

# **European Works Councils: contested and still in the making**

**Stan De Spiegelaere, Romuald Jagodziński  
and Jeremy Waddington**

**etui.**

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and Jeremy Waddington**

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## Abbreviations

AFETT	Association pour la Formation Européenne des Travailleurs aux Technologies [European Association for Training Workers in New Technologies]
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände [Confederation of German Employers' Associations]
CAC	Central Arbitration Committee
CBI	Confederation of British Industry
CEE	Central and Eastern Europe
Ceemet	European employers' organisation representing the interests of the metal, engineering and technology-based (MET) industries
CEEP	Centre Européen de l'Entreprise Publique [European Centre of Public Enterprises]
CGT	Confédération Général du Travail [General Confederation of Labour]
CME	coordinated market economy
Commission	European Commission
CESA	Committee on Employment and Social Affairs (of the European Parliament)
DG	Directorate-General (of the European Commission)
ECJ	European Court of Justice
ECS	European Company Statute
EEA	European Economic Area
EEC	European Economic Community
EESC	European Economic and Social Committee
EFA	European framework agreement
EFBWW	European Federation of Building and Woodworkers
EFFAT	European Federation of Food, Agriculture and Tourism Trade Unions
EIF	European industry federation
EMCEF	European Mine, Chemical and Energy Workers' Federation
EME	emerging market economy
EMF	European Metalworkers' Federation
EPP	European People's Party
EPSR	European Pillar of Social Rights
EPSU	European Federation of Public Service Unions
ETUC	European Trade Union Confederation
ETUF	European trade union federation
ETUCO	European Trade Union College
ETUI	European Trade Union Institute
EU	European Union

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EWC	European Works Council
EWCB	European Works Council Bulletin
EWCDb	European Works Council database (maintained by the ETUI)
GFA	global framework agreement
GUF	global union federation
HR	human resources
HRM	human resource management
ICEM	International Federation of Chemical, Energy, Mine and General Workers
IG Metall	Industriegewerkschaft Metall [Industrial Union of Metalworkers]
IFA	international framework agreement
ILO	International Labour Organization
IMF	International Metalworkers' Federation
LME	liberal market economy
MME	mixed market economy
MNC	multinational company
NMS	New Member State
OECD	Organisation for Economic Co-operation and Development
SE	Societas Europaea, or European company
SEA	Single European Act
SEWC	European Company Works Council (SE = Societas Europaea)
SMEunited	association of crafts and SMEs in Europe, formerly known as UEAPME
SNB	special negotiating body
TCA	transnational company agreement
TUA	Trade Union Alliance
TUAC	Trade Union Advisory Committee (to the OECD)
UEAPME	European Association of Craft, Small and Medium-Sized Enterprises, former name of SMEunited
UN	United Nations
UNICE	Union of Industrial and Employers' Confederations of Europe
UNI	Union Network International
UNI Europa	Union Network International Europa
Unite	'Unite the union', commonly known as Unite, a large general trade union in the UK
WCC	world company council
WWC	world works council

## Preface

Adopted on 22 September 1994, Council Directive 94/45/EC on the establishment of a European Works Council (EWC) or a procedure in Community-scale undertakings or Community-scale groups of undertakings for the purposes of informing and consulting employees (hereinafter ‘the Directive’) was the first piece of legislation of transnational scope designed to promote employee participation in multinational companies (MNCs). Subsequently, more than 1,250 EWCs have been established, constituting the development of a new industrial relations institution (EWCdb).

An initial survey of EWC representatives was commissioned by the European Trade Union Institute (ETUI) in 2005. This survey found that the quality of information and consultation procedures within EWCs met neither the standards required by the Directive nor those specified in EU Charters and Treaties, such as Article 27 of the Charter of Fundamental Rights of the European Union (Waddington, 2011). The survey also demonstrated that efforts by trade union organisations to address the adverse effects of the inadequate legislation at best mitigated these effects but were unable to overcome the shortfalls in the legislation. In this regard, the survey examined the impact of trade union involvement in the operation of EWCs, of articulation between EWCs and other institutions of labour representations within the MNC, and of training provisions made available to EWC representatives. In the light of this survey evidence and a vast array of case study material, representatives of European institutions recognised some of the limitations of the Directive and adopted the Recast Directive (2009/38/EC) in May 2009 (hereinafter, the ‘Recast’) as a means of addressing these limitations. It was also expected that the passing of time would lead to the accumulation of learning effects among EWC participants that may promote improved performance of the institution. To establish whether the impact of the Recast and learning effects has led to the ‘maturing’ of EWCs as industrial relations institutions, the ETUI commissioned a second survey of EWC representatives in 2017. This book reports the results of this second survey and, in so doing, traces the development of EWCs between 2007 and 2018.

At the core of the analysis presented in this volume is the observation that EWCs are contested institutions. This contestation arises from the contrasting positions of the social partners, the European Commission and European institutions. BusinessEurope initially preferred a voluntary rather than a legislative approach to transnational employee representation and, when this position became politically untenable, campaigned for restricted minimum standards and coverage. In contrast, the European Trade Union Confederation (ETUC) and the European Trade Union Federations (ETUFs) view EWCs as adding a social dimension to the European single market and, accordingly, argue for more specific standards and the enforcement of the minimum

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standards specified in the legislation. To compound these fundamental differences in approach, managers responsible for EWCs within MNCs use EWCs as vehicles for the promotion of ever more sophisticated human resource management strategies, thereby ensuring corporate added value from the institution (Pulignano and Turk, 2016).

As illustrated by the content of both the Directive and the Recast, the European Commission has tended to opt for the minimalist approach advocated by BusinessEurope. The Directive, for example, included a raft of voluntary provisions, far from exacting minimum standards, and failed to define key terms. Similarly, the much-delayed Recast comprised tentative steps forward where the ETUC and ETUFs, survey data and case study material indicated that significant strides needed to be made in addressing the shortcomings of the Directive. The European Parliament and the European Economic and Social Committee (EESC) recommended more wide-ranging revisions to the Directive than were contemplated by the European Commission, while managers responsible for EWCs within MNCs viewed the Recast as merely bringing the legislation into line with EWC practice (Pulignano and Turk, 2016). The analytical core of this publication focuses on the competing positions of the social partners and how European institutions have responded to the differing interpretations of the purpose and development of EWCs.

Against this background, the central argument advanced here is that the Recast and any accompanying learning effects have failed to result in EWC practices attaining the standards required by European legislation and policy-makers for the vast majority of EWC representatives. The quality of information and consultation procedures within EWCs is generally poor, with the consequence that, at best, most EWCs function as purely information rather than information and consultation institutions. Although trade union organisations continue to strive for greater involvement in EWCs, articulation between EWCs and other institutions of labour representation, and more wide-ranging training provisions for EWC representatives, standards of information and consultation remain persistently low, suggesting that the underpinning legislation is insufficient to allow EWC practices to reach an appropriate standard. In short, while trade union involvement in EWCs plays a key role in their functioning and development, such involvement is insufficient to overcome the shortfalls in the legislation.

The response of the social partners and European institutions to this situation is examined in this book. In particular, it shows that BusinessEurope is willing to enter into negotiations on EWCs only when it is politically impossible to resist demands to do so, and, when forced to the negotiation table, opts for as wide a range of voluntary measures and restricted minimum standards. Effective lobbying supports these positions. The more exacting standards for transnational information and consultation sought by trade union organisations were accompanied by institution building as a means of developing EWCs. The legislation on EWCs, for example, promoted the reform of European trade union practice insofar as the ETUFs were formally allocated industrial responsibility within the European trade union movement, have developed and implemented policies to assist and regulate EWC practices, and have become more articulated with affiliated trade unions. All this serves merely to illustrate that the Directive triggered a process involving the establishment of EWCs and an infrastructure within which EWCs may

operate. Together with the quality of information and consultation procedures, the Recast and any learning effects, these developments show that the evolution of EWCs is still in process, and that a great deal remains to be done before EWCs can achieve the standards initially expected of them.

This book has been a long time in the making. We would like to take this opportunity to thank all those who have contributed to the research on which the book is based. The ETUI, based in Brussels, generously funded the research and was thus essential to its completion. Our involvement with the ETUI afforded unparalleled access to committees, conferences and workshops on EWC development and debates on EWC legislation. At these events, exchanges with policy-makers and EWC representatives contributed significantly to the arguments developed in the book. Countless discussions with EWC representatives at EWC meetings and on training programmes supplemented and enriched the questionnaire data, which were collected specifically for the research. We would like to thank those within the ETUFs and national trade unions for their support, as well as the EWC coordinators and chairpersons who facilitated the distribution of the questionnaire. We are also grateful to all the EWC representatives who completed the questionnaire, without whose involvement the survey would not have been completed. Arijana Amina Ramic and Viviane Bertel from the ICON Institute organised the collection of the electronic data and the inputting of the questionnaire responses. We are most grateful to them for their outstanding contribution. Our colleagues at the ETUI, as well as associated contributors also made substantial contributions to the final publication. Irmgard Pas provided invaluable assistance in extracting data from the database maintained by the ETUI, Fabienne Depas of the ETUI Documentation Centre checked the references, The Peer Group and Bethany Staunton were responsible for language editing, and James Patterson and Birgit Buggel-Asmus for the layout and for the publication process. Without their diligent efforts with respect to these key elements of the publication process, this book would never have seen the light of day. Friends and colleagues have also read and commented extensively on various drafts of the book. We would especially like to thank Miguel Martínez Lucio, Valeria Pulignano and Philippe Pochet for their detailed comments on the text. We are extremely grateful for all the constructive and helpful comments, which have contributed significantly and positively to the final version of the manuscript. Finally, we would like to point out that the survey was conducted in 2018 before the Covid 19 pandemic hit. As a result, no reference is made to the impact of the pandemic on EWC practice.

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# Chapter 1

## Setting the scene

As initially conceived in Council Directive 94/45/EC (hereinafter ‘the Directive’), European Works Councils (EWCs)<sup>1</sup> were innovative bodies intended to ‘improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings’ (Article 1). This was to be achieved through information exchange and consultation between central managers of multinational companies (MNCs) with European operations and worker representatives selected from the different sites of the MNC. Subsequently, more than 1,250 EWCs have been established with operations undertaken in a range of industries and based in different European Union (EU) Member States and countries within the European Economic Area (EEA) that committed to the Directive (De Spiegelaere and Jagodziński 2015).<sup>2</sup>

European-level policy-makers viewed EWCs as a body that is integral to the European social model and as a keystone to the establishment of a European system of industrial relations (Savoini 1995). In the context of the then formative development of the European single market, EWCs were viewed as mitigating the impact of the ‘fundamental asymmetry’ between the economic and social elements of European integration (Scharpf 2002: 665) by promoting an interdependence between the social partners based on regular meetings. The initial intentions of European-level policy-makers were not realised in practice, with the consequence that the Recast EWC Directive 2009/38/EC (hereinafter the ‘Recast’) was adopted to revise and reformulate the terms of the Directive with the intention of improving practice. The stated objective of the Recast, however, remained the same as that of the original Directive (Article 1(1)). A purpose of this book is to establish whether the Recast has promoted EWC practice that is consistent with the initial intentions of European-level policy-makers.

EWCs are relatively immature bodies by comparison with many national institutions of labour representation in Western Europe. EWCs are also unique in that they are transnational bodies involving lay representatives. Furthermore, the legislation that underpins EWCs was reformed within some 15 years of the adoption of the Directive as European policy-makers strove to create circumstances within which the stated objectives of EWCs could be attained. These points illustrate that EWCs are an institution in process. Compounding the processual nature of the institution is the

- 
1. The Directive also allowed a ‘procedure for informing and consulting employees’ to be established rather than an EWC. Unless explicitly stated, this book uses the term ‘EWC’ throughout to refer to both legal options.
  2. Between 1957 and 1992, the official name was the ‘European Economic Community’. It was only in 1992 that it became known as the ‘European Union’. For ease of explanation, the term ‘European Union’ is used throughout this publication.



continual development of EWC practices and the absence of a common understanding between and within the social partners regarding the purpose of the institution and how it might develop. It should also be acknowledged that further reviews of the legislation are envisaged, raising the prospect of further change to the underpinning regulations. In short, EWCs are an institution in process where the underpinning regulations, objectives and practices are not fixed but are subject to debate and contestation.

Irrespective of the legislative underpinning, EWCs are institutions of indirect representation in which employee representatives voice the interests of the workforce with the intention of influencing strategic corporate decision-making. As such, EWCs are a transnational variant of national works councils that are present in many Member States. Constitutionally, however, EWCs are limited by comparison to many national systems of works councils. Unlike many national works councils, for example, EWCs are restricted to information and consultation rights. There are no codetermination rights as are available to German and Austrian works councils or negotiation rights as are available to Hungarian works councils (Slomp 1996: 79–91; Tóth 2001). Similarly, the subsidiary requirements set out in the Annex to the Directive (point 1(a)) and Annex I to the Recast (point 1(a)) include items that may appear on the agenda of an EWC, but do not state that these items must necessarily appear. Whereas some national works council systems specify which agenda items are attached to either an information right or a consultation right, EWC legislation draws no such distinction. EWC legislation also stipulates a minimum of one plenary meeting per year. While the legislation does not preclude more frequent meetings, it sets a particularly low standard compared to the frequency of meetings of national works councils (Slomp 1996: 79–91). Furthermore, Article 13 of the Directive allowed the establishment of EWCs between 22 September 1994 and 22 September 1996 that were exempt from many of the terms of the Directive. The voluntary EWCs established during this period, of which it is estimated that there are about 490 (De Spiegelaere and Jagodziński 2015), are also exempt from the provisions of the Recast.<sup>3</sup> While some argue that voluntary agreements established under Article 13 of the Directive are subject to the core definitions of the concepts of ‘transnational information and consultation’ (Picard 2010: 34), the point remains that the range of constitutional shortfalls raises questions concerning the operation of EWCs: namely, can these shortfalls be overcome or do they preclude the institution operating in a manner consistent with the intentions of European-level policy-makers?

In contrast to the constitutional shortfalls identified when comparing EWCs with national works councils, the operational challenges faced by both institutions have many similarities in principle. This is particularly the case regarding the ‘intensity of participation’ and articulation. These operational matters are clearly not independent of the constitutional arrangements applicable to EWCs but are central to the development of an institution with the capacity to influence corporate decision-making. These operational matters are briefly considered below as a means of introducing some of the themes that figure large throughout this study.

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3. Throughout this study, these agreements are referred to as ‘voluntary agreements’. Earlier studies have referred to these agreements as Article 13 agreements or pre-directive agreements. The preference for the term voluntary agreements rests on the point that the Recast includes an Article 13 covering other matters and that some EWCs were established before the Directive was first adopted in 1994.

The ‘intensity of participation’ refers to the extent to which employee representatives can exert influence and power within institutions of employee participation (Gold and Hall 1990: 4; Knudsen 1995: 8–10). Clearly, constitutional factors directly affect the intensity of participation. The absence of a codetermination right, for example, necessarily curtails the intensity of participation. Operational matters also influence the intensity of participation. Information and consultation should be timely and of the appropriate quality. Both in principle and in practice, in order to be meaningful, information exchange and consultation should be completed before management has finalised a decision to allow EWC representatives the opportunity to influence both the strategic corporate decision and the manner of its implementation (Blanke and Rose 2010). EU policy-makers acknowledge this point on two counts. First, Article 27 of the 2000 Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’) states that ‘[w]orkers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time’. Second, and in recognition of the inadequacies of EWC practices based on the Directive, the Recast advocates the provision of information and consultation in sufficient time to allow ‘in-depth’ impact assessments to be completed of the matter at hand. Furthermore, information has to be provided ‘without slowing down the decision-making process in undertakings’ (recital 22, Recast) and consultation has to allow for the ‘expression of an opinion which will be useful to the decision-making process’ (recital 23, Recast). The immediate research question is thus: does the intensity of participation at EWCs allow EWC representatives to exert influence and power over the content and the implementation of corporate strategic decision-making?

Excluding an EWC representative from debates on either the content or the implementation of a strategic corporate decision places that representative in an invidious position. Although responsibility for a decision made in these circumstances lies with management, those represented by the EWC representative may view him/her as responsible for the decision and its implications, given that there is, by definition, a ‘distance’ between the EWC representative and the workers that s/he represents. It is thus necessary to articulate the activities of the EWC with other institutions of labour representation within the MNC and with interests in the MNC (Martinez Lucio and Weston 2000). In practice, articulation with national works councils and/or trade unions within the MNC and with European trade union federations (ETUFs)<sup>4</sup> beyond the MNC would appear to be a minimum requirement for EWC activities to be situated within a ‘network’ of labour representation. A failure to articulate the EWC with other institutions of labour representation may lead EWC representatives to become politically isolated from representatives of labour elsewhere in the MNC. In these circumstances, initiatives arising from information and consultation within the EWC may be undermined from the perspective of labour, as EWC representatives will not be able to brief representatives throughout the MNC on the initiative. While a range of mechanisms to articulate EWCs with other institutions of labour representation are in place, the most prominent are reporting back procedures, the selection of EWC

4. Although the term ‘European industry federation’ was previously used, the more recent name ‘European trade union federation’ is used throughout this study.

representatives from people already holding representative positions within other institutions of labour representation, and the appointment of EWC coordinators to liaise with the ETUFs (Haipeter et al. 2019). To a degree, each of these mechanisms is reliant on the willingness of management *inter alia* to provide premises and tools for reporting back. Some managements, however, may restrict articulation to hinder the effective operation of labour representation within EWCs (Pulignano and Waddington 2020). The provision of training by trade union organisations may also encourage articulation insofar as the establishment of communication systems and interrelationships between institutions of labour representation are prominent issues addressed in training courses. Similarly, coordination between the trade unions whose members are represented on the EWC contributes to the development of articulation (Pulignano 2005). In the context of articulation, the research question thus centres on the degree to which EWC representatives are embedded within networks of labour representation.

To elaborate these themes and to introduce further points of analytical departure, this chapter comprises two further sections. The first of these will review the current evidence on EWCs. This evidence forms the counterpoint to the survey data presented throughout this book. The policies of the actors relevant to the development of EWCs are discussed in Chapter 2 in order to identify the areas of contestation between them. The role of the actors is thus downplayed in the review of the evidence. A second section will introduce the survey research that underpins this study, outline the structure of the presentation and briefly summarise the argument advanced in this book.

## **What does extant research tell us?**

The novelty and potential of EWCs has stimulated a vast array of research since the early 1990s. The purpose here is to identify some of the themes addressed by this research. These themes introduce evidence on several analytical strands against which the data generated in the research reported here are compared. Although distinctions between the categories are by no means hard and fast, extant research is discussed by reference to four disparate categories: history and law; numerical studies of agreements; quality and timing of information and consultation processes; and infrastructural issues beyond the formal information and consultation agenda.

### History and law

The initial focus of studies in this category was on the duration of the negotiations that resulted in the Directive and its content (Hall 1992; Danis and Hoffmann, 1995). Similar themes were prominent in history and law studies of the processes leading to, and the content of, the Recast (Jagodziński 2008; Lulom 2010). Initial analyses emphasised the innovative character of the institution, particularly the bringing together of employee representatives from different sites operated by MNCs on a regular and transnational basis (Meissner 1994).

With regard to the Directive, attention was directed towards the form that EWCs may adopt (Ramsay 1997; Stoop 1994); the potential and/or limitations of the legislation (Knutsen 1997; Streeck 1997); comparisons with arrangements for information and consultation within Member States and how EWCs might impinge upon these arrangements (Hancké 2000); the implications for the parties in terms of the provision of training and other forms of support to EWC representatives (Miller 2002; Stirling 2004);<sup>5</sup> and the identification of managerial objectives for engagement with the EWC (Lamers 1998; Hume-Rothery 2004).

Initial analyses of the Directive were divided into those who viewed the measure critically and those who saw potential in the legislation that required realisation. Academic critics highlighted the limited capacity for information and consultation practices in EWCs, coupled with the absence of meaningful sanctions for non-compliance (Lecher et al. 1999; Royle 1999); the limits to transnational communication systems on the labour side (Lecher et al. 2001; Veersma 1999); different definitions of the objectives of EWCs proposed by EWC representatives (Fulton 1996; Rivest 1996); the likelihood that EWCs may come to serve national rather than transnational interests (Hancké 2000; Wills 2000) and the limited capacity of trade union organisations<sup>6</sup> to support EWC representatives and develop effective networks through which transnational activities may be conducted (Keller 1995; Streeck 1997).

In contrast, those who saw potential in the Directive emphasised those features that required development if the potential of the Directive was to be realised, while acknowledging that the legislation was limited in scope. Among the features that required some development were a common identity or solidarity among EWC representatives (Knudsen et al. 2007; Miller 2002); transnational networks of employee representatives within which EWC representatives were embedded (Weston and Martinez Lucio 1998; Stirling 2004); the establishment of trust among EWC representatives with experiences based in very different industrial relations environments (Timming 2006; Stoop 1994); and training programmes to promote trust and solidarity, to develop an understanding of different industrial relations systems and to enhance the language skills of EWC representatives (Gohde 1995; Miller 2002). In short, those emphasising the potential of the Directive saw trade union activity as the means by which the potential of the Directive could be realised, as such activity would deliver training programmes and underpin the development of solidarity, networks and trust. In contrast, critics of the Directive thought that trade union activity would be insufficient to overcome the inherent weakness of the Directive, in part due to limited resources available at European level.

While the debate between the critics of the Directive and those who saw potential in the measure has subsided, primarily due to the withdrawal of many of the critics from the topic, the issues at the centre of the debate remain contentious. There are three

5. The term 'EWC representatives' is used here to refer to all persons formally selected to serve on EWCs. Later chapters draw distinctions between different categories of EWC representative.

6. The term 'trade union organisations' is used here to refer collectively to the ETUC, ETUFs, national trade union confederations and national trade unions.

reasons for this. First, the process leading to, and the adoption of, the Recast generated further debate about the viability of the legislation in fulfilling the objectives assigned to it by European policy-makers (Dorssemont and Jagodziński 2018). Second, the decision to opt for a directive rather than a regulation remains contentious. A regulation would have limited diversity and subsidiarity in practice (Villiers 2009), which, as subsequent analysis shows, is problematic. Third, debates around identity, trust and solidarity now centre on the circumstances that allow or inhibit the development of these attributes.

The adoption of the Recast confirmed the position of the academic critics of the Directive insofar as the Recast revised elements of the Directive identified by the critics as inadequate. In particular, the following were cited by critics as constituting distinct limitations of the Directive and were addressed in the Recast, albeit not necessarily to their satisfaction: the definition of information and consultation to take into account timeliness and improvements in quality, and the provision of in-depth impact assessments (Articles 2(f) and 2(g)); the communication obligations to link European- and national-level activities (Articles 10(2), 6(2)(c) and 12); the right to training without loss of wages (Article 10(4)); and the introduction of ‘effective, dissuasive and proportionate’ sanctions (recital 36)<sup>7</sup> to be put in place by Member States to encourage compliance (Article 11). Since the adoption of the Recast, the debate has shifted to addressing whether the revisions are sufficient to satisfy the critics (Laulom 2010; De Spiegelaere 2016). The research data generated for this study are directed towards establishing the impact of the Recast on the practices of EWCs.

Rather than debating whether the Directive or Recast provide an adequate underpinning for the development of identity, trust and solidarity, recent research has focused on those features that develop or inhibit these attributes and the different forms that these attributes might take (Kotthoff 2007; Kotthoff and Whittall 2014; Hürtgen 2011). Case study evidence shows that, where a common identity based on some form of mutual transnational interdependence has been established, EWCs are more effective (Knudsen et al. 2007; Kotthoff and Whittall 2014; Weiler 2004). Even in supposed ‘best case’ EWCs, however, ‘the foundations of trust and solidarity’ are inherently fragile, can be easily undermined and can be sustained only through constant cooperative action (Mählmeyer et al. 2017; Greer and Hauptmeier 2012).

A range of factors have been associated with the generation or, conversely, the preclusion, of trust and solidarity. The principal structural factor associated with the generation of a common identity within an effective EWC is a high degree of internationalisation of the MNC coupled with the introduction of centralised management systems operating at European level (Marginson et al. 2004; Kotthoff 2006). ‘European companies’ (known by the Latin name ‘Societas Europea’ or SE) with these features operate in a network of interdependent sites and conduct interdependent operations, which promotes a mutual interdependence among the EWC representatives (Kotthoff and Whittall 2014). A second range of factors viewed as limiting the development of a common identity

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7. Recitals are not formally part of a directive and do not have a force in law. They are used, however, to amplify and clarify the terms of a directive. In practice, recital 36 thus suggests the scope of sanctions in cases of infringement.

relate to differences between national systems of interest representation and a lack of knowledge thereof among EWC representatives, competing interests between the different sites operated by the MNC, the dominance of representatives from the home country of the MNC on the EWC, resulting in the exclusion of other representatives from involvement in decision-making processes, and inadequate support from trade unions (Lecher et al. 1999; Ramsay 1997; Rampeltshammer and Wachendorf 2009; Telljohann 2005b; Klemm et al. 2011). A third range of factors that may inhibit the development of a common identity among representatives are the absence of appropriate language skills, a reluctance among senior managers to engage with the EWC, the infrequency of plenary meetings and the absence of communication between meetings (Telljohann 2005b; Klemm and Weyand 2009; Ierardo and Ongaro n.d.). The impact of some of these factors on the development of a European identity or solidarity among EWC representatives constitutes a further analytical strand of this study.

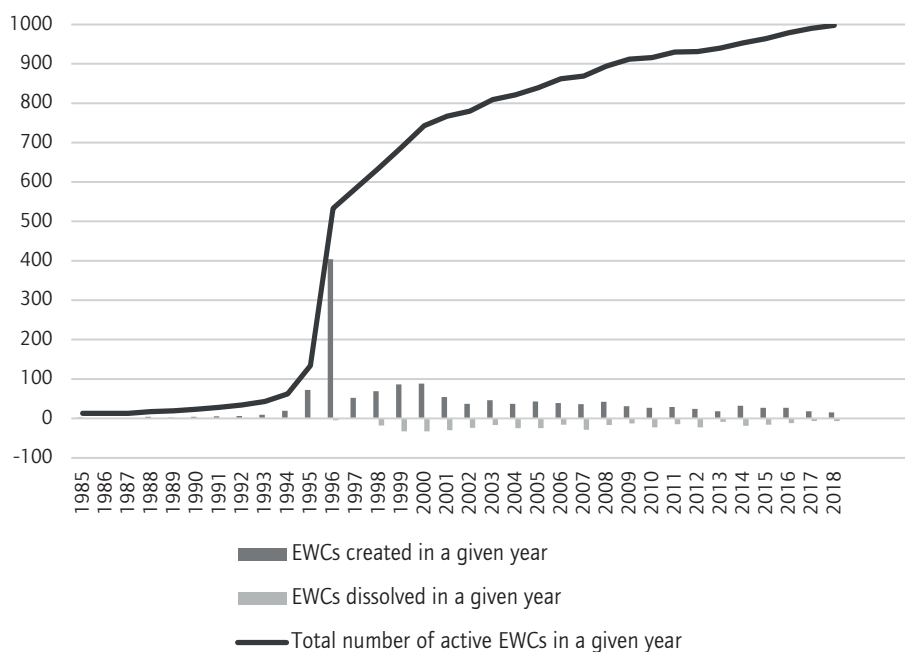
The debates on whether the content of the Directive and Recast is sufficient to achieve the objectives intended by European policy-makers are supplemented by analyses of legal proceedings brought to clarify the legislation. The imprecise nature of the legislation prompted some to speculate whether many court proceedings would be brought in an effort to achieve greater precision (Blanpain 1998). A review of litigation pursued through the national courts of eight countries, however, unearthed only 25 cases in the period until 2010 (Dorssemont and Blanke 2010: 115–223).<sup>8</sup> No fewer than nine of the cases were settled within the highly juridified German industrial relations system (Blanke 2010), suggesting that the propensity to pursue a case may be related to the character of the industrial relations system (Jagodziński 2010a). Most of these 25 cases revolved around one of two issues. First, workers and/or their representatives brought legal proceedings with the intention of setting up an EWC. In these instances, management had no desire to establish an EWC, and so legal proceedings were initiated in an effort to overcome management resistance. Second, court proceedings were brought in order to enforce the completion of information and consultation procedures before management implemented a decision. Both of these issues highlight areas of contestation concerning EWCs that are examined in later chapters.

## Numerical studies of agreements

Numerical analyses of EWC agreements come in two forms: those that focus on the number of agreements and those that review the content of agreements.<sup>9</sup> These numerical analyses are examined here to highlight the scope of the institution, to provide pointers regarding the operation of EWCs and to identify some of the factors that explain the variation in the content of agreements.

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8. Cases were reviewed in the following eight countries: Austria, Belgium, France, Germany, the Netherlands, Slovakia, Sweden and the United Kingdom.
  9. The term ‘numerical studies’ is used here to focus exclusively on research that has traced the development of EWCs by reference, for example, to the size of the population, the number of EWC agreements that have been renegotiated or the number of EWC founding agreements that address a specific matter. It is acknowledged that survey research on EWC is also numerical, but not in the sense used here.

Figure 1.1 Growth in the number of EWCs and the number of dissolutions (to December 2018)



Source: ETUI database of EWCs (2020). [www.ewcdb.eu](http://www.ewcdb.eu)

Figure 1.1 shows the growth in the number of EWCs to December 2018, at which juncture there were 998 EWCs in operation.<sup>10</sup> Three points are immediately apparent from Figure 1.1. First, during the period September 1994 to September 1996 when Article 13 of the Directive was in force, no fewer than 491 EWCs were created, 404 in 1996 alone. This period marked the highest annual growth in the number of EWCs and was concurrent with relatively weak control and monitoring of the establishment of EWCs by the ETUFs (Waddington 2011: 33–52). The voluntary EWCs established during this period were exempted from a number of the minimum provisions set out in the Directive, although the negotiation of these agreements took place ‘in the shadow of the law’ (Bercusson 1992). Furthermore, the parties to EWC founding agreements negotiated during this period are under no obligation to renegotiate these agreements to ensure that they comply with the terms of the Recast. In many cases prior to September 1996, management took the initiative to establish the EWC as a means of avoiding the need to comply with the terms of Article 6 of the Directive. In the light of these

10. Unless otherwise stated, all references to the number of EWCs are taken from the database compiled by the European Trade Union Institute, the EWCdb, the most comprehensive data source on the numerical development of EWCs. December 2018 was chosen as the date for EWCdb data, as this date closely coincided with the distribution of the survey (April 2018), and all aspects of the EWCdb were up to date for December 2018.

findings, this study investigates whether the practices within voluntary EWCs operating under Article 13 of the Directive differ from those of other EWCs operating under more exacting legal requirements. The distribution of EWCs at December 2018 comprised 361 operating under voluntary agreements and 637 operating under Article 6 of the Directive or the terms of the Recast.<sup>11</sup>

Second, Figure 1.1 shows that the annual rate at which EWCs are being established is decreasing. Between 1997 and 2008, for example, an average of 52 EWCs were set up per year. Between 2010 and 2018, after the adoption of the Recast, the rate fell to just over 24 EWCs established per year. Two measures were included in the Recast to promote the rate of establishment of EWCs: Article 4(4) places an obligation on management to provide information on the size of the workforce, and Article 5(2) requires that information on the commencement of negotiations to set up an EWC be sent to the relevant trade unions and employers' organisations. These measures do not as yet appear to have had their desired effect.

Third, since 1996 when the first EWC was dissolved, no fewer than 406 EWCs have been dissolved at a rate of 17.6 per year (Figure 1.1). In other words, to keep the number of EWCs constant, a minimum replacement rate of almost 18 EWCs per year needs to be maintained. Company restructuring in the form of mergers and acquisitions accounts for 74 per cent of dissolutions, conversion of the company to another legal status 6 per cent and bankruptcy or the selling off of the company a further 6 per cent. Only 1 per cent of dissolutions are attributed to a lack of interest among participants, and 2 per cent are due to the company failing to meet the workforce size threshold (De Spiegelaere and Jagodziński 2015: 15).<sup>12</sup> The 'churn' in the institution indicated by the rate of dissolution of EWCs suggests that the maintenance of continuity is far from straightforward.

Two more points associated with the data presented in Figure 1.1 regarding the coverage of EWCs and the renegotiation of EWC agreements are also pertinent to the analysis that follows. First, data on the number of MNCs that fall within the scope of the legislation on EWCs are notoriously unreliable, in no small part due to the extent of corporate restructuring mentioned above. Successive EU enlargements and the reversal of the UK opt-out added to the uncertainty. Bearing these caveats in mind and taking into account that several MNCs operate more than one EWC, estimates suggest that the coverage rate of EWCs was 34 per cent in December 1996; 32.8 per cent in December 1998, following the growth in the number of eligible MNCs as a result of the reversal of the UK opt-out; 34.3 per cent in October 2006; 35 per cent in June 2005 (Kerckhofs 1999a, 2002, 2006); 36 per cent in 2008 (Eurofound 2008: 1); and 44.2 per cent in 2018 (European Commission 2018a: 39). The issue of the coverage rate is political insofar as employers' associations cite it as evidence of a lack of interest among employees in the institution (BDA 2004). The political character of the issue is addressed in Chapter 2.

11. In addition, there were 159 European company works councils operating under Directive 2001/86/EC. These are excluded from the analysis presented here, as there are variations in content between the Directive, the Recast and Directive 2001/86/EC, and regarding the country of origin of the MNCs adopting the different measures.

12. The reason why 11 per cent of EWCs were dissolved is unknown, hence the figures presented here do not add up to 100 per cent.



A second point associated with the data illustrated in Figure 1.1 concerns the renegotiation of agreements. Renegotiation of agreements is crucial for adapting to changes in circumstances and as a means of developing new practices within EWCs. Of the 998 EWCs active in December 2018, 369 (37.0 per cent) operate on the basis of a renegotiated agreement. The rates of renegotiation among the different forms of EWC were: voluntary agreements, 53.8 per cent; and Article 6, other agreements covered by legislation and agreements based on the subsidiary requirements, 30.5 per cent. It thus appears that, although there is no legal obligation to renegotiate voluntary agreements, operational requirements have prompted their renegotiation. Approximately half of the voluntary EWCs, however, have operated for more than 20 years based on agreements initially concluded no later than September 1996, suggesting likely differences compared to EWCs operating in conjunction with recent agreements. To observe the absence of renegotiation, however, is not to argue that practice has not changed over time.

A second strand of the numerical analysis of EWC agreements charts changes in the content of agreements over time. Rather than trace the change in the proportion of agreements that include or exclude a specific clause, the purpose here is to plot the overall trajectory of change and to identify the principal sources of variation. Chapter 3 includes a more detailed analysis of some key features of the constitutions of EWCs.

Initial numerical analyses of the content of EWC agreements observed that voluntary agreements tended to vary in their reference to the terms outlined in the subsidiary requirements of the Directive. The negotiation of voluntary EWC agreements may have taken place ‘in the shadow of the law’, but this did not mean that the law acted as a straitjacket. Training provisions for EWC representatives, for example, were available in only about a quarter of agreements (David 1998). In contrast, the agenda items that were listed as being subject to information and consultation obligations in EWC agreements were often drawn from those issues highlighted in the subsidiary requirements (Bonneton et al. 1996). More consistent deviation from the terms specified in the Directive was observed on three counts. First, whereas the Directive made no reference to trade unions, a substantial minority of voluntary agreements stipulated that trade union officers could be members of the EWC or granted them a right to attend EWC meetings. Second, the Directive specified that EWC representatives be drawn from countries covered by the Directive. In practice, however, where MNCs had operations in the UK, Switzerland and Central and Eastern Europe (CEE), representatives from these countries tended to participate in the EWC as full members. Third, following the German model, the Directive specified that the EWC comprise only worker representatives. The majority of voluntary agreements made provision for joint management-employee bodies, reflecting French practice (Marginson et al. 1998; David 1998; Carley et al. 1996). Operational requirements and preferences would thus appear to have superseded the terms of the regulations on these issues.

After September 1996, a second phase of the numerical analysis of the content of agreements focused on agreements concluded under Article 6 of the Directive. By comparison with the voluntary agreements concluded under Article 3, a more marked impact of the Directive on the content of Article 6 agreements was reported, particularly regarding the inclusion of clauses dealing with access to experts, specifying agenda

items, allowing the establishment and operation of a select committee or equivalent, and addressing confidentiality (Carley and Marginson 2000; Stanzani and Beiraert 2006; Cox 2005). In addition, the same commentators noted evidence of learned behaviour, as a greater proportion of Article 6 agreements than voluntary agreements included clauses introduced into the latter but not specified in the Directive. These clauses covered follow-up or debriefing meetings, access to experts, and arrangements for agenda setting and the distribution of minutes (Cox 2005). In combination, these developments led some to suggest that the agreements concluded under Article 6 were more likely to underpin EWCs that undertake an 'active role' than voluntary agreements (Carley and Marginson 2000: 50). This proposition is examined in subsequent chapters.

The Recast introduced substantial revisions to the Directive regarding training, trade union involvement and reporting back to employees; a reworking of the definitions of information, consultation and transnational competence; and a consolidation of the role of the select committee. Given the requirement for agreements concluded under Article 6 of the Directive to comply with the terms of the Recast, a wide-ranging revision of agreements was anticipated after 2009 (Kerckhofs 2010). In practice, however, this expectation was not realised. The Recast had an effect on reporting back provisions and on the definitions of information, consultation and transnational competence in EWC agreements. In contrast, the Recast had no observable influence on the content of EWC agreements regarding select committees and training (De Spiegelaere and Waddington 2017). The Recast failed to have an influence in these areas because learning effects since 1994 had served to ensure that the content of agreements on these topics was in advance of the content of the legislation. These findings are consistent with those showing a marked learning effect that overwhelms the impact of the Recast (Kerckhofs 2015; De Spiegelaere and Waddington 2017). It is possible, of course, that the Recast had such limited effects because EWC agreements had been renegotiated in anticipation of its content. Examination of this possibility is beyond the scope of this study. More central to our purpose is the question: have the terms of the Recast led to improvements in the practices of EWCs?

In addition to examining shifts in the composition of EWC agreements with successive amendments to the regulatory regime, these studies have identified factors associated with variations in the terms of agreements. Clearly, the legislation has had an effect on the terms of EWC agreements. As noted above, however, the imprecision of the legislation, both at European and, in its transposition, at national level (Jagodziński and Lorber 2015), coupled with the inclusion of many voluntary elements and an absence of enforcement are indicative of the limits to the statutory effect. As also mentioned above, a learning effect has been widely observed since the late 1990s. In effect, EWC representatives must glean information about practices from EWCs other than their own and choose to implement them within the EWC on which they serve. Trade union organisations at national and European level are clearly central to this transfer of information. Two other principal influences are associated with variations in the terms of EWC agreements: a country effect and a sector effect (Gilman and Marginson 2002; Knudsen and Bruun 1998; Hall et al. 2003). Of course, from these studies of agreements, it remains to be seen whether these variables have an impact on EWC practice. The variation in the practice of EWCs is discussed below.

## Quality and timing of information and consultation processes

Information exchange and consultation are the central objectives of EWCs. It is thus not surprising that the quality of information and consultation processes has figured large in much of the research on EWCs. In this context, the quality of information has been discussed by reference to the form in which it is made available, its content and the detail in which it is presented, as well as the person(s) who is (are) its source. The quality of consultation has also been addressed by reference to timeliness: when does consultation take place in relation to the finalisation by management of the content of a strategic corporate decision and the implementation of that decision? The timing of consultation has also been linked to the influence of the EWC, insofar as the possibility of exerting influence is more marked if consultation takes place before management finalises the content of a strategic corporate decision. In addition, this study also examines the manner in which confidentiality and reporting back procedures impinge on information and consultation practices.

Although analyses of information and consultation processes at EWCs have used a wide range of research methods, case studies and questionnaire surveys are the most prominent. Case studies tend to focus on the operation of EWCs as a whole, whereas surveys rely on responses from EWC representatives or, in a few instances, from EWC coordinators<sup>13</sup> or managers responsible for EWCs within MNCs. A comparison of the results from the two sources is thus not straightforward. The difficulty of analysing extant research on information and consultation practices is further compounded by differences in the time since 1994 at which research was conducted. With these caveats, the following review serves to summarise the current situation regarding information exchange and consultation and to identify the sources of variation in such practices.

In efforts to illustrate developments in the institution as a whole, a range of case studies were undertaken that included a relatively large number of cases (Lecher et al., 1999, 2001, 2002; Telljohann 2005b; Weiler 2004). The key finding from these studies is that EWCs were at different stages of development. These stages were not necessarily chronological in that, over time, an EWC did not necessarily move from one stage to another higher stage. It was also acknowledged that an EWC could regress to a less sophisticated state when confronted by adverse circumstances (Mählmeyer et al. 2017). As a result, a series of EWC 'types' were identified. The Lecher et al. (2001: 53) variant of this approach, for example, comprised four types: symbolic EWCs, service EWCs, project-oriented EWCs and participative EWCs. Symbolic EWCs are those that hold an annual meeting, but have very few other activities; whereas participative EWCs operate as social actors, engage in timely information and consultation practices, and may extend the activities of the EWC beyond the formal agenda specified in the legislation. Similar distinctions underpinned the typologies advanced elsewhere (Marginson 2000; Kotthoff 2006). Three points arise from these analyses. First, EWCs cannot be treated as a monolithic category: the inclusion of voluntary and negotiated elements in the

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13. EWC coordinators are usually selected by the relevant ETUF to represent its interests at the EWC and to coordinate the activities of the EWC with those of the ETUF and the other EWCs coordinated by the ETUF. The role of the EWC coordinator will be discussed in more detail in Chapter 2.

legislation ensures variation in information and consultation practices between EWCs. Second, a range of factors were associated with the variation in the development of information and consultation practices within EWCs. Prominent among these factors were the sector, country of origin of the MNC, extent of unionisation among EWC representatives, variation between single- and dual channel systems of representation, and the degree of interdependence between the different sites operated by the MNC (Lecher et al., 2001; Marginson et al., 2004; Weiler 2004). Third, EWCs operated primarily as information rather than information and consultation bodies: that is, the intentions of European policy-makers were not being realised in most EWCs (Kotthoff and Whittall 2014).

Case study research based on a small number of cases takes a multitude of different points of departure in assessing the quality of information and consultation processes and identifying the factors that influence this quality. Studies situating the EWC in the context of the history and traditions of the MNC linked information and consultation arrangements to the industrial relations practices of the MNC (Royle 1999; Wills 2000; Whittall et al. 2009; Haipeter 2006). Specific national features of EWC information and consultation practices were highlighted by studies that took the country of origin of the MNC (Köhler and González Begega 2009; Nakano 1999; Hall et al. 2003; Rehfeldt 2009) or the country of origin of the EWC representatives (Bicknell and Knudsen 2006; Beaupain et al. 2003; Ziltener and Gabathuler 2016) as the point of departure. Company studies hint at a marked variation in the quality of information and consultation procedures and in the effectiveness of EWCs between sectors, with developments in engineering generally and automotive engineering in particular tending to be in advance of developments elsewhere (Hertwig et al. 2011; Haipeter 2006). Studies of EWCs based in specific sectors, however, demonstrate a wide-ranging variation in information and consultation practices within sectors (Rüb and Platzer 2015; Whittall et al. 2009), suggesting that, while the sector may influence the quality of information and consultation practices within EWCs, other factors also come into play. Among these are the strategic and organisational dimensions of the MNC, particularly its size and degree of internationalisation (Gold and Rees 2013); industrial relations in the country of origin of the MNC (Lecher et al. 2002); the extent and nature of trade union engagement (Banyuls et al. 2008); and management organisation and management attitudes towards the EWC (Pulignano and Turk 2016; Marginson et al. 2004).

The large-scale case study-based projects identified different ‘types’ of EWCs but did not attempt to quantify the distribution of EWCs across the range of ‘types’. Researchers settled for observations such as ‘only a few EWCs have had experience with consultation’ (Lecher et al. 2001: 134) or ‘the main objective [of EWCs] of providing workers with a voice in corporate decision-making processes has only been achieved in a minority of cases’ (Weiler 2004:103). Similarly, based on ‘those EWCs so far studied’, it is estimated that no more than 20 per cent have developed to a stage where consultation has taken place with management (Kotthoff and Whittall 2014: 7).

The application of survey techniques to the study of EWCs is infrequent compared to case studies, but a central objective of survey research is to establish the distribution of information and consultation practices between EWCs based on the views of individuals

involved in EWCs. The results are not dissimilar to those obtained from case studies. There was not one single agenda item drawn from the list of issues provided in the subsidiary requirements of the Directive in relation to which even a third of EWC representatives felt that ‘useful information and consultation’ had been provided in 2007. Although a significant number of EWC representatives reported that key issues had not even appeared on the agenda of their EWC, the survey results confirmed that EWCs operated primarily as information bodies rather than information and consultation bodies (Waddington 2011:90). Furthermore, only 17.6 per cent of EWC representatives were informed of a decision to undertake corporate restructuring before management had finalised their corporate decision-making process, and only 13.1 per cent of EWC representatives were consulted on that same basis (Waddington 2011: 103). Most EWC representatives were thus unable to influence the content of strategic corporate decision-making. A survey based on interviews of EWC coordinators and conducted after the Recast was adopted confirmed the pattern of results obtained from EWC representatives insofar as EWC coordinators reported that ‘all too often information is provided too late’ and that ‘consultation hardly takes place, and even when it does it is often under too restricted circumstances’ (Voss 2016: 14–15). Managers share the same view as EWC representatives and EWC coordinators. A project supported by BusinessEurope,<sup>14</sup> for example, reports that, out of 56 managers responsible for EWCs within MNCs, only four (7.1 per cent) indicated that information exchange and consultation took place before managers finalised their strategic decision-making process (Pulignano and Turk 2016).

To summarise, the evidence derived from both case studies and survey techniques demonstrates that the information and consultation agenda proposed by European policy-makers is rarely met in practice. At best, the overwhelming majority of EWCs operate as bodies through which information is made available rather than as information and consultation bodies. Furthermore, a significant minority of EWC representatives report that key issues had not appeared on the agenda of their EWC.

### Infrastructural issues: beyond the formal information and consultation agenda

As conceived by European policy-makers, information exchange and consultation are the core objectives of EWCs. Apart from specifying some minimal constitutional provisions, European policy-makers neither elaborated how the provision of information and consultation of sufficient quality might be ensured nor suggested how EWCs might develop beyond minimal core objectives. These omissions are addressed here by reference to four related issues that are not directly addressed in the Directive or Recast but are concerned with the quality of information and consultation processes and the development of EWCs beyond the formal information and consultation agenda. First, networking involving the EWC is viewed as fundamental in overcoming the

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14. The Union of Industrial and Employers’ Confederations (UNICE) changed its name to BusinessEurope in 2007. For ease of explanation, the name BusinessEurope is used throughout this study, irrespective of the date to which the reference is made. Publications cited, however, are referred to by the title in operation at the time. It should also be noted that, in many instances, BusinessEurope publishes material jointly with the European Centre of Public Enterprises (CEEP) and the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME). To avoid overloading the text with acronyms, only BusinessEurope is cited in these circumstances.

limitations of the legislation and improving the quality of information and consultation practices (Weston and Martinez Lucio 1998). Second, transnational solidarity underpins coherent EWC policies and enables the EWC to be involved in activities to further these policies (Knudsen et al. 2007). Third, the generation of both networked EWCs and transnational solidarity therein relies on guidance and training programmes made available to EWC representatives to enable them to acquire the skills and techniques to operate within the unique institution that is the EWC. Fourth, efforts made to develop a negotiations function involving EWCs constitute attempts to move beyond the minimal formal constitutional arrangements detailed in the legislation and, in some instances, to address the shortcomings of the legislation. It is acknowledged from the outset that trade union organisations are the key to each of these four issues. These issues are addressed below to illustrate how it is envisaged that the limitations of the legislation may be overcome by these means. Later chapters illustrate the extent to which initiatives embracing these issues have achieved their intended objectives.

Networking between worker representatives across national boundaries and between different levels of operation within a MNC 'will ultimately condition managerial initiatives' (Martinez Lucio and Weston 1995: 233). The precise way in which advocates of networking envisage that it will condition management actions is more difficult to pinpoint. Advocates of networking emphasise four points in elaborating its effects: networking may be formal or informal; the structure and activity of any network will depend on a wide range of factors prominent among which are the composition of the network, the frequency at which members of the network meet and communicate, and the structure of the MNC; the character of national industrial relations systems and the extent to which EWCs are interconnected with or embedded in such systems will impinge on the character of the networking; and the activities of trade union organisations are instrumental in promoting and sustaining networks (Martinez Lucio and Weston 1995, 2000; Helfen and Fichter 2013). Operationally, networking among EWC representatives and between EWC representatives and representatives serving on other institutions of labour representation is constrained by the constitutional arrangements that underpin EWCs. In particular, the minimum of one annual plenary meeting stipulated by the legislation does not promote networking. Similarly, the ambiguity over the link between information and consultation processes at workplace and at European level does not encourage network building (Blanke and Rose 2010; Dorsemont and Kerckhofs 2015), as it promotes imbalances in the availability of information and consultation procedures between representatives at different levels of operation. This imbalance is compounded by variations in national regulations on information exchange and consultation and in national relationships between trade unions and information and consultation procedures. Relations between EWCs and representative bodies at company level are also characterised by 'distance' (Telljohann 2005b: 9) and uncertainty (Rehfeldt 2004), again suggesting marked limitations to the networking of EWCs. In theory, the Recast enhanced the potential for networking insofar as EWC representatives were obliged to inform national-level employee representatives or, in their absence, the entire workforce, of the results of EWC consultation (Article 10(2)). Chapter 5 will examine whether this measure has intensified contact and communication between the EWC and those whom it represents.

With a view to addressing other constitutional limitations to networking, trade unionists have campaigned for more plenary and select committee meetings.<sup>15</sup> By June 2015, however, only 3 per cent of EWC and SEWC agreements allowed more than two plenary meetings per year (De Spiegelaere and Jagodziński 2015: 30), suggesting that formal networking possibilities remain limited and that trade union campaigning for more frequent meetings has not met with much success. In contrast, 86 per cent of EWC agreements allow for the establishment of a select committee (De Spiegelaere and Jagodziński 2015: 36). Both case study and survey research methods indicate that members of the select committee are better able to network within the EWC as a consequence of the more frequent meetings that they attend (Weiler 2004; Waddington 2011). In order to assess the extent of networking, Chapter 5 will examine the intensity of communications involving EWC representatives and of links with other institutions of labour representation, as well as the extent to which EWC representatives can visit sites operated by the MNC.

The generation of solidarity (Telljohann 2005a), a common identity (Knudsen et al. 2007) or 'felt interdependence' (Kotthoff 2007) is also viewed as a means of overcoming the shortcomings of the legislation. In particular, transnational solidarity is associated with the exercise of influence and power (Hyman 1999; Kotthoff and Whittall 2014). In the context of EWCs, transnational solidarity has two interlinked components (Kotthoff and Whittall 2014: 257–259). Within the EWC, transnational solidarity may be generated among EWC representatives. Several case studies, particularly in engineering and automobiles, report the existence of this component of transnational solidarity (Banyuls et al. 2008; Voss 2006), although such solidarity is fragile and may be undermined by managerial decisions to restructure that have disproportionate and adverse national effects (Fetzer 2008). A second component of transnational solidarity regarding EWCs focuses on the capacity or willingness of employees to bear the costs of action taken in support of employees elsewhere in the MNC, particularly employees from other nations. The perception within the EWC in general, and within the select committee specifically, of the extent of such transnational solidarity among employees impinges on the capacity of the EWC to act. Where transnational solidarity among employees is in place and is recognised as such within the EWC, the position of the EWC is strengthened. It is acknowledged that transnational solidarity among employees is far from commonplace, thus restricting EWCs and preventing them from overcoming many of the shortcomings of the legislation (Timming and Veersma 2007; Kotthoff 2006). Clearly, examination of transnational solidarity among employees is beyond the scope of this study, although how EWC representatives perceive their mandate and its relation to the constituents they represent is assessed. The focus here, however, is on the identity generated by EWC representatives and how this identity impinges on their perception of the EWC. It is acknowledged that the relationship between identity and perception of the EWC may be mutually reinforcing. Aspects of this relationship will also be examined in Chapter 5.

Although the term 'trade union' did not appear in the Directive, those who saw potential in the measure viewed trade unions as essential to overcoming the limitations of the

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15. The term 'select committee' is used throughout this publication. It is acknowledged, however, that other titles are used for this body in MNCs.

Directive. The role of trade union organisations in institution building in relation to EWCs was apparent soon after the adoption of the Directive. While the initial volume of voluntary EWC agreements that were concluded between September 1994 and September 1996, coupled with the absence of established systems within ETUFs, overwhelmed the ETUFs, they were able to support many negotiations, and a more steady state of operation was put in place shortly thereafter (Waddington 2011: 32–52). Integral to this steady state was the production of guidelines, the implementation of procedures for the ratification of EWC agreements, the establishment of committees to formulate and monitor EWC policies, the appointment of EWC coordinators to represent the ETUF within EWCs and the provision of training programmes. Differences in emphasis between ETUFs regarding policies and guidelines will be discussed in Chapter 2, while the impact of the presence of EWC coordinators will be examined in Chapters 4, 5, 6, 7 and 9.

From the outset, the provision of dedicated training to EWC representatives was viewed as a prerequisite for the establishment of trust and solidarity among EWC representatives (Stirling and Tully 2004; Gohde 2005), with emphasis placed on training programmes for all members of a particular EWC, as such programmes would create space within which informal dialogue could flourish (Miller and Stirling 1998; Miller 2002). Survey research showed that, in 2007, EWC representatives were more than three times as likely to have been trained on EWC matters through their national trade unions rather than through a pan-European organisation (Waddington 2011: 136). Given that very few trade unions offer places on training courses to members of other trade unions, this suggests that training programmes for EWCs as a whole were relatively infrequent, which, in turn, means that the space for informal dialogue and the building of solidarity was restricted.

While the Directive was silent on the training provisions that might be made available to EWC representatives, 35 per cent of voluntary agreements concluded under Article 13 of the Directive and 62 per cent of agreements reached under Article 6 made provision for the training of EWC representatives (Carley and Marginson 2000). Following campaigning by trade union organisations, the Recast introduced a right to training without loss of wages (Article 10(4)). While the Recast had no discernible effects on the content of EWC agreements with regard to training (De Spiegelaere and Waddington 2017), by 2015 learning effects had resulted in 55 per cent of voluntary agreements and 74 per cent of Article 6 agreements making provision for the training of EWC representatives (De Spiegelaere and Jagodziński 2015). In the context of training, the purpose of this research is to establish the extent of the training provision made available to EWC representatives, the subject matter of such training, the impact of training on EWC practice and the current training requirements of EWC representatives (see Chapter 7).

The Directive and Recast both specify information exchange and consultation as the principal purpose of EWCs. As noted above, the overwhelming majority of EWC agreements follow the lead provided by the legislation and specifically refer to information exchange and consultation as the purpose of EWCs. Most agreements do not explicitly restrict the EWC to information exchange and consultation (Jagodziński



2007a). Only 11 per cent of agreements, for example, explicitly excluded a negotiations function from the competence of the institution in 2015 (De Spiegelaere and Jagodziński 2015).

Although such engagement is very rarely explicitly allowed in agreements, EWCs have been involved in the negotiation of the growing number of European framework agreements (EFAs) and transnational company agreements (TCAs) (Telljohann et al. 2009a, 2009b; ETUC 2012; European Commission and ILO various), which, in some instances, have been shown to have had a marked impact on corporate decision-making (Whittall et al. 2017). This development demonstrates that the information and consultation function is not necessarily a straitjacket within which the EWC must act (Jagodziński 2012a). This development also raises two key policy questions. First, what is the relationship between EWC involvement in negotiations and trade union organisations, and how is this relationship managed? These aspects are particularly pertinent in many Member States where dual channel systems function and there is an operational distinction between the trade union bargaining function and works council activities (Rogers and Streeck 1995). Policy responses to this question will be examined in Chapter 2, and the way in which EWC representatives view the implementation of these policy responses will be assessed in Chapter 10. Second, what issues form the content of the agreements negotiated with EWC involvement and to what extent is this content intended to overcome the limitations of the legislation or EWC practice? Chapter 10 will present the views of EWC representatives on this question.

## **So, where do we go from here?**

This book situates EWCs within an industrial relations framework: that is, it views EWCs as one institution that may be articulated with a range of other institutions, notably management, trade union organisations and national works councils. It is assumed that, to be effective, however that may be defined, the internal functioning of EWCs should be articulated with activities undertaken within other institutions of labour representation. The study of EWCs in isolation fails to acknowledge that, even if EWC representatives deem the quality of information and consultation procedures satisfactory, it is how such procedures are used that determines their value. The assumption adopted here is that the effective use of information exchange and consultation relies on the EWC and its relations with other institutions of labour representation. Management, of course, may impinge on these relations through the introduction of confidentiality provisions (see Chapters 5 and 8).

With these points in mind, Chapter 2 examines the views of the parties involved towards EWCs. Chapter 2 thus assesses developments within EU institutions, among employers' organisations and management, and among trade union organisations. Chapter 2 also highlights the contestation between these parties and the influence this has had on the content of the legislation and the development of EWC practices.

Chapters 3 to 9 present the survey data. Chapter 3 compares the characteristics of the survey data with those of the population of EWCs on a number of constitutional matters.

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This comparison serves to introduce some of the variables used in subsequent chapters. In addition, Chapter 3 reviews the characteristics of the respondents and the EWCs on which they sit. Chapter 4 analyses the quality of information exchange and consultation from the perspective of EWC representatives. By means of comparisons with survey data generated before the adoption of the Recast, Chapter 4 also examines whether the quality of information and consultation procedures has improved since the Recast. Given the importance of the intended role of EWCs in corporate restructuring, Chapter 4 assesses the timing of information exchange and consultation during corporate restructuring.

The central focus of Chapter 5 is on communications within the EWC and communications between EWC representatives and those they represent. This focus is supplemented by a review of how EWC representatives assess their representative priorities. Chapter 5 identifies whether EWCs are articulated with other institutions of labour representation and with the workers represented by EWC representatives in practice. Chapter 6 examines relations between EWCs and trade union organisations. This examination is conducted by reference to the impact of the EWC coordinator and the unionisation of EWC representatives on EWC practice. In addition, Chapter 6 identifies whether EWCs are vehicles through which trade union objectives may be realised. Chapter 7 assesses the extent and the impact of the training provision available to EWC representatives. With regard to management, Chapter 8 assesses whether the managers who attend the EWC are viewed as those who make corporate strategy decisions, examines the use of confidentiality by management and discusses how EWC representatives view relations with managers. The enforcement of the rights of EWCs and the bringing of legal proceedings on occasions where there is a failure to agree between EWC representatives and management are examined in Chapter 9.

Chapter 10 examines the current state of play regarding the involvement of EWCs in the negotiation of EFAs and TCAs. This examination also considers the extent to which the negotiation function of EWCs is interlinked with trade union organisations and the subject matter of the negotiations entered into. Chapter 11 concludes the text in drawing together the principal strands of the argument that emerge from the analysis. It also presents the views of EWC representatives on how the institution should be reformed if the objectives of European policy-makers are to be realised in practice.

The data used to assess the issues and questions raised in this chapter are drawn from a large-scale survey of EWC representatives conducted between February and April 2018. A total of 1,520 EWC representatives (rate of return: 32.7 per cent) responded to the survey. Details of the survey distribution are presented in Appendix A. Appendix A also specifies the weighting procedure applied to accommodate disproportionately large or small numbers of respondents with particular characteristics. All data from the 2018 survey presented in subsequent chapters have been weighted using this procedure.

At several points, the data collected in 2018 are compared with similar data collected in an earlier survey of EWC representatives conducted between late 2005 and 2008 (Waddington 2011: 233–239). For ease of explanation, this survey is referred to as the

2007 survey.<sup>16</sup> Several questions in the 2018 survey replicate questions from the 2007 survey. It is thus possible to compare the views of EWC representatives before and after the Recast was adopted. It is acknowledged, however, that the data from the 2007 survey are not weighted, with the result that these comparisons should be treated with caution.

In brief, the book argues that EWCs, at best, operate as information rather than information and consultation bodies. Furthermore, EWCs are generally unable to influence strategic corporate decisions on restructuring. As a result, the intentions of European policy-makers regarding EWCs are not being realised in practice. Attempts to remedy the shortfalls in the legislation by articulating EWCs with other institutions of labour representation, through trade union support and extensive training arrangements, have proved insufficient. Management, however, have been able to limit the effect of the information and consultation agenda assigned by European policy-makers to EWCs, while concurrently using EWCs to promote value-adding HRM agendas within MNCs. Although very few EWCs have initiated litigation to seek remedies for infringements to the legislation, in prioritising the revision of the Recast to address the fundamental weaknesses of EWC legislation, many EWC representatives consider the imposition of sanctions as a means of resolving disputes. In the light of the sub-standard performance of EWCs regarding information and consultation procedures, European institutions and the Commission in particular have failed to propose measures that might remedy the situation and result in EWC practices that are consistent with the original intentions of European policy-makers.

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16. The questionnaires entered into the database in 2008 arrived in the post during the 2007-2008 Christmas break, hence the use of 2007 as the date for the initial survey.

## Chapter 2

### Contestation: the parties to the Directive

This chapter addresses three themes that resonate throughout subsequent chapters. First, it identifies the issues at the heart of the contestation that has characterised the emergence of legislation on EWCs since the 1970s and practice within EWCs. To a degree, this contestation explains the specific features of the constitutional arrangements on which EWCs are based. Second, accompanying the shift away from ‘social market style’ economic and social policies towards a neoliberal orientation among many European-level policy-makers, particularly after the Delors Commission (1985–1994), were shifts in the character of social policy interventions, as the impact of ‘negative integration’ (Scharpf 1996) and the pursuit of an internal market underpinned by neoliberal internationalism led to the downgrading of the social dimension (Streeck 2019). In particular, ‘hard law’ social policy diminished and was increasingly accompanied by more voluntary elements exemplified by the introduction of non-binding instruments such as the open method of coordination and the European Semester (Streeck 2012, 2015; Fazi 2014; Crouch 2011). This shift towards neoliberalism generated changes in approaches to social policy in general (Falkner 1998; Majone 1993) and policies on employee participation in particular. Third, because EWCs are contested institutions, this ensures an uneven pattern in their development. The principle of autonomy of the parties was respected in the provisions of both the Directive and the Recast, thus enabling management and labour within each MNC to contest the form and practices of information exchange and consultation on a company-by-company basis. In the light of variations *inter alia* in power, expertise and objectives between the parties within each MNC, it comes as no surprise that the development of the institution has been uneven.

A further introductory remark concerns three different aspects of information exchange and consultation that are implicit in the Directive and the Recast. These are as follows: first, management initiatives to promote a corporate identity, value added and worker commitment to the objectives of the enterprise; second, the involvement of workers in strategic corporate decision-making and the implementation of these decisions; and third, the possibility for EWC representatives to exert power to secure benefits for those they represent (Boxall and Purcell 2003; Blanke and Rose 2010; Müller-Jentsch 1986). These three aspects of information and consultation originate in debates on human resource management (HRM), industrial democracy and industrial relations respectively (Wilkinson and Fay 2011). Although these aspects are difficult to delineate, it is apparent that managerial concerns centre on the first of these aspects, while the objectives of EWC representatives focus on the second and third aspects. This chapter reviews how the parties to EWCs pursue these different aspects of information and consultation.

To address these themes, the chapter comprises three sections that examine the Commission and European institutions; BusinessEurope and managers responsible for EWCs; and trade union organisations. It is remarkable that the same issues figure large in the debates on employee participation from the 1970s to the present day. In many cases, it is only the detail attached to these issues that changes in the light of legislative amendments. Similarly, the respective positions of the social partners have, in principle, not changed throughout the whole period, with the consequence that debates are repeated at different points in time. In assessing both the contentious issues and the content of the debates between the Commission and the social partners, this chapter situates the current debate on the performance of the legislation on information exchange and consultation and ‘set up’ the analysis of its efficacy included in Chapters 4 to 9.

## European Commission and European institutions

The economics of the social market-oriented policies of the 1960s and 1970s were accompanied by the extension of systems of indirect employee participation throughout most Member States of the EU in the form of board-level employee representation and increased coverage of works councils. The Treaty of Rome (1957) granted the EU only rudimentary social policy options and required a unanimous vote among Member States to ratify social policy proposals. Although these constitutional obstacles were significant, the pursuit of European social integration led to a series of Commission-driven proposals on employee participation similar to national arrangements before 1990, prominent among which were the European Company Statute (1970), the draft Fifth Directive on Company Structure and Administration (1972), and the proposed Vredeling Directive (1980).<sup>1</sup>

It is not the purpose here to examine the history and content of these proposals. It is important to note three points regarding these proposals.<sup>2</sup> First, the debates and political processes surrounding these proposals stretched into the 21st century. Only after the introduction of qualified majority voting on a wider range of social policy issues, however, was legislation on participation adopted. Opposition from employers and some Member States precluded the adoption of earlier proposals.<sup>3</sup> Second, each proposal comprised diluted recommendations compared to its predecessor. Only the European Company Statute (ECS), for example, included a codetermination right and proposed EWCs with a brief that covered two or more establishments at which 50 or more people were employed in at least two Member States (European Commission 1975a, 1975b); the Fifth Directive envisaged a dual board structure with employee representatives comprising a minimum of one third of the supervisory board, latterly diluted to allow a choice from a range of participation systems (European Commission 1983); and the Vredeling Directive required a period of 40 days to elapse between the

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1. The Directive was named after the then Commissioner for Social Affairs who was involved in its development.
  2. For details on the history and content of these proposals, see George 1991; Springer 1992; Cressey 1993; and Schwimbersky and Gold 2009.
  3. Opposition from the UK to the proposal was consistent, while that from Portugal and Spain influenced developments at specific points in time.

submission of a management proposal for corporate restructuring and implementation of the proposed decision in order to allow information exchange and consultation to take place (European Commission 1980). As becomes apparent below, the process of dilution that effectively weakened successive proposals continued into the 1990s and beyond. Third, initial proposals aimed at the upward harmonisation of participation arrangements were abandoned in favour of proposals with restricted minimum standards. In the light of these contextual factors, the remainder of this section examines the issues surrounding the adoption of the Directive, the subsequent debates surrounding the adoption of the Recast, and reviews of the operation of the Recast.

## After 1990: diluted legislation adopted

Debate on the terms associated with the introduction of the European single market, the implementation of the Single European Act (1987), the emergence of the European Company (*Societas Europaea*, SE) and anticipated high rates of corporate restructuring as companies adjusted to the single market (Cressey 1993; Marginson 2000) acted to generate a political realisation that a ‘social dimension’ was required to accompany economic developments if the EU was to retain public support (Scharpf 1996). Although the Conservative Government of the UK did not share this political realisation, other Member States explored a range of social options,<sup>4</sup> the initial outcome of which was the Community Charter of Fundamental Social Rights of Workers, adopted in 1989, together with its accompanying Social Action Programme (European Commission 1990a). The Community Charter covered a range of social issues,<sup>5</sup> but, on the issue of participation, it was explicit:

Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

This shall apply especially in companies or groups of companies having establishments or companies in two or more Member States of the European Community (point 17).

At the Maastricht Summit of December 1991, a Protocol on Social Policy was agreed. The UK opted out of this Protocol, thereby increasing the political room for manoeuvre for the remaining 11 Member States. Article 2 of the Social Policy Protocol introduced qualified majority voting for a range of social policy issues including ‘the information and consultation of workers’.<sup>6</sup> Codetermination, however, remained a matter requiring unanimity of the Council (Article 2(3) of the Agreement annexed to the Protocol). The Social Policy Protocol enlarged the scope of social dialogue in requiring the Commission

4. Among the options discussed were directives on health and safety, collective redundancies and transfer of undertakings, and recommendations on financial participation.
5. Among the issues covered by the Community Charter of the Fundamental Social Rights of Workers were freedom of movement, improvement of living and working conditions, social protection, freedom of association and collective bargaining, equal treatment for men and women, health and safety, and vocational training.
6. Among the other issues subject to qualified majority voting were the working environment, equality between men and women at work, the integration of people excluded from the labour market, and health and safety.

to consult the social partners at EU level prior to making formal proposals on social policy or submitting a proposal to the Council, and enabled the social partners to draft legislation. The economic circumstances associated with the European single market, the framework changes associated with the Community Charter, its accompanying social programme and the Social Policy Protocol combined with the political impetus towards the social dimension generated by the Delors-led Commission created a different dynamic in information and consultation practices compared to before 1990, out of which emerged a revival of discussions on the ECS in 1989 (for details, see Waddington 2011: 5–13; Schwimbersky and Gold 2009) and a draft EWC Directive in 1990.

The 1990 Commission proposal for a Directive on the establishment of EWCs included information and consultation rights, and was to be applied to MNCs with a minimum of 1,000 employees within the Member States and with at least two establishments in different Member States, each employing at least 100 employees, while the composition of an EWC was to be negotiated between management and employee representatives organised as a special negotiating body (SNB) (European Commission 1990b). Similarly to the pre 1990 proposals, a set of minimum conditions were to apply if management and the SNB failed to reach agreement within a year.<sup>7</sup> Compared to earlier proposals, however, the 1990 draft excluded issues in an attempt to secure agreement among Member States. A codetermination right was absent, for example. Similarly, the proposal excluded companies operating within a single Member State, unlike the Vredeling Directive. The negotiated element of the 1990 proposal was also more wide-ranging in covering the structure, composition and many of the practices of any established institution. It was also envisaged that EWCs would be established only following a written request from employees or their representatives or following an initiative taken by central management. The legislation would thus be ‘triggered’ rather than apply uniformly.

Although the 1990 draft was a compromise born of the rejection of earlier employee participation proposals, it was met by the same hostile reaction from some Member States, particularly the UK, and employers’ associations. Reflecting on these hostile reactions, the Employers’ Group of the European Economic and Social Committee (EESC) saw the draft as bureaucratic and likely to slow corporate decision-making (European Economic and Social Committee 1994). The majority position within the EESC and that of the European Parliament, however, was to support the draft in principle while proposing amendments to lower the workforce size threshold to 500, to clarify the meaning of information and consultation by reference to timeliness, to increase the number of EWC meetings per year, to specify the role of trade unions, and to enable EWC representatives to halt the implementation of a management decision if consultation had not taken place (European Parliament 1991). The Commission revised the draft in September 1991 in order to link the secondary workforce size threshold (100

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7. The minimum conditions that were to apply in the case of a failure to agree included that at least one meeting of the EWC should be held per year; consultation should take place on any management proposal likely to have ‘serious consequences’ for employees; information exchange and consultation should take place on issues that concern the undertaking, the group as a whole or two or more establishments; an EWC should comprise between three and 30 employee representatives with a minimum of one representative from each Member State within which the enterprise has operations; and management should meet the expenses of the EWC.

employees) with the Member State rather than with the establishment and to guarantee a pre-meeting for EWC representatives (European Commission 1991).

These amendments failed to move the employers' associations and Member States that opposed the draft from their previously held positions. In consequence, when the proposal was put to the Council in April 1993, the UK effectively vetoed the measure, as unanimity was required. Taking advantage of the newly implemented framework arrangements arising from the Maastricht Treaty, the Commission then submitted the draft to the social partners with a remit to negotiate appropriate provisions. The failure of these negotiations prompted the Commission to table two further drafts in April and June 1994. The content of these drafts was influenced by lobbying from BusinessEurope with the consequence that the coverage of the measure was restricted by increasing the secondary workforce size threshold from 100 to 150 employees in each of two Member States; the period over which SNB negotiations could take place was increased to three years, thereby facilitating the slowing of the introduction of EWCs; and the range of voluntary provisions was extended. Adopting the measure within the period of the German Presidency, however, was viewed within trade union circles as a priority. Subsequent Presidencies were viewed as unlikely to pursue the measure (Lapeyre 2018). The Labour and Social Affairs Council finally adopted the measure on 22 September 1994 within a regime of qualified majority voting, with 10 Member States in favour, a Portuguese abstention and the UK, which had decided to exercise its opt-out, removing its objections.

The Directive was innovative in its spirit and objectives, but at the price of many aspects of the measure being imprecise, and uniform standards were not stipulated, in contrast to many of the 'hard law' labour standards arising under earlier legislation (Barnard 2006; De Vos 2009). Although information exchange and consultation were acknowledged as the core activities of EWCs, information was not defined and issues such as timeliness and quality were omitted from the definition of consultation. A wide range of voluntary provisions and low minimum standards accentuated the limitations of the Directive and, as Chapter 1 demonstrated, led critics of the Directive to question whether it was fit for purpose. Two other features of the Directive underpinned the position of the critics. First, at the behest of BusinessEurope, the principle of subsidiarity was incorporated into the Directive in several ways, including latitude in the manner in which the Directive could be transposed into national legislation (Hall et al. 1995).<sup>8</sup> Second, the Directive promoted negotiation within MNCs between management and employee representatives on several counts: negotiations took place notably under Article 13 without recourse to the subsidiary requirements outlined in the Annex to the Directive, and within SNBs under Article 6 when the subsidiary requirements constituted a fallback position of last resort.

The terms of the Directive were thus far removed from the hard law measures on employee participation proposed by the Commission in the 1970s and 1980s. As is

8. Nomination procedures, the distribution of seats, regulations concerning confidentiality and enforcement mechanisms, for example, were settled within each Member State rather than by means of the terms of the Directive.



argued below in relation to the positions of the social partners, the Directive represented a compromise solution. It was viewed as furthering the development of European industrial relations, however, and likely to promote institution building in the form of EWCs and other institutions intended to support or enhance the operation of EWCs (Goetschy 1994; Ross 1994).

## The revision process 1999–2009

Article 15 of the Directive specified that the Commission should ‘review’ the operation of the Directive ‘not later than 22 September 1999’. Consistent with this obligation, the Commission confirmed in the Social Action Programme 1998–2000 a commitment to review the Directive and made funding available for an EU-level conference where practitioners identified matters of concern with emphasis placed on: the slowing of the rate of establishment of EWCs after September 1996 and a range of operational concerns, including the infrequency of meetings, the centrality of select committees, and limitations to the effectiveness of information and consultation procedures (Waddington 2011: 183). At this conference, held on 28–30 April 1999, the Irish conservative Commissioner for Employment and Social Affairs, Pádraig Flynn, brought the review process to an abrupt halt in signalling that it was premature to revise the Directive, as the Article 6 provisions had only been in operation for three years, and the ongoing discussions on the Draft Directive on Information and Consultation at national level, which had been tabled in November 1998, and on the information and consultation provision of the ECS would be best finalised before the Directive was revised (Flynn 1999). The Commissioner thus accepted BusinessEurope’s arguments against the revision of the Directive. This position was subsequently reiterated and developed by Commissioner Flynn’s successor, who argued that any revision of the Directive should be informed by practices associated with these other measures following their adoption (Diamantopoulou 2000). The Greek socialist Commissioner, Anna Diamantopoulou, thus argued for a lengthy delay before the revision of the Directive beyond the legal deadline outlined in Article 15 of the Directive, as the other measures had yet to be adopted, and further time was then required to assess their functioning. Article 15 of the Directive required a statement from the Commission on the operation of the measure. The formal Implementation Report identified problems with the operationalisation of the measure but disassociated these from the shortcomings of the legal framework and argued that there was insufficient evidence to justify legal reform (European Commission 2000).

At this juncture, the Commission and the Committee on Employment and Social Affairs (CESA) of the European Parliament differed in their approach. The CESA argued in favour of a revision of the Directive to incorporate reduced workforce size thresholds, a reduction in the duration over which SNB negotiations could endure, the inclusion of a definition of information, and changes to the definition of consultation to ensure timeliness and improved quality. In response to the content of the EU-level conference and the position of the CESA, the Commission reported to the Council and the European Parliament in April 2000 (European Commission 2000). In addition to detailing at length the situation with regard to the transposition of the Directive, the

report highlighted the ‘very low level of transnational information and consultation’ at some EWCs, the absence of an adaption clause to cover company restructuring, the absence of timeliness as a defining criterion of information and consultation, no right to training for SNB negotiators and EWC representatives, and the limitations to the flow of information between EWCs and national-level institutions (pp. 6–7). In this document, the Commission also confirmed that the revision of the Directive was ‘closely linked’ with the operation of the Draft Directive on employee involvement in the ECS and the Draft Directive on Information and Consultation at national level. Although not ruling out a future review, in practice the Commission acknowledged many limitations of the Directive identified by its critics, while preparing the social partners for a long delay in its revision, as other proposed legislation was not yet adopted, and an assessment of its implementation would be some considerable time in the future.

Consistent with the emphasis on delay, the Commission omitted reference to the revision of the Directive in the Social Policy Agenda 2000–2005 published in June 2000. The adoption of the ECS and its accompanying Directive on the involvement of employees (2001/86/EC) in 2001 and of Directive 2002/14/EC in 2002 on informing and consulting employees in the European Community, however, removed a key political obstacle to the revision of the Directive from the perspective of the Commission. In addition, several tripartite Social Dialogue Summits were convened between 2001 and 2005 at which various operational aspects of EWCs were discussed (Waddington 2011: 188). Although ‘delay’ was the watchword of the Commission, the performance of EWCs did not entirely disappear from the political agenda. The European Parliament, for example, continued to advocate a revision and, in a resolution of September 2001, listed no fewer than 12 substantive revision points and called on the Commission to amend the Directive (A5 0282/2001). Included among these revision points were a reduction in the SNB negotiation period to 18 months; the definitions of information and consultation to ensure that employee representatives can influence corporate decision-making; and company restructuring to be accompanied by an enhanced consultation procedure that necessitates an agreement before restructuring takes place.<sup>9</sup> The EESC also offered an opinion, at the request of the Commission, on the operation of EWCs, which concluded that EWC arrangements for when companies restructure were inadequate, the timeliness of information and consultation procedures was problematic, the gender distribution among EWC representatives was inadequate, and variations in the national transpositions of the Directive accentuated variation in EWC practices (European Economic and Social Committee 2004). Both the European Parliament and the EESC thus identified a reform agenda while the Commission advocated delay.

In response to the views put forward by the European Parliament, the EESC and the ETUC, the Commission issued a communication intended to link EWCs and corporate

9. In addition to the three points mentioned in the text, the 12 revision points advocated by the European Parliament included: a reduction in workforce size thresholds to 500 and 100 employees; the introduction of a right to training for EWC representatives; a wider range of facilities to be available to EWC representatives; the obligation to inform and consult employees on a wider range of issues; adjustment provisions to be available where corporate restructuring disturbs existing EWC arrangements; more frequent preparatory and plenary meetings; improvement of the gender balance among EWC representatives; a strengthening of sanctions for non-compliance; and an extension of the negotiation period when a management decision has significant adverse effects on employees (A5 0282/2001).

restructuring in revising the Directive (European Commission 2005b). Instead of recommending specific revisions to the Directive, however, the Commission encouraged the social partners to negotiate a revised Directive. Wide differences between the positions of the social partners precluded a settlement. The European Parliament called on the Commission to submit a proposal for the revision of the Directive, which should include improved information and consultation provisions and better facilities for EWC representatives (European Parliament 2005). The EESC also confirmed its support for the revision with preferences for a standardisation of the definitions of information and consultation across all EU directives, the number of possible SNB representatives to be adjusted to reflect EU enlargement, and greater involvement of trade unions in the operation of EWCs (European Economic and Social Committee 2006; Jagodziński 2007a).

In response to the positions taken by the European Parliament and the EESC, the Commission announced to the European Parliament its intention to strengthen European legislation on information and consultation (European Parliament 2007a, 2007b). This announcement was followed by the inclusion of a commitment in the Work Programme of 2007 to introduce greater consistency in legislation on information and consultation (European Commission 2007). Politically, the Commission's request to the social partners to negotiate a solution had come to nothing, thus shifting responsibility back to the Commission.<sup>10</sup> Furthermore, representatives of the upcoming French Presidency, due to commence on 1 July 2008, signalled an intention to renew the social agenda, including a revision of the Directive. Compounding these developments, an empirical impact assessment authorised by the Commission confirmed the reservations expressed by the European Parliament and the EESC regarding the operation of the Directive (EPEC 2008).

The Commission presented a consultation document on 20 February 2008, requesting opinions from the social partners and enquiring again as to whether they were prepared to negotiate a revision of the Directive. Although BusinessEurope responded positively to this enquiry, it was felt within the ETUC that the positive response from BusinessEurope was a tactic to prolong negotiations beyond the French Presidency, thereby precluding a revision (Jagodziński 2008: 124; Waddington 2011: 194). BusinessEurope and the ETUC failed to agree on a schedule with a time limit for the negotiations, with the result that the ETUC called on the Commission to present a revised Directive.

In the absence of a negotiated settlement, the Commission tabled an amended Directive in July (2008b, 2008d) and indicated that it would take the form of a recast directive rather than a revision (Jagodziński 2010a).<sup>11</sup> Amendments included the definitions of information, consultation and transnational matters covered by EWCs; the introduction of a link between transnational and national information and consultation procedures;

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10. It should be noted that the social partners were also unable/unwilling to negotiate on the Information and Consultation Directive (2002/14/EC) at national level (Pochet 2019).

11. The recast procedure had two technical advantages for the Commission. First, the number of amendments that can be proposed by the European Council and the European Parliament is restricted. The European Parliament was thus prevented from submitting the large number of amendments proposed in 2001 (A5 0282/2001). Second, the European Council is unable to dilute a recast proposal. In opting for the recast procedure, the Commission thus retained some control over the development of the proposal.

enhanced training opportunities for EWC representatives; a role for trade unions in the establishment of EWCs; clarification of the role of management in the provision of information on workforce size; and the insertion of an ‘adaptation clause’ to protect EWCs during corporate restructuring (European Commission 2008c). Subsequent tripartite discussions chaired by the French Minister of Labour, Xavier Bertrand, resulted in joint advice that changed the definitions of information and consultation, clarified the term ‘expert’ to include representatives of the ETUFs, strengthened the links between EWCs and national institutions of labour representation, and exempted from the terms of the Recast EWC agreements signed within two years of the adoption of the measure (ETUC et al. 2008). A definition of ‘transnational’ was not agreed during these discussions. The Commissioner welcomed the joint advice and called on the European Parliament and Council to adopt the draft Recast as amended (Špidla 2008).

The response from the CESA of the European Parliament was a proposal comprising 17 amendments to the draft Recast, as amended by the joint advice (2008a, 2008b). The EESC also reiterated the concerns it had expressed in 2006 and proposed a number of amendments in addition to those of the draft amended by the joint advice (European Economic and Social Committee 2008). In effect, the European Parliament and the EESC supported a more extensive overhaul of the legislation than the Commission, the social partners and the French Presidency. This apparent impasse was resolved at a meeting of representatives of the Commission, European Parliament and Council at which the draft Recast, as amended by the joint advice, formed the core document, supplemented by three of the 17 points raised by the CESA: a definition of ‘transnational’, sanctions if management fail to comply with the terms of the Recast, and the need to ensure that no workforce size threshold disqualifies a country from representation on an SNB (Jagodziński 2009). The European Parliament subsequently endorsed this document, which was then adopted by the Council on 23 April 2009, although the UK’s ‘New Labour’ Government abstained.

The principal operational objectives of the Recast are:

- ensuring the effectiveness of employees’ transnational information and consultation rights;
- remedying the lack of legal certainty resulting from defects in some provisions (such as definitions of information and consultation) and the absence of others (definition of the transnational character of a matter);
- ensuring better links with other EU ‘legislative instruments on information and consultation of employees’ (recital 7).<sup>12</sup>

A purpose of this book is to assess whether these objectives have been achieved through the adoption of the Recast.

<sup>12</sup>. As noted in Chapter 1, the Recast was also intended to accelerate the rate at which EWCs were established. To date, this increased rate of establishment has yet to materialise. The Recast was also intended to facilitate the resolution of problems encountered in the application of the legislation.

## Reporting on the Recast

Similarly to the Directive, Article 15 of the Recast required the Commission to ‘report’ on its implementation and to make ‘appropriate proposals where necessary’ for amendments by 5 June 2016. To this end, the Commission authorised an evaluation study of the Recast, which reported that, in 12 of the countries covered by the Recast, at least one element of the national transposition did not meet the requirements of the Recast;<sup>13</sup> that there was no increase in the rate at which new EWCs were established (see Chapter 1); that about 120 agreements were renegotiated to incorporate the terms of the Recast, particularly regarding the definitions, the right to training, the adaption clause and the protection of EWC representatives; that there was no significant improvement in the operation of EWCs; that information was not provided early enough to allow for meaningful consultation; and that EWCs had little impact on actual processes of corporate restructuring (European Commission 2016a, 2016b). The evaluation study of the Recast thus identified many of the shortcomings associated with the Directive as also applying when the Recast was in operation. In addition, no fewer than 18 countries failed to meet the deadline for the transposition of the Recast by 6 May 2011 (Jagodziński 2015).<sup>14</sup>

Drawing on data from the evaluation study and other research sources, a Commission staff working document published two years later confirmed the limitations to EWC practice identified in the study (European Commission 2018a). The document also emphasised that almost three-quarters of EWC representatives were not consulted about corporate restructuring, and EWC representatives were unable to influence restructuring decisions (European Commission 2018a: 28–29); that ‘the consultation process shows deficiencies in practice’ (European Commission 2018a: 27); that transnationality remains difficult to interpret in practice (European Commission 2018a: 45); and that enforcement poses significant challenges (European Commission 2018a: 33–36). In contrast, the staff working document indicated that employers see EWCs as useful ‘in many ways, such as improving the common understanding of issues’, ‘explaining decisions’ and prompting ‘valuable proposals for action (European Commission 2018a: 45), while, ‘for most employers, the benefits outweigh the costs’ (European Commission 2018a: 46). The Commission thus appears to acknowledge that many of the Directive’s limitations that the Recast was intended to address remain unresolved. Employers, however, appear more content with the post-Recast situation than EWC representatives.

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13. The ICF report, published at the behest of the Commission, states that ‘in 12 EEA countries provisions were assessed as not meeting the requirements of the Directive (either because of an absence of transposition or national legislation differing from the requirements of the Recast or lacking specificity). Only in 4 Member States at least one of the key substantive provisions of the Directive was not transposed correctly. In 9 Member States, a relatively minor non-substantive provision (or part of such provision) was not transposed. Among such shortcomings in transposition were the failure to provide the right to training for the EWC representatives without loss of wages, the requirement to inform European social partners about the start of negotiations and provisions on the composition of the EWC’ (European Commission 2016a: 151). It is not clear from the report what constitutes a ‘key substantive provision’ or a ‘minor non-substantive provision’.

14. It was anticipated that the Recast would be transposed by 6 May 2011. Delays in the transposition of the Recast beyond the deadline occurred in Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Poland, Romania and Slovenia. In addition, deviations from the Recast in the transpositions occurred in Bulgaria, Czech Republic, Denmark, Germany, Hungary, Italy, Lithuania, the Netherlands, Poland, Portugal, Slovakia and the UK.

Political debate continued apace. In the context of the Refit Programme (2012) and the Better Regulation Programme (2015) launched by the Commission, information and consultation rights within Europe were assessed, although EWCs were not specifically examined (European Commission 2012b). Subsequently, the European Pillar of Social Rights was politically endorsed in November 2017 with *inter alia* the intention of repoliticising EU social policy and mitigating some of the adverse effects of neoliberal economic policies and the accompanying financial crises (Vanhercke et al. 2018: 153–172). Among the objectives of the European Pillar of Social Rights is ‘better enforcing of EU law’ (European Commission 2017). In this context, the failure of the Recast to improve EWC practice in so many areas that had been identified as inadequate under the terms of the Directive suggests that the Commission should revise the legislation in order to ensure that the intentions of that legislation are met in practice: in other words, that the law is better enforced. Surprise was expressed within the ETUC that the Social Pillar had failed ‘to introduce any changes related to workers’ participation rights’ (Kowalsky 2019: 40). The response from the Commission, however, centred on the intention to publish a ‘practical handbook’ comprising examples of ‘good practice and specific examples of agreements made in multinational companies that could be shared across the EU’ (European Commission 2018b: 9). Rather than implementing legislation, the Commission thus decided to adopt a voluntary approach reliant on the adoption of good practices within MNCs where somewhat less than good practice is currently in operation; therefore, the response of the Commission represents a stark mismatch between the identified problems of the legislation and the solutions proposed (Dorsemont and Jagodziński 2018). This approach repeats the cycle of the revision process associated with the Directive insofar as, in 2004, nine EWCs were examined as a means of identifying lessons that might be learned and disseminated as part of the Social Dialogue Summit.<sup>15</sup> A purpose of subsequent chapters is to assess the viability of this voluntary approach based on case studies of good practice.

## Summary

This review of the development of EU policy on information and consultation highlights four points. First, the replacement of hard law solutions to information and consultation practices by voluntary mechanisms linked to minimal fallback standards characterises the trajectory of change in legislative proposals and illustrates the reluctance within the Commission to introduce realistic enforcement mechanisms either by imposing stricter sanctions or by ensuring the implementation of the Directive and Recast within Member States. Second, codetermination is now absent from the employee participation agenda at EU level, whereas it was previously an integral element. Third, the same debates have accompanied each legislative proposal on information and consultation. At EU level, the European Parliament and the EESC have tended to advocate legislation with higher standards than the Commission from the mid 1990s. Fourth, the legislation that has been adopted constitutes compromise settlements. The next two sections elaborate the competing positions of the social partners, thereby positioning them in relation to the Commission’s compromise proposals.

15. The nine case studies examined Carrefour, EDF, EDS, Ericsson, Fortis, GKN, Henkel, Lafarge and Unilever.

## **BusinessEurope and the managerial pursuit of corporate objectives<sup>16</sup>**

BusinessEurope and managers of MNCs with operations in Europe have pursued policies similar to their German counterparts: that is, attempts have been made to subvert EWCs politically from without, while from within managers have exploited the malleability of the institution to ensure that it serves strategic corporate objectives (Kinderman 2005). This is not to argue that these two aspects of policy are necessarily part of a concerted campaign. Indeed, this section argues, to the contrary, that these two aspects of policy are often pursued independently. The pursuit of particular policy preferences by BusinessEurope, however, has enabled managers with responsibilities for EWCs within MNCs to pursue corporate objectives that originate in HRM at the expense of making core information and consultation provisions based on industrial relations practices available to EWC representatives. To address these issues, this section initially examines the principled and tactical positions adopted by BusinessEurope. A second stage of the analysis assesses the pursuit of corporate objectives by managers within MNCs by means of the information and consultation arrangements available at EWCs.

### **BusinessEurope, employers' associations and legal regulation**

The crux of the BusinessEurope position on employee participation is a steadfast preference for voluntary arrangements rather than legislative solutions. BusinessEurope argues that 'one size fits all' legislation fails to recognise variation between MNCs and the different uses to which information and consultation arrangements may be put within an enterprise (UNICE 1991c). Accompanying this position is advocacy of the principle of subsidiarity, whereby decisions are made as close as possible to their point of effect in order to promote 'flexibility' in the application of any regulation on employee participation; and of the autonomy of the parties in negotiating and conducting arrangements for employee participation (UNICE 1993). These preferences have remained constant since about 1970 and have acted to restrict the political room for manoeuvre available to European policy-makers within the Commission, in no small part due to the effective lobbying conducted by, and on behalf of, BusinessEurope. To illustrate the unchanging stance adopted by BusinessEurope, the processes leading to the emergence of the Directive, the adoption of the Recast and the situation after the adoption of the Recast are examined separately.

### **Emergence of the Directive**

In alliance with different Member States throughout the 1970s and 1980s, BusinessEurope was able to lobby to resist the ECS (1970), the draft Fifth Directive (1972) and the proposed Vredeling Directive (1980). In rejecting the Vredeling proposal, for example, BusinessEurope argued that the measure had a questionable

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16. For the most part, UEAPME and CEEP have agreed with BusinessEurope throughout regarding the Directive, Recast and the revision processes. The focus here is on BusinessEurope, as it has tended to lead the discussions on behalf of employers' organisations.

legal basis and that it would damage managerial decision-making, as well as heighten hostility between management and labour (UNICE 1981). Similarly, the British Engineering Employers' Federation (EEF) regarded Vredeling as representing 'a creeping and insidious form of paralysis leading to expropriation' (EEF 1983, quoted by Cressey 1993: 92). Regarding the Fifth Directive, the UK's Confederation of British Industry (CBI), a member organisation of BusinessEurope, argued that it 'threatens confusion to a company's strategic decision-making because it would admit for the first time in Britain the representation of sectional interests on board structures (CBI 1984, quoted by Cressey 1993: 92). BusinessEurope's opposition to these legislative proposals was not simply a matter of British preferences. The American Chamber of Commerce, for example, lobbied hard against these proposals. In addition, the BDA, while acknowledging that board-level employee representation and information and consultation were the norm in the then Federal Republic, argued that harmonisation was unnecessary and not legally justifiable, that the imposition of extensive worker participation rules on companies in other Member States would cause friction and decline in economic performance, and that information and consultation is an area that has no cross-border dimension whatsoever (Callaghan 2007).

Secure in the knowledge that any information and consultation proposal would require unanimity among Member States before the Maastricht Treaty took effect, BusinessEurope was thus able to retain and enforce a principled objection to legislation. Political circumstances changed, however, during the Commission Presidency of Jacques Delors (1985–1994), when a range of social policy initiatives was launched in the wake of the development of the European single market. While these altered circumstances did not result in a change in the principled stance of BusinessEurope towards information and consultation, they required pragmatic adjustments. Among these pragmatic adjustments was participation in the Val Duchesse discussions involving the social partners and the Commission. Although these discussions were intended to promote social dialogue, the issue of employee participation was discussed. On these occasions, BusinessEurope reiterated its preference for voluntary rather than legislative arrangements (Venturini 1988). Furthermore, a joint opinion reached by the social partners acknowledged the benefits of employee participation by means of information and consultation, but was silent on how such arrangements might be introduced (UNICE et al. 1987).

When the Commission tabled the legislative proposal on EWCs in 1990, the response from employers' associations was as before. The CBI opposed the measure and was supported by the UK's neoliberal Conservative Government. BusinessEurope argued that the proposal did not meet the objectives of information and consultation, undermined social partner autonomy, disregarded established practice and national law, and was likely to have an adverse effect on investment (UNICE 1991a). Once again reiterating a preference for a voluntary solution to transnational information and consultation, BusinessEurope suggested that the joint opinion concluded in 1987 (UNICE et al. 1987) form the basis for social dialogue with the purpose of agreeing suitable voluntary arrangements (UNICE 1991b) and that dialogue between the social partners at European level provide 'an opportunity to move away from the false start of the draft Directive, which is over-institutionalised, over-rigid and bureaucratic in character' (UNICE 1991c).



As noted above, support for the amended proposal of the Commission from the European Parliament and the EESC led to the submission of the proposal to the Council in April 1993 based on the Social Policy Protocol and Agreement annexed to the Maastricht Treaty, which provided for qualified majority voting on information and consultation. The opt-out from the Social Policy Protocol by the UK's Conservative Government effectively removed the Member State that was certain to vote against such legislation from the voting lobbies (Grant 1994: 153–210; Ross 1995: 16–50). Invoking the Social Policy Protocol in October 1993, the Commission requested that the social partners negotiate an alternative to the proposed legislation on the understanding that a failure to agree would result in the introduction of legislation. The change in the legislative framework for social policy thus required BusinessEurope to negotiate if legislation was to be avoided. Negotiations took place between November 1993 and March 1994. The CBI then withdrew from the negotiations, arguing that too much had been conceded to the ETUC (CBI 1994). The constitution of BusinessEurope requires all member organisations to agree to a negotiated outcome of social dialogue. The withdrawal of the CBI thus brought negotiations to an end and enabled the Commission to move towards a legislative solution.

At this juncture, BusinessEurope shifted from principled opposition to lobbying to reduce the coverage and requirements of the legislation. Subsequent amendments of the April 1993 draft increased the workforce size threshold, thus reducing the coverage of the legislation; broadened the scope of the voluntary provisions; and extended the period over which negotiations to establish an EWC could take place from one to three years. In short, BusinessEurope's lobbying was successful, as each of these measures was opposed by the ETUC. The adoption of the Directive on 22 September 1994 was thus contrary to the principled position of BusinessEurope, as legislation was adopted to regulate information and consultation procedures in the workplace. The impact of this policy reversal was mitigated, however, as BusinessEurope was successful in ensuring that the content of the legislation excluded a range of policy options supported by the ETUC, was more limited in coverage than earlier proposals, included a substantial voluntary element and promoted negotiated outcomes rather than hard law solutions.

### **Emergence of the Recast**

A central feature of the review process initiated by the Commission as a consequence of Article 15 of the Directive was an EU-level conference held on 28–30 April 1999, convened by the social partners and funded by the Commission. As noted above, the Commission precluded a revision of the Directive on political grounds, while acknowledging limitations to extant EWC practice. At the conference, BusinessEurope representatives highlighted the range of initiatives that had taken place within EWCs as a means of expressing support for the 'flexibility' that was built into the Directive. In addition, the Secretary General of BusinessEurope raised three points in speaking against a need to revise the Directive. First, several Member States had not completed the transposition of the Directive.<sup>17</sup> Second, the three-year negotiation period for setting

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17. Luxembourg, Portugal and the United Kingdom had not completed the transposition process (Kerckhofs 1999b).

up EWCs was defended, as it allowed negotiators time to reach considered positions on the terms of operation of EWCs. Third, lowering the workforce size thresholds was rejected explicitly, as such an action would adversely affect small MNCs in terms of cost and staff time (Waddington 2011: 184). The position of BusinessEurope was thus to reject any potential revision and to emphasise the positive aspects it perceived as arising from the flexibility of the legislation.

The legislative and work programme for 2003 published by the Commission included a commitment to revise, rather than review, the Directive. The subsequent consultation document (European Commission 2004) called for the opinion of the social partners on how to improve the operation of EWCs. This document also referred to limitations of EWC practice identified by the European Parliament and the EESC. The Commission thus raised the political pressure on BusinessEurope compared to 1999. In principle, the position of BusinessEurope remained the same as in 1999, however: no revision was necessary, thus further consultation was inappropriate. Formally, BusinessEurope responded to the consultation document unequivocally: it ‘strongly opposed’ a revision of the Directive, since it ‘would send the wrong signal at a time when new Member States’ efforts should focus on effective implementation of the existing legal *acquis*’ and instead recommended a focus on ‘monitoring the transposition and implementation of the Directive in the new Member States, and exchanging and learning from experiences of EWCs and other procedures of workers’ information and consultation in Community-scale undertakings, notably against the background of enlargement of the EU’ (UNICE 2004a). BusinessEurope thus disagreed with the Commission in viewing EU enlargement and the integration of representatives from the New Member States as the principal challenge rather than ensuring a role for EWCs in corporate restructuring. Additionally, BusinessEurope reiterated a preference for amendments to EWC practices to be implemented voluntarily on a company-by-company basis (UNICE 2004a, 2004b), a point reaffirmed by senior officers of BusinessEurope at subsequent Tripartite Social Summits (UNICE 2004c).<sup>18</sup>

Tactically, BusinessEurope sought to delay any decision on a revision of the Directive beyond the then Commission’s term of office, which was due to end in November 2004. To that end, BusinessEurope’s spokesperson on EWCs, Jørgen Rønneest, argued that there was still inadequate research data available on EWC practices, that the impact of EU enlargement on EWCs should be assessed, and that the outcome of concurrent social dialogue discussions on corporate restructuring should be available before consultations on EWCs between the social partners should commence. Consolidating this position, BusinessEurope reiterated that the ‘best way’ to develop worker information and consultation was through European- and company-level social dialogue: that is, voluntary solutions (UNICE 2004a). Concurrently, BusinessEurope also rejected the Commission’s proposal to explore the links between EWCs and sectoral social dialogue on the grounds that ‘EWCs deal exclusively with intra-company issues whereas the sectoral social dialogue discusses cross-company issues’ (UNICE 2004, 2004b: 4–5).

18. The UNICE statement was unequivocal: ‘The EU institutions [...] should [...] avoid proposing unnecessary revisions of existing legislation such as the European Works Council Directive or new legislation such as the directive on data protection’ (2004c).

With the new Commission came a fresh initiative on EWCs integral to which was a commitment to revise the Directive (European Commission 2005a) and to explore the links between EWCs and corporate restructuring (European Commission 2005b). In launching these initiatives, the Commission also encouraged the social partners ‘to start negotiations with a view to reaching an agreement [...] on the requisite ways and means for [...] promoting best practice in the way that European works councils operate, with a view to making them more effective, more especially as regards their role as agents for change’ (European Commission 2005a: point 2.4). Once again, BusinessEurope asserted its commitment to voluntary solutions in arguing that the initiatives from the Commission undermined the work of the social partners on restructuring that was then under way within the framework of social dialogue (UNICE 2005a, 2005b). More specifically, BusinessEurope argued that the results of recent joint seminars held by the social partners on EWCs had not been widely disseminated and time was required for dissemination; and that, in launching these initiatives, the Commission acted unconstitutionally, as these initiatives failed to meet the condition of balanced support for the social partners in rejecting the voluntarist position advocated by BusinessEurope (UNICE 2005a: point 12).

The announcement in April 2007 by the Social Affairs and Employment Commissioner, Vladimír Špidla, of an intention to overhaul EU-level legislation on information and consultation rights was influenced by the extent of support for a revision of the Directive within the European Parliament and EESC. Throughout 2007, BusinessEurope and member organisations lobbied intensively against the publication of the anticipated consultation document (de Buck 2007; BusinessEurope 2007; BDA 2007) but, once the document had been published, announced a preparedness to negotiate on a revision with the ETUC, thereby reversing previous opposition to such an approach. While welcoming BusinessEurope’s preparedness to negotiate, the ETUC suspected that it was a tactic to extend deliberations beyond the end of the French Presidency when a revision would no longer be possible (Jagodziński 2009).<sup>19</sup> Following a ballot held among affiliates, the ETUC announced that, in the absence of an agreed timetable for negotiations, it was not prepared to negotiate (ETUC 2008a, 2008b; Lapeyre 2018). Pressure from the French Presidency prompted the Commission subsequently to publish an amended draft Recast.<sup>20</sup> BusinessEurope responded characteristically in arguing that the Commission was ‘taking a biased view of the issues in question’; introducing rules that ‘constitute a straitjacket to negotiations at company level’, thereby ignoring the autonomy of the parties’ decision-making; and creating ‘high obstacles to taking decisions quickly’ (BusinessEurope 2008). Furthermore, BusinessEurope objected to the broader role envisaged for trade unions and to the timing requirements attached to consultation, and it was concerned to maintain the exemptions attached to the voluntary EWC agreements concluded under Article 13 of the Directive. In short, BusinessEurope maintained its ‘in principle’ objection to legislation and sought to sustain the voluntary elements secured in the Directive. While any amendment to

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19. A Czech Presidency was to follow the French Presidency. Representatives of the Czech Presidency had already signalled that they had no intention of taking forward any social legislation.

20. This draft was largely based on Joint Advice submitted to the European Council on 29 August 2008, which was itself based on a common position reached by BusinessEurope and the ETUC (for details, see Jagodziński 2008).

the Directive was unwelcome to BusinessEurope, the absence from the Recast of any lowering of the workforce size thresholds and the shortening of the SNB negotiation period coupled with the continued exemption of voluntary agreements signed under Article 13 of the Directive from the minimum conditions were viewed as successful outcomes of BusinessEurope lobbying and the openness of the Commission to such lobbying (Hoffmann and Hoffmann 2009).

### **Post-Recast stance**

As noted above, the consultation cycle associated with reporting on the Recast comprised an evaluation study of the Recast (European Commission 2016a) and a commitment to publish a 'practical handbook' on EWC practice (European Commission 2018b). BusinessEurope pre-empted the Commission's publication in commenting on the functioning of the Recast (BusinessEurope 2017). The commentary repeated the position taken by BusinessEurope in 1999 when the review of the Directive commenced. In general, BusinessEurope argued that 'there is no need for a revision [of the Recast]' and 'more time is needed to assess [the Recast's] full impact on the functioning of EWCs' (BusinessEurope 2017). BusinessEurope also argued that it was too early to assess the impact of the Recast due to the time taken for transposition of the legislation, that a revision of the Recast would create uncertainty, that the quality of information and consultation processes was a function of corporate culture and mutual trust rather than legislative intervention, and that companies with EWCs concluded under UK legislation should be given time to adapt to another legislation after Brexit. Additionally, BusinessEurope took issue with several of the findings of the evaluation study. In this context, BusinessEurope reiterated its support for the 'principle of autonomy of the parties' (recital 19 of the Recast) and argued that this principle would be contravened if the content of information and consultation procedures were to be legally specified, if time frames for information and consultation procedures were to be legally determined, and if the number of annual meetings were to be increased, as facilities for extraordinary meetings are already in place (BusinessEurope 2017). In short, BusinessEurope rejected the criticisms of the operation of the Recast and suggested that any shortcomings would be best addressed through voluntary rather than legislative solutions. The data available to this study allow assessment of this proposition.

### Within the company: the pursuit of corporate objectives

Analysis of the views of managers with responsibility for EWCs within MNCs shifts the emphasis away from the political sphere occupied by BusinessEurope towards that where operational concerns are central. This is not to argue that contestation is absent in operational matters. The argument advanced here to the contrary is that, operationally, managers responsible for EWCs have used them as a means of furthering a corporate agenda within MNCs based on HRM objectives, while concurrently managers have tended to downplay aspects of the formal information and consultation agenda that originate in industrial relations. Competition in the context of operational matters thus centres on the tension between corporate strategy and formal information and consultation requirements.

Two further observations are apposite. First, more than 40 EWCs were established in, primarily French, MNCs before the Directive was adopted in 1994 (Figure 1.1; Kerckhofs 2006: 8). These initiatives reflected operational concerns among some managers following the adoption of the Single European Act and influenced the strategic thinking within some employers' associations (AGREF 1991). Second, as noted at the outset of this section, BusinessEurope and managers responsible for EWCs advance complementary, but not directly linked, policies towards EWCs. The 'distance' between these two policy strands is illustrated by research showing that 93 per cent of managers responsible for EWCs did not liaise at all with BusinessEurope, while 7 per cent did so indirectly through an independent adviser or consultant. In addition, several managers had neither heard of BusinessEurope nor knew of its purpose (Waddington et al. 2016: 68–69). In short, although managers and BusinessEurope are concerned to influence the development of EWCs, their efforts to this end are largely uncoordinated.

In light of the managerial focus on operational matters, it is no surprise that managerial comments on EWCs are concentrated in the period after 1994 and particularly during periods when the legislation was under review. Early signs that managers viewed EWCs as a means of securing corporate objectives were visible when consultation, if it took place at all, added value in the form of improved managerial decision-making, the generation of employee commitment to corporate goals, and greater transparency of corporate processes (Lamers 1998). The same study also identified managerial criticisms of the operational application of the Directive in that it was 'essential to prevent the European consultation process from becoming no more than a once-a-year event' (Lamers 1998: 90), that EWCs had yet to develop a European perspective (Lamers 1998: 147–150), and that relations between the EWC and local levels of operation were problematic (Lamers 1998: 115–120).

Although these findings were solely based on Dutch research, managerial delegates at the conference convened to review the operation of the Directive in April 1999 confirmed these findings on an international basis (Waddington 2011: 184). Managerial delegates added to the Dutch data in highlighting the perceived high costs of convening EWC meetings and delays in corporate decision-making as a result of annual, rather than more regular, plenary meetings. Managers at Japanese MNCs complemented these findings in that they evaluated EWCs favourably, particularly their role in the dissemination of management information, the exchange of information between management and EWC representatives, and in promoting a spirit of cooperation (Nakano 1999). This positive assessment owed much to the observation that managers at Japanese MNCs thought that EWCs 'would not seriously affect corporate decision-making', as they were unlikely to alter the strategic direction of the MNC (Nakano 1999: 323–325).

A different managerial approach to the definition of a 'successful' EWC outlined before the adoption of the Recast embraced the 'deliberate' use of EWCs by managers 'as an agent of change' (Hume-Rothery 2004: 85), thereby ensuring that management can 'take the workforce with them in the change process' (Hume-Rothery 2004: 86). The focus here was on the involvement of EWCs in corporate restructuring and the uses to which management could put EWCs during such events. Within this perspective, several barriers had yet to be overcome before EWCs became 'successful', including:

conflicts between transnational and national legal obligations; the limitations of the EWC agenda, as specified in the subsidiary requirements; and shortcomings in the expertise of EWC representatives, which was insufficient to allow their meaningful involvement in strategic corporate decision-making (Hume-Rothery 2004: 86–90).

Prior to the adoption of the Recast, managerial observations were broadly consistent with those of BusinessEurope insofar as both parties identified similar limitations to the Directive and acknowledged that involvement of the EWC in restructuring could facilitate the process. In contrast to BusinessEurope, however, managers emphasised a range of value-added corporate benefits that arose from the establishment of EWCs. Following the adoption of the Recast, managers responsible for EWCs reported two principal developments. First, the range of value-added benefits arising from EWC involvement was extended with no commensurate increase in the quality of information and consultation processes. Second, differences emerged between the political stance of BusinessEurope and the position of managers within MNCs.

A study endorsed by BusinessEurope, for example, showed an increased sophistication in managerial strategies to extract added value compared to earlier studies. In particular, managers reported that EWCs facilitated the promotion of corporate identity; the development of social dialogue or social partnership within the MNC; the operation of communication systems, particularly ‘bottom-up’ communication systems; the generation of managerial leverage between European and local levels of employee representation; and employee commitment to strategic corporate objectives (Pulignano and Turk 2016). Concurrent with the accrual of these value-added benefits, no fewer than 61 per cent of managers interviewed reported that the EWC had no meaningful impact on proposals for corporate restructuring (Pulignano and Turk 2016: 45). The value added of EWCs reported by managers is also confirmed by an impact assessment of the Directive funded by the Commission (EPEC 2008) and a report to European institutions by the Commission (2018b). In contrast, only four of 56 interviewees indicated that information and consultation procedures were completed before management decisions concerning corporate restructuring were finalised (Pulignano and Turk 2016: 40–42), thus limiting the capacity of EWC representatives to influence strategic corporate decision-making.

In short, managers responsible for EWCs in MNCs report an increasing range of value-added corporate benefits based on the HRM aspects of information and consultation, while most acknowledge that they are not meeting their industrial relations information and consultation obligations as required by the legislation. Furthermore, the reason cited for not meeting these obligations is the commitment of managers to releasing information first to the stock exchange (Pulignano and Turk 2016: 39–44). In practice, therefore, most managers see no alternative to failing to meet information and consultation obligations required by EU-level legislation, as they view stock market rules as the determinant of their actions. This observation raises questions concerning the application of confidentiality provisions, which will be addressed in Chapter 8.

A second post-Recast development is the emergence of differences between the political stance of BusinessEurope and managerial perceptions of EWC practices.

BusinessEurope, for example, argued that the Recast would erect ‘high obstacles’ (2008) to the operation of EWCs. In contrast, managers responsible for EWCs tended to report that the Recast formalised arrangements that were already in place rather than necessitating a significant change to either agreements or practice (Waddington et al. 2016: 52–62). Similarly, the concern raised by BusinessEurope (2008) that the Recast constituted a ‘straitjacket’ also has not materialised, according to managers responsible for EWCs. Managers cite to the contrary the wide range of practices and forms as characteristics of EWCs rather than restrictions as implied by a ‘straitjacket’ (Pulignano and Turk 2016). BusinessEurope (2008) objected to the greater involvement of trade unions and experts in EWCs, to the definitions of information and consultation, and to the slowing down of corporate decision-making that would result from the Recast. Although a minority of managers acknowledge the objections raised by BusinessEurope, the majority do not view these issues as problematic in the operation of EWCs (Pulignano and Turk 2016: 79–90). Furthermore, BusinessEurope argues that the costs of EWCs are prohibitive, while only 19 per cent of managers agree and 54 per cent of managers think that the benefits of EWCs outweigh the costs (Pulignano and Turk 2016: 53–58). It is possible that differences between BusinessEurope and managers are a result of the limited liaison that takes place between the two parties: that is, between the institutional political representative of managers and its constituents. Research into this matter is beyond the scope of this study, but these aspects of the operation of EWCs are examined in Chapters 4 and 8.

## Summary

BusinessEurope’s policy on EWCs has focused on avoiding legislation and a preference for voluntary solutions. When BusinessEurope deemed legislation to be politically unavoidable, it strove to limit its coverage and content. BusinessEurope has been successful in this regard, insofar as the Directive and the Recast comprise significant voluntary elements, which managers responsible for EWCs within MNCs have been able to exploit to ensure that EWCs serve corporate objectives, while only a small minority of managers comply with the information and consultation terms of the legislation as intended by European-level policy-makers. The links between the two elements of policy conducted outside and within MNCs are tenuous, as BusinessEurope is ‘distant’ from managers. This ‘distance’ is clearly reflected in the different views of BusinessEurope and managers towards the impact of the Recast on the operation of EWCs.

## Trade union organisations

In discussing the impact of trade union organisations on EWCs, it is important to recall that the development of trade union organisations at European level before 1973 was rudimentary (Dølvik 1999). The Commission tabled the ECS and the Fifth Directive, for example, before the establishment of the ETUC, with the consequence that trade union responses to the proposals largely emerged from within the Member States. Within the Commission, the lack of development of trade union organisations at European level was viewed as problematic. Institution building within the social sphere was thus an

intended side effect of proposals on employee participation tabled by the Commission. In addition, academic optimists and critics of the Directive agreed that the measure had many shortcomings. The debate between the two groups centred on the capacity of trade union organisations to overcome these shortcomings: optimists argued that, through networking, identity building activities and training, trade unions would release the potential in the legislation (Martinez Lucio and Weston 2000; Stirling 2004), whereas the critics were more sanguine and questioned the capacity of trade unions to deliver in terms of material and human resources (Keller 1995; Streeck 1997). In part, this review of the interventions made by trade union organisations assesses these competing positions.

Prior to the inaugural Congress of the ETUC in February 1973, there was no uniform position towards employee participation among trade unions in Europe. In no small part, the priority assigned by trade unions to such systems reflected arrangements within Member States. Dutch and German trade unions, for example, tended to favour legislative approaches, with a German preference for codetermination, while Belgian trade unions emphasised the harmonisation of labour policies rather than European-level participation systems (Dølvik 1999: 49–54).

Following the inaugural Congress, the ETUC welcomed the Vredeling Directive of 1980, arguing for an increase in its coverage by means of a reduction in the workforce size threshold, while expressing disappointment that no codetermination right was incorporated into the proposal (Danis and Hoffmann 1995). In particular, the ETUC saw the inclusion in the proposal of companies that have one or more subsidiaries and are based within a single Member State as a step towards harmonisation. Although the EESC and the European Parliament (Spencer 1982a, 1982b) broadly supported the ETUC position, opposition from employers, including the American Chamber of Commerce, and some Member States led to the demise of the proposal.

The ETUC participated in the Val Duchesse social dialogue discussions convened by the Commission, where its preference for legislative approaches to information and consultation arrangements contrasted with the preference for voluntary solutions advocated by BusinessEurope. In consequence, the joint opinion arising from these discussions expressed a general support for information and consultation arrangements at European level without specifying how these arrangements might be introduced (UNICE et al. 1987; Didry and Mias 2005). When the draft Directive was tabled by the Commission in 1990, BusinessEurope recommended that this joint opinion form the basis of negotiations between the social partners on appropriate information and consultation arrangements as a tactic to avoid legislation (UNICE 1991b).

In expressing support for the draft Directive, the ETUC advocated a lowering of the workforce size threshold from 1 000 to 500 employees, the inclusion of timeliness in the definitions of information and consultation, the holding of more meetings than the proposed minimum of one annual meeting, the capacity of EWC representatives to bring the implementation of a managerial decision to a halt if consultation had not taken place beforehand, and specification of a role for trade unions (ETUC 1990). As becomes apparent below, this statement of position has been reiterated on several



subsequent occasions during the development of the legislation to little effect. Rather than adopt these recommendations from the ETUC, which were supported by the European Parliament (1991), the Commission took a different tack and amended the draft Directive by increasing the workforce size threshold within a Member State from 100 to 150 employees, broadening the scope of voluntary provisions, and increasing the period over which SNB negotiations could take place from one to three years. These amendments thus went directly against the direction of change recommended by the ETUC. For the ETUC, therefore, the Directive was a success ‘in principle’: legislation on information and consultation arrangements was welcomed. This success, however, was not unalloyed. The absence of a codetermination right, the absence of a definition for information, the rudimentary definition of consultation, the voluntary arrangements allowed under Article 13, the limited minimum standards, no formal role for trade unions, and the restricted coverage of the Directive were all seen as shortcomings that would impair the operation of EWCs and limit the capacity of trade union organisations to realise the potential of the Directive.

Concurrent with the presentation of the 1990 draft Directive were reforms to the ETUC. In particular, the Stekelenburg Report, *For a More Efficient ETUC*, was adopted in 1990 and *inter alia* recommended a more pronounced role for the ETUFs. As a consequence, the ETUFs became full affiliates of the ETUC at the Seventh ETUC Congress in 1991, and, at the Ninth ETUC Congress held in 1999, responsibility for the coordination of activities associated with EWCs and their long-term development was allocated to the ETUFs. While these developments were instances of institution building at European level desired by the Commission, their implication was that EWC activities are organised on a sectoral or industrial basis, as these are the organisational bases of the ETUFs. Allocation of the operational responsibility for EWCs to the ETUFs enabled the development of different policy emphases within the ETUFs to accommodate variations in the circumstances of EWCs, such as the extent of unionisation among EWC representatives or the form of support made available to EWCs. The allocation of operational responsibility for EWCs coupled with the pursuit of different policy options also raised issues of policy formulation. While the ETUC retained responsibility for engagement in the political sphere, representatives from the ETUFs were also concerned to promote a range of policy alternatives leading, on occasions, to debates over policy choices.

## Trade union policy after the Directive

The inclusion of Article 15 of the Directive, requiring a review of its operation by 1999, influenced the ETUC and ETUFs in their acceptance of what was considered in union circles to be an inadequate measure (ETUC 1990). Acceptance of a Directive, viewed as inadequate by trade unionists, was agreed, as the German Presidency of the Council was to be followed by Presidencies that would not promote the measure. In practice, trade unionists saw the review promised by Article 15 as a means of addressing the Directive’s shortcomings. Although the social partners were excluded from a Working Party of the Member States convened by the Commission (Buschak 1999), they participated in the EU-level conference of April 1999 at which the Irish conservative Commissioner,

Pádraig Flynn, announced that a revision of the Directive would be premature on political grounds. Prior to this conference, the ETUC favoured a revision in light of the managerial failure to consult EWCs prior to restructuring at Renault (Vilvoorde) in 1997, Levi Strauss in 1998 and Philips in 1998. In addition, an ETUC Working Party argued that the definitions of information and consultation should incorporate some notion of timeliness, a trade union role should be specified, SNB negotiations should be limited to one year, and sanctions should be introduced where MNCs fail to comply with the legislation, while calling for improved rights to time off and training, and a reduction in the workforce size thresholds (ETUC 1998). At the conference, EWC representatives endorsed this agenda, while adding that the infrequency of plenary meetings inhibited the establishment of continuity and trust among representatives and between representatives and management. In short, the position of EWC representatives mirrored the stance adopted by the ETUC towards the Directive when it was adopted. Commissioner Flynn's decision to abandon any revision in 1999 was thus a source of frustration within trade union organisations and among EWC representatives.

Following the ratification of the Working Party report by the Executive Committee of the ETUC in December 1999 (ETUC 1999), the ETUC formally presented its contents to the first joint consultation meeting convened by the Commission later in December 1999. In addition to reports on the 'very positive' progress on the national transpositions and the political justification for delaying a revision, the report of the Commission, following from the joint consultation, endorsed most of the shortcomings of the Directive identified by the ETUC (European Commission 2000). At this juncture, the positions of the ETUC and the Commission were thus similar, but the political desire to develop other information and consultation measures, particularly developments that led to Directives 2001/86/EC and 2002/14/EC, prohibited the Commission from revising the identified and agreed shortcomings of the Directive and from enforcing an appropriate transposition of the legislation by Member States (European Commission 2000).

While the revision of the Directive was not mentioned in the Social Policy Agenda 2000 2005 (European Commission 2000), the ETUC and the ETUFs continued to campaign for a revision by means of lobbying and organising demonstrations to influence national governments and the Council. Many of the papers presented at a conference convened by the ETUC held on 20–21 November 2000 confirmed the basic ETUC position (ETUC 2000b). These papers also prompted refinements to the ETUC position. In particular, from this point forward, the ETUC position on the revision of the Directive included a preference for 'an appropriate representation' of men and women on SNBs and EWCs, and for the inclusion of equal opportunities, health and safety, and environmental issues to be added to the list of agenda items specified in the subsidiary requirements (ETUC 2000a). The ETUC, however, did not argue for the inclusion of a codetermination right or the lowering of employee thresholds as it had done before the adoption of the Directive. The exclusion of the former was not an indication of a change of position in principle but rather was a tactical recognition that codetermination required unanimity at the Council and was thus unlikely to be a realistic proposition.<sup>21</sup>

21. It was also debatable whether the ETUC could have generated a consensus among affiliates regarding the inclusion of codetermination within the legislation.

The ETUC further refined its position on four counts during the consultation process initiated by the Commission in 2003 at the Executive Committee meeting of 4–5 December 2003 (ETUC 2003). First, the definitions of information and consultation included in the recently adopted Directives 2001/86/EC on the involvement of employees and 2002/14/EC on informing and consulting employees at national level were regarded as superior to the definition of consultation in the Directive. The ETUC argued that the Directive should meet the ‘new community standards’ set elsewhere. Second, the ETUC agreed with the approach of the European Parliament towards sanctions in that they should be effective, proportionate and dissuasive, and that, where managers fail to consult an EWC, any subsequent management decision ‘shall not have legal effects on the contract and the terms of employment of the concerned employees’. Third, the ETUC required managers to demonstrate that an issue was not transnational, rather than placing the burden of proof on employee representatives to demonstrate that an issue was transnational. Fourth, the ETUC required managers to inform ETUFs whether an MNC meets the workforce size threshold criteria. The refined ETUC position thus did not change the substance of the preferred revision agenda, but introduced greater specificity on a range of practical issues.

During April 2004, the Commission opened the first stage of consultation with the European social partners on the possible revision of the Directive (European Commission 2004). In tabling details on the consultation process in 2005, the Commission explicitly linked the revision of the Directive to the regulation of corporate restructuring, thus rejecting the argument of BusinessEurope that restructuring was not the central issue (European Commission 2005a). The ETUC and the ETUFs agreed that this linkage may be present, but it was not necessarily universal, and viewed the two issues as best handled separately (ETUC 2005). In addition, the ETUC reiterated the shortcomings of the Directive outlined above. The concurrent social dialogue processes limited work on EWCs to assessments of the joint lessons learned from EWCs from a series of seminars (ETUC et al. 2006). Although these lessons were interpreted by some in the Commission as sufficient reason for taking no further action on the revision (EWCB 2006), support from the European Parliament (2005, 2007a; Cottigny 2006) and the EESC (2006) effectively kept the revision process alive.

Support for the revision agenda proposed by the ETUC and ETUFs also emerged from the Impact Assessment of the Directive drawn up at the behest of the Commission (EPEC 2008). The breadth of evidence in support of the position adopted by the ETUC and ETUFs and the range of the political origins of this evidence, coupled with the advocacy of a revision by the French Presidency, led the Commission to table a draft Recast on 2 July 2008 (European Commission 2008c). As discussed above, this draft included several of the revisions supported by the ETUC, but excluded extensions to the subsidiary requirements agenda, uniform definitions of information, consultation and transnationality with other EU-level legislation, a reduction in the workforce size thresholds, a reduction in the duration of SNB negotiations, a minimum of two plenary meetings per year, and an entitlement for ETUF representatives to attend all meetings associated with the EWC. Despite these omissions, evidence produced in the Commission’s Impact Assessment (EPEC 2008) and support for a more wide-ranging revision from the EESC (2008) and the European Parliament (A6 0454/2008), the

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Commission diluted still further the content of the Recast prior to its adoption by the Council on 23 April 2009. Furthermore, the Commission changed the procedure from the expected ‘revision’ to a ‘recast’, thus limiting the possibility of amending drafts of the document (Jagodziński 2008)

From the perspective of the ETUC, the Recast constituted a limited improvement compared to the Directive, but fell well short of the position advocated by the ETUC. Thus, for the ETUC and the ETUFs, further amendment to the Recast was required if EWCs were to perform in the manner envisaged by European policy-makers.

Policy developments associated with reporting on the Recast predictably followed a similar course to the review process attached to the Directive. A survey of EWC coordinators endorsed by the ETUC, for example, reported an increase in the quality and ease of access to training for EWC representatives, on the added value of EWCs to MNCs, on partial progress in defining information, consultation and transnationality, and on the improved linkage between European and national levels of information and consultation arising from the legislative amendments included in the Recast (Voss 2016). From the perspective of EWC coordinators, the benefits of the Recast are similar to those identified in the evaluation study of the impact of the measure authorised by the Commission (European Commission 2016a, 2016b). The shortcomings in the operation of the Recast identified by the evaluation study are also confirmed by EWC coordinators who report that EWCs operate primarily as information rather than information and consultation bodies, are unable to influence strategic corporate decisions, including those on restructuring, have insufficient resources and competences, operate without adequate expert support due to the management’s interpretation of the legislation, and are limited in their operation because of the management’s confidentiality policies (Voss 2016). Furthermore, underpinning several of these limitations according to EWC coordinators is the inadequacy of the sanctions regime included in the Recast.

Incorporating the findings of both the evaluation study and the survey of EWC coordinators, and following extensive discussions with the ETUFs, in 2017 the ETUC identified 10 priorities directed towards more effective EWCs (see Appendix B). The incoming ETUC Secretariat confirmed support for this agenda in 2019 (ETUC 2019). It is immediately apparent from this agenda that several of the matters raised therein have been long-standing issues of proposed reform from the perspective of the ETUC and the ETUFs. An enlarged list of topics for EWC agendas (point 10), for example, has been the subject of debate since before the adoption of the Directive. Similarly, the role of trade unions (point 3) and coordination between levels of information and consultation (point 4) were raised during the late-1990s in conjunction with the review of the Directive. The removal of exemptions available to voluntary agreements signed under Article 13 of the Directive (point 6) reflects the basic policy preference of trade union organisations for legislative solutions.

The reform agenda is notable for an added emphasis on enforcement and sanctions, reflecting concerns with extant practice. Chapter 9 examines measures taken by EWC representatives to enforce the terms of the Recast. The reform agenda is also notable for the absence of proposals on issues that have figured large in previous iterations. Among

these ‘missing’ items are a codetermination right, an increase in the number of annual plenary meetings, an obligation on management to inform trade union organisations if the workforce size thresholds are met within the MNC, a shortening of the period over which SNB negotiations can take place, and a lowering of the workforce size thresholds. While the 2017 reform agenda includes many long-standing demands for improvement, it is also notable for the demands that have been dropped. In practice, the ETUC reduced the number of demands in order to focus on immediate operational issues. Chapter 11 assesses the views of EWC representatives on this agenda, while Chapters 4 and 5 evaluate the performance of EWCs in relation to this agenda and identify how EWC practices might be reformed in order to ensure that the intentions of European policy-makers regarding information and consultation arrangements are achieved within the institution as a whole rather than within specific EWCs. The study also examines the potential impact of some items excluded from the reform agenda.

## ETUFs: operationalising policy options

The ETUFs formally assumed operational responsibility for EWCs after the Helsinki Congress of the ETUC in 1999. As becomes apparent below, however, this Congress decision merely confirmed a division of responsibility that was already in place in practice. The emphasis of this section is thus on operational matters. The position of the ETUC and the ETUFs outlined above reflects many of the operational concerns of the ETUFs. These are excluded from this discussion, which focuses primarily on those issues not included in the proposed programme of legislative reform. From the outset, it should also be noted that the resources available to the ETUFs are limited. Although membership fees were increased from the mid-1990s, by comparison with national union confederations the ETUFs are materially under-resourced and employ far fewer staff (Waddington 2011: 31).<sup>22</sup> In 2018, for example, two staff members were responsible for the coordination of EWC activities and policy development within *industriAll*, within the ambit of which fall more than 55 per cent of currently active EWCs. Most other ETUFs rely on a single person to undertake these responsibilities. In consequence, the ETUFs are reliant on support from affiliated trade unions, particularly in the form of staff time, and budget lines made available by the Commission to fund EWC-related projects and activities.<sup>23</sup>

An operational issue that underpins many of the policy choices adopted by ETUFs concerns the status of EWCs. In law, EWCs are not trade union bodies. Furthermore, the fact that the Directive made no reference whatsoever to the term ‘trade union’ has

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**22.** Mergers among ETUFs have been influenced by the shortage of resources. In particular, the European Mine, Chemical and Energy Workers’ Federation (EMCEF) was formed in 1996 as a result of the merger of the Miners’ European Federation (MEF) and the European Federation of Chemical and General Workers’ Unions (EFCGU). EMCEF was relatively short-lived, however, as it was involved in the merger with the European Metalworkers’ Federation (EMF) and the European Trade Union Federation for Textiles, Clothing and Leather (ETUF-TCL) to form *industriAll* in 2012. Similarly, UNI Europa was formed in January 2000 from the merger of the European regional organisations of the International Federation of Commercial, Clerical, Professional and Technical Employees (Euro-FIET), Communications International, the European Graphical Association and the Media and Entertainment International. As with *industriAll*, the merger of these European regional organisations to form UNI Europa was part of a wider merger involving the global unification of these union federations.

**23.** A budget line comprising €17 million per year was made available to support the development of EWCs.

heightened operational concerns. From the perspective of trade union organisations, EWCs posed a challenge insofar as decisions taken or influenced by non-unionists could have a marked impact on the policies adopted by EWCs. The scale of this challenge varies by company, industry and nationality with the relatively low levels of unionisation in private-sector services and in many CEE countries viewed as particularly problematic. In addition, the involvement of EWCs in strategic corporate decision-making is anathema to many trade unions, particularly those based in single channel systems of employee representation. From the perspective of trade union organisations, a central operational objective is thus to exert control over the activities of EWCs and to ensure high rates of unionisation among EWC representatives.

The rudimentary state of institution building within the ETUFs before 1996, coupled with the absence of any requirement in the Directive that the ETUFs be informed when an SNB was established, resulted in many voluntary agreements concluded under Article 13 being signed without vetting by the ETUFs. In practice, this meant that a significant number of the 495 agreements concluded between September 1994 and September 1996 were agreed without reference to legal standards or recommendations from the ETUFs, although the terms included in the subsidiary requirements had probably influenced the negotiation of these agreements. The initial response of most of the ETUFs to the establishment of EWCs was to set up committees with the brief to formulate policies on EWC practice and implementing procedures by means of which founding agreements of newly established EWCs could be monitored and approved; to allocate EWC coordinators to act on behalf of the ETUF responsible for the EWC; and to draw up guidelines and recommendations on EWC best practice.

Initially, the committees set up by the ETUFs to monitor EWCs were informal, reflecting an immediate response to the establishment of large numbers of EWCs under Article 13 of the Directive. The Task Force of the European Metalworkers' Federation (EMF), for example, was formed in February 1996. While there was some variation between ETUFs, over time these committees became more formal, usually by means of a Congress resolution that established them as standing committees operating with a brief covering EWCs, information and consultation procedures, corporate restructuring and company policy. Support for these committees was usually provided by full-time staff of the ETUFs in facilitating the coordination of EWC activities and developing policy options. The majority of the committee members, however, were drawn from unions affiliated to the ETUF. Procedurally, the principal role adopted by these committees was the ratification of negotiated and renegotiated founding agreements and, latterly, the awarding of mandates to negotiate, and ensure the monitoring of, transnational company agreements. By these means, the committees established by the ETUFs exerted some control over the content of EWC agreements.

A key policy option adopted by all ETUFs is the appointment of EWC coordinators and the production of best practice guidelines. The policy intention is to allocate an EWC coordinator to each EWC or SNB, if the process to set up an EWC had just been set in train. The brief of EWC coordinators is to liaise between the EWC/SNB and the ETUF, to ensure that the founding agreement of the EWC complies with the guidelines of the ETUF, to inform EWC/SNB members of their rights and obligations, and to

participate in all meetings convened in association with the EWC/SNB (for example, see UNI Europa 2011; industriAll 2012). The EWC coordinator may also co-opt experts in specific fields, law or accountancy for example, to advise EWC representatives if circumstances so demand. Most ETUFs recommend that EWC coordinators are full-time trade union officers drawn from the home country of the MNC within which the EWC is based. The expectation within ETUFs is that the affiliated trade union that employs the EWC coordinator would ensure that s/he had the appropriate training and support. It should be noted, however, that, while this approach is recommended by ETUFs, ETUF staff members coordinate many EWCs in addition to undertaking their committee support role. Furthermore, 19.9 per cent of EWC representatives who responded to the survey in 2018 indicated that their EWC operated without an EWC coordinator, indicating limitations to the policy in practice.<sup>24</sup> Chapter 4 addresses the efficacy of the policy of appointing EWC coordinators by reference to the quality of information and consultation processes, and Chapter 6 examines the impact of trade union interventions of EWC practice.

As could be anticipated, the guidelines and recommendations on EWC best practice drawn up by the ETUFs generally follow the preferences for legislative reform expressed by the ETUC and the ETUFs. To this end, the ETUFs have emphasised the importance of a number of recommendations, including that common positions should be developed among employee representatives on the SNB or the EWC; a greater number of plenary meetings should be held rather than a single annual meeting, and the right to request extraordinary, preparatory and de-briefing meetings should be ensured; the select committee should meet frequently, without management if appropriate, and agree on the agenda, location and minutes of all meetings with management; the composition of the EWC should reflect that of the workforce it represents by reference to gender and employment types; there should be a preference for union members to serve as EWC representatives; internal rules of procedure should be developed that *inter alia* define the role of the chairperson, the role of the select committee and the actions to be taken in cases of dispute; measures should be introduced to prevent management appointees attending as EWC representatives; and a European rather than a national perspective should be instilled in EWC representatives (EFFAT 2009; UNI Europa 2011; EMF 2011). The extent to which the ETUFs have been able to improve on the minimum standards outlined in the Directive and Recast is examined in Chapter 3. Chapter 4 establishes whether the policies on the composition of EWC representatives influence the quality of information and consultation processes, whereas Chapter 5 assesses the development of a European identity among EWC representatives.<sup>25</sup>

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24. It should also be noted that a further 19.3 per cent of respondents did not know if a coordinator was present at their EWC.

25. UNI Europa has also implemented a policy to establish trade union alliances to work in conjunction with EWCs and to influence their policy development. The intention is to establish a permanent trade union alliance to work with each EWC (UNI Europa 2016). IndustriAll is also prepared to set up trade union alliances, but as temporary institutions to deal with specific issues affecting the MNC, not as permanent institutions as in the case of UNI Europa (EMF 2011). The survey questionnaire does not examine the impact of trade union alliances, hence detailed assessment of their influence is not undertaken here.

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## Summary

Trade union organisations viewed the inclusion of voluntary measures and restricted minimum standards within the Directive and the Recast as limiting the capacity of EWCs to realise the objectives of the legislation expressed by European policy-makers. Although the Recast was viewed as partial progress towards an appropriate legislative framework, it was also a justification of the approach of trade union organisations insofar as it represented the ‘hardening’ of the legislation that underpins EWCs. The range of reforms proposed by the ETUC in 2017 demonstrates the extent to which trade union organisations viewed the Recast as only a partial improvement on the Directive. Furthermore, many of these reforms are long-standing proposals, several of which were initially voiced in some form prior to the adoption of the Directive. To compensate for the limitations of the legislation that underpins EWCs, trade union organisations have implemented a range of policies directed towards strengthening a union influence over the operation of EWCs. Crucial to this policy was the formation of committees with a brief to monitor and vet EWC activities and agreements, and the appointment of EWC coordinators to represent the ETUF within each EWC.

## Conclusion

EWCs are contested institutions at two levels. First, BusinessEurope and other employers’ organisations advocate a voluntary approach to transnational information provision and consultation, while trade union organisations advocate solutions based on law. Second, managers responsible for EWCs within MNCs pursue information and consultation practices based on HRM, whereas trade union organisations emphasise those aspects of information and consultation that originate in industrial relations or industrial democracy.

The Commission initially advocated hard law solutions to transnational arrangements for information and consultation, but failed to secure the adoption of legislation, as unanimity at the Council was beyond reach. Successive proposals from the Commission on information and consultation provisions diluted the hard law elements and replaced them with a raft of voluntary arrangements relying on far from demanding minimum standards. Although qualified majority voting was available after the entry into force of the Maastricht Treaty, the perceived need to steer prospective legislation through a neoliberal-influenced Council promoted the dilution of the legislation in the form of more voluntary elements. As key members of the Commission were also political appointees, the influence of neoliberal policy choices within the Commission, particularly after 2000, should also not be downplayed. It should be noted, however, that both the European Parliament and the EESC consistently advocated policies on transnational information and consultation that comprised a wider range of hard law measures and more exacting minimum standards than those proposed by the Commission.

Both the Directive and the Recast required the Commission to report on the practices associated with the legislation and to recommend amendments if appropriate. In both instances, the Commission’s implementation reports accepted and shared evidence on



legislative and operational shortcomings (European Commission 2000, 2018a, 2018b) but failed to propose legal reform and delayed any amendment to the legislation as far as possible. This cycle of delay follows a pattern comprising stages in which the transposition process is viewed as incomplete, followed by claims that data are insufficient to make a judgement, and then the promotion of case study research to identify best practice, followed by arguments that best practice should be exchanged and promoted. Only when further impact assessment studies were completed and the political impact of the French Presidency was irresistible did the Commission propose the Recast (Dorssemont and Jagodziński 2018).

The shift towards favouring voluntary arrangements within the Commission brought it more into line with the position of BusinessEurope and some Member States. The political inclusion of a raft of voluntary arrangements and the acceptance of the principle of subsidiarity effectively weakened EWCs from without. When politically there was no other choice, BusinessEurope indicated a preparedness to negotiate with the ETUC to avoid, delay or dilute the Commission proposals. A preparedness to negotiate was a tactical ploy rather than a strategic choice. In the case of both the Directive and the Recast, BusinessEurope lobbied successfully to reduce the scope and to increase the voluntary elements of successive proposals.

Differences in emphasis between BusinessEurope and managers responsible for EWCs emerged in the context of the Recast. In particular, and unlike BusinessEurope, managers did not think that the Recast introduced 'high obstacles', was too heavy a burden on MNCs or constituted a 'straitjacket' to the operation of EWCs, and most thought that the benefits of EWCs outweighed the costs. Furthermore, managers have been able to implement and develop over time an agenda based on the HRM aspects of information and consultation, while concurrently limiting those aspects of information and consultation that originate in industrial relations or industrial democracy. In short, managers have exploited the malleability of the institution to avoid compliance with aspects of the legislation, while ensuring that the institution serves corporate objectives, as Kinderman noted among German managers (2005).

The drift away from hard law solutions to transnational information and consultation towards negotiated voluntary solutions by the Commission was contrary to the preferences of the trade union organisations. Although trade unionists welcomed the Directive, they expressed wide-ranging concerns about its voluntary elements and weak minimum standards. Their concerns were mitigated by the expectation that the 1999 review of the Directive would address any shortcomings identified. By the time that the Recast was adopted in 2009, the European Parliament, the EESC and the trade union organisations had advocated more profound revisions to the Directive than were adopted. In consequence, while welcoming the revisions adopted in 2009, the reform agenda tabled by the ETUC in 2017 comprised several items that had been raised in some form prior to the adoption of the Directive. In short, the trade union organisations take the view that the Directive and the Recast are inadequate, that the inadequacies were identified at the time of the initial proposals for the Directive, and that legislative amendment is required if these inadequacies are to be addressed.

While liaising with the ETUC in the formulation of a revision agenda, the ETUFs assumed operational responsibility for EWCs. The objective of ETUFs in this regard was to bring a trade union influence to bear on the formation and practice of EWCs. Central to achieving this objective was the establishment of committees to monitor EWCs, the appointment of EWC coordinators to represent the ETUFs within EWCs and the publication of best practice guidelines.



## Chapter 3

### Mapping variation within the institution

In bringing together representatives of the European workforce of MNCs and central managers of MNCs, EWCs are certainly innovative institutions. The terms of the Directive and the Recast are also unusual insofar as they comprise imprecise definitions of some key terms; allow for negotiation on the purpose, form and procedures of EWCs; and, compared with arrangements for workers' participation within several Member States, specify weak minimum standards. Furthermore, the legislation is effectively 'layered' with different institutions operating under Article 13 of the Directive, Article 6 of the Directive and the terms of the Recast. Compounding the inherent legal uncertainty is the contestation between the parties regarding the institution. In practice, there is no universal understanding between the parties to EWCs as to their objectives and the procedures that might be employed to achieve these objectives. In consequence, there is no reason to assume that EWCs constitute a monolithic institution. To the contrary, variation within the institution is assumed to be wide-ranging.

The implications of these observations are threefold in the context of survey research. First, it is useful to identify the parameters along which EWCs vary.<sup>1</sup> These parameters include variation in the composition of EWC representation and in the constitution of the institution. Variation in these parameters may be the source of differences in practice. Second, the extent of variation within the institution necessitates examination of the composition of the survey sample in relation to the entire population of EWCs to 'test' whether the sample is representative of the population. Third, identification of the variation within the institution serves to illustrate the extent to which the 'flexibility' sought by European policy-makers has been integrated into the institution and the forms that this flexibility takes. Examination of these issues allows identification of some of the variables that are used in subsequent chapters. These variables are listed and specified in Appendix C.

The challenge of investigating these issues centres on two populations: the population of EWCs, and the population of representatives that serve on EWCs. In practice, the population of EWCs, on which comprehensive information is available, was used to generate a sample of representatives, information about which is relatively sparse. The objective of the survey was to collect information from the population of representatives, but there is no exhaustive or reliable database comprising the contacts of this population. The European Works Council database (hereinafter 'the EWCdb') maintained by the

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1. It is acknowledged that other parameters may impact on EWC practice. The point here, however, is to identify those parameters that may inform the selection of a survey sample. Later chapters will examine the impact of other parameters on EWC practice.

ETUI, however, is based on information covering EWCs and SEWCs, the agreements on which they are founded, and the MNCs within which they operate. While the EWCdb is not exhaustive, it is the most comprehensive database available. For the purposes of this research, the EWCdb was used as a means of generating a sample of EWCs. When the sample was being assembled, 975 EWCs were reported as active within the EWCdb and used as a sampling frame. Based on those EWC founding agreements that specified the number of representatives sitting on the EWC, the population of representatives was estimated at 15,768. Questionnaires were distributed to 4,746 (30.1 per cent) EWC representatives from this population, and a total of 1,520 questionnaires were returned, corresponding to a rate of return of 32.0 per cent. The returned questionnaires came from representatives based in 335 institutions. For the purposes of this study, responses from 1,520 EWC representatives based in 335 EWCs form the basis of the analysis. These respondents represent 9.6 per cent of the estimated population of EWC representatives, and the 335 EWCs within which they are based constitute 34.4 per cent of all EWCs that were active when the sampling procedure was undertaken. The number of respondents per EWC varied between 1 and 39 with an average of 4.5 respondents per EWC. Details of the research method and the weighting procedure applied to the survey results to mitigate the impact of anomalies are presented in Appendix A.

In the light of the variation within the institution and the method used to distribute the survey, the remainder of this chapter ‘maps’ the representatives and the institutions within which they work. This chapter thus establishes the character of the representatives and the form taken by the institution, while subsequent chapters investigate how the institution functions. To this end, the chapter comprises two sections. The first section identifies some of the personal characteristics of the representatives, while the second section reviews some key constitutional arrangements of the EWCs within which the representatives work. Throughout these two sections, comparisons will be made with the 2007 survey and the state of the EWCdb in December 2018 in order to establish whether the composition of the representatives and the constitutional arrangements changed after the adoption of the Recast and whether the constitutional arrangements reported by EWC representatives differ from those specified in EWC founding agreements.

## **Composition of EWC representation**

Recital 20 of the Recast states that it is ‘for the Member States to determine who the employees’ representatives are and in particular to provide, if they consider appropriate, for a balanced representation of different categories of employees’. Four aspects of ‘balanced representation’ are assessed here: sex, age, nationality and unionisation. For each of these aspects, the implications for representation are examined together with the policy implications for the parties to EWCs.

The ETUC (2000a) and several ETUFs state a preference for EWC representation to reflect the gender composition of the workforce it represents. UNI Europa, for example, aims to ‘ensure that companies’ EWCs are representative of the composition of the company workforce, both in terms of gender and in relation to other factors’ (2011: 4). An initial point of departure for the examination of ‘balance’ thus concerns the sex

of EWC representatives. In 2018, 18.7 per cent of EWC representatives were women. While this proportion constitutes a slight increase on the 17.1 per cent of women who responded to the 2007 survey, it is clear that EWC representation is far from gender-balanced. The proportion of women also diminished in 2018 among office holders within the EWC (15.8 per cent) compared to EWC members (19.6 per cent) and substitute members (22.4 per cent). Furthermore, when respondents were asked in 2018 to specify the proportion of women EWC representatives in their EWC, 79.3 per cent of respondents reported fewer than 40.0 per cent of the EWC representatives were women and only 2.5 per cent reported that women comprised more than 60.0 per cent of the representatives on their EWC. While it is recognised that the workforces of MNCs vary enormously by sex, it is clear that EWCs are largely a male preserve, and wide-ranging policy initiatives emanating from ETUFs and national trade unions are required if proportionality is to be achieved.

The average age of an EWC representative in 2018 was 50.7 years with the majority (65.9 per cent) aged between 46 and 60 years. Only 4.5 per cent of EWC representatives were aged 35 years or younger. This situation largely replicates that recorded in 2007 when 65.1 per cent of EWC representatives were aged between 46 and 60 years, and 6.5 per cent were 35 years of age or younger. The relatively high age of EWC representatives suggests that they may have accumulated considerable experience as representatives both before becoming an EWC representative and as an EWC representative. This latter point can be consolidated insofar as, in 2018, the median length of service of EWC representatives was five years, with 18.7 per cent having served for more than 10 years. Turnover is pronounced, however, as 10.1 per cent of EWC representatives had been in office for one year or less. The experience of EWC representatives is also reflected in the number of plenary meetings they had attended. The 2018 survey reports EWC representatives as having attended a median number of six plenary meetings with 9.7 per cent of EWC representatives having attended more than 20 plenary meetings. In 2007 by comparison, the median number of meetings attended by EWC representatives was four, while 2.8 per cent had attended 20 or more such meetings. Of course, the increasing longevity of the institution between the two surveys may account for much of the longer duration of service among EWC representatives. The longer duration of service, however, suggests that, if a learning curve is in evidence among EWC representatives, it should manifest itself in improved practices in 2018 compared to 2007.

A further aspect of 'balance' to consider in connection with EWC representation is nationality. Most ETUFs recommend formulae in which the size of a national workforce determines the number of EWC representatives from that nation (EFFAT 2009; UNI Europa 2011).<sup>2</sup> Additional measures are usually introduced to accommodate particularly

2. Borrowing from the subsidiary requirements regarding the composition of the SNB, EFFAT recommends the following distribution of representatives based on the proportion of the EEA workforce: 10 per cent or fewer, one seat; more than 10 per cent but fewer than 20 per cent, two seats; more than 20 per cent but fewer than 30 per cent, three seats; more than 30 per cent but fewer than 40 per cent, four seats; more than 40 per cent but fewer than 50 per cent, five seats; more than 50 per cent but fewer than 60 per cent, six seats; more than 60 per cent but fewer than 70 per cent, seven seats; more than 70 per cent but fewer than 80 per cent, eight seats; more than 80 per cent but fewer than 90 per cent, nine seats; and more than 90 per cent, 10 seats (2009).

large or small concentrations of employees within specific countries.<sup>3</sup> Furthermore, representation from outside the EU can be negotiated into the EWC founding agreement. Many EWC founding agreements thus stipulate the nationality of the representatives by reference to these formulae, or modified versions thereof, depending on the outcome of negotiations with management. It should also be noted that corporate restructuring may alter the size of the workforce within nations and/or the relative size between nations with the consequence that the number of EWC representatives from a nation may vary over time.

Based on the content of EWC founding agreements, the column headed ‘Estimated population 2017’ in Table 3.1 details the distribution by nationality of EWC representatives within the 511 founding agreements, analysed as part of the sampling frame of EWCs reported as active at the time of the sampling, that specified the distribution of seats. As anticipated from the formulae mentioned above, the size of the population of EWC representatives from each country is related to the size of the country. The nationality of the respondents to the 2018 survey is specified in Table 3.1. As is apparent from the percentage data, there is a broad correspondence between the sample returned and the estimated population. Exceptions are Belgium, where the number of respondents was greater than the estimated population, and France and the UK, where the estimated populations were greater than the number of respondents. Because of these differences, a weighting procedure was applied, as described in Appendix A.

Throughout this study, comparisons are drawn between the surveys of EWC representatives conducted in 2007 and 2018. Table 3.1 thus also details the nationality of respondents to the 2007 survey. Four points are noteworthy. First, the ‘balance’ between the size of the country and the proportion of EWC representatives from that country remains broadly in place. The obvious exception to this statement for 2007 was the over-representation of Finnish respondents. Second, respondents from the new Member States of Central and Eastern Europe (CEE) appeared less frequently in 2007, no doubt as a consequence of the then recent accession of these countries to the EU. Third, the 2018 survey was based on a stratified cluster sample, whereas no comprehensive sampling procedure was applied in 2007.<sup>4</sup> Fourth, in contrast to 2018, no weighting procedure was applied to the 2007 data. These points should be considered when comparisons between the two surveys are drawn in subsequent chapters.

Two additional points originating in nationality apply to both sets of survey data and have implications for the duty of representation undertaken by the EWC representatives. The first of these concerns the distinction between home country and foreign EWC

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3. These may specify that countries with a small proportion of the workforce are guaranteed one seat irrespective of the size of the thresholds employed or a representative from a second country be designated to act on behalf of two countries within the EWC. In cases where a large proportion of the workforce of the MNC is located in a single country, there may be limits imposed on the number or proportion of EWC representatives from that country.
  4. Within the European Metalworkers’ Federation, European Mine, Chemical and Energy Workers’ Federation and UNI Europa, a structured sample of questionnaires were distributed, comprising one in four of the companies within which an EWC agreement had been concluded. A similar approach was intended for the other ETUFs, but, in practice, the outcome was not as systematic and was reliant on the contacts established between the officer responsible for EWCs within the ETUF and EWC coordinators and representatives.

Table 3.1 Nationality of EWC representatives

Country	Estimated population		Sample returned		Sample returned	
	2017		2018		2007	
	N	%	N	%	N	%
Austria	508	3.2	55	3.6	16	1.7
Belgium	896	5.7	159	10.5	56	6.0
Bulgaria	69	0.4	21	1.4	–	–
Croatia	14	0.1	12	0.8	–	–
Cyprus	11	0.1	–	–	–	–
Czechia	303	1.9	47	3.1	15	1.6
Denmark	417	2.6	42	2.8	18	1.9
Estonia	58	0.4	5	0.3	–	–
Finland	537	3.4	51	3.4	101	10.7
France	2,348	14.9	118	7.8	147	15.6
Germany	2,469	15.7	279	18.4	224	23.8
Greece	178	1.1	14	0.9	5	0.5
Hungary	153	1.0	36	2.4	7	0.7
Ireland	320	2.0	18	1.2	12	1.3
Italy	1,084	6.9	75	4.9	49	5.2
Latvia	31	0.2	3	0.2	2	0.2
Lithuania	40	0.3	8	0.5	–	–
Luxembourg	124	0.8	8	0.5	6	0.6
Malta	11	0.1	–	–	4	0.4
Netherlands	807	5.1	53	3.5	49	5.2
Norway	397	2.5	37	2.4	8	0.9
Poland	326	2.1	83	5.5	24	2.6
Portugal	358	2.3	14	0.9	14	1.5
Romania	112	0.7	36	2.4	–	–
Slovakia	109	0.7	16	1.1	–	–
Slovenia	45	0.3	11	0.7	2	0.2
Spain	1,012	6.4	109	7.2	59	6.3
Sweden	721	4.6	79	5.2	46	4.9
Switzerland	252	1.6	12	0.8	–	–
United Kingdom	2 049	13.0	119	7.8	77	8.2
Other	8	0.1	–	–	–	–
Total	15,768	–	1,520	–	941	–

Note: The 'other' respondents were from Iceland and Liechtenstein.



Table 3.2 Number of sites represented by each EWC representative

Number of sites	All respon- dents 2007	All respon- dents 2018	Home country reps 2007	Home country reps 2018	Foreign reps 2007	Foreign reps 2018
	%	%	%	%	%	%
1	14	21.1	12.3	9.4	15	24.5
2	8.7	8.1	3.9	4.4	11.2	9.2
3	9.8	8.5	7.4	5.1	11	9.5
4	6.1	6.6	5.5	4.4	6.4	7.2
5	7	5.5	7.4	4.3	6.9	5.8
6 to 10	22.2	15.3	25.8	17.8	20.4	14.6
11 or more	32.2	34.9	37.7	54.7	29.1	29.2
N	940	1,440	310	306	628	1,134

representatives. Home country representatives are those whose nationality is the same as the country of origin of the MNC within which the EWC is based, whereas the nationality of foreign representatives differs from the country of origin of the MNC. Home country representatives comprised 32.9 per cent in 2007 and 23.2 per cent in 2018 of all respondents, while foreign representatives constituted 67.1 per cent in 2007 and 76.8 per cent in 2018. Home country representatives thus comprised a larger proportion of respondents in 2007 than in 2018 with implications for representation in that home country representatives would be expected to be more familiar with home country managerial practices and have more frequent contact with central management than their foreign counterparts (Streeck 1999; Hammer and Lutz 2002).

Linked to nationality and home country/foreign representation is the number of sites represented by each EWC representative within the MNC. The median number of sites represented by each EWC representative was comparable in 2007 (six sites) and 2018 (five sites). Table 3.2 illustrates the situation and introduces some of the differences between EWC representatives regarding their representative duties. By reference to all respondents, the situation in 2007 and 2018 was broadly comparable: in 2007, 45.6 per cent of respondents represented workers employed at between one and five sites, whereas 49.8 per cent did so in 2018. Corresponding figures for home country representatives were 36.5 per cent in 2007 and 27.5 per cent in 2018, whereas those for foreign representatives were 50.5 per cent in 2007 and 56.2 per cent in 2018. In short, foreign representatives are more likely to have fewer sites with which to liaise than their home country counterparts. The challenge of liaising with sites is also clearly becoming more intense for home country representatives, as 55.7 per cent of them had representative coverage for 11 or more sites in 2018 compared to 37.7 per cent in 2007. Compounding the representative challenge for 5.3 per cent of representatives in 2018 is that they represent workers in more than one country.

To a degree, the term ‘balance’ is a misnomer regarding the final point on the composition of EWC representation: namely, the unionisation of EWC representatives. Every ETUF argues that it is preferable that union members be selected as EWC

representatives and strives to ensure that this is the case. Arguments cited in support of this preference include the provision of support and training to EWC representatives from trade union organisations; the need to articulate EWCs with other institutions of labour representation within the MNC, unionisation being particularly important in countries with single channel systems of representation; and the critical importance of union engagement in EWCs' negotiations with MNCs (EMCEF 2001; EFFAT 2009; UNI Europa 2011). In 2007, 93.6 per cent of survey respondents were unionised, a proportion that had declined to 84.5 per cent among the 2018 survey respondents. Given the method of distribution of both surveys, it is likely that these data overstate the proportion of EWC representatives that are unionised (see Appendix A).<sup>5</sup> In 2007, 42.9 per cent of representatives reported that their EWC was 100 per cent unionised, whereas, in 2018, 33.6 per cent reported complete unionisation.<sup>6</sup> It is thus apparent that wide-ranging policy initiatives are required from the ETUFs if unionised EWCs are to become the norm.

Closely associated with increasing unionisation among EWC representatives is the policy objective among ETUFs to ensure that each EWC be assigned an EWC coordinator. The role of the EWC coordinator is to liaise between the EWC and the ETUF, in particular informing EWC representatives of the policies of the ETUF. In 2007, 32.9 per cent of representatives reported the presence of an EWC coordinator at the EWC, acting on behalf of the ETUF. By 2018, this proportion had risen to 58.9 per cent. While this increase reflects improved performance among trade union organisation, Chapters 4, 6, 7 and 9 will examine how EWC coordinators impact on the performance of EWCs.

Consistency is the principal feature of the composition of EWC representation between 2007 and 2018. The 'average' EWC representative in 2007 was male, aged 50, unionised and represented workers at six sites. In 2018, his counterpart was male, aged 50, unionised and represented workers at five sites. A difference between 2007 and 2018 is that, in 2018, the EWC representative was more likely to be from Central or Eastern Europe. In both 2007 and 2018, home country representatives were more likely to represent workers at a larger number of sites than their foreign counterparts. The proportion of home country representatives with representative responsibilities covering 11 or more sites increased markedly between 2007 and 2018.

## Constitutional arrangements

The Directive and Recast allow wide-ranging negotiation on the constitutional arrangements of EWCs. The minimum standards set a floor to these negotiations but, compared to national arrangements for worker representation, are weak and ill-defined. This section makes no attempt to review the complete range of constitutional

5. Union density in the EU was 31.1 per cent in 2007 and 25.4 per cent in 2018 (OECD/AIAS ICTWSS database, accessed March 2021). The rate of unionisation among EWC representatives is thus markedly higher than aggregate density rates, suggesting the efforts by trade unions to ensure unionists sit as EWC representatives have been relatively successful.
6. In 2007, 19.7 per cent and, in 2018, 34.0 per cent of EWC representatives did not know the extent of unionisation within their EWC.

arrangements applicable to EWCs, many of which are examined in subsequent chapters. Instead, it focuses on the selection of EWC representatives and meeting arrangements. The objective is to identify how these issues may impinge on EWC practice, thus adding to the analytical framework applied in later chapters.

## Selection of EWC representatives

The median number of representatives on an EWC reported by the EWC representatives was 21 in 2007 and 19 in 2018.<sup>7</sup> This section examines how these representatives were selected to sit on the EWC. In referring to the principle of subsidiarity, the legislation places responsibility for the selection of EWC representatives on the Member States (recital 20 of the Recast). An analysis of EWC founding agreements confirms that national legislation underpins the selection of EWC representatives (De Spiegelaere and Jagodziński 2015). Furthermore, a legal assessment shows that there is considerable variation in how the selection of EWC representatives is organised within Member States (Jagodziński 2019). It is thus expected that a wide range of practices will underpin the selection of EWC representatives, reflecting different national practices. This expectation was realised in both 2007 and 2018. Central to the selection procedures in both years, however, was the influence of single- and dual channel systems of representation within Member States.<sup>8</sup> In 2007, for example, 39.3 per cent of all EWC representatives were selected by an election held by the works council or equivalent institution of employee representation. This proportion had risen to 43.4 per cent by 2018, probably as a result of the dual channel systems of representation operating with the new Member States. By comparison, the proportion of all EWC representatives appointed by a trade union remained fairly constant: in 2007, 22.6 per cent and, in 2018, 21.3 per cent, although the proportion of all EWC representatives elected by union members rose from 10.2 per cent in 2007 to 18.5 per cent in 2018. These proportions rise markedly when respondents from either single- or dual channel systems of representation are examined separately. No fewer than 78.7 per cent of EWC representatives based in dual channel systems of national representation in 2018 were selected to serve on the EWC by an election held by the works council or equivalent institution of employee representation. Similarly, among EWC representatives based in single channel systems of representation, the proportion elected by union members was 26.3 per cent.

The implication of this variation between single and dual channel systems of representation is twofold. First, and further ‘complicating’ arrangements, EWC representatives based in the two systems of employee representation clearly have different reporting back priorities: one to the works council, the other to the trade union.<sup>9</sup>

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7. It should be noted that, in 2007, 35.7 per cent and, in 2018, 15.0 per cent of EWC representatives did not know how many people sat on the EWC.

8. It is acknowledged that there are many variants of both single- and dual channel systems. Here, reference is made only to those systems that unambiguously ‘fit’ into one category or the other. Appendix C specifies the countries that were included in these two categories and the countries that were excluded on the grounds that their arrangements for participation comprised elements of both systems.

9. In the absence of a works council or a trade union branch or similar, EWC representatives are required to report back to the workforce. Such a requirement further ‘complicates’ reporting back procedures, as will be shown in Chapter 5.

Second, 16.9 per cent of EWC representatives based in countries with single channel systems of representation are not unionised. The question thus arises: to whom do these representatives report back, if at all? Chapter 5 examines this question.

Three further points are apposite regarding the selection procedures of EWC representatives. First, direct election by all workers is relatively rare: 10.0 per cent of all representatives in 2007 and 11.8 per cent in 2018. The rarity of such elections may contribute to the ‘distance’ reported between EWC representatives and those they represent (Lecher et al. 2002; Telljohann 2005a), as workers generally are not directly involved in the selection procedure. Second, in 2018, 2.1 per cent of all EWC representatives indicated that they were appointed/selected by company management to serve on the EWC. This is clearly contrary to the spirit of the legislation and runs counter to the guidelines produced by the ETUFs (EMCEF 2001; EFFAT 2009). Anecdotally, several EWC representatives informed the authors of this book that the managerial selection of representatives was a feature of the new Member States of CEE. The survey data do not, however, corroborate this anecdotal evidence, as less than one-third of the EWC representatives appointed by management are from a new Member State. One in five of the EWC representatives appointed by management come from the UK. It is noteworthy, however, that 9.6 per cent of non-trade union members reported that they had been appointed/selected by management, suggesting that, in some cases, management are attempting to manipulate the outcome of the EWC’s activities by exerting their influence over some of the EWC representatives. The survey does not allow further specification of the characteristics of these management appointees. Third, the ETUFs ask that EWC representatives verify their mandates to the EWC after election. With such a variety of national procedures in place, this is proving a difficult task in many EWCs. It remains to be seen what proportion of EWC representatives have their mandates verified in this way.

## Meeting arrangements

This section examines the constitutional arrangements attached to meetings associated with EWC functioning. In addition to the plenary meeting, it is concerned with select committee meetings, preparatory meetings and debriefing meetings. Extraordinary meetings will be assessed in Chapter 4 and are thus excluded from consideration at this juncture. The Directive and the Recast state that the EWC has the right to meet in plenary session once a year with no upper limit imposed on the number of plenary meetings. The Directive and the Recast, however, are silent on preparatory and debriefing meetings, although the subsidiary requirements of the Directive and Recast (point 4) recommend that the EWC meet without a management presence before meeting with central management.<sup>10</sup> There is thus no established right for EWC representatives to meet without the management being present either to prepare for the plenary meeting or to assess the content of the plenary meeting once it has taken place. On select committees, the legislation is more explicit, but still leaves room for

**10.** It should be noted, however, that Article 4(4) of the Recast allows the SNB to organise both a preparatory and a debriefing meeting in the absence of management.

Table 3.3 Purpose of the select committee in 2007 and 2018 (%)

	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
As a means of influencing the agenda of the EWC meeting						
2007	25.6	52.2	15.6	4.9	1.7	781
2018	38.9	44.3	13.1	2.7	1.0	1,200
As a means of communicating between meetings of the EWC						
2007	20.5	47.9	21.5	7.2	2.8	780
2018	29.6	45.8	17.3	5.5	1.8	1,229
As a provider of useful and accurate minutes						
2007	10.4	40.3	33.1	12	4.1	776
2018	26.8	40.0	24.9	5.9	2.4	1,190
As a means of reacting in exceptional circumstances						
2007	16.5	41.7	24.5	12.6	4.8	777
2018	29.2	39.1	22.4	6.7	2.6	1,219

manoeuvre. The subsidiary requirements of the Directive stated that, where the size of the EWC ‘so warrants’, a select committee is to be elected ‘from among its members, comprising at most three members’ (point 1(c)). The Recast partially addresses the limitation of the earlier formulation in stating that ‘agreements must provide, where necessary, for the establishment and operation of a select committee in order to permit coordination and greater effectiveness of the regular activities of the European Works Council’ (recital 30). While the Directive regarded the size of the EWC as a threshold for the establishment of a select committee without specifying the size that justified the presence of a select committee, the Recast enters the caveat ‘where necessary’ without specifying the circumstances that necessarily justify the presence of a select committee. ETUFs are unanimous on these issues: there should be more than one plenary meeting per year; preparatory and debriefing meetings are required to accompany plenary meetings; and a select committee is the preferred means to coordinate and articulate EWC activities between the plenary meetings. The constitutional arrangements attached to meetings are thus subject to negotiation as trade unionists attempt to improve weak minimum standards.

Regarding the number of plenary meetings held per year, there is evidence that negotiators have secured some improvements. In 2007, for example, 58.2 per cent of EWC representatives reported that the EWC met once per year, a proportion that had declined to 48.7 per cent by 2018. In 2007, two meetings per year were reported by 31.1 per cent of EWC representatives, a proportion that had risen to 39.7 per cent by 2018. In 2018, however, three or more plenary meetings were convened at EWCs attended by 10.6 per cent of EWC representatives compared to 10.7 per cent of their counterparts in 2007, suggesting no improvement at this level. The proportion of EWC representatives reporting that the EWC had moved away from minimum standards was thus 50.3 per cent in 2018 compared to 41.8 per cent in 2007. Data from the

EWCdb valid at December 2018 show that 834 of 998 (83.6 per cent) active agreements mention the frequency at which plenary meetings take place. Of the 834 agreements, 73.9 per cent specified one annual plenary meeting, 23.1 per cent two meetings and 3.0 per cent three or more meetings. On this basis, 26.1 per cent of agreements have moved away from minimum standards. This suggests that the sample of respondents comprises a disproportionately large number of representatives operating in EWCs where agreements and/or practices surpass the minimum standards, particularly those attending EWCs that meet three or more times per year.

There is also evidence of marginal negotiated improvements in the proportion of EWC representatives reporting the establishment of a select committee: in 2007, 85.0 per cent and, in 2018, 87.5 per cent. No fewer than 75.8 per cent of agreements in the EWCdb in December 2018 mentioned that a select committee should be established.<sup>11</sup> The presence of select committees is thus overstated among survey respondents compared to their presence reported in active EWC agreements. Select committees appear to be meeting at a similar frequency: in 2007, the median number of annual select committee meetings reported by EWC representatives was three, a number that had not changed in 2018. In 2018, however, the distribution of select committee meetings was influenced by the legislative underpinning of the institution, with 88.0 per cent of EWC representatives operating under Article 6 reporting the presence of a select committee, while fewer, 86.4 per cent, operating under Article 13 reported the same. Based only on responses from EWC representatives that stated that the select committee undertook these functions, Table 3.3 demonstrates that select committees, where present, were more effective in 2018 than in 2007. Even though, in 2007, a majority of EWC representatives reported that the select committee was effective to some degree with respect to each of the purposes listed in Table 3.3, EWC representatives thought that, by 2018, select committees had become more effective. From the perspective of EWC representatives, it thus appears that select committees are crucial to the functioning of EWCs.

A direct comparison of the situation in 2007 with that of 2018 regarding preparatory and debriefing meetings is not possible because different questions were asked in the two surveys. In 2007, representatives were asked if their EWC founding agreement allowed such meetings. No fewer than 89.6 per cent of EWC representatives indicated that the founding agreement made provision for a preparatory meeting, while 57.1 per cent reported provision for a debriefing meeting. Given the absence of any reference to preparatory and debriefing meetings in the Directive, negotiators of EWC founding agreements had thus made some headway in the period before 2007 on these meetings. In 2018, the survey asked respondents to indicate 'how often' preparatory and debriefing meetings are convened in conjunction with the plenary meeting of the EWC. With regard to preparatory meetings, 76.2 per cent of EWC representatives indicated that such meetings were 'always' convened or were held 'most of the time', and 58.1 per cent reported debriefing meetings as occurring at the same frequency. In contrast, 13.6 per cent of EWC representatives reported in 2018 that preparatory meetings rarely or never took place or did not know if such meetings were convened, and 22.0 per cent of EWC

11. In all, 756 agreements state that a select committee should be established, which is 75.8 per cent (756/998) of all active agreements on the EWCdb at December 2018.

representatives responded on the same basis regarding debriefing meetings. Where preparatory and debriefing meetings were mentioned in agreements in the EWCdb, 99.4 per cent and 98.3 per cent respectively indicated that such meetings should take place. In both cases, however, large numbers of agreements made no reference to preparatory meetings (28.5 per cent) or debriefing meetings (58.0 per cent), meaning that the coverage of these meetings remains uncertain.

This brief review of the selection procedures that underpin the position of the representatives and meeting arrangements raises three points for subsequent analysis. First, the reporting back requirements differ between representatives from single- and dual channel systems and between home country and foreign representatives, suggesting different patterns of articulation between EWCs and other institutions of labour representation within the MNC. Second, there is considerable variation in the number of meetings of the EWC. Chapter 4 examines whether this variation impacts on the functioning of EWCs in relation to the frequency of plenary meetings. Third, the more extensive experience of representatives in 2018 compared to 2007 may impact on the performance of the institution. The impact of this potential 'learning curve' is examined in several subsequent chapters.

## Conclusion

Between 2007 and 2018, the 'average' EWC representative remained remarkably constant: a 50-year-old unionised man who represented workers at five (in 2018) or six (in 2007) sites. In 2018, the 'average' EWC representative was more likely to be from the post 2004 new Member States. In 2007 and 2018, home country representatives tended to represent employees at a larger number of sites than their foreign counterparts, suggesting that the two groups face different reporting back challenges. In contrast, the emphasis of the review of constitutional arrangements was development over time. The increasing frequency of plenary meetings and the growing proportion of EWCs operating with select committees and preparatory or debriefing meetings indicates a gradual movement away from the weak minimum standards specified in the legislation. The wide-ranging variation in the method of selecting EWC representatives to serve on the institution was anticipated from the legislation, but it is a further variation within the institution.

The findings of this chapter raise three issues that will figure large in subsequent chapters and suggest a range of variables that may form the basis to the analysis. First, while the duties attached to the acquisition of information and consultation may be similar for all EWC representatives, their reporting back responsibilities vary widely dependent *inter alia* on systems of workplace representation within Member States, the structure of the MNC, and the relationship between the nationality of the EWC representative and the country of the headquarters of the MNC.

A second issue concerns the gradual movement away from the weak minimum standards regarding meetings, which suggests some 'learning curve' effects as EWC representatives come to understand the institution and how it may be improved.

Research on managers (Pulignano and Turk 2016) and the content of agreements (De Spiegelaere and Waddington 2017) suggest that learning effects rendered much of the Recast obsolete even before it was adopted. The point here is that legislative change and learning effects may both lead to improvements in the operation of the institution. While no attempt is made here to assign a value to these effects, subsequent chapters attempt to tease apart the implications of the two effects on EWC practice.

Third, and associated with the debate between the relative impact of learning effects and legislation, is the impact of contestation. The gradual movement away from weak minimum standards also reflects, to some degree, the policy initiatives of trade union organisations, which have repeatedly sought, and continue to seek, improvements in the legislation and in the terms of founding EWC agreements. This movement also confirms that some managers are prepared to search for mutual benefits and to implement improvements on minimum standards to upgrade EWC practice. Chapter 8 examines the motivation of management in these circumstances. The fact that this movement away from minimum standards is gradual, when it occurs, and partial, in that many EWCs remain wedded to the weak minimum standards, is a further indication of the contestation inherent in the content of the legislation and EWC practice. All subsequent chapters address different aspects of this contestation.





## Chapter 4

# Information and consultation: still struggling to make the grade

This chapter examines three aspects of the core information and consultation practices of EWCs: first, the quality and timeliness of information and consultation procedures; second, the efficacy of the EWC as a means of facilitating information exchange and consultation and influencing management; and third, the role of the EWC in restructuring, thus establishing whether EWCs influence strategic corporate decision-making. Information and consultation rights were viewed as enhancing transparency within MNCs and opening up a space for transnational employee participation (Hall 1992). The Directive and Recast set European standards for MNCs with European operations with the intention of mitigating the impact of differences in the provisions for information and consultation between Member States.

Given the centrality of information exchange and consultation to the purpose of EWCs, it was surprising that there was no definition of the term ‘information’ in the Directive. The absence of a definition of information was a measure of the effectiveness of lobbying by employers’ organisations, which favoured negotiated solutions. In practice, the omission of a definition of information left the social partners to negotiate a working definition on a company-by-company basis, which, in turn, meant that information practices in Member States were likely to influence EWC practice and that EWC information practices would not be uniform. In contrast, the Directive included a definition of consultation, which was regarded as meaning ‘the exchange of views and the establishment of dialogue between employees’ representatives and central management’ (Article 2(f)). The inclusion of the phrase ‘establishment of dialogue’ went beyond conventional definitions of consultation (Bercusson 1996: 289), but the definition in the Directive left issues such as timeliness to the social partners to agree.

The imprecision of the Directive contrasted with Directive 2001/86/EC on employee involvement in SEs, which defined information as meaning:

‘the informing of the body representative of employees and/or employees’ representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE’ (Article 2(i));

and consultation as:

‘the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees’ representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees’ representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE’ (Article 2(j)).

In short, Directive 2001/86/EC introduced timeliness and content as criteria of the quality of information and consultation procedures. Also, the reference to consultation as being taken into account in the decision-making of European companies suggests that managers should finalise their strategic decisions only after consultation has taken place, a point absent from the definition of consultation in the Directive. The content of the legislation promoted negotiation between the social partners on two dimensions. First, there was negotiation within EWCs regarding the definitions of, and the practices involved in, information and consultation. Second, as Chapter 2 demonstrated, the ETUC and the ETUFs campaigned in favour of uniform definitions of information and consultation rather than having different definitions applying to EWCs and SEWCs.

The imprecision of the Directive also prompted a number of court proceedings intended to determine the meaning of information and consultation as well as ensure that managerial disregard for the Directive be brought to book. Initially, the Renault (Vilvoorde) case clarified the issue of timeliness where restructuring has ‘significant effects’ on the workforce insofar as information and consultation should take place beforehand (Moreau 1997). Similarly, courts ruled that the merger between Gaz de France and Suez could take place only after the board of directors of Gaz de France had consulted with the EWC and appropriate national representative bodies (TGI Paris, 21 November 2006; Cour d’Appel Paris, 21 November 2006; Cour de Cassation, 16 January 2008). Directly illustrating the ambiguity inherent in the legislation, some courts applied the definitions of information and consultation from other directives to cases brought under the Directive (Beiersdorf: TGI Melun, 13 October 2006),<sup>1</sup> whereas others did not (Alcatel Lucent: TGI Paris, 27 April 2007).

Supplementing the court cases was an ever-broadening range of research evidence demonstrating that EWC practices amounted, at best, to information rather than information and consultation provision. Case study evidence illustrated a broad range of EWC practices with large numbers of EWCs operating at a rudimentary level (Telljohann 2005b; Kotthoff and Whittall 2014), while survey evidence showed that the occurrence of ‘useful information and consultation’ was reported by fewer than 30 per cent of EWC representatives (Waddington 2011: 90–91). Similarly, the impact assessment initiated by the Commission highlighted the infrequency of EWC meetings as limiting the utility of the information provided, the absence of comprehensive information and consultation arrangements, and shortcomings in the timeliness of

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1. The court hearing the Beiersdorf case cited the more exacting definitions included in the Framework Directive 2002/14/EC on national-level information and consultation arrangements.

consultation (European Commission 2007: 62–63). As a consequence of the court cases and the range of research evidence available, the Commission conceded that the expectations of EWCs with regard to information and consultation ‘are far from being satisfied’ (European Commission 2008a: 2).

In recognition of the failings of the Directive with regard to information and consultation, new definitions were introduced in the Recast. The new definitions were similar to those of Directive 2001/86/EC. In the Recast, information means:

‘transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings’ (Article 2(1)(f));

and consultation means:

‘the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings’ (Article 2(1)(g)).

One purpose of this chapter is to establish whether these new definitions have led to improvements in the quality and timeliness of information and consultation procedures from the perspective of EWC representatives. In addition, the chapter analyses the efficiency of EWCs, which, in this context, refers to the performance of EWCs as a means of facilitating information exchange and consultation and influencing management.

A second purpose of this chapter is to examine whether EWC representatives have been able to influence the content of strategic corporate decision-making on company restructuring. Chapter 2 showed that the ETUC was able to resist the initiative of the Commission formally to link EWCs and corporate restructuring on the grounds that the agenda of EWCs should not be restricted to restructuring. The fact that EWCs should be involved in corporate restructuring, however, was not in doubt. The Commission, for example, viewed the Single European Act as likely to promote corporate restructuring as companies adjusted to the European single market. The Directive was adopted as a means of enabling workers to influence the outcome of restructuring decisions made in this process of adjustment (Savoini 1995). Similarly, the ETUC and the ETUFs regard EWC involvement in strategic restructuring decisions as a central purpose (UNI Europa 2011; EFFAT 2004). In recognition of the extent of corporate restructuring, the Recast also introduced an ‘adaptation clause’ (Article 14) to facilitate the revision of voluntary

EWC agreements concluded under Article 13 of the Directive in order to meet any new demands arising from corporate restructuring. When coupled with the requirement specified by the Recast that information be made available to enable the undertaking of an ‘in-depth assessment of the possible impact’ of managerial decision-making, this amendment highlights the centrality of corporate restructuring to EWC practice and the concerns of European policy-makers about pre-Recast practice. This chapter examines the effects of these revisions on EWC practice.

The argument that runs through the chapter is that the provision of information and consultation improved between 2007 and 2018, but EWCs still operate primarily as information rather than information *and* consultation bodies. These limitations are exacerbated in the context of corporate restructuring, as the vast majority of EWC representatives are unable to influence the content of managerial decision-making in these circumstances. EWC representatives thus do not report substantial increases in the efficacy of EWCs between 2007 and 2018. To elaborate these arguments, the chapter comprises four sections. The first section examines the quality of information and consultation arrangements, the second considers the timing of information and consultation processes, and the third assesses the utility of EWCs from the perspective of EWC representatives. The fourth section analyses the influence EWCs allow representatives to exert on corporate restructuring decisions. Throughout these sections, the data refer only to those EWC representatives that have attended either a plenary meeting or, in the fourth section, an extraordinary meeting.

## Quality of information and consultation

The initial analysis of the quality of information and consultation processes focuses on agenda items raised at EWCs and comprises three stages. The first examines the quality of information and consultation procedures in 2018 in order to establish whether the Recast has enabled EWCs to move from being primarily institutions engaged in information exchange to institutions engaged in both information exchange *and* consultation. The second compares the survey results of 2007 and 2018. It thus identifies whether EWC information and consultation practices have improved with the adoption of the Recast. The third assesses how different groups within the category EWC representatives perceive the quality of the information and consultation processes.

### Quality of information and consultation in 2018

Table 4.1 illustrates the views of all EWC representatives in 2018 on the quality of the information and consultation processes. The survey question specified that responses refer to plenary meetings that had taken place ‘in the past three years’. Table 4.1 is divided into two panels. The top panel includes agenda items specified in point 2 of the subsidiary requirements annexed to the Directive. These items reflect the views of European policy-makers on the basic subject matter that should comprise a transnational information and consultation agenda. Analyses of EWC founding agreements show that more than half of such agreements explicitly include most of these items as issues for

Table 4.1 Quality of information and consultation procedures (2018)

	Not raised %	Raised, but useless information %	Useful information, but no consultation %	Useful information and consultation %	N
Economic and financial situation of the company	2.0	4.7	55.6	37.7	1,424
Corporate strategy and investment plans	4.3	7.9	55.1	32.7	1,403
Changes to working methods	23.7	8.4	41.3	26.7	1,365
Closure of or cutbacks in plants/workplaces	13.5	9.0	34.1	43.4	1,399
Mergers, takeovers and company acquisitions	16.3	9.2	46.3	28.2	1,401
Introduction of new technology or processes	14.9	8.3	50.9	26.0	1,389
Reorganisation of production lines	39.3	7.0	34.8	18.9	1,359
Relocation of production	30.8	8.0	34.5	26.7	1,381
Employment forecasts	26.9	11.3	43.5	18.4	1,383
Research and development policy	28.2	10.4	47.4	14.1	1,369
Vocational training	46.3	8.5	30.8	14.5	1,382
Equal opportunities	38.5	9.0	34.4	18.1	1,365
Health and safety	18.2	7.4	36.7	37.7	1,396
Environmental protection	33.2	8.4	35.4	23.0	1,377
Trade union rights	52.9	6.3	23.4	17.4	1,358
Working time	54.6	7.4	22.4	15.6	1,372
Profit sharing/financial participation	48.6	9.0	29.8	12.7	1,371
Parental leave	73.1	5.6	12.7	8.6	1,364
Employee data protection	40.6	8.8	29.3	21.4	1,377
Wages and grading systems	53.2	9.3	25.4	12.1	1,371
Gender equality	46.1	8.6	28.1	17.1	1,375
Performance of different plants	30.6	9.4	42.3	17.7	1,378
Outsourcing/subcontracting	36.8	12.4	34.0	16.8	1,384
Working conditions of atypical workers	57.1	9.7	21.5	11.7	1,377

the agenda of the EWC (De Spiegelaere and Jagodziński 2015: 27). The lower panel of Table 4.1 comprises additional agenda items that are relevant to management-labour relations, are the subject of European legislation or have a high transnational policy profile. Collectively, these items are referred to as the extension agenda to distinguish them from the subsidiary requirements agenda. While these issues are less likely to be explicitly mentioned as agenda items in EWC founding agreements, the intensity and quality of the extension agenda is an indicator of the extent to which the agenda of EWCs has been extended beyond the minima defined by European policy-makers and, as such, is a proxy for the extent of institution building within EWCs in the form of the intensity of participation (Knudsen 1995: 8–10).

Table 4.1 illustrates that the extent of non-appearance of items from the subsidiary requirements agenda ranges from 2.0 per cent of EWC representatives reporting that the ‘economic and financial situation of the company’ was ‘not raised’ to 39.3 per cent reporting that ‘reorganisation of production lines’ was ‘not raised’. It is not surprising that the ‘economic and financial situation of the company’ and ‘corporate strategy and investment plans’ are so infrequently reported as ‘not raised’, as point 2 of the subsidiary requirements of the Directive and the Recast states that the EWC will be ‘informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business [...] and its prospects’. In short, not to raise these issues would be to question the *raison d’être* of the legislation. It is also arguably an easy requirement for management to fulfil in the form of annual reports and similar material. More difficult to comprehend is the failure of ‘employment forecasts’ to appear on the agendas of 26.9 per cent of EWC representatives over three years. Indeed, it is difficult to imagine how EWC representatives can formulate coherent responses to managerial proposals in the absence of knowledge on employment levels, an issue of prime importance for the workers represented by the EWC.

Reference to the subsidiary requirements agenda items listed in Table 4.1 also shows that only a minority of EWC representatives report ‘useful information and consultation’. On only one issue, ‘closure of or cutbacks in plants/workplaces’ (hereinafter ‘closure or cutbacks’), did more than 40 per cent of EWC representatives report ‘useful information and consultation’. At the lowest point in the range, fewer than 20 per cent of EWC representatives reported ‘useful information and consultation’ on ‘employment forecasts’. As the survey question required respondents to indicate their perceptions of practices over the preceding three years, it is apparent that the Recast has failed to ensure ‘useful information and consultation’ for the overwhelming majority of EWC representatives on the issues considered central to an EWC agenda by European policy-makers.

On every item of the subsidiary requirements agenda except ‘closure or cutbacks’, EWC representatives reported ‘useful information, but no consultation’ more frequently than ‘useful information and consultation’. EWCs in 2018 thus remain essentially institutions engaged in the provision of qualified information rather than information exchange *and* consultation. This situation contrasts markedly with the intentions of European policy-makers. As early as 2008, for example, the impact assessment conducted on behalf of the Commission argued that the quality of information exchange and consultation at EWCs left much to be desired and that the Directive required reform if deficiencies were to be remedied (EPEC 2008). The results shown in Table 4.1 indicate that these deficiencies remain and that the revised definitions of information and consultation in the Recast have yet to lead to ‘useful information and consultation’ for the majority of EWC representatives. The results in Table 4.1, however, confirm the findings of the evaluation of the implementation of the Recast, which reported that consultation practices fell short of those intended by European policy-makers, particularly on the corporate restructuring issues included in the subsidiary requirements agenda (European Commission 2016a, 2016b). Views expressed within the Commission to the effect that EWC consultation practices require improvement (European Commission 2018a) are also supported by these results. Similarly, the survey results on the views of

EWC representatives are entirely consistent with those of EWC coordinators who also report post-Recast practice as primarily comprising information exchange rather than information exchange *and* consultation (Voss 2016: 13–15).

Turning to the extension agenda reveals generally lower reported levels of ‘useful information and consultation’ compared to the subsidiary requirements agenda. Replicating the situation of the subsidiary requirements agenda, items on the extension agenda are more likely to be the subject of ‘useful information, but no consultation’ than ‘useful information and consultation’. The situation with regard to the extension agenda confirms that EWCs operate primarily as information rather than information and consultation bodies across the complete range of the agenda.

Given the relative infrequency at which items from the extension agenda appear in EWC founding agreements, it is no surprise that large numbers of EWC representatives indicate that these items were not raised at the EWC. The infrequency of the appearance of items from the extension agenda suggests that the extent of institution building within the EWC beyond the formal recommendations is subject to marked limits. The pattern of (non-)appearance of the items from the extension agenda, however, illustrates two features of EWC information and consultation practices.

First, ‘health and safety’ is the only item from the extension agenda where ‘useful information and consultation’ occurs more frequently than ‘useful information, but no consultation’ and is the least likely to be ‘not raised’. Furthermore, ‘health and safety’ is the most frequently mentioned item from the extension agenda to appear in EWC founding agreements with 32 per cent explicitly mentioning it (De Spiegelaere and Jagodziński 2015: 27). The frequency at which ‘health and safety’ appears on EWC agendas confirms the transnational nature of the issue and suggests that the vast array of European health and safety legislation generates European standards that are the subject of EWC discussions. A similar, albeit more limited, argument could be made regarding ‘environmental protection’, which is also the subject of European standards, is mentioned relatively frequently in EWC founding agreements and, in consequence, is the subject of information and consultation. In short, where pan-European legislation is in place, the transnationality of the issue is beyond doubt, thereby enabling parties to raise the issue at the EWC.

Second, Chapter 2 reported that managers responsible for EWCs used the EWC to advance managerial objectives in the form of an HRM agenda. Furthermore, managers used EWCs to conduct coercive comparisons between different sites operated by the MNC (Aranea et al. 2018; Greer and Hauptmeier 2016). Several items from the extension agenda allow examination of these developments. In particular, managerial use of coercive comparisons is confirmed by EWC representatives, 42.3 per cent of whom report ‘useful information, but no consultation’ and 17.7 per cent of whom report ‘useful information and consultation’ on the ‘performance of different plants’. The managerial focus on information rather than information *and* consultation on the ‘performance of different plants’ suggests that managers provide comparative data on different plants in an instrumental way to lever concessions but are much more rarely prepared to consult on the issue. This illustrates the extent to which the managerial pursuit of an HRM-



based agenda is embedded within EWCs. Similarly, the growth of pan-European wage and grading systems (Gooderham et al. 2004; Marginson and Meardi 2009), profit sharing and financial participation schemes within MNCs (Pendleton et al. 2001) are associated with these items appearing on the agenda, as reported by 46.8 per cent and 51.4 per cent of EWC representatives respectively. While the managerial HRM agenda is advanced primarily by means of information exchange rather than information and consultation procedures, these results suggest that managers are extending the EWC agenda to meet their objectives of utilising EWCs to secure corporate added value: a point examined in detail in Chapter 8.

## Comparing 2018 with 2007

An intended purpose of the Recast was to improve the quality of information and consultation procedures from the very low bar set by the Directive. Table 4.2 compares the results from the 2007 and 2018 surveys of EWC representatives. Two specific introductory remarks are apposite to supplement the general remarks on the surveys mentioned in Chapter 3. First, the range of extension agenda items included in 2007 was narrower than in 2018. Table 4.2 includes only agenda items that appeared in both surveys. Second, in 2018, respondents were asked to indicate the quality of information and consultation provision during the most recent three years, whereas, in 2007, there was no time period stipulated. On average, in 2007, EWC representatives had attended between four and five plenary meetings. At the time, the vast majority of EWC agreements allowed for a single annual plenary meeting, suggesting that, for the majority of respondents in 2007, the period under consideration was between four and five years. The point remains, however, that the comparison between the two surveys is not exact.

The comparison of the subsidiary requirements agenda between 2007 and 2018 shows that, with the exception of ‘closure or cutbacks’, ‘useful information, but no consultation’ dominated the responses in 2018. ‘Useful information and consultation’, however, was more likely in 2018 than in 2007 for every item of the subsidiary requirements agenda. The quality of information and consultation procedures was thus higher in 2018 than in 2007. Accompanying this improvement is the reduction in the proportion of EWC representatives reporting that every subsidiary requirements agenda item was ‘not raised’. The agenda of EWC meetings was thus broader in 2018 than in 2007.

In general terms, reporting on the quality of information and consultation on items from the extension agenda follows the pattern set by the subsidiary requirements agenda: ‘useful information, but no consultation’ occurs more frequently than ‘useful information and consultation’; with the exception of ‘vocational training’ and ‘trade union rights’, ‘useful information and consultation’ occurred more frequently in 2018 than in 2007; and, with the exception of ‘trade union rights’, ‘not raised’ was reported more infrequently in 2018 than in 2007. It is particularly noteworthy that information and consultation on ‘profit sharing and financial participation’ increased in coverage and quality between 2007 and 2018. The growth of such schemes is associated with employees working harder and longer, taking less sickness absence and being less likely

Table 4.2 Quality of information and consultation procedures before and after the Recast

	Not raised %	Raised, but use- less information %	Useful infor- mation, but no consultation %	Useful infor- mation and consultation %	N
<b>Economic and financial situation of the company</b>					
2007	6.6	5.4	60.5	27.5	941
2018	2.0	4.7	55.6	37.7	1,424
<b>Corporate strategy and investment plans</b>					
2007	9.7	5.1	57.3	27.9	941
2018	4.3	7.9	55.1	32.7	1,403
<b>Changes to working methods</b>					
2007	44.5	11.3	29.1	15.1	941
2018	23.7	8.4	41.3	26.7	1,365
<b>Closure of or cutbacks in plants/workplaces</b>					
2007	20.6	7.8	44.4	27.2	941
2018	13.5	9.0	34.1	43.4	1,399
<b>Mergers, takeovers and company acquisitions</b>					
2007	19.6	7.0	55.4	18.1	941
2018	16.3	9.2	46.3	28.2	1,401
<b>The introduction of new technology and processes</b>					
2007	42.7	9.9	37.4	10.0	941
2018	14.9	8.3	50.9	26.0	1,389
<b>Reorganisation of production</b>					
2007	48.5	7.5	33.2	10.8	941
2018	39.3	7.0	34.8	18.9	1,359
<b>Employment forecasts</b>					
2007	33.3	10.1	42.7	13.9	941
2018	26.9	11.3	43.5	18.4	1,383
<b>Research and development policy</b>					
2007	45.6	10.5	35.6	8.3	941
2018	28.2	10.4	47.4	14.1	1,369
<b>Vocational training</b>					
2007	49.9	9.4	25.0	15.7	941
2018	46.3	8.5	30.8	14.5	1,382
<b>Equal opportunities</b>					
2007	54.3	11.2	22.2	12.3	941
2018	38.5	9.0	34.4	18.1	1,365

Table 4.2 Quality of information and consultation procedures before and after the Recast (cont.)

	Not raised %	Raised, but use-less information %	Useful information, but no consultation %	Useful information and consultation %	N
Health and safety					
2007	36.9	8.3	27.6	27.2	941
2018	18.2	7.4	36.7	37.7	1,396
Environmental protection					
2007	43.4	9.6	28.2	18.9	941
2018	33.2	8.4	35.4	23.0	1,377
Trade union rights					
2007	52.6	9.4	19.7	18.4	941
2018	52.9	6.3	23.4	17.4	1,358
Working time					
2007	59.0	8.9	21.1	10.9	941
2018	54.6	7.4	22.4	15.6	1,372
Profit sharing/financial participation					
2007	66.7	6.8	18.1	8.4	941
2018	48.6	9.0	29.8	12.7	1,371
Parental leave					
2007	81.6	5.4	8.7	4.3	941
2018	73.1	5.6	12.7	8.6	1,364

to seek alternative employment (Bryton and Freeman 2019). The rise in the coverage and quality of information and consultation on this item further supports the argument that management is using the EWC to gain improvements in performance through the introduction of HRM techniques.

In brief, between 2007 and 2018, the quality of information and consultation arrangements improved and the breadth of the agenda increased. Interpretation of these data, however, is far from straightforward. Advocates of the Recast could conclude that the measure improved the performance of EWCs. In contrast, more critical trade unionists could argue that, although the Recast was a step in the right direction, further legislative reform is required, as the Recast has failed to ensure that EWCs develop from primarily information into information and consultation bodies, and that, for the overwhelming majority of EWC representatives, ‘useful information and consultation’ is not a feature of the EWC, a point confirmed by managers responsible for EWCs within MNCs (Pulignano and Turk 2016). The trade union position is reinforced by evidence showing that the Recast led to a step change in the information and consultation content of agreements, which, assuming a link between the content of agreements and practice, may have promoted improved information and consultation practices (De Spiegelaere

and Waddington 2017). Evidence from managers responsible for EWCs within MNCs, however, suggests the impact of a learning effect rather than a legislative effect, as the Recast merely formalised existing practice, rather than led to marked changes in procedure (Waddington et al. 2016: 53–56). For managers, learning effects rather than the Recast promoted the improvement in EWC information and consultation practices.

## Differences within the cohort of EWC representatives

The analysis of differences in the perception of the quality of information and consultation practices within the cohort of EWC representatives proceeds in two stages. The first stage examines the impact of the industrial relations circumstances and background of the EWC representatives. The second stage assesses the potential impact of some of the policy preferences of the ETUC and the ETUFs mentioned in Chapter 2. Chapter 3 defined the categories of EWC representatives examined here, the results from which are presented in the form of an index where the value of three indicates ‘useful information, but no consultation’. Results from some of these categories are not reported, as there are no significant differences between them. Men and women, for example, reported very similar results on the quality of information and consultation practices. Where possible, comparisons are made with the situation in 2007 to examine whether relationships observed in 2007 persisted until 2018.

### Industrial relations circumstances

The results presented in Table 4.3 are characterised by consistency among the different categories of EWC representatives. The narrow range of average index scores for the subsidiary requirements agenda varies between 2.8 and 2.9, while that for the extension agenda varies between 2.1 and 2.3. At less than 3, the average index score for the subsidiary requirements agenda is not equivalent to ‘useful information, but no consultation’, while the average index score for the extension agenda only just exceeds ‘raised, but useless information’. The quality of information and consultation on the subsidiary requirement agenda, however, consistently improves on that achieved for the extension agenda. The pattern of responses within the different categories of EWC representative is also consistent. The ‘economic and financial situation of the company’, ‘corporate strategy and investment plans’ and ‘closure or cutbacks’ repeatedly occur among the items attached to the highest quality of information and consultation within the subsidiary requirements agenda, whereas ‘reorganisation of production lines’ is consistently the agenda item with the lowest quality of information and consultation. Similarly, within the extension agenda, ‘health and safety’ and ‘environmental protection’ are prominent as the items on which the quality of information and consultation is superior, while information and consultation on ‘parental leave’ is universally of the lowest quality. The persistently higher index scores for items from the subsidiary requirements agenda compared to those from the extension agenda suggests that the inclusion of items recommended for information and consultation at EWCs in the subsidiary requirements encourages a higher quality of information and consultation and supports the recommendation of the ETUC that the list of agenda items specified in the subsidiary requirements be extended (see Appendix B, point 10).

**Table 4.3 Differences in perception of the quality of information and consultation procedures. Industrial relations circumstances and background**

	Reps from dual channel systems	Reps from single channel systems	EWC members	Office holders	Home country reps	Foreign reps	Reps from EU-based MNCs	Reps from non-EU-based MNCs	Article 13 reps	Article 6 reps
Economic and financial situation of the company	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3
Corporate strategy and investment plans	3.2	3.1	3.1	3.2	3.2	3.2	3.2	3.1	3.2	3.1
Changes to working methods	2.7	2.8	2.7	2.7	2.6	2.7	2.7	2.7	2.7	2.7
Closure of or cutbacks in plants/workplaces	3.0	3.1	3.0	3.2	3.1	3.1	3.1	3.1	3.1	3.1
Mergers, takeovers and company acquisitions	2.8	2.9	2.9	2.9	2.8	2.9	2.9	2.8	3.0	2.8
Introduction of new technology or processes	2.8	3.0	2.9	2.9	2.8	2.9	2.9	2.8	3.0	2.8
Reorganisation of production lines	2.3	2.5	2.4	2.3	2.2	2.4	2.3	2.5	2.4	2.3
Relocation of production	2.6	2.6	2.6	2.6	2.5	2.6	2.5	2.7	2.6	2.5
Employment forecasts	2.5	2.6	2.5	2.5	2.5	2.5	2.5	2.5	2.4	2.6
Average for subsidiary requirements agenda	2.8	2.9	2.8	2.8	2.8	2.8	2.8	2.8	2.9	2.8
Research and development policy	2.4	2.5	2.5	2.5	2.5	2.5	2.5	2.4	2.5	2.4
Vocational training	2.0	2.2	2.2	2.1	2.1	2.1	2.2	2.1	2.1	2.1
Equal opportunities	2.2	2.4	2.4	2.2	2.3	2.3	2.4	2.0	2.5	2.2
Health and safety	2.9	3.0	2.9	3.0	2.9	2.9	3.0	2.8	3.1	2.9
Environmental protection	2.5	2.6	2.5	2.5	2.4	2.5	2.5	2.3	2.6	2.4
Trade union rights	2.0	2.2	2.1	1.9	2.0	2.1	2.1	2.0	2.2	2.0
Working time	1.9	2.1	2.1	1.8	1.9	2.0	2.0	1.9	2.1	1.9
Profit sharing/financial participation	1.9	2.1	2.1	2.0	2.0	2.1	2.1	2.0	2.2	2.0

Table 4.3 Differences in perception of the quality of information and consultation procedures. Industrial relations circumstances and background (cont.)

	Reps from dual channel systems	Reps from single channel systems	EWC members	Office holders	Home country reps	Foreign reps	Reps from EU-based MNCs	Reps from non-EU-based MNCs	Article 13 reps	Article 6 reps
Parental leave	1.5	1.7	1.7	1.5	1.5	1.6	1.6	1.5	1.7	1.5
Employee data protection	2.3	2.4	2.3	2.4	2.2	2.3	2.3	2.4	2.4	2.3
Wages and grading systems	1.8	2.0	2.0	1.9	1.9	2.0	2.0	2.0	2.1	1.9
Gender equality	2.0	2.3	2.1	2.2	2.1	2.2	2.3	1.9	2.3	2.1
Performance of different plants	2.3	2.5	2.5	2.4	2.4	2.5	2.4	2.6	2.4	2.5
Outsourcing/subcontracting	2.3	2.4	2.2	2.5	2.3	2.3	2.3	2.3	2.2	2.3
Working conditions of atypical workers	1.8	2.0	1.9	1.9	1.8	1.9	1.9	1.9	1.9	1.8
Average for extension agenda	2.1	2.3	2.2	2.2	2.2	2.2	2.2	2.1	2.3	2.2
N	458-482	564-593	761-792	480-508	293-312	1,059-1,110	1,025-1,076	324-346	445-462	910-960

Note: The index data were calculated by treating 'not raised' as one point, 'raised, but useless information' as two points, 'useful information, but no consultation' as three points, and 'useful information and consultation' as four points.

The stated purpose of EWCs, as mentioned in the Directive and Recast, 'is to improve the right to information and to consultation of employees' (Article 1(1)). Within EU Member States, approaches to information exchange and consultation vary; prominent among them are single and dual channel systems of participation. EWCs originate in the dual system approach to information exchange and consultation. The first pair of categories of EWC representatives are included to examine whether origins in single or dual channel systems influence perceptions of the quality of information and consultation practices. Regarding the subsidiary requirements agenda, there are marginal differences between the two categories on individual agenda items, but the average index score is marginally higher for representatives from single channel systems. 'Representatives from single channel systems' view the quality of the information and consultation processes for items on the extension agenda more favourably than 'representatives from dual channel systems'. For all of the 15 extension agenda items, 'representatives from single channel systems' thought that the quality of the information and consultation processes was superior compared to 'representatives from dual channel systems'. The greater satisfaction of the 'representatives from single channel systems' suggests that the quality of information and consultation practices at EWCs is perceived as constituting a more substantial improvement compared to domestic arrangements than that reported by 'representatives from dual channel systems'.

In 2007, office holders reported a higher quality of information exchange and consultation for both the subsidiary requirements and extension agendas, suggesting that the category EWC representative was not monolithic, but was layered due to privileged access to information exchange and consultation, and inadequacies of internal EWC articulation and communication (Waddington 2011: 88-96). The difference in perception between office holders and EWC members was explained in terms of office holders attending more meetings and having more regular contact with managers. By 2018, the inequalities in the perception of the quality of information exchange and consultation between office holders and EWC members had dissipated on the subsidiary requirements and extension agendas. By definition, office holders still attend more meetings than EWC members and are more likely to be in contact with managers. The parity between office holders and EWC members in 2018 may result from the higher expectations of office holders or from improved articulation and communication within the EWC. The need to improve these aspects of internal EWC relations has been emphasised by the ETUFs in their guidelines since 2009 (EFFAT 2009; UNI Europa 2011). This emphasis may have led to improved practice. EWC articulation and communication are examined in more detail in Chapter 5. It should also be noted that, in 2007, EWC representatives had, on average, attended between four and five plenary meetings, whereas, in 2018, EWC representatives had, on average, been in post for 10 years. Continuity in post among EWC representatives was thus higher in 2018 than in 2007, which may have facilitated internal EWC articulation and communication.

Competing arguments underpin debates on the different perceptions of home country representatives and foreign representatives. Critics of the Directive argued that EWCs are likely to become mere extensions of national systems of employee participation in which representatives from the home country of the MNC have undue influence over the EWC as a result of their more intense and long-standing links with management

compared to foreign representatives (Streeck 1997). In contrast, those emphasising the potential of the legislation argued that information disclosed by central management at the EWC would otherwise not be available to foreign representatives (Knutsen 1997). Managers have also used EWCs since their inception to generate commitment to corporate objectives through communication with foreign representatives (Lamers 1998; Waddington et al. 2016: 41–44). Table 4.3 shows that foreign representatives generally rate the quality of information exchange and consultation higher than home country representatives insofar as there is not a single item on either the subsidiary requirements or extension agenda on which home country representatives regard the quality of information provision and consultation to be superior, although the average scores are the same. This result replicates the situation in 2007 (Waddington 2011: 88–96) and confirms that foreign representatives are in an information deficit compared to their home country counterparts. The consistency of the results over the two surveys confirms that managers have used EWCs to ‘reach’ foreign representatives. The results are problematic for those arguing that EWCs will become extensions to national systems of participation, as there is clearly an added value for foreign representatives.

Associated with the debate concerning home country and foreign EWC representatives are discussions about the effect on information and consultation arising from the home country of the MNC. In particular, European regional managerial systems in US-based MNCs are familiar and responsive to EWC-style practices, as they are largely staffed by Europeans (Hall et al. 2003) while Japanese managers treat EWCs as integral to managerial decision-making processes (Nakano 1999). Table 4.3 shows that there are no differences in the perception of the quality of the subsidiary requirements agenda between ‘representatives from EU-based MNCs’ and ‘representatives from non-EU-based MNCs’, although ‘representatives from EU-based MNCs’ rate the quality of information provision and consultation on the extension agenda marginally more highly. The broad equality between the two categories of EWC representatives supports the argument that European regional management structures in non-EU-based MNCs are comparable to their counterparts from EU-based MNCs. By definition, many strategic corporate decisions are made by the company board in the home country of the MNC. It remains to be seen whether ‘representatives from non-EU-based MNCs’ are able to exert as much influence over the content of these corporate decisions as their counterparts in EU-based MNCs. This issue is examined later in this chapter.

The various definitions of information and consultation applying to SEWCs and EWCs were discussed at the outset of this chapter. In practice, the Recast refined the definition of consultation and introduced definitions for EWCs broadly comparable with the definitions in Directive 2001/86/EC. Legislators’ expectation was that EWCs operating under Article 6 of the Directive would update the definitions in founding agreements in order to comply with the definitions included in the Recast. In contrast, managers operating EWCs with voluntary agreements concluded under Article 13 of the Directive do not regard themselves to be under an obligation to update the definitions of information and consultation in order to comply with the Recast (Pulignano and Turk 2016).<sup>2</sup>

2. It is argued that such managers are obligated to comply with the new definitions, because it is the obligation to provide information and engage in consultation that is important and has not changed. To comply with this obligation, it is necessary to act in accordance with the new definitions provided in the Recast (Picard 2010).



Furthermore, when these Article 13 agreements were concluded, there was no obligation to comply with the rudimentary definition of consultation included in the Directive, and there was no guidance offered in the legislation with regard to a definition of information, with the consequence that the two terms were defined either on paper or in practice by the parties to the EWC agreement.

Table 4.3 demonstrates that representatives operating with voluntary agreements concluded under Article 13 of the Directive report a slightly higher quality of information provision and consultation on the subsidiary requirements and extension agendas than their counterparts operating with legal definitions. This finding raises questions about the quality of agreements concluded under Article 13 of the Directive, and the relationship between legislation and learning effects on EWC practice. One point arising from this finding is that practices associated with EWCs operating under Article 13 are not necessarily inferior to those with legislative underpinning. Some of the EWCs working with a voluntary agreement are pioneers of transnational industrial relations (Lecher et al. 1999, 2001). A second point centres on learning effects: in the absence of legislation that determines the definition of information and consultation in voluntary agreements concluded under Article 13 of the Directive, learning effects may explain the higher quality of information provision and consultation reported by EWC representatives at such EWCs. Agreements concluded under Article 13 of the Directive are relatively longstanding, having initially been concluded before September 1996, which may amplify the impact of a learning effect on information and consultation. This finding is consistent with the views of managers responsible for Article 13 EWC agreements who report a continued evolution of information and consultation practice (Pulignano and Turk 2016: 80–83). These survey findings and the managerial research support the idea that learning effects impact on EWC practice regarding information and consultation procedures. Of course, this is not to argue that other aspects of legislative reform included in the Recast, such as provisions on training, will not improve the position of EWC representatives with agreements concluded under Article 13 of the Directive. The argument returns to this point in Chapter 7.

### **Trade union policy preferences**

Since the formation of the initial EWCs, trade union organisations have promoted a range of policy preferences aimed at mitigating perceived limitations of the legislation. The impact of some of these policy preferences on perceptions of the quality of information exchange and consultation among EWC representatives are examined here.

As with the impact of industrial relations circumstances, the overall position reported in Table 4.4 is a consistency of results, albeit within a marginally wider range: between 2.7 and 2.9 for the subsidiary requirements agenda; and between 2.0 and 2.3 for the extension agenda. The best average index score for the subsidiary requirements agenda of 2.9 is almost equivalent only to ‘useful information, but no consultation’, while the average index scores for the extension agenda are closer to ‘raised, but useless information’. Again replicating the situation regarding the impact of industrial relations circumstances, there is a pattern of responses within the two agendas: ‘economic and financial situation of the company’, ‘corporate strategy and investment plans’ and ‘closure or cutbacks’ are

Table 4.4 Differences in perception of the quality of information and consultation procedures. Trade union policy preferences

	EWC coordinator present	No EWC coordinator	One or two plenary meetings	Three or more plenary meetings	Unionised EWC reps	Non-members
Economic and financial situation of the company	3.3	3.3	3.3	3.3	3.3	3.3
Corporate strategy and investment plans	3.2	3.1	3.2	3.1	3.2	3.1
Changes to working methods	2.7	2.8	2.7	2.7	2.7	2.7
Closure of or cutbacks in plants/workplaces	3.0	3.1	3.1	3.1	3.1	3.1
Mergers, takeovers and company acquisitions	2.8	2.9	2.9	2.8	3.0	2.8
Introduction of new technology or processes	2.8	3.0	2.9	2.8	3.0	2.8
Reorganisation of production lines	2.3	2.5	2.3	2.5	2.4	2.3
Relocation of production	2.6	2.6	2.5	2.7	2.6	2.5
Employment forecasts	2.5	2.6	2.5	2.5	2.4	2.6
<b>Average for subsidiary requirements agenda</b>	<b>2.8</b>	<b>2.7</b>	<b>2.8</b>	<b>2.9</b>	<b>2.8</b>	<b>2.9</b>
Research and development policy	2.6	2.3	2.5	2.4	2.5	2.3
Vocational training	2.1	2.0	2.1	2.3	2.1	2.2
Equal opportunities	2.3	2.2	2.3	2.5	2.3	2.6
Health and safety	3.1	2.6	2.9	3.0	3.0	2.9
Environmental protection	2.6	2.2	2.5	2.5	2.5	2.4
Trade union rights	2.1	1.8	2.0	2.2	2.1	2.0
Working time	2.0	1.7	2.0	2.3	2.0	2.2
Profit sharing/financial participation	1.9	2.1	2.1	2.0	2.2	2.0
Parental leave	1.5	1.4	1.6	1.7	1.5	1.8
Employee data protection	2.4	2.1	2.3	2.5	2.3	2.5
Wages and grading systems	1.9	1.9	1.9	2.5	1.9	2.3
Gender equality	2.2	2.0	2.1	2.4	2.1	2.4
Performance of different plants	2.5	2.4	2.5	2.3	2.5	2.4
Outsourcing/subcontracting	2.3	2.3	2.3	2.4	2.3	2.4
Working conditions of atypical workers	1.9	1.6	1.9	2.0	1.9	1.9
<b>Average for extension agenda</b>	<b>2.2</b>	<b>2.0</b>	<b>2.2</b>	<b>2.3</b>	<b>2.2</b>	<b>2.3</b>
N	832-867	274-293	1,217-1,277	129-136	1,160-1,271	191-203

Note: The index data were calculated by treating 'not raised' as one point, 'raised, but useless information' as two points, 'useful information, but no consultation' as three points, and 'useful information and consultation' as four points.

the subject of superior information and consultation within the subsidiary requirements agenda, while 'health and safety' is the topic of the best information and consultation within the extension agenda for most categories of respondent.

All ETUFs recommend that an EWC coordinator be appointed to liaise between the EWC and ETUF, and to inform EWC representatives of ETUF policies and recommended practice. Table 4.4 demonstrates the positive impact of this ETUF policy insofar as the presence of an EWC coordinator is related to a better perception of the quality of information provision and consultation on both the subsidiary requirements and extension agendas. These results replicate those recorded for 2007 (Waddington 2011: 101–102) and confirm a long-term impact of the presence of EWC coordinators, irrespective of legislation or learning effects. The policy question raised by this result concerns the coverage of EWC coordinators. No fewer than 19.9 per cent of EWC representatives report that there is no EWC coordinator present at the EWC, and a further 21.3 per cent did not know if a coordinator was present. While these proportions have declined markedly from the 67.1 per cent of EWC representatives with no EWC coordinator in 2007 (Waddington 2011: 101),<sup>3</sup> there remains considerable progress to be made if the benefits of the ETUF policy are to be fully realised.

A second policy preference examined in Table 4.4 concerns the number of annual plenary meetings. Critics of the Directive, those who saw potential in the measure and the ETUFs have expressed the view that the minimum of one plenary meeting per year is insufficient to maintain continuity of the institution and to establish trust among the participants (Keller 1995; Martinez Lucio and Weston 1995). Although most of the ETUFs recommend more than one annual plenary meeting (EFFAT 2009; UNI Europa 2011), the issue of additional meetings is excluded from the ETUC (2017) reform agenda (see Appendix B). Table 4.4 suggests that additional meetings are paramount to improving the quality of information provision and consultation on both the subsidiary requirements and extension agendas. Initial testing showed that the impact of a single meeting in addition to the minimum requirement was marginal: however, when two or more annual plenary meetings were negotiated to supplement the minimum of one meeting per year, a marked impact is discerned to the extent that the average index score for the subsidiary requirements and extension agendas when there are three or more plenary meetings are not surpassed by any other category in Table 4.4.

All the ETUFs promote the election of union members to serve as EWC representatives as a means of generating a more uniform perspective within the EWC and facilitating the embedding of EWCs within networks of institutions of labour representation in MNCs. The average index scores for the subsidiary requirements and extension agendas are superior for non-members. EWC non-members thus view the quality of information exchange and consultation marginally more favourably than their unionised counterparts. It remains to be seen whether this is a result of differences in expectations or differences in the quality of information and consultation procedures available within national systems of worker participation.

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3. In 2007, 310 EWC representatives reported the presence of an ETUF representative, while 631 indicated that no such representative was present at the EWC.

## Timing of information and consultation

Critics of the Directive pointed out that, although information and consultation were central to the Directive, the terms and procedures, including the timing, of information and consultation were inadequately specified (Keller 1995; Streeck 1997). Similarly, legal analyses confirmed that the timing of information and consultation was not mentioned in the Directive, although the subsidiary requirements (point 3) and the 20th recital stated that, where exceptional circumstances affecting the employees' interests arise, employees should be informed and consulted 'as soon as possible', without specifying precisely when this should happen, thus leaving the issue of the timing of information and consultation open-ended (Blanke and Rose 2010: 330–333). Subsequent case study and survey evidence demonstrated that, in the main, information and consultation took place too late for EWC representatives to influence the content of corporate decision-making; however, in certain instances, the timing of information and consultation did allow EWC representatives to influence the implementation of corporate decisions (Telljohann 2005b; Hancké 2000; Waddington 2011: 102–107).

In acknowledging that the practices associated with the Directive failed to meet the objectives set for EWCs by European policy-makers, papers produced or commissioned by the European Commission identified the timing of information and consultation as a key issue for inclusion in the Recast (European Commission 2008a; EPEC 2008). To this end, the Recast states that 'information shall be given at such time [...] as [...] to enable employees' representatives to undertake an in-depth assessment' (Article 1(f)) and that consultation should take place 'at such time [...] as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related' (Article 1(g)). The Recast thus emphasises that the measures to which the information and consultation relate are 'proposed' rather than finalised and that EWC representatives can influence the content of corporate decision-making on the basis of an in-depth assessment (Article 2(1)(g); recital 16). Following the adoption of the Recast, BusinessEurope argued that 'many EWC agreements either provide for specific timeframes for [information and consultation] procedures or the parties to agreements tend to work out the [...] timeframes' (2017). In contrast, Spanish courts found that both Tenneco and Coca Cola had taken decisions before informing and consulting the EWC (European Commission 2016a: 35). The objective here is to establish whether the intentions underpinning the Recast are being realised in practice as BusinessEurope claims. The question on which the analysis is based did not appear in the 2007 survey, so a comparison over time is not possible. In addition to an 'all' category and following the approach implemented above, EWC representatives are examined by reference to industrial relations circumstances and trade union policy preferences.

### 'All' EWC representatives

Table 4.5 shows that 20.8 per cent of all EWC representatives report being in a position to influence the content of strategic corporate decision-making insofar as information and consultation takes place before managerial decisions have been finalised. For this

group of EWC representatives, the Recast appears to meet the expectations of European policy-makers. It is noteworthy that only four of 56 (7.1 per cent) managers responsible for EWCs reported that they engaged in information and consultation with the EWC before finalising their decision (Waddington et al. 2016: 15–18). EWC representatives and managers responsible for EWCs are thus agreed that the timing of information and consultation following the Recast remains inadequate.<sup>4</sup>

In practice, almost 80.0 per cent of EWC representatives receive information and engage in consultation after managers have finalised the corporate strategic decision and are thus unable to influence the content of that decision. For these representatives, EWC practices are failing to meet the core intention of the European policy-makers who drew up the terms of the Recast. These data contradict the claim made by BusinessEurope (2017) that satisfactory arrangements for the timing of information and consultation are in place within EWCs. More than 40.0 per cent of this group have the potential to influence the implementation of the strategic corporate decision in that implementation had not commenced before information and consultation had taken place, whereas the remainder are not in a position to even influence the implementation. The Recast has thus proved inadequate as a means of allowing the vast majority of EWC representatives to influence the content of corporate strategic decision-making.

## Industrial relations circumstances

Although Table 4.5 illustrates variation between EWC representatives from different industrial relations circumstances, there is considerable consistency in their ordering of the timing of information and consultation. For each category of EWC representative, for example, information and consultation ‘after the managerial decision is finalised, but before implementation’ is the most frequent response. Similarly, for all but two categories of EWC representative, ‘representatives from dual channel systems’ and ‘representatives based in non-EU MNCs’, information and consultation ‘before the managerial decision on the issue is finalised’ occurs more frequently than ‘after implementation’. For each category of EWC representative, there are also substantial minorities that were unable to influence either the content or the implementation of corporate decision-making, as information and consultation took place ‘during’ or ‘after’ implementation of a managerial decision.

Table 4.3 showed that ‘representatives from single channel systems’ viewed the quality of information provision and consultation on the extension agenda to be higher than their counterparts from dual channel systems. Differences between the two categories, however, were marginal. Table 4.5 shows that differences between the two categories are marginal with regard to information provision and consultation ‘before the managerial decision on the issue is finalised’, but ‘representatives from single channel systems’ were more likely to report information provision and consultation ‘after the

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4. The comparison is not direct, as the samples of the two studies differed, the wording of the questions was not the same and the study of managers utilised interviews, while this study relied on survey data. Both studies, however, are the largest that have been conducted in terms of the numbers of managers and EWC representatives involved.

Table 4.5 When do information exchange and consultation usually take place? Industrial relations circumstances and background

	All %	Reps from dual channel systems %	Reps from single channel systems %	Office holders %	EWC members %	Home country reps %	Foreign reps %	Article 13 reps %	Article 6 reps %	Reps from EU-based MNCs %	Reps based in non-EU MNCs %
Before the managerial decision on the issue is finalised	20.8	18.4	21.0	20.5	21.7	25.2	19.4	22.5	19.8	21.6	18.1
After the managerial decision is finalised, but before implementation	44.9	43.4	50.6	52.8	39.4	43.5	45.3	46.1	44.2	43.9	47.9
During implementation	18.5	24.2	12.6	18.7	18.9	18.1	18.7	17.7	19.0	18.7	18.1
After implementation	9.7	8.5	9.6	6.9	11.8	8.5	10.1	8.2	10.5	9.2	11.2
Don't know	6.2	5.5	6.2	1.2	8.1	4.8	6.6	5.5	6.5	6.6	4.7
N	1,427	482	596	509	793	312	1,115	466	961	1,081	346

managerial decision is finalised, but before implementation’, whereas ‘representatives from dual channel systems’ reported information provision and consultation ‘during implementation’ more frequently than their paired counterparts. This suggests that ‘representatives from single channel systems’ view the quality of the information and consultation processes to be higher than ‘representatives from dual channel systems’, in part, because information exchange and consultation take place earlier.

All other things being equal, ‘office holders’ would be expected to receive information earlier than ‘EWC members’, as the former, by definition, attend more meetings with management present than the latter. It is apparent, however, that management do not release information more readily to ‘office holders’ than ‘EWC members’ ‘before the managerial decision on the issue is finalised’. In contrast, ‘office holders’ were more likely to report that information exchange and consultation take place ‘after the managerial decision is finalised, but before implementation’ than ‘EWC members’. Given that there were no substantial differences between ‘office holders’ and ‘EWC members’ in their assessments of the quality of information provision and consultation (see Table 4.3), yet the two categories identify differences in the timing of information and consultation procedures, other factors would appear to underpin the relationship between the quality and timing of information and consultation procedures for ‘office holders’ and ‘EWC members’.

Critics of the Directive argued that the availability of information through national institutions of labour representation would result in EWCs becoming mere extensions of national participation arrangements, dominated by representatives from the home country of the MNC, rather than developing into transnational institutions (Keller 1995; Streeck 1997). On this basis, the timing of information provision and consultation would be anticipated to be superior for ‘home country representatives’. Table 4.5 shows that this is the case insofar as more ‘home country representatives’ report that information exchange and consultation take place ‘before the managerial decision is finalised’ than ‘foreign representatives’. The difference of 5.8 percentage points is not marked. ‘Foreign representatives’, however, are more likely to engage in information and consultation procedures ‘after the managerial decision is finalised, but before implementation’ than ‘home country representatives’, and differences between the two groups are marginal with regard to information provision and consultation ‘during’ or ‘after’ implementation. Regarding the timing of information and consultation procedures, the expectations of the critics of the Directive are thus, at best, qualified.

Related arguments apply to EWCs in MNCs based in EU Member States and those based elsewhere. As EWCs operating in non-EU-based MNCs do not necessarily have access to senior management and decision-making fora, it is anticipated that information and consultation are provided in a less timely manner. The evidence from Table 4.5 is equivocal. ‘Representatives from EU-based MNCs’ are more likely to report information and consultation taking place ‘before the managerial decision on the issue is finalised’ than ‘representatives based in non-EU MNCs’, but the reverse is true in the case of information and consultation ‘after the managerial decision is finalised, but before implementation’. These results suggest that EWCs in MNCs based outside the EU have fewer opportunities to influence the content of corporate decision-making, as

they have less access to managerial decision-makers based at corporate headquarters; however, once a corporate decision has been finalised, opportunities to influence the implementation of that decision are more marked.

‘Article 13 representatives’ report a superior timeliness of information and consultation procedures compared to ‘Article 6 representatives’. Irrespective of the content of agreements and the absence of legal underpinning, the practices associated with the timeliness of information and consultation procedures clearly ensure that ‘Article 13 representatives’ are informed and consulted in more timely manner than ‘Article 6 representatives’. This may contribute to their assessment of the quality of information provision and consultation also being superior (see Table 4.3). The impact of the German system on the timeliness of information and consultation procedures can be illustrated in relation to both ‘Article 6 representatives’ and ‘Article 13 representatives’. No fewer than 29.5 per cent of ‘Article 13 representatives’ and 28.0 per cent of ‘Article 6 representatives’ based in MNCs of German origin with board-level employee representation report being informed ‘before the managerial decision on the issue is finalised’. In brief, the impact of the German system appears to increase the key measure of timeliness by about 8.0 to 9.0 percentage points for both ‘Article 13 representatives’ and ‘Article 6 representatives’.

### Trade union policy preferences

The results presented in Table 4.6 essentially replicate the overall pattern of results associated with industrial relations circumstances. The most frequently occurring result for each of the trade union policy preferences is ‘after the managerial decision is finalised, but before implementation’, which is cited by at least 44.7 per cent of EWC representatives in each category. EWC representatives in four of the six categories assign ‘before the managerial decision on the issue is finalised’ as the second most frequent indicator of timeliness. For two single categories, ‘EWC coordinator present’ and ‘up to two plenary meetings’, the information and consultation processes more frequently take place ‘during implementation’ than ‘before the managerial decision on the issue is finalised’. With the single exception of the category ‘three or more meetings’, 23.0 per cent or more of the EWC representatives engaged in information and consultation activities either ‘during’ or ‘after’ implementation, with the consequence that they had little or no opportunity to bring influence to bear on either the content or the implementation of the managerial decision. For these EWC representatives, the Recast has left them floundering in a quest for timely information and consultation procedures.

An analysis of the impact of specific trade union policy preferences reveals that the presence of an EWC coordinator has no marked impact on the timing of information and consultation procedures. Given that EWC representatives report a higher quality of the information and consultation processes when an EWC coordinator is present (see Table 4.4) and there is no impact on the timing of information and consultation procedures from the presence of an EWC coordinator, other factors must underpin the perception of higher quality of information provision and consultation among EWC representatives with a coordinator present.



**Table 4.6 When do information exchange and consultation usually take place? Trade union policy preferences**

	EWC coordinator present %	No EWC coordinator %	One or two plenary meetings %	Three or more plenary meetings %	Unionised EWC reps %	Non-members %
Before the managerial decision on the issue is finalised	20.4	23.7	19.0	35.2	20.2	23.7
After the managerial decision is finalised, but before implementation	45.2	46.0	45.0	45.0	44.8	44.7
During implementation	20.6	15.4	19.4	12.7	19.3	14.8
After implementation	10.1	11.3	10.4	4.4	10.0	8.2
Don't know	3.8	3.7	6.1	2.8	5.7	8.7
N	868	294	1,277	137	1,224	201

EWC representatives who operate with ‘three or more plenary meetings’ are more likely than any others to report that information exchange and consultation occur ‘before the managerial decision on the issue is finalised’. This result is consistent with the high quality of information and consultation procedures reported by EWC representatives working in conjunction with ‘three or more plenary meetings’ (see Table 4.4). Interpretation of these results is not straightforward. An immediate response would be to argue that frequent plenary meetings facilitate timely information exchange and consultation. If this were the case, however, ‘office holders’, who attend many meetings with management, would also report more timely information exchange and consultation. As Table 4.5 shows, however, this is not the case. While the current evidence cannot confirm the argument, it is possible that a management prepared to agree to three or more plenary meetings per year is also prepared to engage in timely information exchange and consultation as a means of engagement with the EWC. In short, the quality and timeliness of information and consultation procedures in these circumstances are the result of a managerial preparedness to engage with the EWC rather than the imposition of a trade union preference for additional annual plenary meetings.

The final trade union policy preference included in Table 4.6 concerns the unionisation of EWC representatives. No fewer than 68.4 per cent of non-members reported that information exchange and consultation take place either ‘before the managerial decision on the issue is finalised’ or ‘after the managerial decision is finalised, but before implementation’ compared to 65.0 per cent of unionised EWC representatives, suggesting that non-members view the timing of information and consultation procedures to be marginally superior to their unionised counterparts. This is not reflected, however, in non-members viewing the quality of information and consultation arrangements to be markedly better than unionised EWC representatives (see Table 4.4), pointing to a complex relationship between the timing and quality of information and consultation procedures.

Table 4.7 How effective are the plenary meetings of the EWC? (2018)

	Very effective %	Effective %	Neither effective nor ineffective %	Ineffective %	Very ineffective %	N
As a source of information	24.3	53.4	16.8	3.1	2.4	1,422
As a check on information provided by management	12.7	43.4	30.5	9.3	4.1	1,392
As a means of consultation	11.9	37.9	26.5	16.5	7.2	1,407
As a means of expressing an opinion on matters within the company	18.5	48.3	22.6	7.6	3.0	1,416
As a means of influencing management decisions	4.2	17.9	36.0	28.5	13.5	1,412

## Utility of European Works Councils

Table 4.7 presents data on the efficacy of the plenary meetings of the EWC. Relatively ‘soft’ issues are positioned towards the top of the table, and ‘hard’ issues towards the bottom. Soft and hard in this context refers to whether EWC representatives are passive or active towards management. ‘As a source of information’, for example, is relatively passive insofar as EWC representatives are recipients of information from management, whereas ‘as a means of influencing management decisions’ requires EWC representatives actively to seek amendments to managerial decisions.

Table 4.7 confirms much of what has already been argued in this chapter. The plenary meetings of EWCs tend to be superior on the ‘soft’ issues associated with information compared to their handling of consultation. Similarly, while plenary meetings allow many representatives the opportunity to express an opinion on issues, in the vast majority of cases, they fail ‘as a means of influencing management decisions’: only 22.1 per cent of EWC representatives thought that the EWC plenary meeting was either ‘very effective’ or ‘effective’ in this regard. This proportion rises to 41.7 per cent, however, among EWC representatives who reported that information exchange and consultation takes place ‘before the managerial decision on the issue was finalised’, suggesting that managerial compliance with legislative requirements is a key influence of the quality of engagement among EWC representatives.

The failure of the Recast to enable EWCs to meet the intentions of European policy-makers is further illustrated by Table 4.8, which compares the results for 2018 with those reported in 2007.<sup>5</sup> The pattern of results reported in Table 4.7 is reproduced for each of the categories presented in Table 4.8 insofar as the ‘softer’ the issue, the higher

5. Several of the categories of EWC representative that appear earlier in this chapter are excluded from Table 4.8 because comparable data are not available for 2007. The comparisons between 2007 and 2018 include only those categories for which data are available for both years.

Table 4.8 How effective is the European Works Council? (2007 and 2018)

	All		Office holders		EWC members		Home country reps		Foreign reps		Unionised EWC reps		Non-members	
	2007	2018	2007	2018	2007	2018	2007	2018	2007	2018	2007	2018	2007	2018
As a source of information	3.7	3.9	3.8	3.9	3.6	3.9	3.7	3.9	3.7	3.9	3.7	3.9	3.7	3.9
As a check on information provided by management	3.3	3.5	3.4	3.5	3.3	3.5	3.2	3.5	3.3	3.5	3.3	3.5	3.3	3.5
As a means of consultation	3.2	3.3	3.3	3.2	3.1	3.3	3.2	3.3	3.3	3.3	3.2	3.3	3.1	3.5
As a means of expressing an opinion on matters within the company	3.6	3.7	3.8	3.8	3.5	3.7	3.7	3.7	3.6	3.7	3.6	3.7	3.6	3.8
As a means of influencing management decisions	2.5	2.7	2.6	2.6	2.5	2.8	2.6	2.7	2.5	2.7	2.4	2.7	2.6	2.9
N	941	1,390-1,420	384	496-507	557	771-789	310	303-310	631	1,086-1,110	876	1,189-1,215	58	199-203

Note: Respondents were asked to indicate their response on a five-point scale: very effective, effective, neither effective nor ineffective, ineffective, and very ineffective. Points on the scale were scored 5 to 1. A score of 4 was thus 'effective'. The scores presented in Table 4.8 are the index scores for different categories of EWC representatives. An index score of four or more indicates that representatives thought their EWC to be effective, while an index score of less than three indicates that representatives considered the EWC to be ineffective.

the index score. The 'hard' issue 'as a means of influencing management decisions' records index scores of 2.4 or 2.9 equivalent to a point between 'ineffective' and 'neither effective nor ineffective' on the scale.

Advocates of the Recast will, no doubt, point out that the results for 2018 are a marginal improvement on those for 2007. In 30 of the 35 entries in Table 4.8, there is an improvement in the index scores between 2007 and 2018, although in only six instances was the improvement greater than 0.2 of an index point. In four of the 35 entries, no improvement is reported to have occurred between 2007 and 2018, while, in one instance, the situation deteriorated, according to EWC representatives. In short, the advances expected by European policy-makers from the adoption of the Recast are, at best, marginal, and have failed to substantially increase the utility of EWCs for representatives.

## **European Works Councils and corporate restructuring**

The Commission acknowledged that transnational corporate restructuring would intensify as companies adjusted to the European single market and integrated this into the case for the Directive insofar as EWCs were viewed as the means whereby worker representatives could influence the terms of corporate restructuring. The expectation that rates of corporate restructuring would rise was illustrated by the 2007 survey when 80.2 per cent of EWC representatives reported restructuring as having taken place within the three years prior to the survey. By 2018, this proportion had risen to over 90.0 per cent of EWC representatives who, on average, had experienced 3.2 restructuring events in the three years prior to the survey, confirming the persistence of high rates of corporate restructuring. The role of EWCs in transnational corporate restructuring envisaged by the Commission was not realised in practice before 2007. Many of the early legal proceedings brought by EWCs, for example, concerned their exclusion from information and consultation procedures during corporate restructuring (Waddington 2011: 102). Similarly, in 2007, only 17.6 per cent of EWC representatives were informed and 13.1 per cent consulted before the decision to restructure was finalised by management, while no fewer than 32.6 per cent of EWC representatives were not consulted at all regarding the restructuring events that took place in the MNC (Waddington 2011: 103).

In recognition of the limitations of the Directive in relation to transnational corporate restructuring, European policy-makers attempted to strengthen the situation of EWCs by including in the Preamble details on the need to respond to corporate restructuring (recitals 14, 29, 37 and 41) and in the Recast a requirement for in-depth assessments, an adaptation clause to promote continuity of EWC practice when restructuring takes place, and more specified definitions of information and consultation. The purpose of this section is to establish whether the situation has improved since 2007 from the perspective of EWC representatives. The analysis proceeds in three stages. The first stage assesses the treatment of corporate restructuring events at plenary meetings of the EWC, while the second examines the extent to which corporate restructuring stimulates the calling of extraordinary meetings, and, if they

are called, the capacity of EWC representatives to exert an influence on managerial decision-making at such meetings. A third stage examines access to expert advice during corporate restructuring.

## Corporate restructuring and the plenary meeting

The extent and persistence of transnational corporate restructuring has resulted in it becoming a key agenda item for EWC plenary meetings. European policy-makers anticipated this development through the inclusion of a range of agenda items associated with corporate restructuring in the subsidiary requirements. Table 4.9 extracts these agenda items and tabulates them against a range of restructuring events included in the 2018 survey.<sup>6</sup> Respondents were asked to indicate whether the MNC had been involved in each restructuring event within the past three years and which was the most recent event. Table 4.9 draws on responses from EWC representatives who indicated that the event was the most recent within the MNC. Responses from EWC representatives that had not experienced any form of restructuring during the three years prior to the survey are also reported.

It is apparent that restructuring generally does not necessarily enhance the quality of information exchange and consultation insofar as the average index score for ‘no restructuring’ is comparable with those reported when restructuring had taken place. The quality of the information and consultation processes for the specific agenda item associated with the restructuring event, however, tends to be high. If the restructuring event is a ‘merger or acquisition’, for example, the index score for ‘mergers, takeovers and company acquisitions’ peaks. The same situation applies to ‘plant closure’ and ‘transfer of production or production lines’. ‘Sale of part of the MNC’ is also associated with a relatively high index score for ‘closure or cutbacks’. The exception to this schema is ‘mass redundancies’, which is associated with the lowest index score for ‘employment forecasts’. The quality of information exchange and consultation on ‘employment forecasts’ associated with ‘no restructuring’ is higher than that generated by any of the restructuring events. This result remains a puzzle given that, in addition to ‘mass redundancies’, several of the restructuring events would be expected to generate concern for employment levels among EWC representatives.

Interpretation of the data presented in Table 4.9 is open to question. At least two very different, but not necessarily mutually exclusive, interpretations are available. The first is that management are more likely to engage in higher quality information exchange and consultation as a means of promoting commitment to the restructuring event among EWC representatives. Alternatively, the data are also consistent with the view that restructuring encourages EWC representatives to strive for higher quality information provision and consultation on the event at hand. The data presented here are insufficient to reach a conclusion on these alternatives, although it is noteworthy

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6. In addition to the five restructuring events listed in Table 4.9, the questionnaire also included the option ‘change in multinational company human resources strategy’. This option is excluded from the current analysis, as it does not appear in the subsidiary requirements agenda.

Table 4.9 Restructuring and the quality of information provision

	No restructuring	Merger or acquisition	Mass redundancies	Plant closure	Transfer of production or production lines	Sale of part of the MNC
Changes to working methods	3.0	2.7	2.7	2.8	2.8	2.7
Closure of or cutbacks in plants/workplaces	2.9	3.1	3.1	3.2	3.0	3.1
Mergers, takeovers and company acquisitions	2.6	3.2	2.8	2.9	2.9	2.8
Introduction of new technology or processes	3.0	2.9	2.7	2.9	3.0	2.9
Reorganisation of production lines	2.3	2.4	2.3	2.4	2.6	2.2
Relocation of production	2.5	2.6	2.5	2.7	2.8	2.4
Employment forecasts	2.8	2.6	2.4	2.5	2.5	2.4
Average index score	2.7	2.8	2.6	2.8	2.8	2.7
N	126-135	350-366	215-222	194-199	225-230	238-246

Note: The index data were calculated by treating 'not raised' as one point, 'raised, but useless information' as two points, 'useful information, but no consultation' as three points, and 'useful information and consultation' as four points.

that, even where a restructuring event takes places, the index scores range between 2.2 and 3.2 corresponding to 'useful information, but no consultation', which is a long way short of the expectations for consultation among European policy-makers.

In recognition of the inadequacies of practices arising from the Directive, the Recast specifically introduced a provision allowing for in-depth assessments of changes proposed by management. The 2018 survey asked whether the information presented by management on the most recent restructuring event allowed EWC representatives to conduct an in-depth assessment as required by the Recast. Fewer than half (48.4 per cent) of EWC representatives indicated that this was the case. The terms of the Recast are thus not being met in practice for a majority of EWC representatives. Industrial relations circumstances impinge upon the perception of whether the quality of information was sufficient as a basis to conduct in-depth assessments in that 'reps from EU-based MNCs', 'Article 6 reps', 'home country reps' and 'office holders' were more likely to report information of sufficient quality than their paired counterparts.<sup>7</sup> Similarly, among the trade union policy preferences, EWC representatives with 'three or more plenary meetings' or an 'EWC coordinator present' are more likely to report that information allowed an in-depth assessment of the matter at hand, but, in the best

7. The proportions of EWC representatives reporting that information was sufficient to allow for in-depth assessments are: 'representatives from EU-based MNCs', 48.9 per cent; 'representatives from non-EU-based MNCs', 44.2 per cent; 'Article 6 representatives', 49.9 per cent; 'Article 13 representatives', 44.6 per cent; 'home country representatives', 52.2 per cent; foreign representatives', 46.5 per cent; 'office holders', 50.2 per cent; and 'EWC members', 45.7 per cent. There were no marked differences between 'representatives from dual channel systems' and 'representatives from single channel systems' or between 'unionised EWC representatives' and 'non-unionised EWC representatives'.

case of ‘three or more plenary meetings’, 56.2 per cent of EWC representatives reported this to be the case.<sup>8</sup> In short, for substantial numbers of EWC representatives, the terms of the Recast are not being enacted in practice, irrespective of industrial relations circumstances or trade union preferences.

## Corporate restructuring and extraordinary meetings

The subsidiary requirements of the Directive and Recast make provision for the calling of meetings to supplement the plenary meeting in exceptional circumstances that are largely defined by reference to restructuring events.<sup>9</sup> While transnational restructuring has been shown above to be far from an exceptional circumstance, by 2015, 86 per cent of EWC agreements allowed for some form of extraordinary meeting to be called in exceptional circumstances, although 35 per cent of these agreements required managerial agreement before such a meeting was convened (De Spiegelaere and Jagodziński 2015: 34). In most EWCs, extraordinary meetings may thus be convened to supplement the plenary meeting.

Taking the most recent restructuring event as the point of reference, the 2018 survey asked if an extraordinary meeting had been convened to discuss the restructuring event.<sup>10</sup> Fewer than half of the EWC representatives (46.9 per cent) reported that an extraordinary meeting had been called to discuss restructuring and 42.1 per cent indicated that no such meeting had been convened.<sup>11</sup> Furthermore, of those who reported that no extraordinary meeting had been convened, only 16.4 per cent indicated that they had requested such a meeting. Over 80.0 per cent of EWC representatives reporting that no extraordinary meeting had been convened either had not called for such a meeting or were unaware whether a call for a meeting had been made. While the terms of the EWC agreement may have enabled some managers to reject initiatives from EWC representatives to convene an extraordinary meeting, the coverage of agreements with a clause that requires managerial agreement to convene an extraordinary meeting is insufficient to explain why EWC representatives did not call more extraordinary meetings. One explanation may be that the matter was handled to the satisfaction of EWC representatives at the plenary meeting. The data presented in the previous stage of the analysis of restructuring, however, indicate that this is unlikely to be the case for many EWC representatives. Among alternative explanations are that EWC representatives rely on initiatives taken within other institutions of labour representation in the MNC; are satisfied by management through other means, such as at a select committee meeting or through communication other than at a meeting; have no confidence in the EWC as an institution within which restructuring may be

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8. The proportions of EWC representatives reporting that information was sufficient to allow for in-depth assessments are: ‘three or more plenary meetings’, 56.2 per cent; ‘one or two plenary meetings’, 46.6 per cent; ‘EWC coordinator present’, 50.6 per cent; and ‘no EWC coordinator’, 47.0 per cent.
  9. Point 3 of the subsidiary requirements of the Recast, for example, mentions ‘relocations, the closure of establishments or undertakings or collective redundancies’ to illustrate exceptional circumstances.
  10. The option ‘change in multinational company human resources strategy’ is included together with the five restructuring events listed in Table 4.9 in this analysis.
  11. The remaining EWC representatives (11.9 per cent) did not know whether an extraordinary meeting had been convened.

handled; or assume that nothing can be done within the EWC to alter the content of the management decision. Whichever of these or other explanations underpin the current situation, it is apparent that a significant proportion of EWC representatives fail to call for an extraordinary meeting when faced by corporate restructuring.

The responses of those EWC representatives who were involved in extraordinary meetings reveal further limitations in the handling of corporate restructuring by these means. Again, taking the most recent restructuring event as the point of reference, only 26.1 per cent of EWC representatives who participated in an extraordinary meeting reported that the meeting had been convened 'before the decision was finalised on the issue'. These EWC representatives thus had the potential to influence the content of the restructuring decision. In contrast, 45.8 per cent of EWC representatives reported the extraordinary meeting as taking place 'after the decision was finalised, but before implementation', 23.2 per cent 'during the implementation process', and 3.0 per cent 'after implementation'.<sup>12</sup> The vast majority of the EWC representatives who were fortunate to participate in an extraordinary meeting were thus unable to influence the content of the management decision regarding restructuring, although they had the potential to influence the implementation of the restructuring decision.

## Corporate restructuring and access to experts

The Directive (point 6, Annex) and the Recast (point 5, Annex I) provide for the EWC or the select committee to seek the assistance of experts of their choice in performing their duties and responsibilities. In this context, the expertise of the expert is not defined: an expert may be an EWC coordinator or an individual with a specific skill, for example in law or corporate finance. In the absence of a precise definition of an expert, 92 per cent of EWC agreements provide for access to external expert support (De Spiegelaere and Jagodziński 2015: 41). The majority of these agreements give EWC representatives sole responsibility to select the expert (64 per cent), while joint EWC representatives/management responsibility is mentioned in 23 per cent of agreements.<sup>13</sup>

In the majority of restructuring cases, it should thus be straightforward for EWC representatives to seek and make use of specialist expertise to assist in the handling of technical issues associated with corporate restructuring. The 2018 survey asked EWC representatives to state whether an expert who was not the EWC coordinator had been appointed in connection with the most recent restructuring event in which the MNC had been involved. On this basis, 26.9 per cent of EWC representatives reported that such an expert had been appointed, 54.3 per cent reported no such appointment, and 18.7 per cent did not know. Fewer EWC representatives thus called on the services of an expert than EWC agreements suggest was possible. Of course, this result is not necessarily problematic, as the restructuring event could have been dealt with satisfactorily by the EWC

**12.** In addition, 1.9 per cent of EWC representatives reported that they did not know when the extraordinary meeting had taken place.

**13.** In 11 per cent of cases, responsibility for selecting the expert was not specified, and, in 1.0 per cent of cases, responsibility lies solely with management (De Spiegelaere and Jagodziński 2015: 41).



without access to an expert, or, more likely in the light of the above results, information from management was provided too late for advice from an expert to be useful.

There is very little variation among EWC representatives regarding the frequency at which experts are sought: 26.6 per cent of representatives serving on an Article 6 EWC reported accessing the services of an expert compared to 27.5 per cent of their counterparts working in conjunction with a voluntary agreement concluded under Article 13 of the Directive. Similarly, EWC representatives with an EWC coordinator (29.8 per cent) and office holders (31.8 per cent) are more likely to report seeking support from an expert. The most significant variation, however, is apparent in those EWCs with advanced practices: no fewer than 38.2 per cent of EWC representatives who operate with three or more plenary meetings per year report receiving support from an expert, whereas 40.7 per cent of EWC representatives in receipt of information from management before management finalises decision-making sought advice from an expert. The extent of this variation and the greater access to experts among EWC representatives based in EWCs with advanced practices again suggests that it is only in a very small minority of EWCs that the practices intended by European policy-makers are being implemented.

In short, neither plenary meetings nor extraordinary meetings are fora at which information exchange and consultation on corporate restructuring allow the vast majority of EWC representatives to influence the content of managerial decision-making. Similarly, very few EWC representatives gain access to advice from experts during restructuring. EWC arrangements in a policy area deemed central to their purpose by the Commission are thus inadequate. The Recast and its national transpositions have not fulfilled the expectations of European policy-makers in that the general quality of information is insufficient as a basis on which in-depth assessments can be conducted.

## Conclusions

This chapter demonstrates that the quality of information and consultation procedures at EWCs is inadequate from the perspective of EWC representatives. In particular, most EWCs are institutions engaged in the provision of information, which itself is often qualified, rather than information exchange *and* consultation. The timeliness of information and consultation procedures compounds the limitations of EWCs in that almost 80.0 per cent of EWC representatives are unable to influence the content of managerial decision-making. For most representatives, these shortcomings in the quality and timeliness of information and consultation procedures at EWCs contribute to their failure as institutions that influence management. Neither the plenary nor the extraordinary meeting is a satisfactory location at which the vast majority of EWC representatives could reliably address the challenges of corporate restructuring. On these four counts, the performance of EWCs falls well short of the objectives and expectations of European policy-makers.

Has the situation improved between 2007 and 2018 as European policy-makers intended? The quality of information and consultation procedures has improved, albeit from a

very low baseline. The 2007 and 2018 surveys did not include comparable questions on timeliness, and so the validity of a comparison between the two dates is compromised. It is noteworthy, however, that, in 2018, only 20.8 per cent of EWC representatives considered themselves in a position to influence the content of managerial decisions in that information exchange and consultation took place before the decision was finalised by management. EWCs were not effective ‘as a means of influencing management decisions’ in both 2007 and 2018, thus highlighting the limitations of the institution. Although the questions differed between the 2007 and 2018 surveys, it is apparent that in neither year did EWCs allow the majority of representatives to intervene to any great effect in corporate restructuring decisions. In all, improvements were reported between 2007 and 2018, but they are qualified.

An interpretation of the improvements in the quality of information and consultation procedures between 2007 and 2018 is far from straightforward. Advocates of the impact of the Recast will no doubt attribute the improvement in the quality of information and consultation procedures to the definitions of information and consultation and other measures included in the Recast. To substantiate this position, however, it is necessary to explain why the improvements in the quality of information and consultation procedures do not allow the conduct of in-depth assessments for the majority of EWC representatives; why these improvements do not work through to the utility of EWCs and their role in corporate restructuring; and why ‘Article 13 representatives’, whose practice was not subject to legislative change, report a higher quality of information and consultation procedures than their counterparts whose practice was subject to legislation. Similarly, the results reported by ‘Article 13 representatives’ and the general improvement in the quality of information exchange and consultation on both the subsidiary requirements and extension agendas are consistent with an argument that learning effects rather than legislative change underpin the development of the institution until 2018. For proponents of this position, the absence of any improvement in the utility of EWCs and in their role in corporate restructuring are problematic, as this absence suggests that learning effects are restricted solely to the perceived quality of information and consultation procedures rather than more wide-ranging practices.

Although the survey results are from the perspective of EWC representatives, they allow comment on the position of the parties to EWCs: management, trade union organisations and European policy-makers. Almost half (49.4 per cent) of the EWC representatives who reported that transnational restructuring had taken place in the three years prior to the survey indicated that ‘change in multinational company human resources strategy’ was one of the forms of restructuring that had affected them. It is also evident that managers are using EWCs to develop HRM strategies within MNCs. This is marked in the survey evidence by growth in the coverage and quality of information exchange and consultation on ‘wages and grading systems’ and ‘profit sharing/financial participation’. These findings confirm a longstanding pattern of development (Lamers 1998). In addition, managers are using EWCs to discuss the ‘performance of different plants’, presumably as a means of conducting coercive comparisons to promote productivity growth and other improvements. EWC representatives thus confirm the position of BusinessEurope (2017) and managers responsible for EWCs

(Pulignano and Turk 2016: 63–78), who report that EWCs are useful managerial tools. Chapter 8 develops this argument in greater detail.

The data presented here are also open to the interpretation that managers release information of inadequate quality in an untimely manner and are unlikely to engage in consultation. A majority of managers responsible for EWCs within MNCs confirm that this is the case, particularly regarding timeliness (Pulignano and Turk 2016: 19–28). There are points of mitigation, however, regarding this argument. First, several agenda items are cited more frequently in EWC founding agreements than they appear as ‘useful information and consultation’ at the EWC plenary meeting. Similarly, almost 40 per cent of EWC representatives were not in receipt of useful information on ‘employment forecasts’ in the three years prior to the distribution of the 2018 survey. These instances suggest that some EWC representatives are either failing or choosing not to enforce the agreement on which the EWC operates or are declining to ask for information on key strategic issues included in the subsidiary requirements. Second, it is apparent that many EWC representatives do not call for extraordinary meetings even though the EWC agreement makes provision for such meetings. When asked to describe the situation in the EWC, for example, 22.2 per cent of EWC representatives described practice as being ‘below the standards set out in the EWC agreement’.<sup>14</sup> In short, many managers do not comply with the terms of the legislation or EWC agreement, but, in some instances, it would appear that they are not pressed to do so by EWC representatives. This point is further developed in Chapter 9 in the context of the enforcement of EWC regulations.

The survey evidence endorses the basic tenet of the trade union position: the quality of information and consultation procedures is inadequate, and information is often made available too late. Point 1 of the ETUC reform agenda (see Appendix B) is endorsed by the data insofar as extant EWC practice shows that the opinions of the EWC representatives during consultation may be taken into account by some managers, but that this is not always the case. This situation underpins trade union support for reform if EWC practice is to be commensurate with the stated expectations of European policymakers. Among the trade union policy preferences, the presence of an EWC coordinator and the holding of more frequent plenary meetings are associated with a higher quality of information exchange and consultation. A question hangs over the latter, however, as the increased frequency of office holders attending meetings with management is not associated with improvements in information and consultation provision. The higher quality of information and consultation procedures at EWCs with three or more plenary meetings may thus be a consequence of managerial strategy rather than the frequency of contact with managers. Throughout, the quality of information exchange and consultation on agenda items drawn from the subsidiary requirements is superior to that on items from the extension agenda, supporting the idea of including more items in the subsidiary requirements, as argued by the ETUC (Appendix B, point 10). The quality of information and consultation procedures reported by ‘Article 13 representatives’ is

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14. The question asked EWC representatives to comment on whether there was a divergence between EWC practice and the founding agreement. In addition to the 22.2 per cent of EWC representatives who reported practice was inferior to the agreement, 9.0 per cent thought EWC practice was better than the agreement, 47.2 per cent thought it was consistent with the agreement, and 21.6 per cent did not have an answer to the question.

superior to that reported by representatives operating in EWCs bound by legislation, suggesting that there is more to the quality of information and consultation provision than legislative underpinning.

The findings presented in this chapter make difficult reading for European policy-makers. The quality, timeliness and utility of information exchange and consultation at EWCs is far from satisfactory. Furthermore, most representatives are unable to use EWCs as a vehicle through which to bring influence to bear on corporate restructuring. Even if the indefensible assumption is made that no learning effects influence the development of EWCs, the best that can be argued is that the Recast has had a marginal impact on the quality of information and consultation procedures, has had no effects on the utility of EWCs or on the capacity of EWC representatives to influence the content of corporate restructuring decisions, and has not allowed most EWC representatives to conduct in-depth assessments. The most positive assessment of the Recast is that it brought legislation into line with practice. Therefore, the policy challenge for European level policy-makers is to introduce legislation that leads to improvements in practice. These results thus confirm the reviews of the operation of the Recast that have been conducted by academics (Voss 2016; Waddington et al. 2016), that have been the subject of reports endorsed by the Commission (European Commission 2010b) and studies supported by BusinessEurope (Pulignano and Turk 2016), that have been undertaken as part of studies of the legislation (Jagodziński 2010a) and of EWC founding agreements (De Spiegelaere and Waddington 2017), and that have been carried out in connection with studies published by the Commission (2018a, 2018b). Put simply, the Recast has failed to deliver on its objectives and on the expectations of European-level policy-makers.

The questions raised by the survey and these other research findings centre on the issues of compliance and enforcement. With regard to each of the issues associated with information and consultation provision examined by this chapter, minorities of EWC representatives are satisfied with the current arrangements. The challenge for European policy-makers is to raise these percentages so that the majority of EWC representatives report positively on these issues: in other words, how can the legislation be enforced more effectively so as to ensure a wider range of compliance? A further challenge for European policy-makers is to raise levels of compliance while also promoting processes of internal development. The wide range of practices adopted and forms taken by EWCs demonstrate the flexibility of the institution that European policy-makers were intent on injecting into the legislation. Limitations in the quality, timing and utility of information and consultation procedures and the exclusion of EWC representatives from decisions regarding transnational corporate restructuring highlight deficiencies in enforcement.



## **Chapter 5**

### **Communication and EWCs: is the European level articulated?**

Apart perhaps from BusinessEurope, there is a consensus that effective EWCs are reliant on contact and networking between EWC representatives; contact between EWCs and institutions of labour representation and the employees they represent at national level; and networking between the EWC and the responsible ETUF at European level. Those who saw potential in the Directive, for example, argued that networking was a means of mitigating the limitations of the legislation (Martinez Lucio and Weston 1995, 2000; Miller and Stirling 1998). In addition, it was feared that, without the international solidarity that may arise from contact and networking, EWCs could be used to facilitate regime competition (Keller 1995), to promote micro-corporatism (Schulten 1996) and may become 'forums in which cultures are in competition' (Miller 1999: 347). Although timely consultation is not a feature of most EWCs (see Chapter 4), if networking is established, EWCs may, at least, create a network between employee representatives, and this might enable some transnational solidarity and action (Lecher et al. 2002). Although the harshest critics of the Directive argued that EWCs would never achieve the objectives European policy-makers intended of them, these critics agreed that networking is indispensable if EWCs are to represent labour with any effectiveness, however defined (Streeck 1997).

At the core of the debate on networking are the issues of articulation and communication. Articulation refers to the degree of connectedness between the EWC, other institutions of labour representation within the MNC and the workers represented by the EWC. From the perspective of labour, when networks are articulated, there are inter-linkages between the different component parts, which ensure communication flows between the personnel and institutions that comprise the system (Streeck 1995; Svensson and Öberg 2005). In the context of EWCs, articulation comprises two elements (Haipeter et al. 2019: 33). Horizontal articulation involves the connectedness of actors at the same level of operation: within the EWC between representatives, between EWCs and the ETUFs, and, in certain circumstances, between the EWC and board-level employee representatives. Vertical articulation comprises the connectedness between different levels of representation: between the EWC and national or local works councils, trade unions and the workforce. Three points arise from this formulation. First, the parties engaged in articulated networks involving EWCs are likely to vary between countries because of the wide variation in the constituencies of EWC representatives. Second, trade union involvement in articulated EWC networks is, in part, dependent on whether there is a single or dual channel system of representation in place. Third, articulation may be sustained through personal involvement and the holding of multiple representative positions. The average age of EWC representatives noted in Chapter 3 suggests that they

have considerable representative experience. The survey, however, did not ask whether EWC representatives held other representative positions within the Member States. The central concern of this chapter is thus communication and articulation rather than articulation through personal involvement in multiple institutions.

The Directive was silent on communications between EWCs and other institutions of labour representation, although the subsidiary requirements (point 5) of the Directive recommended that EWC representatives inform institutions of labour representation or, in their absence, employees of the content and outcome of EWC information and consultation procedures. European-level policy-makers were aware of the limitations that arose from this approach. A European Parliament report on EWCs, for example, argued that communication is essential for the effectiveness of EWC activities (2001). This view was consistent with that of the ETUFs, which regard communication as ‘the oil that keeps the engine of European representation running’ (Demaître et al. 2015: 2) and produced a series of guidelines on how to establish and operate communication systems (UNI Europa 2011: 14). In the Recast, European-level policy-makers attempted to rectify their initial error by introducing in Article 10(2) an obligation on EWC representatives to ‘inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings, or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Directive’. The Recast thus introduced a duty for EWC representatives to report back, thereby ensuring that the EWC engages in vertical articulation. Implicit in this duty is a managerial obligation to provide EWC representatives with the means to fulfil their duty, which includes facilitating access to company sites (Picard 2010: 115).

This chapter has two objectives: first, to establish the extent to which EWCs have led to the creation of intense communication networks and, second, to identify some of the factors that encourage or limit the establishment of such networks. The central argument is that intense communications networks rarely build up around EWCs. While most EWC representatives communicate about their EWC activities, albeit at different intensities, the impact of this communication in terms of generating interest among employees is meagre. The lack of interest among employees is partially explained by many EWCs’ engagement in information rather than information and consultation procedures and their late involvement, if any, in corporate decision-making processes. In the absence of consultation and timeliness, there is little incentive or need for intense exchanges between EWCs and the local level. To develop these themes, the chapter comprises two sections, which examine horizontal and then vertical articulation.

## **Horizontal articulation: communication between the plenary meetings**

One element of horizontal articulation at European level involves the connectedness between the EWC and the responsible ETUF. Chapter 4 showed that, where an EWC coordinator represents the ETUF at the EWC, representatives reported improvements in the quality and timeliness of information and consultation procedures. Chapter 6

examines these relations in more detail, while Chapter 7 assesses linkages between EWC practices and the provision of training by trade unions. This section of Chapter 5 thus focuses on a second element of horizontal articulation at European level: namely, contact and communication between EWC representatives before, during and after meetings. Employee representatives need to talk to each other to discuss the situation in different countries, to put issues on the EWC agenda, to decide on an approach to management, and to learn about each other's positions on the issues at hand and the processes identified as a main 'field of interaction' (Lecher et al. 2001) and as an important factor in explaining EWC effectiveness (Marginson et al. 2004). The examination comprises three stages. An initial stage assesses the intensity of contact among EWC representatives between EWC meetings in order to ascertain whether a dense communication network develops in conjunction with EWCs. The second stage identifies those factors that inhibit or stimulate more frequent contact, while the third stage examines the relationship between the intensity of contact and whether EWC representatives try to align their positions and identify as representing European rather than national interests at the EWC.

### Do EWCs develop dense communication networks?

This stage focuses on the frequency of communication among EWC representatives between plenary meetings based on two questions of the survey. The first question asked whether the representative has frequent contact with other EWC representatives between plenary meetings. The second question was worded negatively, asking whether representatives find it hard to communicate with their counterparts from other countries between EWC meetings. As Table 5.1 illustrates, responses to these two questions mirror one another.

Table 5.1 shows that about 45 per cent of EWC representatives agree with the first statement and disagree with the second. Similarly, 29.8 per cent disagree with the first statement, while 34.3 per cent agree with the second. In other words, less than half of the EWC representatives consider that they have frequent contact with their counterparts from other countries between meetings, while about a third disagree. These results are open to interpretation. Given that the EWC mandate is often additional to the job of the employee and/or a local representation mandate, it is positive that almost half of the representatives say that they are in frequent contact with representatives from other countries. A more negative interpretation is equally valid. It was expected, for example, that, as a minimum, EWCs would become institutions for transnational networking. The results of Table 5.1, however, show that, for many EWC representatives, this is not the case. If those who saw potential in EWCs hoped to overcome some structural weaknesses by the actions and networking of representatives, these figures show that, for many EWC representatives, this is not happening.

The 2007 survey asked 'do you communicate with EWC representatives from other countries between formal meetings of the EWC' and gave respondents the option of answering yes or no. No fewer than 79.2 per cent indicated that they communicated between meetings (Waddington 2011: 120). If a comparison is made between the 'no'



Table 5.1 Communication between meetings

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
Between EWC meetings, I have frequent contact with EWC representatives from other countries	10.5	35.6	22.7	23.2	6.6	1.3	1,433
It is hard to communicate with other EWC representatives from other countries between EWC meetings	8.0	26.3	19.9	33.3	11.4	1.2	1,423

answers of the 2007 survey and the proportion of EWC representatives who disagreed or strongly disagreed with the first question in the 2018 survey, however, no marked improvement can be seen: 20.8 per cent in 2007 compared to 29.8 per cent in 2018. Communication between EWC representatives from different countries between meetings has been modest since at least 2007.

### Who communicates?

We now turn to factors related to a lack of intense communication between meetings and identify some major obstacles in communication within EWCs. Table 5.2 presents the frequency of communication between plenary meetings by reference to different groups of EWC representatives. Office holders are more likely than EWC members to report that they often contact members from other countries between plenary meetings. This is not surprising given the additional functions of office holders and their attendance at select committees or other meetings (Stirling and Tully 2004; Waddington 2011: 123). In a similar pattern, the number of meetings plays a role: 55.4 per cent of representatives at EWCs with three or more plenary meetings per year agree that they have frequent contact compared to 42.9 per cent of those with no more than one meeting per year, suggesting that regular face-to-face meetings enable EWC representatives to familiarise themselves with each other and build relations of trust. In contrast, infrequent meetings, exacerbated by high turnover among representatives, constitute a serious obstacle for horizontal articulation. By the same token, frequent plenary meetings, pre-meetings, debriefing meetings and the work of a select committee are likely to increase the familiarity between EWC representatives (Stirling and Tully 2004; Telljohann 2005a; Tully 2004). Confirming this point is the greater likelihood of representatives in an EWC with a select committee to have more frequent contact than those where the EWC does not have a select committee: 47.8 per cent compared to 39.0 per cent.

Table 5.2 Frequency of communication between meetings

Between EWC meetings, I have frequent contact with EWC representatives from other countries:

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	10.5	35.6	22.7	23.2	6.6	1.3	1,433
Office holders	16.1	46.0	20.3	14.4	3.0	0.3	493
EWC members	8.0	31.5	23.6	27.2	8.1	1.6	774
No more than one meeting per year	9.7	33.2	23.3	24.3	7.8	1.6	709
Two meetings per year	10.1	38.5	21.6	22.7	6.2	0.9	535
Three or more meetings per year	16.8	38.6	21.5	20.3	2.5	0.3	132
Select committee present	11.1	36.7	22.6	22.9	5.8	1.0	1,226
No select committee	7.8	31.2	23.2	25.7	9.8	2.2	115
EWC coordinator present	11.8	38.4	23.5	20.2	5.0	1.1	838
No coordinator	9.7	36.4	19.6	24.5	9.2	0.7	292
EWC representatives from:							
Nordics	9.6	29.6	21.0	27.2	12.1	0.5	195
CMEs	12.1	35.6	26.0	20.6	4.7	1.1	517
MMEs	11.3	35.6	17.2	26.8	7.3	1.7	308
LMEs	7.2	42.3	25.6	18.6	5.5	0.9	119
EMEs	8.6	33.8	29.9	21.0	3.9	2.9	250
Dual channel systems	11.4	34.1	26.3	20.7	6.2	1.3	468
Single channel systems	8.6	35.8	21.3	25.8	7.4	1.1	578
Foreign reps	11.0	37.5	23.0	21.0	6.1	1.3	1,081
Home country reps	9.1	29.5	21.5	30.4	8.1	1.3	308

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

An EWC coordinator can be instrumental in promoting frequent contact between meetings by centralising contact and stimulating exchange between representatives (Lecher et al. 2001; Pulignano 2007: 84–85). Table 5.2 shows that EWC representatives who operate in conjunction with an EWC coordinator are much more likely to communicate between meetings (50.2 per cent agree to some degree) compared with those who do not have a coordinator (46.1 per cent). The policy of the ETUFs

in promoting the appointment of EWC coordinators is thus vindicated in terms of communication.

Different industrial relations cultures might affect internal communications within EWCs (Stirling and Tully 2004), as, by definition, EWCs bring together representatives with very different experiences of national level representation (Knudsen 2003). This variation can hamper effective communication (Telljohann 2005a). Similarly, variation in industrial relations traditions can cause misunderstandings about the purpose of the EWC, particularly with regard to bargaining. Table 5.2 also groups EWC representatives by country clusters, but differences are small regarding agreement with the statement.<sup>1</sup> The extent of disagreement that contact is frequent is more variable. Nordic representatives are most likely to disagree to some extent (39.3 per cent), while those in liberal market economies (24.1 per cent) and coordinated market economies (25.3 per cent) were the least likely to disagree. The regional clustering of communication among Nordic representatives (Andersson and Thörnquist 2007) would thus appear to be limited. An influence on the frequency of contact between meetings by country cluster is the impact of single and dual channel systems of representation. Small differences are also recorded between EWC representatives operating in single and dual channel systems who agree to some extent that communication is frequent. More EWC representatives operating in single channel systems (33.2 per cent), however, disagree with the statement than their counterparts from dual channel systems (26.9 per cent). This impact no doubt contributes to the relative infrequency of contact in the single channel Nordic countries. The relative frequency of contact among EWC representatives from the largely single channel liberal market economies, however, suggests other factors are influential.

Chapter 3 showed that home country and foreign representatives have very different representative situations. Table 5.2 shows that home country representatives are less likely to report that they are in frequent contact than foreign representatives: 38.6 per cent compared to 48.5 per cent. Given that many foreign representatives are the only representative from their country or part of a small national contingent, it is no surprise that they contact EWC representatives from other countries more frequently. This result may also reflect the importance of the EWC to foreign representatives as a means of gaining access to central management (Whittall et al. 2015), access that is more available to home country representatives.

## Communication, aligning positions and a European identity

Here, the analysis focuses on the impact of dense communications on the development of understanding and trust between representatives, and whether this may promote the search for agreed positions among representatives at the EWC. The literature on management whipsawing shows that it is difficult for EWC representatives to reach a single agreed position and that management is often successful in dividing, rather than unifying, employees from different countries (Aranea et al. 2018; Greer and

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1. Appendix C details the allocation of countries to each of the country clusters.

Table 5.3 Alignment of positions and frequency of contact

In the EWC, employee representatives always try to come to a common position with representatives from all countries

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	11.9	56.2	19.9	7.6	1.8	2.6	1,332

Between EWC meetings, I have frequent contact with EWC representatives from other countries

Strongly agree	29.1	54.8	9.2	2.5	4.5	0.0	149
Agree	11.3	61.5	16.7	8.2	0.9	1.4	451
Neutral	8.9	52.8	29.2	4.7	2.0	2.4	325
Disagree	7.4	57.3	19.5	10.8	1.3	3.7	297
Strongly disagree	12.8	37.7	26.6	13.6	3.8	5.5	78
Don't know	3.1	49.8	20.5	0.0	0.0	26.7	25

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

Hauptmeier 2016).<sup>2</sup> Case study research has also highlighted 'free-rider' behaviour where representatives from some countries refuse to support the positions adopted by others, but reap the benefits when the others resist management (Weston and Martinez Lucio 1998). Furthermore, where representatives from a single country dominate the EWC, they may use the EWC to defend national interests rather than search for an agreed position with other EWC representatives (Kotthoff 2006; Whittall et al. 2009).

There are often many obstacles to overcome to reach an agreed position among representatives, particularly if management proposals have disproportionate national effects. The survey asked if EWC representatives agreed with the statement that they always try to come to an agreed position at the EWC with the representatives from other countries. As is apparent from Table 5.3, a majority of EWC representatives (68.1 per cent) agree to some extent with this statement, while a small minority disagree (9.4 per cent). The survey thus shows that the majority of representatives at least try to align their positions transnationally.

Solidarity is central to reaching agreed positions. 'Solidarity implies the perception of commonalities of interest and purpose which extend, but do not abolish, consciousness of distinct and particularistic circumstances' (Hyman 2001: 170). The perception of commonalities of interest and purpose is dependent on communication and contact

2. Although taking place before the Directive was adopted, the example of Hoover illustrates the difficulties of avoiding managerial whipsawing tactics. In 1993, the management of Hoover decided to shift a production line from a French to a Scottish plant. To facilitate this transfer of production, Scottish trade union representatives had agreed to a range of concessions with management rather than negotiate a common position with representatives of the French workforce. In short, Scottish trade union representatives were forced to cooperate with management in order to protect jobs in Scotland. The French plant was closed following the shift in production to Scotland (EIRR 1993).

(Tully 2004; Stirling and Tully 2004). Table 5.3 demonstrates a strong relation between frequent contact and trying to align positions within the EWC. More than 29.0 per cent of EWC representatives reporting frequent contact between plenary meetings strongly agree that they always try to align their positions with other representatives. An additional 54.8 per cent agree with the statement. By comparison, among the representatives who strongly disagree that they have frequent contact, 50.5 per cent agree to some extent that they try to align positions within the EWC. The causal direction of this relationship, however, is difficult to establish. As has been mentioned before in many studies (Tully 2004; Stirling and Tully 2004), contact breeds trust which is indispensable to agree on common positions. At the same time, if EWC representatives try to come to common positions, this requires intense communication between meetings.

Confirming a key assumption of neo-functionalist theory (Haas 1958), frequent contact encourages trust, which, in turn, may underpin a 'European identity' among EWC representatives (Timming 2007). For EWC representatives to cooperate and demonstrate solidarity, they need 'a strong sense of identity, attachment and allegiance' (D'Art and Turner 2002: 11). This sense of identity relates both to the relations between EWC representatives and to those between representatives and other actors such as management (Telljohann 2009). Such a development goes beyond having similar interests, as it embraces the construction of shared interests (Haipeter et al. 2019: 11–14). Only through sharing a common European identity can sustained collective action be explained (Greer and Hauptmeier 2012; Telljohann 2009). It is thus not surprising that the development of a European identity is associated with the development of EWCs beyond mere information receptors towards consultation and active participation (Lecher et al. 2002; Hoffmann 2016). Conversely, a failure to establish a European identity among EWC representatives is viewed as an explanation of the incapacity of EWCs to resist deregulation (Tuckman and Whittall 2002), micro corporatism (Schulten 1996), and in becoming a management communication tool (Timming 2007). The development of a European identity is a deliberative process in which actors try to change and reshape the perception about the identity and the motives behind their actions (Greer and Hauptmeier 2012). By actively framing issues as transnational European problems within which there are common interests, EWC representatives may see themselves as European representatives rather than defenders of specific national interests. Such a deliberative process requires intense communication, as 'common identities will only evolve in EWCs where communication between representatives is sufficiently intense and frequent'. As cited by Whittall et al., '[t]o quote Sartre [...], "l'autrui c'est moi": I can only learn to know myself in interaction with the other. In this way, communication is the basis for the development of identity' (2009: 172).

To measure the identification of EWC representatives with the European level, respondents were asked to specify their priorities when considering their work in the EWC. They were presented with a choice of six statements and were asked to rank their first, second and third priorities. The top segment of Table 5.4 presents the results for all respondents. Some respondents indicated that two statements were of equal priority, hence the totals sum to more than 100 per cent. It is apparent from Table 5.4 that EWC representatives prioritise representation of their country (38.8 per

Table 5.4 With what do EWC representatives identify?

As an EWC representative, you have a number of priorities to consider in your work: priorities

	First priority %	Second priority %	Third priority %	First, second or third priorities %
<b>All respondents (N = 1,387)</b>				
I am a representative of those employees working in my plant	37.7	18.1	20.2	75.9
I am a representative of those employees working in my country	38.8	39.4	9.1	87.3
I am a representative of all employees in Europe	22.0	17.2	28.0	67.3
I am a representative of the union members of my union	11.6	11.5	17.7	40.7
I am a representative of all union members of my country	5.0	7.6	14.0	26.6
I am a representative of all union members in Europe	2.3	4.6	14.0	20.9
<b>Trade unionists (N = 1,103)</b>				
I am a representative of those employees working in my plant	37.2	16.4	20.0	73.6
I am a representative of those employees working in my country	35.4	39.8	10.3	85.4
I am a representative of all employees in Europe	22.7	15.8	25.8	64.3
I am a representative of the union members of my union	14.5	13.8	18.0	46.3
I am a representative of all union members of my country	5.6	8.9	13.9	28.3
I am a representative of all union members in Europe	2.8	5.6	13.8	22.2
<b>Non-members (N = 179)</b>				
I am a representative of those employees working in my plant	42.4	25.9	17.2	85.5
I am a representative of those employees working in my country	58.1	36.7	2.2	97.0
I am a representative of all employees in Europe	11.7	23.6	43.8	79.0
I am a representative of the union members of my union	0.7	1.7	17.0	19.3
I am a representative of all union members of my country	3.9	2.7	14.3	20.8
I am a representative of all union members in Europe	1.3	0.8	15.4	17.5

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

cent) or their plant (37.7 per cent) above Europe (22.0 per cent). Among all EWC representatives, the representation of 'employees' rather than 'union members' is the priority. For the majority of EWC representatives, the national or plant level remains the priority. In this sense, there is little change from the 2007 survey results (Waddington 2011: 140–141).

It is apparent from the second and third segments of Table 5.4 that trade unionists emphasise the options based on trade unions compared to non-members. In addition, trade unionists prioritise the representation of employees more than union members. At the level of the first three priorities, trade unionists rank country first followed

by plant and Europe for employees, and the interests of their trade union above those of other trade unions in their country and trade unionists in Europe. The same broad pattern is evident among non-members with employees working ‘in my country’ being prioritised over those ‘in my plant’ and ‘in Europe’. The fact that over 20 per cent of all EWC representatives indicate that they see themselves, first and foremost, as representatives of all workers in Europe is still an achievement. This finding is contrary to the views of the critics of the Directive who argued that EWCs were condemned to be mere fora for defending national interests (Keller 1995). It shows that even imperfect transnational structures induce some identification with European interests. The question remains: is the current extent of development of a European identity among EWC representatives sufficient to generate institutions with a European outlook as proposed by those who saw potential in the legislation?

The relationship between the intensity of communications and European identification can be further examined by assessing the responses of EWC representatives who placed Europe as their first priority. In total, 22.3 per cent of EWC representatives indicate Europe as their first priority by reference to either employees or union members.<sup>3</sup> Table 5.5 shows that there is a robust relation between EWC representatives viewing Europe as the first priority and frequent contact between meetings: 60.7 per cent of EWC representatives stating Europe as their first priority also agree that they have frequent contact between meetings compared to 43.8 per cent of those who do not have Europe as their first priority. In other words, the intensity of communication between the meetings goes hand-in-hand with the likelihood that EWC representatives view themselves as representing European interests. This result reproduces the situation in 2007 when EWC representatives involved in intense communication between meetings were more likely to express a European identity (Waddington 2011: 145).

Finally, Table 5.5 also shows the relation between EWC representatives trying to come to an agreed position and the perception of being European. A strong relation between the two is anticipated from case study research (Kotthoff and Whittall 2014). EWC representatives who prioritise the representation of European interests are expected to try to come to a common position with representatives of other countries. This expectation is met: those who define themselves as European are more likely to agree that they try to reach common positions than those who prioritise national or local issues (75.7 per cent compared to 66.5 per cent).

In summary, this section shows that fewer than half of EWC representatives reported that they have frequent contact with representatives from other countries. Office holders and EWC representatives operating with a select committee, an EWC coordinator and an EWC that meets three or more times per year are more likely to have frequent contact. Frequent contact encourages EWC representatives to try to reach an agreed position at the EWC and promotes the development of a European identity. While several structural factors, including country of origin and differences in systems of workplace representation, contribute to an explanation of differences in

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3. As some respondents indicated more than one first priority, this group is not the simple sum of the 22.0 per cent and 2.3 per cent presented in Table 5.4.

Table 5.5 Impact of a European identity

**Between EWC meetings, I have frequent contact with EWC representatives from other countries**

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
National or plant identity	8.0	35.8	23.0	24.8	7.2	1.4	1,004
European identity	18.0	42.7	21.5	14.3	2.8	0.7	272

**In the EWC, employee representatives always try to come to a common position with the representatives from all countries**

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
National or plant identity	11.0	55.4	21.9	7.8	1.4	2.5	1,000
European identity	15.4	60.3	13.6	6.2	3.2	1.3	273

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

the intensity of communication, the presence of EWC coordinators, select committees and more frequent plenary meetings are policy interventions that would intensify communications and improve EWC effectiveness.

## Vertical articulation: communication between levels

EWC representatives are required to contact national trade unions, works councils or employees. If such contact is not made, the EWC risks becoming an 'island of European industrial relations' (Lecher et al. 2001: 96), isolated from all other forms of representation and the workforce. 'Without close connections between local, national and European levels of representation, EWCs are likely to be seen as remote institutions, with little influence or relevance for those employed on the ground' (Wills 1999: 32). Two further introductory remarks are apposite. First, as mentioned above, the Recast placed a right and an obligation on EWC representatives to report back the content and outcome of EWC activities (Article 10(2)). To represent the views and interests of the workforce, however, EWC representatives need to go beyond reporting back. They need to receive or acquire input from the local level to guide their transnational work (Hoffmann 2016). Vertical articulation thus has top-down and bottom-up elements, each of which contributes to the connectedness between representatives at the European, national and local levels. Second, a majority of EWC representatives (67.5 per cent) disagree to some extent with the statement that 'management often communicates directly with employees about the work of the EWC'.<sup>4</sup> It thus appears

4. The range of responses to this question were: strongly agree, 1.0 per cent; agree, 7.7 per cent; neutral, 18.2 per cent, disagree, 36.4 per cent; strongly disagree, 31.1 per cent; and don't know, 5.5 per cent.



that managers generally do not try to present to employees a counter narrative about the EWC. Communication between the EWC and employees is thus largely in the hands of the EWC representatives.

To examine these issues, this section comprises three stages. The first stage discusses reporting back: that is, top-down communication from the EWC to the local level. The second stage assesses the input EWC representatives receive from the local level: that is, bottom-up communication. The third stage identifies some of the determinants of the intensity of communication between levels involving EWC representatives. For ease of explanation, the term 'local' is used throughout to refer to all levels below the European level unless otherwise stated.

### Reporting back: top-down communication

This stage assesses how EWC representatives report back to employees at the local level about their EWC work. The survey asked the EWC representatives how they reported back the results of the most recent EWC meeting to the workforce: that is, to those they represent.<sup>5</sup> As can be seen from Table 5.6, most EWC representatives report back most frequently through the local works council, trade union or employee representatives (73.2 per cent) or through personal conversations/discussions (72.8 per cent). Fewer than half of the EWC representatives circulated personally prepared reports (or newsletters) or the official minutes of the meeting. A third of the EWC representatives posted information on the company intranet, and almost one in five posted information on a website. Most EWC representatives used several methods to report back (average 2.8). Only 2.1 per cent of EWC representatives did not report back through any of these means, a proportion similar to the 3.3 per cent of EWC representatives who failed to report back by any means in 2007 (Waddington 2011: 126).

Table 5.6 also indicates which reporting back method the EWC representatives thought was the most important. More than 30.0 per cent of EWC representatives answered that reporting back through the local works council, trade union or employee representatives is the most important method, which suggests that those who select the EWC representatives are considered the most important to report back to (see Chapter 3) and confirms recent case study evidence (Haipeter et al. 2019: 214). The priority assigned to reporting back to local institutions of labour representation reproduces the situation in 2007 (Waddington 2011: 126–129). Similarly to 2007, personal conversations/discussions and the circulation of a personally prepared report were also key elements of the reporting back process.

As reporting back via the local works council, trade union or employee representatives was identified by representatives as the most important means of reporting back, Table 5.7 examines variation within this form of reporting back. As expected, unionised EWC representatives and those operating in conjunction with an EWC coordinator are more

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5. Respondents could tick more than one box for the method of reporting back used, hence the percentage data add up to more than 100 per cent.

Table 5.6 How did you report back on the most recent EWC meeting?

	Used %	Most important %
Through my local works council, trade union or employee representatives	73.2	31.0
Through personal conversations/discussions	72.8	21.4
By circulating a personally prepared report (or newsletter, etc.)	42.5	16.0
By circulating the official minutes	41.5	14.8
By posting information on the intranet	34.3	14.7
By posting information on a website	20.4	5.6
None of the above	2.1	–
N	1,382	1,345

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

likely than non-members or those with no EWC coordinator to report back using this method. Regarding the country clusters, Table 5.7 illustrates two different patterns: EWC representatives based in coordinated market economies and the Nordics are more likely to say they reported back via the works council, trade union or employee representatives than their counterparts based in liberal market economies, emerging market economies and mixed market economies. Both the European Company Survey (2013) and the European Working Conditions Survey (2015) (Eurofound 2014, 2015) indicate that it is in the coordinated market economies and the Nordics that institutions of local labour representation are most likely to be present. The opportunity to report back to these institutions is thus at its peak in these country clusters.

Table 5.7 Reporting back via the works council, trade union or employee representatives

	Yes %	No %	N
All	73.2	26.8	1,384
Trade unionists	77.4	22.6	1,184
Non-members	50.6	49.4	197
EWC coordinator	78.1	21.9	838
No EWC coordinator	73.8	26.2	289
EWC representatives from:			
Nordics	72.4	27.6	193
CMEs	83.4	16.6	512
MMEs	70.4	29.6	307
LMEs	58.2	41.8	120
EMEs	72.2	27.8	252
Dual channel system	84.4	15.6	464
Single channel system	64.1	35.9	578

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

As it is also probable that representatives sitting on institutions of local labour representation selected or appointed the EWC representatives (see Chapter 3), the issue of reporting back to those who selected the EWC representatives is also likely to be relevant. Survey data support this position insofar as 85.3 per cent of EWC representatives elected by the local works council or an equivalent institution reported back to the works council, whereas 72.5 per cent selected by union members/representatives and 68.5 per cent appointed by unions reported back to these institutions. Reporting back to the institution that selected the representative is also a feature of board-level employee representation (Waddington and Conchon 2016: 170–175). Reporting back is thus not independent of selection procedures.

Comparing EWC representatives based in a dual channel system with those operating in a single channel system reveals marked differences. No fewer than 84.4 per cent of EWC representatives based in countries where a dual channel system is in place indicate that they report back via the trade union, works council or another representation body, whereas this is the case for only 64.1 per cent of the EWC representatives based in countries with a single channel system. A partial explanation of this difference arises from the impact of non-members serving as EWC representatives. Non-members serving as EWC representatives and based in countries with a single channel system are usually unable to report back through the trade union. Non-members based in countries with a dual channel system may also serve on the local works council and thus have a vehicle through which they may report back. Table 5.8 compares unionised and non-members who are EWC representatives based in countries with either a single- or dual channel system. From the outset, it should be acknowledged that non-members serving as EWC representatives in countries with a single channel system constitute a small group. In many countries with a single channel system, the law or collective agreements ensure that only union members can become EWC representatives. Non-members serving as EWC representatives in countries with a single channel system, namely Bulgaria, Romania, Portugal and the UK, comprise the majority of this group. It is apparent, however, that non-members based in countries with a single channel system are less likely to report back on their EWC activities than the other categories identified in Table 5.8.

Table 5.8 Reporting back: trade unionists and non-members

	Representation system	Reporting back via the local works council, trade union or employee representatives %	N
Trade unionists	Single	71.5	410
	Dual	84.9	491
Non-members	Single	28.0	86
	Dual	82.1	52

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

Table 5.9 Informing of employees about the EWC

I think the employees in my company are well informed about what we do in the EWC							
	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	2.5	19.0	22.1	36.8	17.4	2.2	1,420
Reported back via the local works council, trade union or employee representatives							
No	2.0	17.0	19.8	38.6	20.1	2.5	369
Yes	2.7	19.8	23.2	36.0	16.4	1.9	1,040
By circulating the official minutes							
No	1.5	16.0	20.4	39.8	19.5	2.8	814
Yes	4.0	23.3	24.8	32.4	14.4	1.1	595
By circulating a personally prepared report (or newsletter, etc.)							
No	1.6	18.2	20.3	37.0	20.2	2.6	800
Yes	3.8	20.1	24.9	36.3	13.6	1.4	609
By posting information on the intranet							
No	1.7	18.2	21.1	37.0	19.5	2.5	935
Yes	4.2	20.7	24.5	36.1	13.4	1.2	474
By posting information on a website							
No	1.9	19.8	21.7	36.4	18.2	2.1	1,125
Yes	5.3	15.9	24.7	37.9	14.2	2.0	284
Through personal conversations/discussions							
No	1.7	19.2	18.1	39.5	18.7	2.7	369
Yes	2.9	18.9	23.8	35.7	16.9	1.8	1,040
Number of reporting back channels used							
0	1.8	0.0	12.7	39.8	35.0	10.8	43
1	0.8	17.6	19.9	38.2	21.0	2.5	245
2	2.4	18.4	19.3	38.9	18.9	2.0	375
3	1.3	19.4	23.5	38.2	17.1	0.6	309
4	2.3	21.6	29.1	37.6	9.4	0.0	176
5	9.9	23.6	30.5	25.2	10.8	0.0	64
6	6.1	18.0	25.4	32.6	14.4	3.5	174

Reporting back does not necessarily mean that employees are informed about the activities of the EWC. The information reported back could simply remain with the works council or workplace trade union and not be further disseminated. A survey of employees of MNCs would enable a detailed assessment of this issue. Here, however, EWC representatives were asked if employees of their company were 'well informed about what we do in the EWC'. Table 5.9 shows that only 2.5 per cent of EWC representatives strongly agree and 19.0 per cent agree with this statement. Confirming the 'distance' between the EWC and the employees it represents, no fewer than 17.4 per cent of EWC

representatives strongly disagree and 36.8 per cent disagree with the statement. In short, EWC representatives do not think that employees represented by the EWC are very well informed about the institution. Furthermore, Table 5.9 demonstrates that the method used by EWC representatives to report back does not significantly alter the extent to which EWC representatives think that employees are well informed. This finding again suggests that the duty of reporting back on EWC activities is primarily perceived as a requirement to report back to the institutions of labour representation within the MNC. Only when EWC representatives use multiple methods of reporting back is there a marked impact on the extent to which they think employees are well informed. When five methods of reporting back are used, for example, 33.5 per cent of EWC representatives think employees are well informed to some extent. Given that this figure is the result of the perceptions of EWC representatives rather than employees, it is far from overwhelming.

These results confirm that EWCs as institutions are distant from the employees they represent and suggest that the isolation of EWCs feared by many is the case in practice (Weston and Martinez Lucio 1998; Telljohann 2005a). The apparent contradiction is that the 'distance' between EWCs and employees is not the result of a failure to report back *per se* (see Table 5.6). EWC representatives use multiple means to inform those on the local level about EWC activities, but employees remain relatively uninformed about the activities of the EWC, suggesting that there are intervening factors between reporting back and employees being informed. These intervening factors are discussed in the third stage of this section, while the next stage examines bottom-up communication.

### Input from the employees represented by the EWC: bottom-up communication

Reporting back is one element of vertical articulation. A second involves the EWC representative acquiring information from the local level to take to the EWC where it can be assessed in conjunction with similar inputs from other countries. To explore this second element of vertical articulation, EWC representatives were asked whether they often asked for input from the local works council, trade union or the workforce on their work at the EWC. Table 5.10 demonstrates that 41.3 per cent of all EWC representatives agree to some extent that they often ask for such input. This figure contrasts with the 25.5 per cent of EWC representatives who disagree to some extent with the statement. The extent of the input to the EWC from the local level is thus curtailed.

Table 5.10 also illustrates the variation by country cluster, function, unionisation and presence of an EWC coordinator. Similarly to the results on reporting back (Table 5.7), EWC representatives from CMEs are more likely to say that they for ask input from the local level than their counterparts from elsewhere. While this result may be related to the density of local institutions of labour representation within the CMEs, this argument would have been supported had Nordic EWC representatives also reported higher levels of asking for input, but this was not the case. As more EWC representatives from the EMEs than the Nordics agree to some extent with the statement and workplace institutions of labour representation in the EMEs are relatively sparse, it is apparent that factors additional to institutions of workplace representation impinge on the gathering

Table 5.10 Asking for input from local representative institutions

I often ask for input from the local works council, the trade union or the workforce on my work in the EWC

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	6.7	34.6	28.1	19.6	5.9	5.2	1,415
EWC representatives from:							
Nordics	4.6	28.9	26.8	25.0	10.0	4.8	198
CMEs	9.5	38.5	25.1	18.1	5.8	3.0	524
MMEs	7.0	30.5	28.9	22.7	5.1	5.8	318
LMEs	2.5	39.1	32.1	12.9	6.0	7.3	121
EMEs	5.6	37.0	31.8	15.4	1.6	8.6	254
Office holders	9.8	42.9	24.2	18.9	2.2	2.0	490
EWC members	5.2	31.9	29.8	20.6	6.6	6.0	772
Trade unionists	5.9	36.6	28.2	19.6	5.6	4.1	1,211
Non-members	11.3	23.3	27.6	19.5	7.3	11.1	201
EWC coordinator present	7.9	38.0	28.5	16.7	4.8	4.0	843
No coordinator	4.7	34.6	26.5	26.4	6.6	1.2	294

of input for the EWC from the locality. Office holders were the most likely to ask for input from the local level, perhaps reflecting a perceived responsibility to articulate the EWC more effectively with local institutions. Similarly, EWC coordinators appear to promote the acquisition of information from the localities, again confirming the benefit of the ETUF policy to assign a coordinator to each EWC.

To develop an understanding of gathering input from the locality, the survey asked EWC representatives whether they knew what the employees they represented expected of them. The upper segment of Table 5.11 shows that 49.0 per cent of EWC representatives thought that they knew what employees expect from them, while 16.8 per cent did not. Again, this finding indicates a 'distance' between some EWC representatives and those they represent. Combining this question with the question on gathering input from the localities, however, the lower segment of Table 5.11 shows that EWC representatives who often ask for input from the local level are much more likely to say that they know what the employees expect from them. No fewer than 69.9 per cent of those who strongly agree that they ask for input report that they know what the employees they represent expect from them. Of course, this means that 30.1 per cent of EWC representatives who seek input from the localities still do not know what those they represent expect of them. Among EWC representatives who agree to some extent that they often ask for input from the local level, 60.4 per cent report that they know what employees expect of them. This proportion declines to 26.7 per cent of EWC representatives who strongly disagree with the statement that they ask for input. There is thus a strong relation

Table 5.11 Asking for input, knowing what to do

I always know what the employees I represent expect from me							
	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	6.6	42.4	30.9	14.4	2.4	3.4	1,416
I often ask for input from the local works council, the trade union or the workforce on my work in the EWC							
Strongly agree	38.1	31.8	21.0	7.6	0.0	1.5	86
Agree	6.7	53.7	29.1	8.4	0.7	1.3	498
Neutral	3.5	40.8	41.8	11.1	1.3	1.5	405
Disagree	2.1	37.8	24.1	33.4	1.0	1.6	264
Strongly disagree	4.2	22.5	31.8	12.7	26.7	2.1	74
Don't know/not applicable	1.9	28.5	19.3	13.0	0.0	37.4	84

between asking for input and knowing what the employees represented by the EWC representatives expect from them.

An examination of reporting back, the extent to which employees are informed about the EWC and the frequency at which EWC representatives ask for input from the local level reveals severe limitations to the extent of vertical articulation. While most EWC representatives report back using several means, only a minority think employees know what is happening at the EWC. Concurrently, only a minority of EWC representatives regularly ask for input from the local level and feel that they know what the employees want from them. These results raise the question: what underpins the limited extent of vertical articulation? The objective of the next stage of the analysis is to seek an answer to this question.

### What inhibits vertical communication?

Those who saw potential in the Directive hoped that the establishment of robust horizontal and vertical articulation would mitigate the structural weaknesses of the legislation (Lecher and Rüb 1999; Martinez Lucio and Weston 2000). The previous stage of the analysis showed that such robust mechanisms are in place for only a small minority of EWC representatives. To establish why vertical articulation and communication is so limited, two groups of EWC representatives were identified. The 'well-connected' (N = 210, 15.2 per cent of the total) group comprises EWC representatives who think their workforce is informed about their activities (strongly agree and agree) and always know what the workforce expects from them (strongly agree and agree). The second group (N = 1,171, 84.8 per cent) comprises the remaining EWC representatives and is defined as 'not well connected'.

Table 5.12 Are EWC representatives well connected?

	Not well connected %	Well connected %	N
All	84.8	15.2	1,381
Office holder	84.0	16.0	490
EWC member	84.2	15.8	770
Substitute member	92.5	7.5	110
EWC coordinator present	82.6	17.5	836
No EWC coordinator	89.2	10.8	291
Less than 1 year	82.5	17.5	109
1 to 3 years	86.8	13.2	332
3 to 5 years	92.3	7.7	239
5 to 7 years	87.1	12.9	159
7 to 10 years	81.6	18.4	238
10 to 20 years	78.6	21.4	161
More than 20 years	82.8	17.2	23
Foreign reps	82.7	17.3	1,074
Home country reps	91.7	8.3	307

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

From the outset, Table 5.12 shows that holding an office at the EWC is related to connectedness, although, as expected, substitute members tend to be more isolated than most with only 7.5 per cent in the well-connected group. Yet again, the presence of an EWC coordinator tends to be positively related to connectedness, as 17.5 per cent of EWC representatives working with an EWC coordinator report being well connected compared to 10.8 per cent of those with no EWC coordinator. The duration of tenure of the EWC representative is also an influential factor. EWC representatives with a longer tenure tend to be better connected than their more recently selected counterparts, suggesting that policies to decrease the rate of turnover among EWC representatives will encourage better connectedness. Finally, Table 5.12 illustrates that foreign representatives are more likely to be well connected than home country representatives. Chapter 3 showed that foreign representatives represent fewer sites of the MNC than home country representatives with the consequence that their reporting back and acquiring input tasks may be less demanding than those of the home country representatives, which, in turn, may impact on their connectedness.

Table 5.12 demonstrates that the vast majority of EWC representatives are not well connected, irrespective of the circumstances of the EWC. An explanation of this situation is that management restricts communications between EWC representatives and the local level. For example, EWC representatives at Amcor, an Australian packaging company, wanted to use the company's intranet to inform the workforce about the EWC's activities. Management resisted, however, and argued that the EWC



Table 5.13 Freedom to communicate to the local level

	%	All	Not well connected		Well connected	
		N	%	N	%	N
<b>I have enough freedom to communicate with the workforce about the work in the EWC</b>						
Strongly agree and agree	59.2	906	75.8	610	24.2	244
Neutral	21.4	327	97.3	297	2.7	12
Strongly disagree and disagree	17.2	228	99.3	196	0.7	5
Don't know	2.2	30	96.8	27	3.2	1
<b>I have enough freedom to communicate with national/local worker representatives about the EWC</b>						
Strongly agree and agree	69.7	1 026	80.5	741	19.5	223
Neutral	17.9	266	94.6	217	5.4	27
Strongly disagree and disagree	9.9	153	95.8	132	4.2	7
Don't know	2.5	38	92.1	32	7.9	4

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

did not have the right to communicate directly to the workforce, as the local works council was the appropriate vehicle for such communication. The court upheld the managerial position (*Amcor v Amcor EWC*, Az. 5 BV 7/12: ArbG Lörrach, 26 June 2013). The Recast is unambiguous, however, in stating that EWC representatives should have 'the means required to apply the rights arising from this Directive' (Article 10), which, in practice, necessitates the means to communicate top-down and bottom-up with the local level. The issue is thus contested. To explain the absence of vertical communication, the analysis focuses on whether EWC representatives have sufficient scope to communicate with the local level, are permitted to visit the company premises, are limited in communication because of confidentiality issues, or simply have very little to communicate about arising from the EWC. Each of these issues is examined in order to establish the extent to which it constitutes a barrier to vertical communication.

Table 5.13 presents the results on the first of these issues: the freedom EWC representatives have to communicate with the local level. EWC representatives were asked to evaluate two statements regarding communicating with the workforce and with local representatives. The majority of all EWC representatives agreed to some extent with both statements: 69.7 per cent thought they had the freedom to communicate with local representatives and 59.2 per cent the freedom to communicate with the workforce. There are thus some managerially imposed limits on the freedom to communicate, but these do not explain the extent of the absence of connectedness reported above. It should also be noted that the greater freedom to contact local representatives compared to the workforce is consistent with the *Amcor* court ruling mentioned above.

Table 5.13 compares answers to the question on the freedom to communicate with the extent to which EWC representatives are well connected. The data show that there is a strong relationship between having the freedom to communicate and being well connected. Of those who report that they have the freedom to communicate with the

workforce, 24.2 per cent state that they are well connected. Among those with a neutral position or who disagree with the statement on the freedom to communicate, fewer than 4.0 per cent reported being well connected. The same is true for having enough freedom to communicate with the local representatives. Of the representatives who agree with this statement, 19.5 per cent are well connected compared to fewer than 10.0 per cent with a neutral position or who disagree with the statement. The conclusion is unambiguous: if EWC representatives have the freedom to communicate with the local level, they are better connected. The freedom to communicate is thus a necessary but insufficient condition for EWC representatives to be well connected with the local level.

A second explanation of the absence of connectedness between EWC representatives and the local level may be the omission from the Recast of a right for EWC representatives to visit those they represent where they work. This is another contested issue regarding EWCs. Although the Recast does not explicitly include a right enabling EWC representatives to visit workers at their workplaces, the duty to report back to the employees they represent implicitly constitutes such a right (Picard 2010). A similar conclusion was reached by the expert report funded by the Commission that evaluated the implementation of the Recast, which concluded that reporting back 'could entail the need for EWC members to travel to local sites in order to report back to the workers' (European Commission 2010b: 41–42). A further indicator of the ambiguity in this issue is the growing number of EWC founding agreements that include a clause allowing EWC representatives to visit sites operated by the MNC (De Spiegelaere 2016). The contested nature of the issue is also illustrated by a further episode in the history of the Amcor EWC when two members of the select committee wished personally to present the outcome of EWC deliberations to workers at a UK plant of the MNC. The company refused to cover the costs for this trip and disputed whether the select committee members were required to perform this task (*Amcor v Amcor EWC*, Az. 5 BV 7/12: ArbG Lörrach, 26 June 2013; ICF, 2016a). The court ruled that it was the task of the local representatives to inform the UK workforce of the EWC deliberations rather than members of the select committee of the EWC.

Table 5.14 shows the proportion of all EWC representatives able to visit the sites of the MNC in their country and in other countries. No fewer than 84.0 per cent of all EWC representatives reported that they could visit MNC sites in their own country, while 60.7 per cent could visit sites in other countries. For 33.2 per cent of EWC representatives for their own country and for 38.5 per cent for other countries, this is not a right, however, as management must approve the visit beforehand. Furthermore, 16.0 per cent and 39.3 per cent of EWC representatives are prohibited from visiting sites in their own country or in foreign countries respectively. Only 21.0 per cent of EWC representatives for their own country and 5.5 per cent from a foreign country need neither to seek managerial approval nor to notify management before visiting the sites. In short, visiting sites operated by the MNC is a contested issue, and although no majority position emerges among the options available, there are marked managerial restrictions in place.

Table 5.14 also shows the relation between management's willingness to allow visits to company premises and the connectedness of the EWC representative. With regard

Table 5.14 Do management allow visits to company premises?

	%	All	Not well connected		Well connected	
		N	%	N	%	N
<b>Visiting company premises: own country</b>						
Not allowed	16.0	209	90.3	184	9.7	24
Allowed after approval	33.2	442	85.7	363	14.3	76
Allowed after notification	29.9	407	83.3	320	16.7	84
No approval or notification needed	21.0	292	83.0	235	17.0	56
<b>Visiting company premises: other countries</b>						
Not allowed	39.3	502	88.5	436	11.5	65
Allowed after approval	38.5	513	83.3	409	16.7	101
Allowed after notification	16.8	243	81.8	185	18.2	55
No approval or notification needed	5.5	75	81.2	58	18.8	17

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

to visits to company sites in their own country, representatives who can visit company premises without needing to seek managerial approval or notify management are more likely to be in the well-connected group (17.0 per cent) compared to those who are not allowed to visit company premises (9.7 per cent). The same relation is apparent for visiting company premises in other countries: 18.8 per cent of the well-connected group are allowed to visit foreign company premises without needing to seek managerial approval or notify management, whereas only 11.5 per cent are precluded from doing so.

In addition to the contestation inherent in this issue, two points emerge from these findings. First, limits imposed by management on visiting sites clearly impede a significant minority of EWC representatives from undertaking the duties delegated to them by the legislation and European policy-makers. Second, the distance between EWC representatives and those they represent is likely to remain in place unless representatives are accorded the right to visit the sites of the MNC.

Confidentiality provisions are a third possible explanation for the absence of connectedness between EWC representatives and the local level.<sup>6</sup> Where management stipulate that any information conveyed to the EWC as strictly confidential must not be passed on, this precludes the EWC representative from discussing the information with those affected by the matter at the local level, thereby further ‘distancing’ the representative from those s/he represents. Survey research has shown that there is widespread abuse of the confidentiality clause in relation to EWC work (Voss 2016), and this generates friction within the EWC over information disclosure to employees (Gold

6. An extended discussion of managerial approaches to confidentiality is included in Chapter 8. At this point, the examination focuses exclusively on confidentiality and communication.

Table 5.15 Limited in talking about EWC work

I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality

	All		Not well connected		Well connected	
	%	N	%	N	%	N
Strongly agree and agree	33.9	463	87.7	375	12.3	70
Neutral	22.8	326	86.9	266	13.1	47
Strongly disagree and disagree	41.1	594	81.2	452	18.8	121
Don't know	2.3	41	86.4	35	13.6	5

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

and Rees 2013). Furthermore, confidentiality clauses in EWC founding agreements may limit communication between EWC representatives and those they represent (De Spiegelaere and Jagodziński 2016), reflecting management's concerns about keeping certain information confidential in their dealings with the EWC (Pulignano and Turk 2016). Challenging management over the application of confidentiality rules may help facilitate communication between EWC representatives and those they represent, but such action does not appear to promote the earlier disclosure of information (Meylemans and De Spiegelaere 2019).

Table 5.15 investigates the impact of confidentiality on vertical articulation by presenting the relationship between connectedness and responses to the statement 'I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality'. There is a clear relationship between feeling limited in discussing EWC work because of concerns about confidentiality and being well connected to the local level. Among those who feel limited in talking about EWC work because of confidentiality concerns, 12.3 per cent are well connected. By comparison, among those who do not feel limited due to confidentiality, 18.8 per cent are in the well-connected group. Management's use of confidentiality may thus inhibit communications between the EWC and the local level for a small minority of EWC representatives. This is, however, at best, a contributory factor rather than an explanation of the absence of communication between the two levels of representation.

The lack of freedom to communicate, managerial restrictions on visiting company sites and management's application of confidentiality provisions all contribute to the absence of connectedness among EWC representatives. Each of these factors alone, however, does not provide a sufficient explanation for this absence. The analysis now takes a different tack: instead of examining the obstacles to connectedness, it assesses whether there is sufficient information of interest arising from the EWC for the representatives to communicate to those they represent.

If EWC representatives feel that they are involved only after managers have finalised their decision-making (see Chapter 4), for example, there is very little reason for them to ask for input, let alone report on matters employees may already know about. Similarly, Chapter 4 showed that EWCs generally operate as information rather than

Table 5.16 Connected and content with EWC work

	%	All	Not well connected		Well connected	
		N	%	N	%	N
<b>When does information exchange or consultation usually take place?</b>						
Before the final decision	20.8	293	77.9	199	22.1	74
After the final decision, before implementation	44.9	629	87.7	510	12.4	98
During implementation	18.5	272	84.5	217	15.5	46
After implementation	9.7	138	87.6	119	12.4	15
Don't know	6.2	95	83.4	82	16.6	10
<b>How effective are the plenary EWC meetings for consultation?</b>						
Very effective	11.9	171	77.9	116	27.3	49
Effective	37.9	533	87.7	402	18.2	105
Neutral	26.5	408	84.5	339	10.1	54
Ineffective	16.5	211	87.6	189	7.9	19
Very ineffective	7.2	84	83.4	67	15.2	14

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

consultation bodies. In these circumstances, the EWC representative may wish to report back information to the local level, but the utility of asking for input from the local level is very limited if management do not engage in consultation: that is, does not take such information from the local level into account. Put bluntly, if the EWC is an empty shell, why would EWC representatives care to communicate with the workforce about it, and, in turn, why would they seek to acquire information from the workforce if they are not in a position to do anything meaningful with it?

Table 5.16 thus assesses connectedness in the context of the timely release of information and consultation by management and the effectiveness of the EWC on consultation. Among EWC representatives who think that their EWC is generally informed and consulted before managers reach their final decision, 22.1 per cent regard themselves as well connected. EWC representatives who are involved at a later stage in the decision-making/implementation process are less likely to be well connected (12.4 per cent to 15.5 per cent).

Replicating the situation with regard to timeliness, the analysis reveals a clear relationship between connectedness and effective consultation. Among EWC representatives who regard their EWC as very effective for consultation purposes, 27.3 per cent are well connected, which is almost twice the proportion (15.2 per cent) who view the EWC as very ineffective for consultation. It should be noted, however, that 15.2 per cent of EWC representatives are well connected in an EWC that is not effective for consultation, once again suggesting that timeliness and the effectiveness of the EWC in the consultation process are partial rather than complete explanations for the absence of connectedness among EWC representatives.

Although the vast majority of EWC representatives report back to the local level using several methods, the ‘distance’ between the EWC and the employees it represents is marked insofar as the majority of employees are not well informed about the activities of the EWC. A further indicator of this distance is that only a minority of EWC representatives seek input from the local level to guide their activities at the EWC. This section also demonstrated that a small minority (15.2 per cent) of EWC representatives are well connected to the local level. Barriers that contribute to the absence of connectedness between the EWC and the local level include managerial restrictions on the freedom to communicate, lack of access to company premises and the application of confidentiality provisions. In addition, the absence of consultation and timeliness at the EWC noted in Chapter 4 in many cases undermines the purpose of articulation between the EWC and local level.

## Conclusion

To function effectively, EWC representatives need to communicate between meetings and, as representatives of employees within the MNC, to be in contact with those they represent. EWC representatives thus need to communicate horizontally and vertically. These forms of communication occupy a central place in the broader debate on EWCs. Those who saw potential in the legislation argued that some of its structural weaknesses could be mitigated by the creation of intense communication networks involving EWC representatives from different countries and between European and local levels of representation (Martinez Lucio and Weston 1996, 2004; Tully 2004). According to supporters of this position, intense communication between EWC representatives from different countries may also promote solidarity and a European rather than a national identity, both of which were viewed as a prerequisite for the establishment of participatory institutions capable of exerting influence over managerial decision-making (Lecher et al. 2002). In contrast, more pessimistic analyses viewed the legislation as structurally flawed to the extent that EWCs would become mere extensions of national systems of representation (Keller 1995; Streeck 1997). This reading of the legislation envisaged very few opportunities to create European institutions and viewed their fragility as likely to preclude European perspectives, as managers sought to divide EWC representatives, and the disproportionate national impact of managerial proposals undermined any consensus among EWC representatives (Aranea et al. 2018; Mählmeyer et al. 2017).

This chapter shows that sources of optimism are few and far between. Fewer than a half of EWC representatives report that they are in frequent contact with their fellow representatives between the plenary meetings of the EWC. Although most EWC representatives report back to the local level, these representatives do not think that the employees they represent are very well informed about the activities of the EWC. Furthermore, EWC representatives ask for input from the local level to guide their decision-making at the EWC only to a limited extent. On a more positive note, where intense communication takes place, EWC representatives are more likely to try to establish agreed positions and express a European identity. The constraint here, however, is that fewer than a quarter of EWC representatives express a European

identity as their first priority, a proportion markedly lower than those who express a national or a plant identity.

From the perspective of those who saw potential in the legislation, the findings of this chapter are disappointing. Horizontal and vertical communications are subject to considerable limits. There is no wide-ranging evidence to suggest that, by means of such communication, the shortcomings of the legislation are being mitigated. To the contrary, the prevalence of national- and plant-oriented identities lends support to the argument of the pessimists that EWCs would become mere extensions of national systems of representation rather than a transnational level of representation that adds value to representation systems within MNCs. More challenging for the pessimists are the data demonstrating that, where horizontal and vertical communication is intense, there is evidence that EWC representatives try to find agreed positions and express a European identity. In short, the expectations of those who saw potential in the legislation are confirmed in these instances, but they are so infrequent that any claim for general optimism is simply far-fetched.

The analysis of the factors that underpin more intense communications allows movement beyond the debate between the pessimists and those who saw potential in the legislation. In particular, and supporting the position of the ETUC and the ETUFs, the establishment of a select committee, the holding of frequent plenary meetings and the presence of an EWC coordinator are associated with more intense communications. While the inclusion of an obligation to report back in the Recast is a necessary condition for vertical communication, it is insufficient to ensure the communication outcomes desired by European policy-makers. Management also imposes barriers to the connectedness of EWC representatives by limiting their freedom to communicate with the local level, by restricting their access to the sites of the MNC where those they represent are employed and by applying confidentiality provisions to prevent them from disclosing certain information. While these factors do not fully explain the absence of connectedness among EWC representatives, they each have the effect of restricting EWC representatives in the performance of their duties and activities. A further limiting factor for the connectedness of EWC representatives arises from the findings of Chapter 4 and is also associated with managerial approaches to EWCs. Where management do not engage in consultation or fail to engage in information exchange and consultation in a timely manner, EWC representatives are less likely to prioritise connectedness, because events at the EWC are likely to have been superseded within the MNC: put simply, there is no need to ascertain the views of employees on an issue if the managerial decision on that issue has already been finalised. In this context, the onus rests with management to comply with the intentions of European policy-makers regarding consultation and timeliness and with European policy-makers to ensure that their intentions are being realised in practice and on a wider scale. For trade union organisations, the challenge of generating connectedness within EWCs and between EWCs and the local level has proved a bridge too far. Chapter 6 examines trade union initiatives in other areas intended to mitigate the limitations of the legislation.

## Chapter 6

### Do trade unions make a difference?

Historically, the relationship between trade unions and works councils within Member States has been far from straightforward (Bernaciak et al. 2014). In post-1945 Germany, for example, trade unions were initially disappointed that works councils would not be trade union bodies (Markovits 1986: 61–92), but, over time, campaigned to ensure that trade unionists formed a majority of works councillors within a system regarded as a ‘contradictory unity’ (Streeck 1979: 217). In contrast, Dutch works councils are viewed as too close to management by trade unionists (Visser 1995), and Hungarian legislation allowed works councils to be set up in competition with trade unions (Tóth 2001). Trade unionists are concerned that works councils may promote micro-corporatism where the focus is on company bargaining rather than industrial arrangements. This fear has also been expressed in the context of EWCs (Hancké 2000; Kotthoff and Whittall 2014: 249–253), in particular regarding the conclusion of transnational company agreements (Telljohann 2009; Haipeter et al. 2019: 225). It is thus clear that relationships between trade unions and works councils are often complex and may be competitive (Garibaldo and Telljohann 2010; Jevtić 2012; Watling and Snook 2003). Furthermore, in countries with single channel systems of industrial relations, works councils or their equivalent are generally absent, as a result of which the relationship between trade unions and works councils or workplace labour representation within Member States varies widely. A purpose of this chapter is to establish how the relationship between trade unions and EWCs operates in practice in the light of these variations.

Chapter 2 showed that trade union organisations throughout Europe engaged in a long-term campaign in support of legislation on EWCs. While trade unions welcomed the adoption of the Directive, there was widespread disappointment with its content among trade unionists (Danis and Hoffmann 1995; Meissner 1994). In particular, and with regard to the topic of this chapter, there was no mention of the term ‘trade union’ in the Directive. This omission facilitated managerial resistance to trade union involvement in EWCs (Lecher et al. 2002; Telljohann 2005b) and underpinned the subsequent resistance to any trade union involvement in EWCs by BusinessEurope (2008). Trade union involvement in EWCs is thus contested. The omission of any reference to ‘trade union’ in the Directive also required trade union organisations to define the form of their engagement with EWCs. In practice, trade union engagement centred on assisting SNBs in the negotiation of EWC founding agreements, the appointment of EWC coordinators, the promotion of trade unionists to serve as EWC representatives, the identification of best practice and policy, the provision of training for EWC representatives, and the establishment of internal procedures whereby EWC founding agreements and transnational company agreements can be ratified with the intention of maintaining or



improving standards. This chapter examines the impact of some of these interventions on the relationship between trade unions and EWCs.

European policy-makers acknowledged the limitations of the Directive arising from the exclusion of any reference to trade unions in specifying aspects of trade union engagement with EWCs in the Recast. In particular, the Recast highlights four aspects of the trade union role: trade union experts may assist the SNB (Article 5(4)); at the request of the SNB, trade unionists may participate in the negotiation of EWC founding agreements (Article 5(4)); the competent trade union must be informed of the composition of the SNB and of the start of negotiations (Article 5(2c); and management are responsible for providing the trade unions with the information required to conduct the negotiations (Article 4(4)). In addition, the Recast clarified and strengthened the right to training for EWC representatives (recital 33) and specified the terms of conduct for in-depth assessments (Article 2(f) and 2(g)). While both of these issues do not necessitate trade union engagement, in many cases training and in-depth assessments are provided by trade unions. It should be noted, however, that, in some national transpositions of the Recast, trade unions are explicitly allowed a role in the selection of EWC representatives (Jagodziński and Hoffmann 2021).

The meagre content of the legislation on trade union engagement with EWCs contrasts sharply with the role that the European Commission acknowledges trade union organisations undertake. As early as 2004, for example, the Commission stated that:

The part played by European level trade unions, especially the European sectoral federations, should be mentioned in particular. Their involvement has brought a coherence to the practical process of establishing EWCs, a fact acknowledged also by employers and evidenced by the involvement of European level federations as joint signatories in so many agreements. (2004: 3)

The Commission recognises the centrality of trade union organisations to EWC practice and development. European policy-makers, however, have not enacted this recognition in the form of legislative support. Trade union engagement with EWCs thus remains contentious and explains point 3 of the ETUC reform agenda for the Recast (see Appendix B) on the participation of union experts in EWC plenary and select committee meetings.

Chapter 1 identified trade unions as comprising a key element of the debate between the critics of the Directive (Keller 1995; Streeck 1997) and those who saw potential in the measure (Martinez Lucio and Weston 2000; Tully 2004). In short, aspects of the debate between those who viewed the Directive as a measure with potential and its critics revolved around the capacity of trade unions. In the light of the amendments made to the Directive by the Recast enhancing the engagement of trade unions, the potential for overcoming the limitations of the legislation through trade union activity should be improved. This chapter assesses the viability of these competing positions almost 25 years after the Directive was adopted by reference to two key elements of the trade union policy agenda intended to overcome the limitations of the legislation: attempting to ensure high rates of unionisation among EWC representatives and the presence of a coordinator appointed by an ETUF at every EWC.

To examine these issues, the chapter comprises two sections. The first examines the impact of the unionisation of EWC representatives, and the presence of coordinators appointed by the ETUFs on elements of EWC practice. This section thus assesses the extent to which trade unions act as a resource for EWCs. The second section examines whether EWCs facilitate the achievement of trade union objectives. The detailed impact of training provision is examined in Chapter 7. In general terms, this chapter argues that higher rates of unionisation among EWC representatives and the presence of coordinators are associated with improvements in EWC infrastructure and practice from a trade union perspective. These improvements, however, are insufficient to overcome the shortcomings of EWC legislation and to enable trade unions to reach their objectives.

## **Trade unions as a resource for European Works Councils**

Chapter 3 showed that 84.5 per cent of survey respondents were trade unionists and that they thought that on average 81.6 per cent of representatives at their EWC were unionised, an increase from the 66.4 per cent reported by EWC representatives in 2007. While the relationship was not direct, in general terms, in 2018, the higher the unionisation rate in a country, the greater the likelihood that EWC representatives are union members. Chapter 3 also reported that 58.9 per cent of EWC representatives worked in conjunction with an EWC coordinator who represents an ETUF, an increase from 32.9 per cent in 2007. Chapter 4, however, demonstrated that the presence of an EWC coordinator is related to a slightly improved quality of information exchange and consultation, but not with an improvement in the timing of information and consultation procedures. The purpose here is to extend this analysis of the support provided by trade unions to EWCs in four stages, which examine the training and knowledge of EWC representatives, trade unions and articulation, trade unions and the assertiveness of EWCs, and trade unions and internal EWC politics. At each of these stages, the impact of the unionisation of EWC representatives and the presence of an EWC coordinator will be assessed.

### Training and knowledge of EWC representatives

An element of trade union engagement with EWCs is directed towards increasing the knowledge of EWC members. As a result of trade union engagement, unionised EWC representatives or representatives in an EWC with an EWC coordinator might be better trained. The impact of this involvement of trade unions is recognised (Stirling and Tully 2004; Miller 2002) and influenced the Commission to include the right of trade unions to send an expert to the SNB in the Recast (European Commission 2016a, 2016b).

Table 6.1 compares unionised EWC representatives with their non-unionised counterparts on the number of training days received in the past three years. Table 6.1 shows that trade unionists are slightly more likely to have received training and also usually attend training sessions more frequently. A similar situation is observed between those serving on an EWC that has a coordinator compared with those with no coordinator: only

Table 6.1 Trade unions and EWC training

	No training %	One day or less %	2–3 days %	4–5 days %	More than 5 days %	Don't know %	N
All	39.3	12.8	24.3	9.0	12.3	2.3	1,412
Trade unionists	38.1	12.6	23.6	10.1	13.2	2.3	1,206
Non-members	45.4	13.9	28.4	3.0	6.9	2.4	203
EWC coordinator present	32.7	14.1	25.2	10.1	16.3	1.6	838
No EWC coordinator	37.7	12.5	27.5	10.7	9.3	2.2	291

9.3 per cent of the EWC representatives without a coordinator report having received more than five days of training compared to 16.3 per cent of those with a coordinator. While the unionisation of EWC representatives and the presence of coordinators are positively related to attendance at training events by EWC representatives, it is noteworthy that 39.3 per cent of EWC representatives had received no training in the three years prior to the distribution of the survey, a proportion that only falls to 38.1 per cent among unionised EWC representatives and to 32.7 per cent when a coordinator is present. In short, trade unions have a positive effect on training attendance, but have not yet achieved an adequate coverage among EWC representatives of a training provision.<sup>1</sup> The extent of this shortcoming is mitigated: Chapter 7 shows that the short tenure of many EWC representatives contributes to the limited attendance at training events, while Chapter 8 demonstrates that management may also restrict training opportunities.

The support provided by trade union organisations in terms of training is evident in the degree to which the EWC representatives feel that they have knowledge of their EWC agreement, the national law on EWCs and the Directive or Recast, the foundations of a training programme. Table 6.2, for example, demonstrates that unionised EWC representatives and EWC representatives with an EWC coordinator are more likely to either 'strongly agree' or 'agree' with the statement that they have a good knowledge of the EWC Directive compared to non-unionised EWC representatives and those without a coordinator: 43.4 per cent compared to 29.9 per cent; and 49.7 per cent compared to 39.5 per cent. Compared to non-unionised EWC representatives, unionised EWC representatives are also more likely to state that they have a good knowledge of national EWC law, 38.8 per cent compared to 26.3 per cent, and of their own EWC agreement, 65.2 per cent compared to 49.5 per cent. For knowledge on national law and the EWC agreement, the presence of a coordinator has a similar effect.

1. The high proportion of unionised EWC representatives and representatives working in conjunction with an EWC coordinator who have not attended a training event in the three years prior to the distribution of the survey may be the result of their attendance at courses before the three-year window. Chapter 7 examines the situation with regard to training in greater detail.

Table 6.2 Trade unions and the knowledge of EWC representatives

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>I have a very good knowledge of the content of the EWC Directive</b>							
All	8.2	33.2	28.2	22.6	4.1	3.8	1,340
Trade unionists	8.7	34.7	27.8	21.0	3.9	3.9	1,150
Non-members	5.6	24.3	30.4	31.4	5.0	3.3	1,868
EWC coordinator present	10.7	39.0	27.0	19.0	2.4	2.0	810
No EWC coordinator	6.0	33.5	32.2	23.2	3.5	1.7	276
<b>I have a very good knowledge of the content of the national law on EWC</b>							
All	7.2	29.8	29.3	25.1	4.6	4.0	1,331
Trade unionists	7.8	31.0	29.7	23.6	4.0	3.9	1,149
Non-members	3.4	22.9	27.4	33.7	8.0	4.7	186
EWC coordinator present	19.7	52.0	16.1	7.8	2.2	2.2	807
No EWC coordinator/	18.5	49.2	18.2	10.6	2.5	1.0	275
<b>I have a very good knowledge of the content of our EWC agreement</b>							
All	16.2	46.6	17.8	12.4	3.3	3.7	1,336
Trade unionists	17.1	48.1	17.1	10.9	3.1	3.8	1,140
Non-members	11.4	38.1	21.7	20.3	4.8	3.7	186
EWC coordinator present	19.7	52.0	16.1	7.8	2.2	2.2	806
No EWC coordinator	18.5	49.2	18.2	10.6	2.5	1.0	273

A trade union presence is thus positively related to a better knowledge of EWC representatives. Unionised EWC representatives and representatives with an EWC coordinator are more likely to have received training and to have attended more training events, and they consider their knowledge levels to be higher. This training may be beneficial for EWC work. Such training also responds to managerial criticisms that the inadequate quality of the exchanges at EWCs is due to shortcomings in the knowledge and preparation of EWC representatives (Pulignano and Turk 2016). Being a trade union member is more strongly related to attendance at training events and knowledge than the presence of an EWC coordinator. The coverage of the training provision from a trade union perspective, however, leaves much to be desired, as around 35.0 per cent of unionised EWC representatives and EWC representatives operating with a coordinator have attended no training associated with their EWC role in the three years prior to the survey.

## Trade unions and articulation

In addition to the provision of coordination and training, those who saw potential in the Directive envisaged that trade union engagement with EWCs would promote networking and articulation,<sup>2</sup> which, in turn, would contribute to overcoming some of the shortcomings of the legislation (Martinez Lucio and Weston 2000; Whittall et al. 2008). Chapter 5 showed that there is a marked variation among EWC representatives in the extent of their horizontal and vertical articulation, in part resulting from the adverse impact of managerial interventions. The purpose of this stage of the analysis is to establish whether trade union engagement promotes articulation and networking in the manner proposed by those who saw potential in the Directive.

Four introductory remarks are apposite. First, articulation may be jeopardised by a lack of resources (Köhler and González Begega 2010). All other things being equal, better articulation would be anticipated among unionised EWC representatives than their non-unionised counterparts, as the former can draw on the resources of the trade union. Second, case study evidence demonstrates that coordinators improve the intensity of communication between the EWC and the national level in both the top-down and bottom-up directions (Lecher et al. 2002; Weiler 2004), and the strategic content of communication (Pulignano 2007). Third, case study evidence also shows that trade union networks facilitate contact between EWC representatives that is independent of the functioning of the EWC, which intensifies communication and articulation (Telljohann 2005a). A purpose here is to establish whether large-scale survey evidence confirms findings drawn from case studies. Fourth, Chapter 5 showed that, in single channel systems, non-unionised EWC representatives have limited opportunities to articulate their EWC activities with institutions of labour representation within the Member State, while, in dual channel systems, non-unionised and unionised EWC representatives have similar opportunities to articulate with national works councils, but differences are likely to occur regarding engagement with trade unions.

Tables 5.1 and 5.3 illustrated the frequency of communication among EWC representatives from different countries between meetings. Table 6.3 extends this analysis by reference to trade union involvement. Respondents were asked whether they have frequent contact between meetings and whether the EWC helps in relating to representatives from other countries. When comparing unionised EWC representatives with their non-unionised counterparts, there is no difference in the intensity of the contact between meetings, suggesting that unionisation and non-unionisation among EWC representatives is not a source of discrimination within EWCs regarding the frequency of contact. The presence of an EWC coordinator, however, is related to the intensity of contact between meetings. EWC representatives operating in conjunction with a coordinator disagree less with the statement that they have frequent contact between meetings. The same EWC representatives also think that the EWC is more helpful in relating to other employee representatives in Europe than representatives

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2. No reference is made here to the impact of trade union alliances on articulation, as questions on this topic were not included in the questionnaire. It should be noted, however, that an intention of a trade union alliance is to intensify contact between EWC representatives and trade unions with representative responsibilities within the MNC (Waddington 2016).

Table 6.3 Trade unions and transnational communication

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>Between EWC meetings, I have frequent contact with EWC representatives from other countries</b>							
All	10.5	34.5	22.5	23.1	7.2	2.2	1,433
Trade unionists	11.1	34.1	23.2	22.3	7.0	2.3	1,226
Non-members	7.6	36.7	18.2	28.0	7.8	1.7	204
EWC coordinator present	11.9	37.9	23.6	20.1	5.4	1.2	849
No EWC coordinator	9.5	35.5	19.2	25.3	9.8	0.7	278
<b>My EWC helps me in relating to other employee representatives in Europe</b>							
All	29.1	56.6	9.1	1.7	0.7	2.8	1,329
Trade unionists	29.7	57.3	7.8	1.6	0.7	2.9	1,134
Non-members	25.8	52.7	16.0	2.4	0.8	2.3	192
EWC coordinator present	34.0	56.2	6.7	1.1	0.2	1.9	797
No EWC coordinator	23.9	59.8	10.1	2.8	2.0	1.4	251

without a coordinator: 90.2 per cent compared to 82.7 per cent. In short, where a coordinator is present, horizontal articulation is somewhat more intense.

To examine the relationship between the EWC and the national level, respondents were asked to comment on the frequency at which they ask for input from the national level during the course of their EWC work, and whether EWC representatives know what employees expect from them. These questions are thus concerned with vertical articulation. Table 6.4 presents the results. Regarding the frequency at which input is asked from the national level, unionised EWC representatives are more likely to agree ('strongly agree' plus 'agree') that they often ask for input from the national level than non-unionised representatives: 42.5 per cent compared to 34.6 per cent. Similarly, unionised EWC representatives are more likely to think that they know what the employees expect from them. This is most evident on the extent of disagreement ('disagree' plus 'strongly disagree') with the statement: no fewer than 23.3 per cent of non-unionised EWC representatives report that they do not know what employees expect from them, a proportion that falls to 15.7 per cent among unionised EWC representatives. Table 6.4 illustrates similar differences regarding the presence of an EWC coordinator. Representatives based in EWCs where a coordinator is present are more likely to report that they ask for more input from the national level and that they claim to know better what employees expect from them.

Based on the questions examined here, the unionisation of EWC representatives and the presence of EWC coordinators confirm much of the case study evidence mentioned

Table 6.4 Trade unions and vertical articulation

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>I often ask for input from the local works council, the trade union or the workforce on my work in the EWC</b>							
All	6.7	34.6	28.1	19.6	5.9	5.2	1,415
Trade unionists	5.9	36.6	28.2	19.6	5.6	4.1	1,211
Non-members	11.3	23.3	27.6	19.5	7.3	11.1	201
EWC coordinator present	7.9	38.0	28.5	16.7	4.8	4.0	843
No EWC coordinator	4.7	34.6	26.5	26.4	6.6	1.2	294
<b>I always know what the employees I represent expect from me</b>							
All	6.6	42.4	30.9	14.4	2.4	3.4	1,416
Trade unionists	6.3	43.2	31.7	13.3	2.4	3.2	1,212
Non-members	8.1	37.8	26.4	20.9	2.4	4.4	201
EWC coordinator present	8.4	45.1	30.8	11.2	1.9	2.7	841
No EWC coordinator	3.7	39.0	30.4	21.5	3.6	1.9	297

above. In particular, unionised EWC representatives and representatives with a coordinator were more likely to engage in more intense vertical articulation in the form of acquiring input from the national level, suggesting that union resources facilitated such acquisition. Similarly, the presence of a coordinator encouraged EWC representatives to establish what workers whom they represent want from their EWC engagement. While the unionisation of EWC representatives had little impact on horizontal articulation in the form of contact between meetings, the presence of a coordinator had a marked impact in assisting EWC representatives to relate to each other.

### Are EWCs more assertive with a trade union presence?

Unionised EWC representatives and the presence of a coordinator are viewed as important factors in promoting more assertive EWCs, in particular encouraging their development beyond mere information receivers to become active institutions of employee participation (industriAll 2012; UNI Europa 2011). Trade unions are viewed as promoting competences, skills and attitudes that enable EWCs to challenge management (Kotthoff and Whittall 2014: 240–243), no doubt explaining why BusinessEurope is keen to minimise trade union involvement in EWCs (2008). The survey asked EWC representatives whether they often challenged management over the information that is to be considered as confidential and whether they often refer to the EWC founding agreement to enforce their rights. While far from perfect, these two questions provide an insight into how assertive the EWC is in implementing its rights.

Table 6.5 Trade unions and assertive EWCs

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>The employee representatives often challenge management over what information is confidential</b>							
All	13.0	33.8	26.8	17.4	4.6	4.5	1,424
Trade unionists	14.4	34.1	25.1	17.6	4.3	4.5	1,219
Non-members	5.3	32.1	36.0	16.0	6.1	4.5	203
EWC coordinator present	14.2	35.1	24.2	17.4	4.8	4.3	864
No EWC coordinator	10.7	30.9	27.6	21.0	5.6	4.1	293
<b>Employee representatives at my EWC often refer to the EWC agreement to enforce our rights</b>							
All	4.7	31.3	31.3	19.2	3.3	10.2	1,295
Trade unionists	5.1	31.9	31.7	18.4	3.5	9.3	1,114
Non-members	2.7	28.3	28.3	23.3	2.1	15.3	177
EWC coordinator present	5.9	37.2	31.4	16.1	2.5	6.9	796
No EWC coordinator	2.4	25.0	30.9	28.0	4.5	9.2	269

Table 6.5 compares unionised EWC representatives with their non-unionised counterparts and shows that unionised representatives are more likely to say that they often challenge management over confidentiality, 48.5 per cent compared to 37.4 per cent. Unionised EWC representatives also refer to the EWC agreement to enforce their rights more often: 37.0 per cent compared to 31.0 per cent. Furthermore, EWC representatives at an EWC with a coordinator are more likely to challenge managerial definitions of confidentiality than representatives with no coordinator present, 49.3 per cent compared to 41.6 per cent, and refer to the agreement to enforce rights, 43.1 per cent compared to 27.4 per cent.

On the basis of these two measures, unionisation and the presence of a coordinator is related to an EWC being more assertive in challenging management. It should be noted, however, that unionisation or the presence of a coordinator is no guarantee that an EWC will challenge management, as contextual factors, prominent among which are industrial relations traditions and trade union strategies, influence the relationship (Pulignano 2005). Similarly, the skills and competence of both EWC representatives and managers influence the relationship between unionism and the capacity of the EWC to challenge management (Snook and Whittall 2013).

### Trade unions and internal EWC politics

Although EWC coordinators are generally mandated and appointed by an ETUF, they are often national trade union officers employed by the largest union in the country



where the company has most employees and/or its headquarters (Haipeter et al. 2019; Telljohann 2005b). The brief of every coordinator is to generate a consensus among EWC representatives involving common understandings and positions, often portrayed as a ‘European approach’ (EPSU 2001; UNI Europa 2011). Whether a consensus among EWC representatives constitutes a European approach is open to question. Although the presence of a coordinator could contribute to such developments, contextual factors are shown to intervene in the relationship between the presence of a coordinator and a consensus (Pulignano 2007). Similarly, the absence of unionised EWC representatives was a serious obstacle to the development of a European identity in Spanish case studies (Köhler and González Begega 2010). Undue influence on the EWC of representatives from particular nationalities, particularly those from the home country of the MNC, was highlighted as a likely outcome of EWCs by critics of the Directive (Streeck 1997) and is noted in several case studies (Kotthoff and Whittall 2014: 188–201).<sup>3</sup> Furthermore, several studies highlight the tension in the position of coordinators, most of whom are also national trade union representatives. For many coordinators, the national level appears to take the priority, which could impede their role of creating a European approach within the EWC (Haipeter et al. 2019: 234; Waddington 2011: 215).

The intention here is to establish whether the unionisation of EWC representatives or the presence of coordinators affects the generation of a consensus within the EWC. Table 6.6 shows the answers of EWC representatives regarding whether or not they always try to generate a common position and whether they have the feeling that some countries try to dominate the EWC. Comparing unionised and non-unionised EWC representatives reveals very limited differences, suggesting that unionisation of the representatives has, at best, only a limited influence on the activity of the EWC regarding reaching a consensus. Somewhat more pronounced differences are observed regarding the presence or absence of a coordinator: 73.5 per cent of EWC representatives with a coordinator report that they try to some extent to come to common positions compared to 63.8 per cent of those without a coordinator. Regarding the perception that EWC representatives try to impose their views on the entire EWC, there is very little difference between unionised and non-unionised EWC representatives and between representatives with and without an EWC coordinator, suggesting that, in many circumstances, the efforts of coordinators to achieve a consensus succeed, confirming the expectations of the ETUFs, but bringing into question case study evidence that particular national groups within EWCs may dominate proceedings (Kotthoff and Whittall 2014: 188–201).

To summarise, compared to their non-unionised counterparts, unionised EWC representatives are more likely to attend training events, to acquire more input from national institutions of labour representation in undertaking EWC duties, to try to reach a common position with other representatives at the EWC, and to be more knowledgeable about what employees of the MNC want from EWC involvement. Similarly, the presence of coordinators appointed by the ETUFs promotes improved horizontal articulation in the form of better relations between EWC representatives, a greater likelihood of reference to EWC agreements in pursuit of rights, and more

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3. For this reason, several EWC founding agreements stipulate the distribution of seats on the select committee in a manner that avoids undue influence from representatives of a particular nationality.

Table 6.6 Trade unions and consensus building

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>In the EWC, employee representatives always try to come to a common position with the representatives from all countries</b>							
All	11.9	56.2	19.9	7.6	1.8	2.6	1,332
Trade unionists	11.7	57.7	19.4	7.3	2.0	2.0	1,142
Non-members	13.2	48.8	22.0	9.3	0.7	6.0	187
EWC coordinator present	12.7	60.8	16.1	7.0	2.2	1.3	815
No EWC coordinator	11.2	52.6	25.0	8.9	0.8	1.6	279
<b>In the EWC, employee representatives from one or more countries try to impose their views on the other representatives</b>							
All	4.1	17.4	26.1	34.8	15.4	2.3	1,331
Trade unionists	4.6	16.5	25.9	36.4	14.6	2.0	1,140
Non-members	1.2	22.3	27.0	25.9	19.8	3.9	188
EWC coordinator present	5.1	17.5	24.7	36.2	15.6	1.0	813
No EWC coordinator	2.6	17.1	24.1	37.6	16.9	1.8	279

Note: These responses are only from those EWC representatives who had attended at least one meeting.

attempts to generate common positions among EWC representatives. A trade union presence in the form of unionised EWC representatives and coordinators appointed by the ETUFs thus seems to enhance aspects of EWC practice and supports the policies advanced by trade union organisations favouring unionised EWC representation and the appointment of an EWC coordinator for every EWC.

## Does involvement confer advantages to trade unions?

While relations between EWCs and trade unions are often portrayed in terms of the influence trade unions may exert over EWC practice and policy, EWCs could be expected to provide opportunities for unionists to secure trade union objectives. Most frequently cited in this regard are cases of corporate restructuring that have generated a transnational trade union response incorporating the EWC as an active partner (Haipeter 2006; Erne 2008). In more general terms, research has highlighted differences in trade union strategy and organisation (Kotthoff and Whittall 2014: 233–236; Steiert 2001), complications arising from the remit of EWCs to negotiate agreements (Pulignano 2005; Telljohann et al. 2009a), attempts by management to ‘capture and isolate’ EWCs (Royle 1999; Martinez Lucio and Weston 2000), and the limited legislative support for trade union involvement (Danis and Hoffmann 1995) as restricting the benefits that might accrue to trade unions from involvement in EWCs.

Notwithstanding the difficulties inherent in identifying universal trade union objectives that might be implemented with regard to EWCs, three broad policy areas are highlighted as benefits that may accrue to trade unions from EWC involvement: information; coordination and action; and recruitment and organising. Regarding information, the argument is that information released to the EWC may assist trade unions in developing a transnational perspective on the MNC (Hancké 2000; Lecher et al. 1999; Telljohann 2005a). It is far from clear that information available to employee representatives from sources other than EWCs, national works councils for example, is shared with the EWC, let alone trade unionists from other countries (Whittall et al. 2015). Furthermore, the absence of quality, timeliness and utility of the information made available at EWCs coupled with the impact of managerial restrictions on disseminating information beyond the EWC (Jagodziński and Stoop 2021) necessarily restricts the benefits that might accrue to trade unions on this count (see Chapter 4). For these reasons, the issue of information will not be examined further in this chapter.

EWCs can constitute added value to trade unions in forming an element of transnational networks through which representation and union action can be coordinated (Meardi 2004; Telljohann 2005b). The objectives of such transnational networks are defined by recent developments in industrial relations. In particular, the decentralisation of collective bargaining coupled with globalisation and the internationalisation of supply chains; the use of coercive comparisons between sites by managers of MNCs; and the development of European companies, which has been marked since the establishment of the European single market (Williams 2000; Greer and Hauptmeier 2016; Marginson 2000), all constitute significant challenges to trade unions that remain largely embedded within the nation state. Among the characteristics of EWCs that may be utilised by trade unions in this regard are the funding arrangements, which bring together EWC representatives at the expense of the MNC; the breadth of representation on the EWC; and the potential links between EWC representatives and national institutions of labour representation.<sup>4</sup>

Extant research, however, is far from positive. Case studies highlight differences in strategy between trade unions from different countries as weakening, if not undermining, transnational trade union networks involving EWCs; the absence of trade union involvement in many EWCs; and the fragility of such networks when confronted with events that have a disproportionately adverse impact on one or a limited number of countries represented in the network (Lecher et al. 1999; Kotthoff and Whittall 2014; Mählmeyer et al. 2017). Similarly, survey results suggested that, in 2007, EWCs were not a very effective means of promoting trade union coordination (Waddington 2011: 176). Company-based exceptions to this general trajectory, however, have been documented, particularly in the context of corporate restructuring. Transnational coordinated trade union activity involving EWCs when confronted by proposed or actual corporate restructuring took place at Vilvoorde in 1997 (Rehfeldt 1997), General Motors in 2000 and 2006 (Haipeter 2006), ABB in 2000 (Erne 2008: 128–156), Marks

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4. While it is beyond the scope of this book, it should be acknowledged that, for many companies, a point of reference of 'Europe' rather than 'global' is a limit. Furthermore, the number and influence of MNCs with a scope broader than Europe appears to be increasing (Van Appeldoorn 2000).

and Spencer in 2001 (EWCB 2001), Fiat in 2002 (EWCB 2003), Caterpillar in 2016 (Van den Bossche 2016) and SNCF in 2017 (Barnes 2017). These positive examples contrast with other case studies showing that coordinated action involving EWCs and trade unions failed to materialise during corporate restructuring, although discussions took place with the intention of instigating such action (Aranea et al. 2018; Pernicka et al. 2014). Case study evidence on General Motors and ABB also questions the positive conclusions mentioned above (Jagodziński et al. 2006; Jagodziński and Voss 2006). The objective here is to establish whether the positive company cases are indicative of a broader development towards trade union coordinated action or remain isolated cases.

Recruitment and organising is a more under-researched issue involving EWCs in trade union activity. The initial points of departure are clear: trade union density in Europe is now lower than at any other point since 1950 (Visser 2019), and many organising campaigns are directed towards MNCs on the grounds that the concerns of the workforce are likely to have a degree of uniformity (Pernicka and Aust 2007). One of the objectives of the trade union alliances established by UNI Europa to work in conjunction with EWCs, for example, is to promote organising (Waddington 2016). Evidence indicating the involvement of EWCs in trade union organising campaigns, however, is in short supply. In the majority of organising campaigns, the EWC is not involved. Furthermore, the 2007 survey reported that unionised EWC representatives did not think that the EWC was an effective means to promote recruitment and organising. Among the barriers to the engagement of EWC representatives and domestic works councillors in trade union organising campaigns are the presence of non-unionised EWC representatives, the perceived 'distance' between the EWC and potential members, issues of access to the sites where potential members work, and the absence of organising skills (Knudsen 2004; Connolly et al. 2017). In this context, the objective is to establish whether the views of EWC representatives have changed since 2007 and, if so, how?

## Transnational trade union coordination and action

Transnational trade union coordination and action are necessary prerequisites of a response from labour to the challenges of decentralised collective bargaining coupled with globalisation. As, by definition, EWCs cannot be global in scope, the focus here is on their role within Europe.<sup>5</sup> Table 6.7 focuses on the contribution EWC representatives think that the EWC can make to the organisation of trade union activities in Europe. Table 6.7 shows that 27.1 per cent of all EWC representatives agree to some extent that the EWC helps them in organising trade union activities, a lower proportion than those who disagree to a degree with the statement. The proportion of unionised EWC representatives who agree with the statement rises to 30.9 per cent, although more unionised EWC representatives disagree that work in the EWC helps to organise union activities. The presence of a coordinator also encourages EWC representatives to think that the EWC assists in the organising of union activities, with 30.4 per cent agreeing compared to 20.7 per cent who agree with the statement when there is no EWC

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5. It is acknowledged that several EWCs have led to the creation of world works councils (WWC), world company councils (WCC) or global works councils (GWC) as a response to this perceived limitation in many MNCs.

Table 6.7 EWCs and trade union activities

My work in the EWC helps me to organise union activities

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	3.9	23.2	32.5	24.8	6.5	9.2	1,294
Trade unionists	4.5	26.4	32.7	26.0	5.7	4.7	1,111
Non-members	0.2	4.3	31.9	18.1	11.1	34.5	180
EWC coordinator present	4.2	26.2	33.3	23.6	4.8	7.8	790
No EWC coordinator	3.6	17.1	27.3	31.2	11.3	9.5	271

Note: These responses are only from those EWC representatives who had attended at least one meeting.

coordinator. The tail of disagreement with the statement remains, as 28.4 per cent of EWC representatives with a coordinator do not think that the EWC helps in organising union activities. In short, fewer than one third of EWC representatives think that the EWC is helpful in organising union activities.

The 2007 survey asked whether the EWC was 'effective in coordinating', rather than 'helpful in organising', union activities. Comparisons between the two surveys should thus be treated with some caution. In 2007, however, 33.4 per cent of unionised EWC representatives thought that the EWC was effective ('very effective' plus 'effective') in coordinating union action across Europe.<sup>6</sup> This proportion is similar to that recorded for unionised EWC representatives in 2018 (30.9 per cent), and suggests that there has been no improvement in satisfaction with EWCs in 2018 regarding their role in union activities. It thus appears that, throughout the period 2007 to 2018, unionised EWC representatives are, at best, equivocal about the relationship between EWCs and union activities.

The case study evidence reviewed above suggests that it is during corporate restructuring that EWC and trade union coordination is most likely. As was noted in Chapter 4, more than 90.0 per cent of EWC representatives had experienced corporate restructuring in the three years prior to the distribution of the survey. Fewer than half of these EWC representatives (46.9 per cent) had successfully called for an extraordinary meeting to be held, or agreed with management that such a meeting be convened, in order to address issues arising from the restructuring. It is at these extraordinary meetings that action plans, including transnational strike action, may be devised that involve both the EWC and the relevant trade unions (for the example of General Motors, see Banyuls et al. 2008). The survey thus asked whether the extraordinary meeting was useful as a means of organising union action.

6. The range of responses among the 881 unionised respondents were: 'very effective', 5.0 per cent; 'effective', 28.4 per cent; 'neutral', 46.6 per cent; 'ineffective', 12.0 per cent; and 'very ineffective', 8.1 per cent. In 2007, there was no 'don't know' option.

Table 6.8 Extraordinary meeting as a means of organising union action

The extraordinary meeting was useful as a means of organising union action

	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	Meeting was not used for that purpose %	N
All	7.4	27.3	36.9	11.9	5.3	11.3	559
Trade unionists	7.6	28.5	36.2	11.4	5.6	10.6	490
Non-members	6.0	18.6	40.8	15.0	4.0	15.7	67
EWC coordinator present	9.3	26.7	36.7	10.9	4.6	11.9	378
No EWC coordinator	3.6	21.6	36.2	17.5	7.4	13.8	110

Note: These responses are only from those EWC representatives who had attended at least one meeting.

Table 6.8 presents the results from those EWC representatives who had been involved in an extraordinary meeting during a restructuring event, hence the lower values of N. Among these EWC representatives, 34.7 per cent thought that the extraordinary meeting was effective to some extent as a means of organising union action. Among unionised EWC representatives, this proportion rose to 36.1 per cent. In both of these instances, the proportion of EWC representatives expressing a positive view of the extraordinary meeting was higher than the proportion of those who thought that 'my work in the EWC helps me to organise union activities' (see Table 6.7). If an extraordinary meeting is convened when the MNC is undergoing restructuring, it would appear to be more useful than the plenary meeting as a means of organising union action, thus lending some support to the case study evidence that shows restructuring as prompting a coordinated EWC-trade union response. Two points, however, require further explanation. First, only a minority of unionised EWC representatives regard the extraordinary meeting positively as a means of organising union action. Given that 10.6 per cent of unionised EWC representatives state that the extraordinary meeting was not used for the purpose of organising union action, around half of the unionised EWC representatives were not satisfied with the extraordinary meeting as a means of organising union action. These data, of course, exclude those who were unable to, or did not, call an extraordinary meeting. Second, a significant minority of non-unionised EWC representatives (24.6 per cent) also regard the extraordinary meeting positively in the context of organising union action. While it is not possible to confirm any explanation of this finding, it would appear that non-unionised EWC representatives may observe the organisation of union action and view the extraordinary meeting as being effective in this regard. No question was included in the survey to examine this proposition further.

EWC representatives working in conjunction with an EWC coordinator are more likely to think that the extraordinary meeting was effective for organising union action than those without a coordinator: 36.0 per cent compared to 25.2 per cent. The impact of the presence of a coordinator is thus somewhat greater than the impact of the unionisation

of EWC representatives. The absence of a coordinator is associated with a stronger belief that the extraordinary meeting was ineffective. It would thus appear that EWC coordinators, who are, by definition, unionised, are likely to promote the organisation of union action through the extraordinary meeting.

The 2007 survey asked EWC representatives whether the extraordinary meeting was effective as a means of organising union action during corporate restructuring. Again, the questions in the 2007 and 2018 surveys are not directly comparable because, in 2018, but not in 2007, the option ‘meeting was not used for that purpose’ was included. In 2007, 29.7 per cent of all EWC representatives found the extraordinary meeting to be effective (‘very effective’ plus ‘effective’) for organising union action, 31.6 per cent found the meeting to be ineffective (‘very ineffective’ plus ‘ineffective’) and 38.7 per cent remained ‘neutral’. If those who responded ‘meeting was not used for that purpose’ are excluded from the 2018 data, comparable proportions for 2018 are 39.1 per cent found the extraordinary meeting to be effective, 19.6 per cent found the meeting to be ineffective and 41.3 per cent remained ‘neutral’.<sup>7</sup> On this basis, it would appear that there has been an improvement between 2007 and 2018 in the effectiveness of extraordinary meetings as a means of organising union action. The point remains, however, that only a minority of EWC representatives think that the extraordinary meeting is effective. Furthermore, more than half of the EWC representatives in 2018 were excluded from this analysis, as they did not convene a meeting or were prevented by management from calling such a meeting.

## Trade union recruitment and organising

While trade union membership is at a low ebb in the majority of Member States, there are wide-ranging reasons to suggest that EWCs will not be effective in promoting recruitment and organising. In particular, such reasons include that EWCs are not trade union bodies; that, formally, EWCs have no negotiating role through which terms and conditions of employment may be influenced; that they are often regarded by workers of MNCs as ‘distant’; that only a minority of workers are well informed about the EWC; that EWC representatives have limited access to the places where potential members are employed; and that information and consultation skills are not the same as organising skills. In several countries, particularly those where a dual channel system is in place, domestic works councils have been engaged in organising campaigns designed to increase density at already unionised sites (Behrens 2008; Wetzels et al. 2008), promoting interest in using EWCs to the same effect (Waddington 2016).

For this reason, the survey enquired whether EWC representatives thought that ‘my work in the EWC helps me in recruiting members for the trade union’. The results are tabulated in Table 6.9 and are strongly negative. Only 9.3 per cent of EWC representatives

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7. To calculate these figures, the 11.3 per cent of respondents who reported that the ‘meeting was not used for that purpose’ were excluded from the calculation, with the result that the value of N changed from 559 to 496. The number of respondents to each of the remaining categories ‘very effective’, ‘effective’, ‘neutral’, ‘ineffective’ and ‘very ineffective’ was thus expressed as a proportion of the recalculated value of N.

Table 6.9 EWCs and trade union recruitment

My work in the EWC helps me in recruiting members for the trade union

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	1.9	7.4	30.6	33.0	15.6	11.6	1,324
Trade unionists	2.2	8.5	32.2	35.1	15.7	6.2	1,138
Non-members	0.2	1.1	20.7	21.3	15.0	41.8	183
EWC coordinator present	2.7	8.1	30.9	32.3	15.2	10.8	779
No EWC coordinator	1.4	6.2	26.7	36.6	21.3	7.8	275

view the EWC as being helpful in recruiting trade union members to some degree, while almost half (48.6 per cent) disagree. A further 30.6 per cent are 'neutral' on this issue. Even among unionised EWC representatives, the number who disagree with the statement outnumber those who agree by five to one. There is also no marked change in this situation compared to 2007. In 2007, 10.4 per cent of EWC representatives thought that the EWC was effective for trade union recruitment, whereas 27.4 per cent took the opposite view: those holding a negative view thus outnumbered their positive counterparts by almost three to one.<sup>8</sup> The impact of EWC coordinators does not change the overall situation: only 10.8 per cent of EWC representatives working with a coordinator think that the EWC helps them in recruiting members for the trade union. In short, those involved in EWCs do not think that the institution is appropriate as a means of furthering trade union recruitment and organising.

## Conclusions

This chapter focused on the impact of two trade union policy preferences, the unionisation of EWC representatives and the presence of coordinators, as well as on aspects on EWC infrastructure and practice. Both the unionisation of EWC representatives and the presence of coordinators promoted attendance at training events, encouraged vertical articulation, particularly in the form of asking for input from the national level, and influenced the capacity of EWCs to challenge managerial interpretations of confidentiality and of the EWC founding agreement. In addition, the unionisation of EWC representatives is associated with greater knowledge of the national transpositions of the legislation and the content of the EWC founding agreement, qualities reportedly sought by managers responsible for EWCs within MNCs, while the presence of an EWC

8. In 2018, the question included a 'don't know' option, and respondents were asked whether they agreed or disagreed with the statement. In 2007, there was no 'don't know' option, and respondents were asked whether they thought that the EWC was effective or ineffective for trade union recruitment purposes. These differences necessitate that this comparison should be treated with some caution.



coordinator stimulates attempts to generate a common position within the EWC and leads to more intense communications among EWC representatives between meetings. On these counts, the two trade union policy preferences have a positive impact on EWC infrastructure and practice.

These positive impacts are qualified by data presented in this chapter demonstrating that more than a third of EWC representatives and a third of those working with a coordinator had not attended any training in the three years prior to the survey. Furthermore, around 20.0 per cent of unionised EWC representatives and those with a coordinator report that representatives from one or more countries dominated the EWC. If these qualifications are considered alongside the incomplete coverage of EWC coordinators (see Chapter 3) and the weak effects that the unionisation of EWC representatives and the presence of a coordinator have on the quality, timing and utility of information and consultation procedures at EWCs (see Chapter 4), it is apparent that trade union involvement in EWCs enhances EWC infrastructure and practice, but not to the extent of overcoming the limitations of the legislation.

The failure of the trade union policy preferences examined here in overcoming the shortcomings of the legislation supports the position of the critics of the Directive. The critics argued that the limitations of the legislation were so pronounced that trade union activity would be insufficient to remedy them (Keller 1995; Streeck 1997). Furthermore, as the 2018 survey data apply to post-Recast circumstances, it is apparent that the arguments advanced by the critics of the Directive also apply to the Recast: that is, the Recast is equally flawed and trade union activity is an insufficient remedy. The argument that EWCs may become extensions of national systems of industrial relations dominated by representatives from the home country of the MNC (Streeck 1997) also receives partial support from the data insofar as around 20.0 per cent of EWC representatives regard the EWC on which they serve as dominated by representatives from one or more countries. Those who saw potential in the EWC legislation argued that this potential could be realised through trade union activity. Advocates of this position will no doubt cite the improvements in EWC infrastructure and practice that arise from trade union involvement in EWCs. They must also acknowledge, however, that these improvements are inadequate in the context of ensuring that EWCs function as intended by European-level policy-makers as institutions engaged in information exchange and consultation.

The findings presented in this chapter allow for comment on the policy debate concerning EWCs. The data support the ETUC position on the revision of the Recast to the extent that trade union experts should participate in all EWC and select committee meetings (Appendix B, point 3). Even if it is assumed that coordinators can be found for all EWCs, which is far from certain, the adoption of this measure within the legislation would improve EWC infrastructure and practice but would not circumvent the fundamental flaws in the legislation.

For BusinessEurope, the findings are problematic. BusinessEurope believes that the Recast 'is biased in favour of trade unions, giving them undue legal recognition and a major role [in EWCs] that corresponds neither to their influence in Europe nor to the interests of workers themselves' (2008). This chapter has shown that trade unions do

have a role in EWCs, but, at present, this role is not a ‘major’ one. Indeed, the role of trade unions would necessarily have to be ‘major’ if trade union activity is to contribute to overcoming the limitations of the Recast. This chapter has also shown that the interests of workers are served by trade union involvement, again contradicting the statement of BusinessEurope. The marked contrast between the position of BusinessEurope and the findings of the survey are, of course, indicative of the contestation inherent in the development of EWCs reflected in the different strategic options pursued by BusinessEurope and trade union organisations. The statement of BusinessEurope is also at odds with the views of managers responsible for EWCs who wish to promote the acquisition of skills and knowledge among EWC representatives (Pulignano and Turk 2016).

The Recast acknowledged and legislatively endorsed the role of trade unions in the establishment of EWCs but formalised no role for trade union organisations in the functioning of EWCs. Subsequent evaluations by European policy-makers of the Recast failed to examine the roles undertaken by trade unions in the operation of EWCs (European Commission 2016a, 2018b). These reviews, however, identified limitations in the functioning of EWCs with regard to the links between European and national levels of information exchange and consultation, communication between the EWC and those it represents, and the training of some EWC representatives. On each of these counts, this chapter has shown that trade union involvement improves EWC practice. This situation presents European policy-makers with a dilemma. To legislate to broaden formally the role of trade unions in the operation of EWCs would improve the functioning of the institution but would mark a step away from the neoliberal policy agenda that has informed their approach to legislation. How this dilemma is addressed will have a marked influence on the future trajectory of the EWC institution. Adding to the nuance of this dilemma is the situation of trade union organisations. Although the contribution to EWCs made by trade unions is clear, the contribution that EWCs make to the achievement of trade union objectives is not. In short, trade union involvement improves EWC performance, but the return on trade union investment in EWCs in terms of recruitment and organising is minimal, unlike, for example, in Germany (Behrens 2008). How trade unionists address this dilemma will also influence the future trajectory of the EWC institution.



## Chapter 7

### Does training make a difference?

The two preceding chapters have shown that neither measures to articulate EWCs with other institutions of labour representation nor trade union activities have overcome the shortcomings of the Directive and Recast. Those who saw potential in the EWC legislation viewed training as a further means by which the impact of legislative shortcomings could be mitigated (Gohde 1995). In addition, it was acknowledged that, as EWCs were innovative institutions, training would be required for representatives in order that they may undertake a new range of functions specific to EWCs (Miller et al. 2000). While it was recognised that negotiation and representation skills were, to a degree, transferable from national practice, initially language training, knowledge of different industrial relations systems, intercultural dialogue and training in the particulars of EWC legislation were all cited as specific to EWC participation and not generally available through national trade union training programmes (Stirling and Miller 1998; Miller 2002; Gilman and Marginson 2002). More recently, emphasis has been placed on training as a means of generating trust, creating transnational identity, promoting solidarity and establishing transnational communication systems among and between EWC representatives (Mählmeyer et al. 2017; Tully 2004; Föhrer and Erne 2017). This chapter examines the impact of training on the skills of EWC representatives and the performance of EWCs.

It was a source of considerable disappointment within trade union organisations that the Directive made no reference to training or the specific requirements of EWC representatives (Danis and Hoffmann 1995; Buschak 1999). Only Article 4 of the Dutch transposition of the Directive, *Wet op de Europese ondernemingsraden* (European Works Council Act, 1997), included an explicit training provision for EWC representatives.<sup>1</sup> In an apparently contradictory action, the Commission acknowledged the training requirements of EWC representatives in opening budget line B3 4004/B to provide financial support for the training of EWC representatives by trade union organisations. More than an estimated €100 million has been provided in support over 20 years through this and other budget lines.<sup>2</sup> While the extent of this support may

1. Article 4 of the Dutch transposition of the Directive states that '[i]n so far as is reasonably necessary for exercising their functions, they [EWC representatives] shall be afforded the possibility – during working hours and with their pay guaranteed – of taking part in reciprocal consultation and deliberations with other persons on matters concerning the performance of their duties and of undergoing education and training'.
2. During the 1990s, more than €10 million was spent annually on budget lines concerned with 'information, consultation and participation of representatives of undertakings'. After about 2000, the annual budget was of the order of €6 million to €8 million. These data are detailed in the various calls for proposals issued by the Commission. It should be noted, however, that all these sums were not spent exclusively on training, hence the estimate of €100 million. The establishment of networks, for example, was also funded through these budget lines.

have mitigated some of the disparities in resources between trade unions organisations, the opportunities for training among EWC representatives were initially uneven, as they were largely founded on national arrangements and were dependent upon the attitude of management towards training within each EWC. With EU enlargement, these disparities became more marked, as trade union training provisions in CEE were in the process of adaption to the market economy, were not yet embedded in industrial relations systems and were subject to marked limits in resources due to the relative lack of funds available to trade unions.

To address the absence of any reference to the right to training in the Directive, trade union organisations sought to include training provisions in EWC founding agreements. Initial research on these agreements indicated that between 23 per cent (Carley et al. 1996: 13) and 35 per cent (Marginson et al. 1998: 68) of Article 13 agreements included training provisions for EWC representatives. By 2005, the proportion of 703 'active' Article 13 and Article 6 agreements that made explicit provision for the training of EWC representatives had risen to 46 per cent (Cox 2005: 69), although only 28 per cent of 784 agreements extant in 2006 were reported as providing EWC representatives with access to training (Kerckhofs 2006: 61). Among the respondents to the 2007 survey, 56.3 per cent reported that the EWC agreement that formed their frame of reference included an entitlement to training,<sup>3</sup> while 62.9 per cent of all respondents had attended at least one training event specific to their role as an EWC representative (Waddington 2011: 133). The most likely source of training in 2007 was from 'my union's education and training department', followed by training from 'a service organisation/consultancy associated with trade unions' and then 'a pan-European trade union organisation' (Waddington 2011: 134).<sup>4</sup>

BusinessEurope expressed no initial comment on the absence of training provisions from the Directive. At the EU-level conference held during April 1999, BusinessEurope spokespersons and managers with responsibility for EWCs within MNCs expressed doubts about the skills and capabilities of EWC representatives regarding strategic corporate decision-making (Kerckhofs 1999b), a view confirmed elsewhere by managerial sources (Lamers 1998; ORC 2007). The argument advanced was that the absence of appropriate skills slowed corporate decision-making. This argument constitutes a case for extended training provisions. As noted above, managers with responsibility for EWCs were prepared to sign EWC founding agreements that included training provisions as a means of addressing the perceived skills and capacity shortfall. Reflecting the congruence between the preference of trade union organisations for legislative underpinning to training provisions and the agreement by many managers within MNCs that training provisions be included in EWC founding agreements, a joint statement by the social partners entitled 'Lessons learned on European Works Councils' stated that 'investing in language as well as technical/content training helps to

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3. A further 23.4 per cent of all respondents indicated that their agreement provided no entitlement to training and 20.3 per cent did not know if such an entitlement existed.

4. Among all EWC representatives, 44.7 per cent had attended training provided by their national union's education and training department, 18.7 per cent training provided by a service organisation or consultancy associated with trade unions, and 13.5 per cent training provided by pan-European trade union organisations.

optimise the functioning of the EWC and to reduce overall functioning costs. Ensuring the efficiency of such training actions is essential' (ETUC et al. 2005). At this juncture, however, BusinessEurope opposed any revision of the Directive, implying that any solution to the absence of training provisions should be sought on a company-by-company basis through EWC founding agreements, in practice ensuring that managers exercise control over the training provision.

When the revision of the Directive became more likely during 2007-2008 (see Chapter 2), two further developments affected the views of policy-makers on training. First, the preparatory study for an impact assessment of the Directive requested and endorsed by the Commission reported that managers thought that legal and financial training increased clarity among representatives regarding their role and responsibilities within EWCs (EPEC 2008). Second, a further joint statement by the social partners promoted training as a means of improving the effectiveness of EWCs (ETUC et al. 2008), although a letter from the Secretary General of BusinessEurope to the EU Commissioners' Heads of Cabinet reiterated that, while training should properly 'reinforce the means available to members of EWCs', their 'power should be confined within the company' (de Buck 2006). In short, training was identified by the social partners as an issue that was central to the development of EWCs, but there was no consensus on how the issue should be addressed in policy terms.

In light of the evidence favouring a training provision and encouraged by some alignment among the social partners, European policy-makers introduced a 'right to training' in Article 10(4) of the Recast, which states:

Insofar as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

This right was elaborated by recital 33, which states that:

[...] employees' representatives must report to the employees whom they represent and must be able to receive the training they require.

European policy-makers thus remedied their error in excluding a training provision from the Directive. Indeed, by 2010, the Report of the Group of Experts conducted at the behest of the Commission claimed that the issue of training was 'not controversial' (European Commission 2010b: 43). In the light of the history of training provisions within EWCs, this claim was bold in the extreme. As this chapter demonstrates, this claim is also optimistic with regard to developments subsequent to the Recast.

The inclusion of a right to training in the Recast did not appear to have a direct effect on EWC founding agreements. In particular, the inclusion of Article 10(4) on training in the Recast failed to accelerate the rate of inclusion of training provisions in EWC founding agreements (De Spiegelaere and Waddington 2017). By 2015, however, 74 per cent of Article 6 agreements and 55 per cent of Article 13 agreements included provisions for EWC representatives to attend training (De Spiegelaere and Jagodziński

2015: 58). Of these agreements, 53 per cent included a general clause on training and 50 per cent of these specified the availability of language training (De Spiegelaere and Jagodziński 2015: 58). In other words, the increased inclusion of training provisions in EWC founding agreements appears to result from a learning curve among the signatories to agreements rather than a direct effect of the Recast. This is confirmed by managers responsible for EWCs, only 8 per cent of whom indicated that new training arrangements had been introduced as a direct result of the Recast (Waddington et al. 2016: 58). The higher proportion of EWC agreements containing training provisions has not reduced managers' criticisms of EWC representatives. In their view, EWC representatives' inadequate training in languages, skills and understanding business slows down corporate decision-making (Waddington et al. 2016: 36–38) and as an obstacle to effective transnational dialogue (Pulignano and Turk 2016). In practice, managers responsible for EWCs within MNCs want more training for EWC representatives. The inclusion of a right to training has also not resolved the issue of the quantity of training required for EWC representatives (CAC 2018a).<sup>5</sup>

This chapter addresses these issues by reference to the survey results in four sections. The first section examines the extent of training available to EWC representatives, while the second assesses the selection of the training provision, the composition of the training cohort and the content of training received by EWC representatives. The third section discusses whether training is effective in improving the performance of EWC. The fourth section identifies the demand for further training from EWC representatives. The central argument of the chapter is that a wide-ranging training provision is available to EWC representatives that enhances skills and imparts knowledge relevant to EWC performance. This training, however, does not markedly improve the performance of EWCs on the core activities of information exchange and consultation, suggesting that training is insufficient in overcoming the shortcomings of the legislation in these areas.

## Extent of the training provision

An initial central question regarding training provision is: do EWC representatives receive training; if so, how much; and, if not, why not? The survey asked respondents to state the number of days of training they had received for their work as EWC representatives during the three years prior to the survey. Table 7.1 presents the results.

Table 7.1 shows that 39.1 per cent of all respondents reported that they did not attend any training events specific to their EWC duties in the three years prior to the distribution of the survey. This proportion is higher than the 23.0 per cent of EWC representatives who had received no training reported by the evaluation study of the Recast endorsed by the Commission (European Commission 2016b).<sup>6</sup> The survey responses from 2018,

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5. For example, a case brought before the Central Arbitration Committee (CAC) in the UK more than 10 years after the adoption of the Recast centered upon the quantity of training required. The President of the SNB of Hewlett Packard argued that more training was required in order to complete the negotiations to set up an EWC. This view was supported by UNITE, the trade union involved. In contrast, the company argued that some training had already been made available to members of the SNB and thus more training was not required.

6. This study should be treated with great caution, as it comprised only 26 respondents to the question on training.

Table 7.1 Training received during the past three years

	No training %	Up to 1 day of training %	2 to 3 training days %	4 to 5 training days %	More than 5 training days %	Don't know %	N
All	39.1	12.8	24.5	9.1	12.3	2.3	1,419
Office holders	26.2	11.6	29.2	10.3	21.0	1.6	488
EWC members	44.4	15.0	22.6	8.2	7.7	2.2	775
Trade unionists	37.9	12.6	23.8	10.2	13.2	2.3	1,213
Non-members	45.4	13.9	28.4	3.0	6.9	2.4	203
EWC coordinator present	32.5	14.0	25.5	10.1	16.3	1.6	844
No coordinator	37.6	12.5	27.5	10.9	9.3	2.2	292
Article 13	42.2	14.0	20.7	9.3	11.9	2.0	446
Article 6	37.8	12.2	26.2	8.8	12.4	2.5	966
EWC representatives from:							
Nordics	36.6	17.8	18.7	10.0	14.1	2.9	196
CMEs	36.1	9.4	25.7	11.2	16.0	1.5	519
MMEs	41.8	11.9	26.8	8.0	8.3	3.3	320
LMEs	40.7	17.3	21.5	7.1	12.6	0.8	125
EMEs	41.4	12.7	24.8	7.5	10.2	3.3	104

however, are consistent with those from 2007, when 36.1 per cent of all representatives had not attended a training course for EWC activities (Waddington 2011: 133). It would thus appear that the Recast has had no significant impact on the extent of training among EWC representatives, a result that is consistent with the finding that the Recast did not accelerate the rate at which training provisions were included in EWC founding agreements (De Spiegelaere and Waddington 2017).

An explanation of why EWC representatives had not attended training events, however, is not straightforward. The above-mentioned evaluation study of the Recast stated three reasons that may contribute to the absence of training: the EWC had been recently formed or the EWC representative had recently taken up the post, and training programmes had yet to be implemented; EWC representatives did not request training; and difficulties were encountered in securing access to training due to the reluctance of managers to grant permission (European Commission 2016a). The first of these reasons can be examined by reference to the length of tenure of the EWC representatives.<sup>7</sup> Among the EWC representatives who had not attended a training event, 28.1 per cent had been in post for two years or less, compared to 29.0 per cent who had been in post for between two and five years, 29.4 per cent in post for between five and 10 years, and 13.5 per cent in post for more than 10 years. The impact of the length of tenure, at best,

7. This approach allows investigation of the impact of turnover among EWC representatives, which may also contribute to the low take-up of training opportunities.



thus explains why about a quarter of EWC representatives have not attended a training event, although it is clear from the length of service of EWC representatives who had not attended training that factors additional to the length of service are integral to any explanation of the absence of training.

The second reason advanced to explain the absence of training was that there was no demand from EWC representatives. This reason was assessed by reference to the training needs reported by EWC representatives.<sup>8</sup> The responses here were clear-cut. Representatives who had received no training for their EWC duties were much more likely to report that they required training on all topics (34.8 per cent) than those who had already received training in the three years prior to the distribution of the survey (8.3 per cent). The argument that there is no demand for training among EWC representatives can thus be dismissed.

Similarly, the impact of management on training provision is also limited. Among the EWC representatives who had not attended a training event, only 6.1 per cent reported that central management and 3.7 per cent reported that local management opposed the EWC. Furthermore, these managerial proportions were lower than those reported by EWC representatives who had attended training events.<sup>9</sup> Management opposition to training cannot thus explain why a large proportion of EWC representatives received no training in the three years prior to the distribution of the survey. In short, the reasons for the absence of training of EWC representatives advanced in the evaluation report explain, at best, a minority of the cases.

Among those in receipt of training, there is considerable variation regarding the quantity of training. No fewer than 12.8 per cent of EWC representatives had received no more than one day's training, whereas 24.5 per cent had received between two and three days. More positively, 21.4 per cent of respondents had attended four or more days of training in the three years prior to the distribution of the survey.<sup>10</sup>

Consistent with the findings of the 2007 survey is the greater extent of training utilised by office holders compared to EWC members. In particular, in 2018, 72.2 per cent of office holders reported that they had attended a training event compared to 53.4 per cent of EWC members. Furthermore, office holders were likely to attend more training events than EWC members. The concentration of the training provision on office holders is anticipated, as it is the office holders who are vital to the functioning of the EWC.

Trade union organisations provide much of the training that is available to EWC representatives. It was thus expected that trade unionists would be more likely to receive training than their non-unionised counterparts. The survey supports this expectation,

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8. The survey asked EWC representatives to indicate their training needs from the list of 13 topics. Details of these topics are provided in the section below on training needs. The key point for the analysis here is that there were 13 topics and that the respondents could select as many of the options as were appropriate.

9. Among the EWC representatives who had received training, 2.4 per cent reported opposition from central management and 1.6 per cent from local management.

10. Among all respondents to the survey, 2.3 per cent gave an answer of 'don't know' in response to whether they had attended a training event in the three years prior to the survey.

although the difference is not marked, suggesting that many non-unionists can secure places on training courses. In this context, the provision of training courses to entire EWCs may contribute to the training provision of non-unionists. The presence of an EWC coordinator is more influential on attendance at training events than unionisation. Among EWC representatives with a coordinator present, 65.9 per cent have received training, whereas 60.2 per cent of those without a coordinator are in the same position. Furthermore, the presence of a coordinator is also associated with a higher number of training days. An explanation of the absence of training among EWC representatives additional to those provided in the evaluation report may thus be the absence of a coordinator at the EWC.

It was mentioned above that, in 2015, Article 6 agreements were more likely to include a training provision (74 per cent) than Article 13 agreements (55 per cent) (De Spiegelaere and Jagodziński 2015: 58). This pattern of occurrence is replicated in the attendance of EWC representatives at training events, albeit with less marked differentiation, with representatives covered by an Article 6 agreement being more likely to have attended training (59.7 per cent) than their counterparts working within Article 13 (55.8 per cent) agreements. Furthermore, the ranking of the two variants of EWC is maintained regarding the total number of training days, with representatives covered by Article 6 agreements more likely to attend longer or more frequent training sessions. In this instance, it thus appears that the absence of a requirement to amend Article 13 agreements in order to comply with the right to training included in the Recast is associated with a more restricted training provision among EWC representatives working within the framework of Article 13.

The relative absence of resources available to trade unions from the new Member States does not appear to limit the access to training of EWC representatives from these countries, suggesting that EWC agreements on training are universally applied. In particular, 41.4 per cent of EWC representatives from emerging market economies had not attended a training event during the three years prior to the survey, a proportion that compares favourably with EWC representatives from mixed market economies and is comparable with representatives from liberal market economies. It is noteworthy, however, that EWC representatives from coordinated market economies and Nordic countries are the most likely to have attended training events totalling four or more days.

## **Selection, cohort composition and content of training**

In addition to the extent of the training provision available to EWC representatives, there are three interrelated issues that may be contested with regard to the training provision. The first concerns the selection of the training provider: in practice, does the responsibility for selecting the training provider fall to management, EWC representatives, a combination of both, or another party? A second issue concerns the distinction drawn at the outset of this chapter between training for skills necessary to undertake EWC duties and training to promote transnational labour action. The former focuses on the legislative framework, rights and duties, whereas the latter is concerned

with the generation of trust, identity and solidarity among EWC representatives. Trade union organisations and many EWC representatives have interests in both of these aspects of training provision. Management, however, focus on training for skills to undertake EWC duties, as it is the absence of these skills among EWC representatives that managers think slow corporate decision-making.

A third issue concerning the training provision that may be contested is the composition of the training cohort. This issue is related to the provider and the content of the training. Language training, for example, is more likely to take place one-on-one between trainer and EWC representative than training intended to generate solidarity. Similarly, training provided by a trade union is likely to comprise EWC representatives in membership of that trade union, whereas training provided by training organisations may be conducted on a 'by EWC' basis: that is, for all members of a single EWC. The survey of 2007 showed that EWC representatives were three times as likely to have been trained on EWC matters by their trade union than by a training organisation, suggesting that the majority of training was available on a 'by union' rather than a 'by EWC' basis (Waddington 2011: 136). In turn, this suggests that the development of informal dialogue, an EWC identity and solidarity was limited by the composition of the training cohort, as training 'by union' does not bring together all the representatives from a single EWC. This section addresses these issues in three stages. The first stage identifies who selects the training provider, while the second determines the composition of the training cohort. The third stage assesses the content of the training provision.

## **Selection of the training provider**

As a means of establishing how the selection of the training provision is controlled, the survey asked whether respondents attended training from a provider selected by management or from a provider selected by employees.<sup>11</sup> Responses to these questions allow the identification of the five variables utilised in Table 7.2: training provider selected only by EWC representatives (46.7 per cent), training provider selected only by management (8.9 per cent), training provider selected by both EWC representatives and management (9.3 per cent), training provider selected by neither management nor EWC representatives (31.5 per cent), and training for which the party responsible for selecting the training provider was not known (3.7 per cent). It should also be noted that 31.5 per cent of EWC representatives reported that neither EWC representatives nor management selected the training provider. It is possible that trade union organisations, or institutions known to members of the EWC selected the training provision in these circumstances. Whatever the case, the data indicate that management have some influence on the selection of training events for EWC representatives, but this influence is marginal compared to that of the EWC representatives. In the case of training providers selected by neither management nor EWC representatives, a higher proportion of training providers were selected by other parties than those selected only by management, revealing that these other parties were more influential than management in this regard.

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11. Respondents could select one, both or neither of these options.

Table 7.2 Does the selection of the training provider make a difference?

	Training provider selected only by EWC representatives %	Training provider selected only by management %	Training provider selected by both EWC representatives and management %	Training provider selected by neither management nor EWC representatives %	Don't know %	N
All	46.7	8.9	9.3	31.5	3.7	890
Up to 1 day	32.2	9.0	3.1	51.6	4.1	184
2 to 3 days	50.5	10.2	11.2	25.8	2.3	327
4 to 5 days	51.0	6.6	9.2	30.2	3.1	139
More than 5 days	58.5	9.2	12.7	18.1	1.5	204
Trade unionists	46.6	8.9	9.7	31.6	3.2	777
Non-members	47.3	8.9	6.2	31.1	6.5	112
EWC coordinator present	46.7	8.9	12.0	29.7	2.6	590
No coordinator	52.8	10.1	5.5	27.5	4.0	178
Hostile relations*	41.4	15.7	16.3	18.1	8.6	58
Neutral	43.4	7.7	5.1	43.2	0.6	153
Non-hostile relations	48.8	8.4	9.9	29.8	3.0	639

Note: \* The survey asked whether EWC representatives thought that 'the relationship between management and EWC representatives can best be described as hostile'. Responses to this question included 'strongly agree', 'agree', 'neither agree nor disagree', 'disagree' and 'strongly disagree'. EWC representatives assigned to 'hostile relations' responded either 'strongly agree' and 'agree', to 'non-hostile relations' responded 'disagree' and 'strongly disagree', and to neutral responded 'neither agree nor disagree'.

Table 7.2 shows that, where EWC representatives select their own training provider, they are more likely to have received four or more days' training. Conversely, when management select the training providers, it is more likely that the EWC representative will have attended fewer training days, suggesting that, while management may cite an absence of training as slowing down corporate decision-making, they are reluctant to provide a remedy to this perceived problem through long-term or regular training. The majority of EWC representatives who attended no more than one training day, however, reported that their training provider was selected by neither EWC representatives nor management. Furthermore, if the EWC representatives choose the training provider, they are likely to opt for more training days.

Surprisingly, the unionisation of EWC representatives appears to have no marked influence on who selects the training event. Similarly, the presence of an EWC coordinator does not significantly alter the personnel involved in the selection of training events, although both EWC representatives and management are more likely to be involved in the selection when there is no EWC coordinator present. Where EWC representatives perceive hostile relations with management, management are more likely to be involved in the selection of the training events than when relations are not hostile, suggesting that managerial trust of EWC representatives impinges on the selection of training

opportunities or that management in such circumstances use access to training to exert authority over the EWC. Irrespective of any hostility between the parties, the principal method of selection is only by EWC representatives.

## Composition of the training cohort

A second issue that influences the training provision concerns the composition of the training cohort. In this regard, the survey differentiated between individual training, inter-company training and single EWC training. Individual training was identified as one-on-one training between a trainer and an EWC representative. It is assumed that most individual training will cover specialist topics such as language training or issues specific to the role of the EWC representative.<sup>12</sup> Inter-company training involves a training cohort drawn from a number of companies. The advantage of such training is that it allows EWC representatives to compare practices between EWCs, may act to limit the development of ‘company egoism’ among EWC representatives and may create space for networking among EWC representatives (Miller 1999). Inter-company training is unlikely to promote solidarity, trust and a unified identity among representatives from the same EWC. Furthermore, inter-company training may promote national perspectives among representatives rather than transnational approaches (Tully 2004). A third form of training provision by reference to the composition of the training cohort is single EWC training, which involves all members of a single EWC. This form of training promotes informal dialogue between members of the EWC and may assist in the development of trust, identity and solidarity within the EWC (Steiert 2001; Mählmeyer et al. 2017). Furthermore, such training may result in a detailed action plan for the EWC to pursue (Miller 2002).

Table 7.3 presents the results on the composition of the training cohort. The results from all EWC representatives show that single EWC training was attended by 58.0 per cent of representatives compared to 39.5 per cent attending inter-company training and 21.0 per cent attending individual training. Emphasis within the overall training provision had thus changed since 2007 when inter-company training provided by trade unions was three times as likely as single EWC training (Waddington 2011: 136).

Office holders are more likely to receive training comprising the three types of cohort than EWC members. While this result is anticipated for individual training, given that such training allows office holders to develop specialist skills appropriate to their position on the EWC, it is unclear why this should be the case for single EWC training when the expectation is that all representatives who serve on the EWC attend. It is also noteworthy that more than 40.0 per cent of EWC members did not attend a single EWC training event during the three years prior to the distribution of the survey, indicating marked limits to the development of identity and solidarity within the EWC by means of training.

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12. An indicator of the validity of this assumption is that EWC representatives who had attended individual training were more likely than the average (by 19.3 percentage points) to state that they had undergone language training.

Table 7.3 Training cohort

	Individual training			Inter-company training			Single EWC training			N
	Yes %	No %	Don't know %	Yes %	No %	Don't know %	Yes %	No %	Don't know %	
All	21.0	77.2	1.9	39.5	58.0	2.6	58.0	39.2	2.8	890
Up to 1 day	14.7	82.3	3.0	24.3	71.5	4.3	50.0	46.2	3.8	184
2 to 3 days	18.1	80.9	1.0	35.1	64.2	0.8	56.9	41.7	1.4	327
4 to 5 days	21.2	78.5	0.3	45.9	54.1	0.0	61.9	36.8	1.3	139
More than 5 days	33.2	66.4	0.4	64.3	34.2	1.5	71.1	28.2	0.7	204
Office holders	26.3	73.0	0.7	46.1	52.3	1.6	59.8	39.0	1.2	367
EWC members	17.3	81.0	1.7	34.9	62.9	2.2	56.4	40.5	3.1	441
Trade unionists	22.7	75.9	1.4	41.4	56.5	2.1	57.8	39.9	2.3	777
Non-members	10.2	85.0	4.8	26.7	67.9	5.4	59.7	34.8	5.5	112
EWC coordinator present	22.2	76.0	1.7	44.0	54.0	2.0	62.4	35.6	2.0	590
No coordinator	24.9	74.3	0.9	32.1	66.0	1.9	53.2	43.9	2.9	178
EWC representatives from:										
Nordics	15.0	83.2	1.8	47.9	49.9	2.2	54.9	43.3	1.8	128
CMEs	31.1	67.6	1.3	39.7	59.4	0.9	58.8	39.6	1.6	331
MMEs	21.4	76.8	1.8	28.3	68.7	3.0	64.4	32.4	3.3	204
LMEs	5.6	92.7	1.7	48.8	46.8	4.4	52.6	43.0	4.4	75
EMEs	15.0	79.5	5.5	53.4	41.9	4.7	43.1	52.8	4.1	152

As expected, trade unionists are more likely to attend inter-company training than non-members, as inter-company training is the predominant form of training offered by national trade unions for their members. More surprisingly, union members are also much more likely to have attended individual training events. This may reflect the predominance of trade unionists among office holders, individual sessions between trade unionists and full-time officers on EWC matters, or greater language training opportunities for trade unionists. Regarding single EWC training, there is no difference between unionists and non-members in the rate of attendance. The presence of a coordinator influences the composition of the training cohort. Specifically, EWC representatives are more likely to have attended events based on inter-company and single EWC training when a coordinator is present, suggesting that coordinators channel and promote information about such training to EWC representatives.

An analysis of EWC representatives' countries of origin reveals much variation in the composition of the training cohort. With regard to individual training, for example, EWC representatives from liberal market economies are the least likely to have participated in such training. This may reflect the number of native English speakers among the liberal market economy respondents, and the fact that English is used as the working language of many EWCs. Similarly, EWC representatives from mixed market economies are the least likely to have attended inter-company training; however, they are the most likely to have attended single EWC training. It is not apparent why representatives from emerging market economies are the least likely to participate in single EWC training, as invitations to such events would be distributed to the entire EWC.<sup>13</sup>

## Content of training

The content is a third issue central to the training provision examined here. For the purposes of this analysis, distinctions are drawn between training for the development of knowledge, skills and attitudes. In this context, knowledge training focuses on the comprehension of the legal framework and the subject matter on which the EWC has a right to be informed and consulted; skills training may involve language tuition, or courses on organising communication, understanding financial statements or anticipating change in MNCs; and attitude training may embrace trade union values, intercultural differences and the development of identity and solidarity. The EWC survey asked respondents whether they had attended training events on 13 different topics. These topics were grouped into five different clusters: 'EWC basics', understanding the EWC legal framework, the EWC agreement and the definition of transnational and learning about ways in which the union can support the EWC; 'communication', learning how to organise a communication network and understanding industrial relations in different countries; 'management', learning how to deal with management, including with respect to negotiation skills and confidentiality obligations, and understanding the strategies of MNCs; 'skills', learning other languages and understanding financial data;

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13. Anecdotal evidence suggests that a reluctance on the part of management to release EWC representatives so that they can attend training events may contribute to this situation, but there is no evidence within the survey to confirm this hypothesis.

Table 7.4 Content of training

Cluster		Attended %	Individual %	Inter-company %	Single EWC %
EWC basics	Understanding the EWC legal framework	59.2	73.4	67.3	64.3
EWC basics	Understanding which issues are transnational	50.5	54.4	62.4	56.7
EWC basics	Understanding the limits and the potential of the EWC agreement	53.9	61.9	62.3	62.4
EWC basics	Learning about trade union support to the EWC	36.2	44.6	50.3	38.9
Communication	Understanding workers' representation in different countries	35.4	44.2	43.2	41.7
Communication	Learning how to organise communication and networking in the EWC	30.8	41.5	40.1	35.9
Management	Learning how to deal with confidential information	40.4	52.1	51.1	45.7
Management	Learning how to negotiate with management	28.3	40.5	31.9	30.6
Management	Understanding multinational company strategies	20.7	31.5	26.5	26.0
Skills	Learning other languages to communicate in the EWC	25.9	46.8	28.8	29.1
Skills	Learning how to read financial information	29.5	36.8	36.5	33.8
Broader agenda	Learning about what the EWC can do regarding health and safety or environmental issues	22.0	29.7	27.5	27.0
Broader agenda	Learning about what the EWC can do regarding equal opportunities	18.6	25.3	24.2	24.0
N		889	183	381	505

and the 'broader agenda', learning about what the EWC can do regarding health and safety, the environment and equal opportunities.<sup>14</sup> Table 7.4 identifies the proportion of EWC representatives who attended a training event that covered each of these topics during the three years prior to the distribution of the survey.

Most EWC representatives indicated that they had attended training that covered the basics of the EWC. Three of the topics with the largest proportion of attendees at training events appeared in this cluster. Training on trade union support for the EWC was the outlier within this cluster with 36.2 per cent attendance, in part reflecting the impact of non-members among the respondents. Among trade unionists, 39.0 per cent attended such training compared to 18.9 per cent of the non-members. Training on topics within the communication cluster was also fairly well attended with more than

14. The grouping of the topics into clusters was cross-checked by a factor analysis using a promax rotation.



30.0 per cent of respondents having completed courses on one of the two topics. It is no surprise that training covering worker representation in different countries figures large in the training agenda, as many early misunderstandings within EWCs arose from the assumption that all representatives had similar, rather than very different, underpinnings to their representative positions (Gohde 2005). Such training has also been shown to promote transnational understanding, cooperation and action (Martinez Lucio and Weston 2007).

In the management cluster of training, there is more diversity. While 40.4 per cent of EWC representatives reported having attended a course on how to deal with confidential information, fewer had attended training on how to negotiate and on understanding the strategies of MNCs. Three points arise from this diversity. First, the relatively low attendance at courses on negotiating with management may reflect the impact of skills already acquired before selection to serve on the EWC. Many EWC representatives were serving as representatives and dealing with management in their own countries before assuming their transnational role and, hence, have acquired negotiation skills. The low attendance at courses on negotiating skills may also result from the absence of negotiations at many EWCs (see Chapter 10). Second, the relatively high attendance on courses covering confidentiality is an indicator of the sensitivity attached to the issue. Confidentiality will be examined in more detail in Chapter 8. Third, courses on understanding the strategies of MNCs are extremely difficult to deliver and are relatively rare, because the range of strategies employed by MNCs is vast and each EWC is confronted with a unique set of managerial strategies, with the consequence that an appropriate course would have to be tailor-made for each EWC. In most trade union organisations and pan-European training institutions, there are insufficient resources available for such an approach.

The absence of language skills is often cited as one of the obstacles for effective EWC functioning (Miller 2002; Pulignano and Turk 2016). Although, during the formal meetings, interpretation and translation facilities may mitigate language barriers, the development of informal understandings that are essential to building trust and solidarity require some commonality of language. Furthermore, interpretation and translation facilities are not available to all EWCs (De Spiegelaere and Jagodziński 2015: 39). It is noteworthy that half of all EWC founding agreements in 2015 made explicit reference to the availability of language training for EWC representatives (De Spiegelaere and Jagodziński 2015: 38). It is thus surprising that only 25.9 per cent of EWC representatives reported having attended language training: that is, about half of those who were eligible to do so by reference to EWC founding agreements. This discrepancy may result from the difficulties of acquiring a new language to a level suitable for work purposes: acquiring a new language requires a huge commitment that may be of longer duration than the term of office of the EWC representative.

The topics of training attended by the fewest number of respondents were those within the broader agenda cluster, suggesting that EWC representatives do not place a priority on EWCs as a means of improving health and safety, environmental and equality issues. Courses on such topics were attended by between 18.6 per cent and 22.0 per cent of EWC representatives. Again, these results are not entirely unexpected, as the issues

of equal opportunities and gender equality were pursued through the consultation process by relatively few EWC representatives (see Table 4.1), even though regulations on these issues have been adopted at European level. It should be noted, however, that wide-ranging health and safety and environmental regulations have been adopted at European level and were pursued by relatively large numbers of EWC representatives through the consultation process (see Table 4.1). In short, the relationship between regulation, information and consultation practices and training differs with regard to items from the broader agenda cluster listed in Table 7.4. More training on issues that do not appear on the agenda of EWCs is clearly a priority if EWC agendas are to be broadened.

In summary, this section has established three points with regard to training provisions. First, management do not have a significant role in the selection of the training provider in the majority of instances, suggesting that EWC representatives have a relatively free hand in the selection of the training provider. Second, since 2007, there has been a marked shift away from inter-company training towards training involving representatives from a single EWC. This may reflect an increased emphasis within training programmes on the generation of solidarity, trust and an identity within the EWC. Third, two decades after the adoption of the Directive, the content of training remains focused on the basics of the EWC, although specific items that feature prominently within training programmes, such as communication and confidentiality, indicate areas of concern regarding EWC functioning among representatives.

## **Is training effective?**

This section proceeds in two stages. The first stage identifies the general effect of training by comparing attitudes of EWC representatives in receipt of training with their counterparts who had not received any training in the three years prior to the distribution of the survey. The second stage examines the impact of training covering specific topics on the views of EWC representatives towards these topics. From the outset, it is acknowledged that survey-based research cannot unambiguously demonstrate the effectiveness of training. Many of the associations discussed below, for example, could plausibly have a different causality or be the result of the impact of a third variable. Multivariate analysis is required to investigate causality in greater detail.<sup>15</sup>

### General effect of training

Underpinning training provisions from the perspective of EWC representatives and trade union organisations is the desire to improve the efficacy of EWCs. Case study evidence shows that training may promote trust, an increased likelihood of reaching a unified position and a more European perspective among EWC representatives (Mählmeyer et al. 2017; Timming 2006; Knudsen et al. 2007). Similar research also links training to the creation of an environment for transnational labour action (Erne

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15. Future publications planned by the authors will include multivariate analyses.

Table 7.5 Impact of training

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know %	N
<b>Between EWC meetings, I have frequent contact with the EWC representatives from other countries</b>							
No training	9.5	26.5	23.6	29.7	8.6	2.1	510
Up to 2 days' training	11.8	38.7	24.1	15.0	8.1	2.2	352
3 or more days' training	11.2	40.1	22.1	19.6	6.1	1.0	507
<b>Employee representatives always try to come to a common position</b>							
No training	11.0	49.5	23.7	8.7	2.4	4.7	498
Up to 2 days' training	15.3	53.4	19.1	7.3	0.5	4.5	352
3 or more days' training	11.9	60.6	17.3	6.7	1.2	2.4	492
<b>The EWC helps me to gain a better understanding of matters occurring within the company</b>							
No training	22.5	55.2	13.2	2.6	2.1	4.5	483
Up to 2 days' training	24.8	57.4	14.7	0.9	0.0	2.1	348
3 or more days' training	29.5	59.7	7.0	2.7	0.4	0.8	483

2008). Survey research shows that training may lead to more intense communication between meetings (Waddington 2011: 137).

Table 7.5 examines some of these propositions by reference to the survey data of 2018. Among EWC representatives who had received no training during the three years prior to the survey, 36.0 per cent reported that they have frequent contact between EWC meetings. This proportion rises to 50.5 per cent among EWC representatives who had experienced up to two days' training and to 51.3 per cent among EWC representatives attending three or more days' training. These findings thus consolidate the results from the 2007 survey insofar as training is associated with more intense communication among EWC representatives between meetings. It should be noted, however, that more than 23.0 per cent of representatives who had attended training did not agree that they had frequent contact between EWC meetings, suggesting the impact of other factors on the frequency of contact or that the training received was not effective.

Training is also related to attempts to reach a common position among the representatives at the EWC. While 60.5 per cent of EWC representatives who had not attended training thought that they tried to come to a common position, 68.7 per cent of those with two or more days' training and 72.5 per cent of those with three or more days' training took the same view. Regarding the frequency of contact and trying to establish a common position, the longer the duration or the higher the frequency of training, the greater the likelihood of a positive outcome. Although not tabulated here, a similar

result is obtained regarding the proportion of EWC representatives who identify their perspective as European: 30.8 per cent of EWC representatives attending three or more days of training defined their perspective as European. Unlike the tabulated results, however, one or two training days are not related to having a European perspective,<sup>16</sup> suggesting that the number of training days is also a key factor in the development of a European perspective.

Table 7.5 also examines the relationship between training and an understanding of company matters. There is a direct relationship between the number of training days and the understanding of company affairs: 89.2 per cent of EWC representatives with three or more days' training agree that training helped them understand the company compared to 82.2 per cent of those with one or two days' training and 77.7 per cent of those with no training at all. In the circumstances documented in Table 7.5, training thus appears to increase the efficacy of EWCs from the perspective of the representatives.

Attendance at training events has no apparent impact on the perception of EWC representatives of the quality of information and consultation processes over a range of agenda items raised at the EWC. This is contrary to expectations derived from case study evidence that suggests that training facilitates learning effects both within and between EWCs (Gilman and Marginson 2002). Indeed, a key argument advanced by trade union organisations is that training is essential to overcoming the shortfalls inherent in EWC legislation (EFFAT 2009; UNI Europa 2011). Table 7.6 extends the analysis of training by examining whether training assists EWC representatives in overcoming the limitations of the Recast: that is, does training enable representatives to secure improvements in the core information and consultation functions of EWCs?

Training has no marked effects on the perceptions of representatives on EWCs as a source of information and consultation. Insofar as EWC representatives who had attended training were less likely to rate their EWC as an effective means of influencing management than their counterparts with no recent attendance at a training event, it is also clear that training does not lead to additional influence over corporate decision-making. Several competing, but not mutually exclusive, factors may contribute to an explanation of this situation. First, the shortcomings of the Recast are too wide-ranging to be overcome through training provisions. Second, the learning effects arising from training are more limited than envisaged, maybe as a result of inadequate content or intensity. Third, managerial resistance to engagement in information exchange and consultation and to the ceding of influence over corporate decision-making is so pronounced that training is an insufficient remedy. Fourth, training raises expectations to the extent that, after attending training events, EWC representatives are disappointed by the quality of the information and consultation procedures at EWCs. This sense of disappointment may also be accentuated by comparisons with experiences of national systems of information and consultation. At this juncture, there is no reason not to suggest that all these factors are influential to some degree.

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16. The results on the development of a European perspective are not tabulated because the question was formulated differently from those reported in Table 7.5. Among EWC representatives with no training, 18.3 per cent defined themselves as expressing a European perspective, a larger proportion than the 17.3 per cent of those who had attended up to two days' training.

Table 7.6 Training and core EWC business

	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
<b>Are EWCs an effective source of information?</b>						
No training	25.9	49.5	18.9	3.4	2.3	476
Up to 2 days' training	23.0	54.3	18.1	2.4	2.2	352
3 or more days' training	23.8	55.2	14.2	4.1	2.7	495
<b>Do EWCs serve as an effective means of consultation?</b>						
No training	13.3	37.6	26.4	17.6	5.1	470
Up to 2 days' training	9.9	33.6	27.1	21.4	8.0	347
3 or more days' training	12.0	37.9	27.6	13.4	9.1	489
<b>Do EWCs provide an effective means of influencing management decisions?</b>						
No training	4.3	18.9	33.4	32.4	11.1	473
Up to 2 days' training	3.1	16.3	36.3	26.2	18.2	349
3 or more days' training	4.3	15.3	39.0	26.8	14.6	489

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

## Specific effects of training

The failure of training provisions to promote improvement in the core information and consultation activities of EWCs raises the question: does training work in any other specific circumstances? To address this question, the analysis turns to the impact of specific training on perceptions of the topic on which training was provided. Put simply, if an EWC representative has received training on EWC regulations, it is anticipated that the representative would have an improved knowledge of the regulations compared to an EWC representative who has had no training on this topic. Table 7.7 presents the results and demonstrates that attendance at training events often has a marked effect on the perceptions of EWC representatives.

The impact of 'training on understanding the legal framework' on 'knowledge of the Recast', of 'training on understanding which issues are transnational' on 'the frequency of discussions on transnationality', of 'training on understanding workers' representation in different countries' on 'trying to come to a common position', and of 'language training' on 'relating to other employee representatives in Europe' is marked. EWC representatives in receipt of training on these topics were more likely to agree with the statement relevant to the training than EWC representatives who had not attended such training. In these circumstances, specific training seems to improve the functioning of the EWC from the perspective of the representatives. These findings also point to factors

Table 7.7 Specific effects of training

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know %	N
<b>I have a very good knowledge of the content of the Recast</b>							
No training on 'understanding the legal framework'	5.0	25.5	28.4	29.5	6.6	5.1	796
Training on 'understanding the legal framework'	14.2	45.7	26.7	11.6	0.4	1.4	532
<b>There are frequent discussions on whether an issue is transnational</b>							
No training on 'understanding which issues are transnational'	6.8	26.5	27.9	21.4	3.7	13.8	881
Training on 'understanding which issues are transnational'	13.4	32.8	25.8	17.2	4.8	6.2	440
<b>Employee representatives always try to come to a common position</b>							
No training on 'understanding workers' representation in different countries'	10.5	53.1	21.6	8.7	1.8	4.3	1,020
Training on 'understanding workers' representation in different countries'	16.6	62.2	13.5	4.5	1.1	2.2	346
<b>EWC representatives often challenge management over which issues are confidential</b>							
No training on 'learning how to deal with confidential information'	11.4	31.1	28.0	18.1	4.7	6.7	970
Training on 'learning how to deal with confidential information'	16.7	39.7	20.1	15.1	4.3	4.1	417
<b>The EWC helps me in relating to other employee representatives in Europe</b>							
No training on 'learning other languages to communicate in the EWC'	26.9	58.2	9.5	1.5	0.6	3.3	1,056
Training on 'learning other languages to communicate in the EWC'	39.8	49.2	6.6	2.7	1.3	0.5	263

other than training as underpinning the failure of training to improve the performance of EWCs on their core information and consultation activities reported above. Similarly, EWC representatives in receipt of training on confidentiality were more likely to report that they challenged management decisions on confidentiality (56.4 per cent) compared to those who had received no training on the topic (42.5 per cent). Learning about the detail of confidentiality provisions from a trainer would thus appear to promote challenges to managerial decisions. Managerial approaches to confidentiality and their impact are examined in Chapter 8.

This section demonstrates that the impact of training is mixed. Training, particularly that of a longer duration or spread over a number of days, is related to improvements in the performance of a range of activities associated with EWCs, and training on specific topics promotes greater satisfaction among representatives with the handling of these topics by the EWC. Training, for example, is related to an improved knowledge, more attempts to reach agreed positions, and more assertive approaches towards management among EWC representatives. Training, however, is not related to improvements in the core information and consultation activities of EWCs. In these areas, it is clear that training *per se* is insufficient and that other factors impair development.

## **What are the current training requirements?**

Rather than focus on the training that has been received and its impact, this section assesses the current training requirements of EWC representatives. At points, the analysis identifies the current training priorities of EWC representatives and compares these with the situation before the Recast in order to establish whether the right to training included in the measure has changed attitudes towards training among EWC representatives.

EWC representatives were asked to specify from the 13 topics listed in Table 7.4 the topics on which they require further training. No fewer than 17.5 per cent of EWC representatives reported that they had no training requirements, whereas 30.7 per cent required training on between one and six topics, 32.5 per cent on between seven and 12 topics, and 19.3 per cent on all 13 topics. Two principal factors impinge on this distribution: existing training undertaken and length of tenure as an EWC representative. Among those who had no training during the three years prior to the distribution of the survey, for example, 34.8 per cent of EWC representatives expressed a desire for further training on all 13 topics, while only 6.0 per cent of those who had completed two or more days' training adopted the same position. Similarly, 30.0 per cent of EWC representatives with no more than one year of tenure wished to receive training on all 13 topics compared to 9.1 per cent of representatives with tenure of 10 years or more.

Taking the same 13 topics for training, Table 7.8 presents the overall demand for further training from EWC representatives, the demand from those already in receipt of training on the topic, and the demand from those yet to receive training on the topic. In terms of overall demand, between 50.0 per cent and 60.0 per cent of EWC representatives indicate that further training is required on most topics. At one pole in the range are the

Table 7.8 On which topics is further training required?

Cluster	Topic	Total requiring further training %	Some training received on this topic, but further training required %	No training received on this topic, and some training currently required %
EWC basics	Understanding the EWC legal framework	50.9	11.2	77.9
EWC basics	Understanding which issues are transnational	48.7	6.9	70.6
EWC basics	Understanding the limits and the potential of the EWC agreement	51.2	9.2	74.8
EWC basics	Learning about trade union support to the EWC	53.2	9.6	67.6
Communication	Understanding workers' representation in different countries	60.0	12.6	75.0
Communication	Learning how to organise communication and networking in the EWC	58.3	12.2	70.2
Management	Learning how to deal with confidential information	41.1	7.0	55.4
Management	Learning how to negotiate with management	54.4	10.3	66.1
Management	Understanding multinational company strategies	61.5	10.9	70.1
Skills	Learning other languages to communicate in the EWCs	57.6	13.6	68.3
Skills	Learning how to read financial information	60.1	15.1	72.4
Broader agenda	Learning about what the EWC can do regarding health and safety or environmental issues	59.8	11.7	68.6
Broader agenda	Learning about what the EWC can do regarding equal opportunities	59.4	9.0	66.7
N		1 339	179-559	780-1,160

41.1 per cent of EWC representatives stating a desire for further training on handling confidential information, a particularly low figure given that 39.6 per cent of EWC representatives report that management cite confidentiality as the reason for refusing to disclose information. Given the controversial nature of confidentiality within EWCs, this result suggests that EWC representatives may obtain training on this topic from elsewhere, such as within national systems of workplace representation. At the other pole in the range of demand for further training are the topics of understanding MNC strategies (61.5 per cent) and learning to read financial information (60.1 per cent). Demand for further training on these topics surpasses demand for training on all other topics and indicates a desire among EWC representatives to understand how MNCs operate. Insofar as many managers express concern about the limited knowledge of EWC representatives on the operation of MNCs (Pulignano and Turk 2016: 18–19), the desire among EWC representatives for further training on these topics may be a source of relief to managers, as it is an indicator of the desire among EWC representatives to undertake their duties. The emphasis assigned to understanding MNC strategies poses questions for trade union organisations regarding the delivery of such training. As discussed in the context of Table 7.4, the strategy of each MNC is, to a considerable



degree, unique, as well as being subject to repeated change. Training to allow EWC representatives to understand the strategy of 'their' MNCs thus has to be tailor-made. Very few, if any, trade union organisations have the resources to fund such specific training on the scale required. An indicator of the extent of the challenge that the provision of such training constitutes for trade union organisation and pan-European training institutions is that the demand for training on understanding the strategies of MNCs rose by 32.9 percentage points and, for training on financial information, by 26.2 percentage points between 2007 and 2018.<sup>17</sup> In short, training provisions are failing to meet the demand for training on these topics.

The second column of data presented in Table 7.8 indicates the demand for further training on topics on which EWC representatives have already undergone training. As anticipated, and reflecting the value of the training already received, the demand for additional training among EWC representatives is much reduced. On most topics, between 9.0 per cent and 12.5 per cent of EWC representatives report that extra training is required. The demand for more training on the reading of financial information and on understanding the strategies of MNCs remains prominent among representatives already in receipt of such training, highlighting the centrality and complexity of these topics to experienced EWC representatives. Topics involving the organisation of communication and networking, language skills and understanding the legal framework also appear towards the top of the ranking, indicating a breadth of demand that requires considerable resources if it is to be met.

The final column of data reported in Table 7.8 charts the demand for training among EWC representatives yet to receive training on the topic in question. More than 55.0 per cent of EWC representatives in this category require training on all of the listed topics, and more than 66.0 per cent require training on most topics. The demand for training is primarily driven by EWC representatives who have recently taken up their term of office and is also high among those who have attended very few training days. In consequence, topics from across the range are prioritised with particular emphasis placed on those within the EWC basics and communication clusters, as earlier anticipated (Gohde 1995), indicating a need among experienced national representatives to acquire skills specific to EWCs. This raises strategic questions for trade union organisations as the main providers of training for EWC representatives: do trade union organisations focus on training for new representatives, or do they develop more sophisticated training programmes on topics such as MNC strategy and finance aimed at more experienced EWC representatives in the hope that such programmes may enhance EWC performance?

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17. The early data are drawn from the 2007 survey, when 28.6 per cent of EWC representatives indicated a desire for further training on understanding the strategies of MNCs and 33.9 per cent for training on analysis of company results. The wording used in the two surveys differed marginally on these topics. In 2007, the wording was 'analysis of company results/financial information' and 'company/management strategies in other EU Member States', whereas, in 2018, the wording was 'learning how to read financial information' and 'understanding multinational company strategies'. It is acknowledged that these differences may account for some of the variation between the results of 2007 and 2018.

## Conclusion

Since 2007, the proportion of EWC representatives attending training events has declined marginally from 63.9 per cent to 60.9 per cent. The inclusion of a right to training in the Recast thus has not led to an intensification of training among EWC representatives. Furthermore, the demand for training among EWC representatives has risen since 2007 and remains high, particularly among those at the start of their term of office and on topics considered central to the functioning of EWCs. There are indications that the pattern of attendance at training events on specific topics shifts from training on basic issues to communication and then to gaining an understanding of the strategies of MNCs. It is clear that, between 2007 and 2018, the composition of training cohorts has changed markedly away from inter-company training towards single EWC training, possibly implying a focus on the development of trust, identity and solidarity within EWCs by means of the training provision.

Management have tabled long-standing criticisms of the skills of EWC representatives (Lamers 1998; ORC 2007), and these criticisms have not abated since the adoption of the Recast (Pulignano and Turk 2016: 18–19). While very few managers reported having amended the EWC founding agreement to accommodate the revised training terms of the Recast (Waddington et al. 2016: 58), EWC representatives report that managers neither play a major role in the selection of the training provision nor is opposition from management cited on a large scale as a reason for refusing access to training. If management do select the training provision, however, EWC representatives are likely to receive fewer training days compared to training provision selected by EWC representatives. In combination, these points suggest that there is little resistance among managers to a more wide-ranging training provision, particularly if such an approach enhances the skills of EWC representatives and, in the process, makes corporate strategic decision-making involving EWCs more efficient.

Trade union organisations are integral to the training provision available to EWC representatives and, after 2007, have emphasised single EWC training. The survey results of 2018 show that trade unionists are more likely than non-unionists to be in receipt of training in general and of more training days in particular. Similarly, EWC coordinators, the majority of whom are unionised, also appear to promote regular training courses that involve more days of training. Furthermore, as predicted by trade unionists immediately after the adoption of the Directive (Gohde 1995; Danis and Hoffmann 1995), training enhances the skills and raises the awareness of representatives in areas appropriate to fulfilling their duties within EWCs. Two challenges for trade union organisations are raised by these data. First, training of EWC representatives does not markedly improve the performance of EWCs. While this finding confirms the shortcomings of the legislation, it raises questions concerning the content of the training provision and the time and resources devoted to training. In short, can the content of training be amended to promote greater improvements in EWC practice, and do the marginal improvements in EWC practice that result from training justify the time and resources deployed by trade union organisations in providing training? A second challenge that has yet to be met by trade union organisations is the volume of demand for training from EWC representatives and the provision of training on some specialist

topics, notably the analysis of corporate financial information and on the strategies of MNCs. The fact that a marginally smaller proportion of EWC representatives had attended training in 2018 than 2007 and the Recast had introduced a right to training in the intervening period suggests that a considerable increase in the allocation of resources is required if the existing demand is to be met. The high demand for training among EWC representatives also raises questions concerning the total time allocated in EWC agreements for training: in particular, is this amount of time sufficient?

For European policy-makers, the findings of this chapter are far from straightforward. The Recast appears to have merely brought the legislation into line with practices agreed within many EWCs before its adoption. Very few managers, for example, report having amended EWC founding agreements following the adoption of the Recast, as practice was already compliant. Similarly, the Recast did not promote a substantial growth in the number of EWC founding agreements that included access to training for EWC representatives. In addition, there is no marked impact of training on the core information and consultation functions of EWCs, although considerable sums have been made available for training by the Commission. Given the wide-ranging impact of training on other EWC-related activities, the failure of training to have a marked impact on the quality of information and consultation procedures suggests that training cannot circumvent the structural problems inherent in the legislation in these areas.

## Chapter 8

### **Management: seeking a corporate rather than an information and consultation agenda for EWCs**

Chapter 2 elaborated the approach of BusinessEurope and managers within MNCs towards EWCs. Within the political sphere, BusinessEurope favours a voluntary approach to transnational information and consultation practices and has successfully minimised the coverage and maximised voluntary aspects when legislation could no longer be politically resisted. Operationally, many managers attempt to integrate EWCs into corporate HR policies, while downplaying the formal information and consultation agenda. Operational HR benefits were apparent shortly after the adoption of the Directive in the form of enhanced employee commitment to corporate objectives, improved transnational managerial communications with employees, and the generation of a spirit of cooperation (Lamers 1998; Nakano 1999). Furthermore, EWCs were used ‘as an agent of change’, thereby facilitating management-led change (Hume-Rothery 2004). Over time, managers introduced an increasingly sophisticated array of HR strategies involving EWCs to extract added value for the MNC. In this context, managers used EWCs as a tool for promoting corporate identity, as integral components of corporate communication systems and as a means of securing leverage between European and local levels of operation within MNCs (Pulignano and Turk 2016; Greer and Hauptmeier 2016; Koutroukis 2004).

Concurrently, managers responsible for EWCs within MNCs acknowledge that they do not meet the information and consultation obligations specified in the legislation, and several cite the reporting requirements of stock exchanges as the reason why they are unable to fulfil these obligations (Pulignano and Turk 2016; Waddington et al. 2016). Managers also concede that EWCs have either no or very little influence on corporate decision-making, particularly when restructuring is under way (Nakano 1999; Hancké 2000; Pulignano and Turk 2016). Chapter 4 confirms these points from the perspective of EWC representatives insofar as the timeliness, quality and utility of information and, in particular, consultation procedures were inadequate, and EWC representatives were unable to influence the content of strategic corporate restructuring decisions.

Three further points are apposite at this juncture. First, work endorsed by the Commission confirms that EWCs are being used by managers to advance an HR agenda intended to extract added value for MNCs and that the quality of information exchange and consultation with EWCs falls short of the standards intended by European level policy-makers (EPEC 2008). These observations were subsequently reiterated by the Commission (2018b). Second, although BusinessEurope has consistently argued in favour of voluntary solutions for transnational information exchange and consultation, it recognises that EWCs improve HR practices in communications,

employee engagement and the introduction of cross-border initiatives (BusinessEurope 2017). In short, managers, European policy-makers within the Commission and BusinessEurope agree that EWCs facilitate the implementation of increasingly wide-ranging corporate HR strategies. Third, while managers responsible for EWCs within MNCs and BusinessEurope are as one on the utility of EWCs as a means of promoting HR strategies, they have different views on the Recast. Managers view the Recast as merely formalising extant arrangements, while allowing sufficient flexibility to pursue corporate HR strategies (Pulignano and Turk 2016; Rüb and Platzer 2015). In contrast, throughout discussions on the revision of the Directive, BusinessEurope consistently argued that the Recast would erect ‘high obstacles to taking decisions quickly’ and constitute a ‘straitjacket’ to negotiations at company level (BusinessEurope 2008).

Based primarily on case studies, a further analytical strand of research concerning management identifies degrees of commitment among managers to EWCs ranging from minimalist to proactive engagement. Furthermore, different degrees of managerial commitment are associated with different points within typologies of EWCs. Symbolic EWCs, for example, were associated with minimalist managerial commitment, which, in turn, may be influenced by the cost of EWCs and their infrastructure (Weston and Martinez Lucio 1998). In contrast, participative EWCs developed in conjunction with proactive managerial approaches (Lecher et al. 2001, 2002). The linkage between managerial commitment to EWCs and their pattern of development was reiterated in different forms in subsequent typologies of EWCs (Weiler 2004; Marginson et al. 2004; Kotthoff 2006; Köhler and González Begega 2010; Stöger 2011), although, within each of these typologies, it was acknowledged that managerial commitment was not the sole factor that determined the stage of development reached by the EWC. Managers adopting more proactive approaches to EWCs were viewed as pursuing added value from EWCs in the form of the HR strategies mentioned above: that is, proactive managers were concerned with shaping the EWC to act in corporate interests. In contrast, managers wishing to curtail the role of the EWC implemented a range of tactics intended to limit the participation of EWC representatives in decision-making. Among the tactics deployed by managers to curtail EWC development were setting limits on the time allotted for meetings, calling infrequent meetings, ‘swamping’ the agenda with a massive volume of detailed paperwork, restricting the information available through the use of confidentiality provisions, limiting the resources available to the EWC and employing a narrow definition of ‘transnational’ (Timming 2007; Kotthoff and Whittall 2014).

This chapter focuses on the perceptions of EWC representatives on managerial approaches to EWCs. It attempts to establish the extent to which managers adopt minimalist or proactive approaches to the EWC, and how the approach of management impacts the perceptions of EWC efficacy among EWC representatives. To this end, the chapter comprises four sections. The first section identifies who attends the EWC on behalf of central management and whether, in the opinion of EWC representatives, these attendees are able and willing to participate as European policy-makers intended. The second section establishes the character of the industrial relations environment at the EWC. The third and fourth sections examine managerial definitions of ‘confidentiality’ and ‘transnational’ respectively as a means of restricting the information and

consultation agenda. The argument advanced by the chapter is that managers restrict the information available to EWCs by a variety of means, which, in turn, impairs the quality of information exchange and consultation that takes place at EWCs.

## **Management: present, able and willing**

The Recast stipulates that ‘consultation means the establishment of dialogue and exchange of views between employee representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided’ (Article 2(g)). In practice, this formulation affords management some flexibility in its choice of attendees. The first stage of this section thus establishes the composition of managerial representation at the EWC and examines whether this influences the perceptions of EWC representatives of the quality of information and consultation procedures. The second stage discusses whether EWC representatives think that managerial attendees at the EWC have sufficient information and decision-making authority to fulfil their EWC obligations. The third stage assesses the willingness of management to engage with EWC representatives.

### Who represents central management (and does it matter)?

To test whether the managers present at the EWC meeting were from ‘central management or any more appropriate level of management’, the survey asked EWC representatives to report who attended the plenary meeting on behalf of management. Table 8.1 presents the results and demonstrates that 88.1 per cent of EWC representatives state that the European HR managers attend all or most plenary meetings, while 51.7 per cent report the presence of a European finance manager, and 48.4 per cent that of a European operations manager. No fewer than 49.1 per cent of EWC representatives indicated that the CEO attended all or most of the plenary meetings.

Four points arise from these data. First, European managers and/or the CEO are present at 91.3 per cent of EWC plenary meetings: that is, managers from an appropriate level are usually present, but, for 8.7 per cent of EWC representatives, the MNC is not compliant with the legislation, as only national and local managers attend or there is an inconsistent attendance in the representation of central management. It is reasonable to assume that among the MNCs that pursue minimalist strategies towards EWCs are included the MNCs where neither European managers nor the CEO attend the EWC. Second, the predominance of European HR managers confirms the association between the EWC and corporate HR strategies. Insofar as case study research tends to interview HR managers to enunciate the views of management, it corroborates this observation (Contrepois and Jefferys 2010; Pulignano and Turk 2016). Third, in 2007, 33.2 per cent of EWC representatives reported that the CEO ‘led’ the management delegation of the EWC (Waddington 2011: 83). While ‘leading’ the delegation and being present are certainly not the same, it would be expected that, if the CEO was present, s/he would lead the delegation, which, given that the CEO is always present

Table 8.1 Who represents central management at the EWC?\*

	Always present %	Mostly present %	Sometimes present %	Rarely present %	Never present %	No such manager in our company %	N
CEO	31.8	16.3	17.3	10.3	23.6	0.8	1 295
MNC/Eu- ropean HR manager	67.8	20.3	7.9	1.7	1.4	0.9	1 314
MNC/Euro- pean finance manager	29.7	22.0	28.4	6.4	11.4	2.2	1 287
MNC/ European operations manager	26.4	22.4	23.4	9.0	13.7	5.2	1 274
National/ plant-level managers	18.9	16.0	26.7	10.5	22.8	5.2	1 275

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

according to 31.8 per cent of EWC representatives in 2018, suggests that the data for the CEO are broadly comparable for 2007 and 2018. Fourth, national or plant-level managers are present at all or most plenary meetings according to 34.9 per cent of EWC representatives. This relatively low level of attendance may explain why, in some instances, national and plant managers complain to managers responsible for EWCs within MNCs that some EWC representatives are better informed than them about corporate HR strategies (Pulignano and Turk 2016).

To facilitate subsequent analysis, the responses reported in Table 8.1 were grouped into five categories:

- CEO present: EWC representatives who report that the CEO is present at all or most meetings;
- MNC managers present: EWC representatives report the absence of the CEO but the presence of a European HR, finance and/or operations manager;
- Only HR manager: EWC representatives report that only the European HR manager is present at all or most EWC meetings;
- Only local managers: EWC representatives report that only national or plant-level managers are present;
- Inconsistent attendance: EWC representatives report that no category of manager listed in Table 8.1 is present at all or most EWC meetings.

On the basis of these categories, Table 8.2 reviews the pattern of managerial attendance in the different country clusters. EWC representatives operating in MNCs based in LMEs are the outliers regarding the presence of the CEO insofar as the CEO attends

Table 8.2 Who represents central management at the EWC (by country cluster)?\*

	CEO %	MNC level managers %	Only HR manager %	Only local managers %	Inconsistent attendance %	N
All	48.1	17.3	26.1	1.5	7.0	1 340
EWC representatives based in MNCs with headquarters in:**						
Nordics	60.9	10.9	17.9	2.5	7.9	265
CMEs	48.5	16.7	27.3	1.0	6.5	444
MMEs	48.1	11.4	31.0	1.2	8.4	301
LMEs	29.2	32.6	30.4	1.9	6.0	324

Notes: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

EWC meetings less frequently (29.2 per cent) compared to the overall attendance reported by 48.1 per cent of EWC representatives. In liberal market economies, MNC-level managers and only HR managers are more likely to attend than elsewhere. As many of these companies have headquarters outside the EU, particularly in the US, this finding confirms case study research showing that regional managers of such MNCs are responsible for the EWC (Hall et al. 2003; Marginson et al. 2004). In contrast, the CEO attends EWC meetings very regularly in Nordic MNCs, where it is relatively rare for management to be represented by only the HR manager.

Table 4.4 showed that EWC representatives viewed information and consultation procedures as being of a higher quality when three or more plenary meetings were convened per year. The survey enquired whether the presence of particular managers was associated with the frequency of plenary meetings. A clear distinction was apparent between the presence of either the CEO or only the HR manager compared to all other categories. Among EWC representatives reporting three or more plenary meetings per year, 40.1 per cent and 34.8 per cent respectively stated that the CEO or only the HR manager was present. These proportions dropped to 15.8 per cent for MNC-level managers, to 6.9 per cent where attendance was inconsistent and to 2.4 per cent for only local managers. These findings again suggest that, where only local managers attend, minimalist strategies towards the EWC are in place.

Regarding the impact of managerial presence on the perceived effectiveness of the plenary meeting, Table 8.3 shows how EWC representatives perceive the effectiveness of the EWC when managers from different categories are present. Irrespective of the composition of managerial attendees, the effectiveness of EWCs declines between information and consultation and, subsequently, between consultation and influencing management decisions. Whereas, in 2007, the presence of the CEO made no marked difference to the perceived effectiveness of the EWC plenary meeting, leading to the suggestion that the presence of the CEO may be no more than symbolic (Waddington 2011: 93–95), in 2018, EWC representatives rated EWC plenary meetings attended by the CEO as being more effective compared to those where other managers were present.



Table 8.3 Management presence and meeting effectiveness\*

	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
<b>Effective as a source of information</b>						
CEO	28.5	52.3	16.1	1.8	1.4	662
MNC-level managers	22.1	57.9	13.9	4.6	1.4	237
Only HR manager	21.0	51.1	19.5	4.6	3.8	304
Only local managers	22.8	42.9	21.0	13.3	0.0	26
Inconsistent attendance	14.5	56.0	20.3	2.1	7.1	96
<b>Effective as a means of consultation</b>						
CEO	15.0	37.8	24.8	14.8	7.6	653
MNC-level managers	10.4	37.0	28.8	17.0	6.8	238
Only HR manager	8.2	37.0	27.0	21.0	6.7	298
Only local managers	4.2	20.1	44.2	26.5	5.0	26
Inconsistent attendance	8.6	37.4	26.7	16.2	11.1	95
<b>Effective as a means of influencing management decisions</b>						
CEO	5.2	20.9	36.2	25.5	12.1	655
MNC-level managers	4.2	17.4	38.8	28.3	11.3	235
Only HR manager	1.4	11.6	34.1	34.6	18.2	303
Only local managers	0.0	9.5	40.7	27.6	22.3	26
Inconsistent attendance	5.4	18.3	33.9	27.6	14.8	95

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

This was particularly the case with regard to the plenary meetings as an effective means of influencing management decisions, although, even with the CEO present, only 5.2 per cent of EWC representatives thought that the plenary meeting was very effective.

EWC representatives associate the presence of MNC-level managers with lower effectiveness of the EWC plenary meeting than when the CEO is present, but with higher effectiveness than that resulting from the presence of only HR managers. This result confirms case study evidence showing that EWCs led by HR managers have very little influence on corporate decision-making and primarily serve to advance corporate HR agendas (Marginson et al. 2004). The particularly low levels of effectiveness reported

by representatives who attend meetings populated only by local managers lends further support to the argument that management at such MNCs are minimalist towards the EWC. In summary, to increase the effectiveness of EWC plenary meetings, the presence of the CEO or several MNC-level managers is required. Reliance on only HR managers or local managers is likely to reduce the effectiveness of the plenary meeting.

## Are managers able to engage with the EWC?

Of course, the presence or absence of a manager with specific functions does not tell the complete story. At the Toyota EWC, for example, managers outnumbered EWC representatives two to one as a tactic to control the EWC (Hertwig 2015). Similarly, in some, particularly non-EU based, MNCs, there is either no European management or, if present, European managers have insufficient authority to comply with EWC legislation: that is, there is no 'fit' between the European scope of the EWC and that of the MNC (Marginson, et al. 2004). This stage of the analysis thus assesses whether the managers present at the EWC have the information at their disposal and the decision-making authority to comply with the requirements of the EWC legislation.

For the purpose of this assessment, EWC representatives were asked if managers attending the plenary meeting had the necessary information to address the topics raised at the EWC and if they took decisions on these topics. Regarding information, Table 8.4 shows that 75.4 per cent of all EWC representatives agree to some degree that managers present at the plenary meeting have the appropriate information at their disposal, whereas only 7.8 per cent disagreed to some extent with that statement. In general, managers are thus seen to have the information required by EWC representatives. While EWC representatives think that a majority of every category of manager are in possession of the required information, there is considerable variation between the categories of manager. In the case of the CEO, for example, 86.6 per cent of EWC representatives think that the appropriate information is available. This proportion falls to 61.3 per cent where only HR managers are present, to 59.3 per cent where managerial attendance is inconsistent and to 60.7 per cent where only local managers are present. Table 8.4 also shows considerable variation in the information available to managers of MNCs headquartered in different country clusters. In particular, 81.5 per cent of EWC representatives think that managers attending EWCs within MNCs based in coordinated market economies have the necessary information available compared to 65.5 per cent of EWC representatives within MNCs based in liberal market economies. In short, the inadequacy of information at EWCs noted throughout Chapter 4 may, to some extent, arise from the lack of information held by the managers attending the EWC.

The lower segment of Table 8.4 shows that 68.9 per cent of all EWC representatives think that the managers attending the EWC have the authority to implement decisions taken at the EWC. In general terms, most managers present at the plenary meetings have the information and authority to engage with EWC representatives, although representatives are consistently more likely to think that the managers present have the required information than the decision-making authority. Again, however, there is variation by category of manager present in a similar pattern to that exhibited

Table 8.4 Are the managers present able to engage with the EWC?\*

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>The managers present at the meetings generally have the necessary information on the topics we are discussing</b>							
All	23.7	51.7	15.1	6.7	1.1	1.7	1 344
By category of manager present							
CEO	34.9	51.7	9.1	2.5	0.7	1.1	663
MNC-level managers	21.5	56.6	14.3	6.5	1.1	0.1	239
Only HR managers	12.7	48.6	23.7	12.1	1.6	1.3	304
Only local managers	4.4	56.3	23.0	12.4	1.5	2.4	26
Inconsistent attendance	5.1	54.2	19.6	13.3	2.6	5.3	97
EWC representatives based in MNCs with headquarters in:**							
Nordics	26.3	46.7	18.9	5.2	1.8	1.1	265
CMEs	20.9	60.6	11.6	3.7	0.8	2.5	445
MMEs	24.3	55.1	8.7	9.0	1.0	1.8	306
LMEs	23.7	41.8	23.1	9.2	1.1	1.2	322
<b>The managers present at the meetings are the managers taking the real decisions on the topics we are discussing</b>							
All	27.4	41.5	14.6	10.9	2.9	2.7	1 344
By category of manager present							
CEO	41.3	46.0	7.9	2.4	1.0	1.5	664
MNC-level managers	21.5	42.7	16.4	13.1	3.9	2.4	239
Only HR managers	13.2	35.1	24.5	21.6	4.3	1.3	304
Only local managers	12.3	37.8	23.0	17.1	7.9	1.8	26
Inconsistent attendance	10.3	38.0	16.8	16.8	7.0	11.1	97
EWC representatives based in MNCs with headquarters in:**							
Nordics	32.0	36.6	16.5	10.5	2.0	2.4	265
CMEs	25.7	50.1	13.3	6.1	1.8	2.9	446
MMEs	28.4	44.1	10.1	11.6	3.2	2.6	307
LMEs	23.7	32.3	19.9	16.4	5.0	2.7	320

Notes: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

for information. It is no surprise that CEOs are most likely to be viewed as having the authority to take decisions on topics discussed at the EWC. Similarly, only HR managers, only local managers and inconsistent managerial attendance are less likely to be associated with decision-making on the topics discussed at the EWC. That a minority of EWC representatives view the presence of only HR managers as associated with appropriate levels of decision-making authority confirms case study evidence showing HR managers as significantly less likely to have such authority than either the CEO or operational/production managers (Marginson et al. 2004).

Again, there is variation by country cluster within which the MNC is headquartered. EWC representatives working within EWCs based in MNCs headquartered in liberal market economies are the least likely (56.0 per cent) to report that managers attending the EWC take decisions on the topics discussed at the EWC. Breaking these down to country level shows that EWC representatives operating in MNCs based in Spain (60.0 per cent), Denmark (59.2 per cent) and the US (49.8 per cent) are the least likely to think that the managers present at the EWC have the appropriate decision-making authority. The US data confirm the view that European regional management appointed by US-based MNCs tend to have operational but not strategic decision-making authority (Marginson et al. 2004).

### Are managers willing to search for agreed solutions with the EWC?

Management attitudes towards national works councils influence the character of engagement between management and the representatives of workers. European Company Survey data, for example, demonstrate that a managerial preparedness to engage with works councils produces value added for the company (van den Berg et al. 2013). These European data confirm German (Fichter et al. 2011), Dutch (van den Berg et al. 2011) and Slovenian (Franca and Pahor 2014) national data. Although employing different formulations to assess managerial engagement, research on EWCs demonstrates that, where managers are positive towards the EWC and attempt to reach compromises with EWC representatives, the institution is likely to function better from the perspective of the EWC representatives than where managers are negative towards the EWC (Kotthoff 2006; Lecher et al. 2001, 2002; Pulignano 2006). This stage of the analysis thus assesses managerial attitudes towards EWCs by examining whether the presence of different categories of managers influences the search for agreed solutions at the EWC and if the intensity of the managerial search for agreed solutions impacts upon how EWC representatives perceive the efficacy of the EWC.

Table 8.5 indicates that 39.3 per cent of all EWC representatives thought that management made efforts at their EWC to find agreed solutions to the matters at hand, whereas 19.5 per cent disagreed to some degree. Given the variation between the different categories of management noted above regarding information and decision-making authority, it is no surprise that the perceived likelihood of managers searching for agreed solutions also varies by managerial category. In particular, EWC representatives think that CEOs and MNC managers are most likely to seek agreed solutions. These two categories of manager are also those thought most likely by EWC representatives to

Table 8.5 Are management willing to try to reach agreed solutions?\*

Management make efforts to find agreed solutions with the EWC representatives							
	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	3.8	35.5	38.3	15.5	4.0	2.9	1 327
<b>By category of manager present</b>							
CEO	4.1	42.5	36.2	12.5	2.3	2.4	659
MNC-level managers	9.3	31.0	35.5	16.7	4.4	3.1	236
Only HR manager	0.6	29.9	45.1	16.7	5.6	2.1	298
Only local managers	0.0	27.8	30.7	37.2	4.3	0.0	26
Inconsistent attendance	1.1	25.8	35.6	22.3	9.8	5.5	94
<b>EWC representatives based in MNCs with headquarters in:**</b>							
Nordics	4.6	33.4	43.0	10.5	5.2	3.3	259
CMEs	3.9	39.7	33.3	16.9	2.5	3.7	443
MMEs	1.1	33.1	45.4	14.1	2.7	3.6	303
LMEs	5.8	34.6	32.6	19.9	6.4	0.8	316

Notes: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

have sufficient information at their disposal and the decision-making authority. It thus appears that information and decision-making authority promote perceived managerial searches for agreed solutions. This is broadly as anticipated, since without information and the authority to make decisions, it would be a rash manager who sought to compromise with EWC representatives.

The managerial willingness to try to reach agreed solutions also varies by the country cluster within which the MNC is headquartered. Representatives working in EWCs within MNCs headquartered in mixed market economies are the least likely (34.2 per cent) to agree to some extent that management make efforts to find agreed solutions. Representatives working in EWCs within MNCs based in liberal market economies thought that managers were the least likely to have the appropriate information available or to have decision-making authority on the matters raised at the EWC. On the question of trying to find agreed solutions, managers based in liberal market economies are comparable with their counterparts in coordinated market economies and the Nordics insofar as similar proportions of EWC representatives agree to some extent with the proposition. EWC representatives operating within MNCs headquartered in liberal market economies, however, are more likely (26.3 per cent) to disagree to some extent that managers try to find agreed solutions than their counterparts in MNCs headquartered in the Nordics (15.7 per cent), mixed market economies (16.8 per cent) and coordinated market economies (19.4 per cent).

Two key points emerge from this analysis. First, there is a hierarchy of engagement among managers with 91.3 per cent of EWC representatives thinking that the appropriate international managers attend the EWC, 75.4 per cent thinking that managers have sufficient information to engage with the EWC, 68.9 per cent thinking that the managers present are those with the appropriate decision-making authority, and 39.3 per cent thinking that management make efforts to find agreed solutions at the EWC. In practice, the more demanding each stage of this hierarchy is for managers, the larger the proportion of managers who fail to meet their obligations according to EWC representatives.

Second, introducing data from the European Company Survey (2009) reveals that managers are consistently less likely to engage with EWCs than with national works councils or their equivalent.<sup>1</sup> Although 39.3 per cent of EWC representatives think that management make efforts to find agreed solutions at the EWC, no fewer than 80.3 per cent of managers make efforts to involve employee representatives in the solving of joint problems within national works councils (Eurofound 2014). Furthermore, when national data are compared in every country, a larger proportion of managers involve employee representatives in the solving of joint problems than are prepared to make efforts to find agreed solutions at the EWC.<sup>2</sup> It thus appears that management consistently limit the involvement of EWCs by comparison with national works councils or their equivalent.

The question arising from both the hierarchy of engagement and the managerial downplaying of EWCs compared with national works councils is: does the willingness of management to engage have an impact on the performance of EWCs? Table 8.6 provides an answer to this question in that it shows that managers willing to engage with the EWC are much more likely to provide timely information and consultation, and to make the EWC more effective as a source of information and consultation, while also being more likely to be influenced by the EWC in their decision-making. The scale and consistency of the impact of a willingness among managers to engage with the EWC is marked. Almost 45.0 per cent of EWC representatives who report that information and consultation procedures take place before the managerial decision is finalised 'strongly agree' that management make efforts to find agreed solutions with the EWC compared to fewer than 8.0 per cent who 'strongly disagree' that managers try to find agreed solutions. The 43.7 per cent of EWC representatives who report information and consultation procedures taking place before the decision is finalised as being when management are prepared to engage more than doubles the 20.8 per cent of all EWC representatives reporting information and consultation procedures as taking place within the same time frame (see Table 4.5). The issue, however, is that the 43.7 per cent

1. It should be noted that this comparison is not direct on two principal counts. First, the EWC survey asked whether 'management make efforts to find agreed solutions with the EWC representatives', while the European Company Survey asked whether 'management make sincere efforts to involve the employee representation in the solving of joint problems'. Second, the EWC survey included five options (strongly agree, agree, neutral, disagree and strongly disagree), whereas the European Company Survey included four options (strongly agree, agree, disagree and strongly disagree). A comparison of the two sets of results should thus be treated with caution, although the extent of the difference between the two points to different managerial attitudes to EWCs and national works councils.
2. See Annex 1 at the end of this chapter (p. 215) for detailed results.

Table 8.6 An unwillingness to seek agreed solutions results in ineffective EWCs\*

Timing of information and/or consultation procedures						
Management make efforts to find agreed solutions	Before the managerial decision is finalised %	After the managerial decision is finalised, but before implementation %	During implementation %	After implementation %	Don't know %	N
Strongly agree	43.7	29.0	17.7	5.0	4.6	55
Agree	29.5	47.5	15.0	4.7	3.3	454
Neutral	14.3	45.2	22.0	11.1	7.5	506
Disagree	12.8	47.3	16.5	18.8	4.7	206
Strongly disagree	7.5	45.6	32.0	14.9	0.0	56
	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
Effective as a source of information						
Strongly agree	60.7	24.5	9.4	1.6	3.8	56
Agree	34.5	51.8	10.0	1.5	2.3	457
Neutral	19.5	53.4	22.5	3.9	0.7	504
Disagree	8.4	60.8	22.6	5.6	2.7	207
Strongly disagree	11.2	52.0	18.6	7.4	10.8	56
Effective as a means of consultation						
Strongly agree	37.6	36.8	13.7	8.1	3.8	55
Agree	18.3	43.5	21.1	9.9	7.2	452
Neutral	7.7	37.4	31.8	19.8	3.3	493
Disagree	2.5	24.6	33.6	27.8	11.5	205
Strongly disagree	4.3	23.3	18.2	25.2	28.9	56
Effective as a means of influencing management decisions						
Strongly agree	27.9	32.2	18.9	18.2	2.9	54
Agree	6.6	27.0	43.8	14.8	7.8	454
Neutral	0.8	13.3	35.2	37.3	13.4	497
Disagree	0.1	7.6	26.0	41.8	24.5	206
Strongly disagree	1.3	8.5	21.1	24.4	44.8	56

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

of EWC representatives reporting information and consultation procedures as taking place before managerial decisions are finalised and a willingness of management to engage with the EWC constitute only 1.5 per cent of all EWC representatives. An

additional 10.5 per cent of all EWC representatives agree that management wish to find agreed solutions and engage with the EWC before managers finalise their decisions. Similar situations are evident in relation to other indicators of efficacy, with a managerial willingness to engage promoting the effectiveness of EWCs as a source of information, a means of consultation, and as a means of influencing management decisions. The proportion of all EWC representatives reporting their EWC to be very effective on these issues is relatively small: for example, 2.3 per cent of all EWC representatives think EWCs to be very effective as a source of information and strongly agree that management try to find agreed solutions, 1.4 per cent think the same of EWCs as a source of consultation, and only 1.0 per cent take the same view of EWCs as a means of influencing management.

In summary, this section demonstrated a hierarchy of engagement among managers with the proportion of managers engaging with the EWC declining at each ascending level of the hierarchy: presence, appropriate information available, decision-making authority and a willingness to engage with the EWC. Consistent with the integration of EWCs into corporate HR strategies, HR managers are the most likely to attend the EWC on behalf of management but are among the least likely to have the required information at their disposal and decision-making authority regarding the topics raised at the EWC. Managers are less willing to engage with EWCs than national works councils, and the unwillingness of a majority of managers to engage fully with the EWC impacts negatively on the timeliness of information and consultation procedures and on the efficacy of EWCs as a source of information and consultation and as a means of influencing managerial decision-making. If a greater proportion of managers engaged fully with EWCs, the information and consultation functions of the institution could be markedly improved.

## **Industrial relations environment**

A vast array of evidence on national works councils (Rogers and Streeck 1995; Baccaro and Howell 2017) and EWCs (Telljohann et al. 2005b; Kotthoff and Whittall 2014) shows that relations between management and employee representatives may vary from cooperative to adversarial. Furthermore, while recognising considerable internal differences, variations in the extent of cooperation or adversarialism between national systems of industrial relations are acknowledged (Hall and Soskice 2001; Crouch 1993; Coates 2000), as is variation in the extent to which trade unions historically secured a workplace presence (Sisson 1987). The nature and extent of either cooperation or adversarialism between management and EWC representatives may explain the variation in managerial engagement with the EWC noted above. The Directive and Recast assume cooperation between the parties insofar as, once an EWC is established, compliance with the terms of the legislation is expected to follow. The Recast, for example, is explicit in stating that '[t]he central management and the European Works Council shall work in a spirit of cooperation' (Article 9). This expectation has led to the suggestion that 'the architects of the EWC Directive were perhaps naïve in their vision that workers' and employers' representatives would happily come together in a spirit of cooperation' (Timming 2007: 259). This section explores the extent of cooperation



Table 8.7 Industrial relations environment within the EWC\*

The relationship between management and EWC employee representatives can best be described as hostile

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	1.0	6.0	17.1	49.4	24.9	1.7	1 327
EWC representatives based in MNCs with headquarters in:**							
Nordics	1.0	2.6	19.3	43.1	32.1	1.9	259
CMEs	1.1	3.0	17.8	52.3	23.5	2.3	443
MMEs	1.0	6.8	13.7	55.4	20.9	2.2	304
LMEs	1.0	11.6	18.4	44.3	24.7	0.0	315

Notes: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

or adversarialism present within EWCs and how this impinges on perceptions among EWC representatives of managerial attitudes towards the EWC.

Table 8.7 shows the overall industrial relations environment within the EWC from the perspective of the EWC representatives. From the outset, it is clear that the majority (74.3 per cent) of EWC representatives do not think that relations with management are hostile, while only 7.0 per cent take the contrary view. Furthermore, when the MNCs are disaggregated by country cluster, the aggregate pattern is generally reproduced, albeit with somewhat more hostility within MNCs based in LMEs and less hostility within MNCs based in CMEs and the Nordic countries. The higher levels of hostility between managers and EWC representatives in LMEs are primarily a result of the hostility reported in MNCs of US origin where 12.2 per cent of EWC representatives agree to some extent that relations are hostile. Hostile relations between management and EWC representatives in general, however, are unlikely to explain why the majority of managers are unwilling to engage fully with EWCs. Although there are exceptions, it should also be acknowledged that the extent of hostility reported by EWC representatives is similar to that reported by employee representatives serving on national works councils.<sup>3</sup> This similarity is likely to underpin 'home country effects' reported in many EWC case studies (Lecher et al. 2002; Weiler 2004).

To examine relations between management and EWC representatives in greater depth, the survey asked EWC representatives to report on management's attitude towards their involvement in the EWC. In a manner broadly consistent with the data presented in Table 8.7, Table 8.8 shows that, in 2018, managers who discourage or oppose

3. The European Company Survey excluded a 'neutral' option, but no fewer than 90.5 per cent of respondents either 'disagreed' or 'strongly disagreed' with the statement 'the relationship between management and employee representation can best be described as hostile'. In addition, the European Company Survey reports a relative absence of hostility in Austria, Finland, Germany, the Netherlands and Sweden, above-average hostility in Belgium, France, Spain and the UK. In no country, however, do 20.0 per cent of respondents view relations between management and employee representatives as hostile (Eurofound 2014).

Table 8.8 What is the view of management towards EWC involvement?\*

	2007 Central management %	2007 Local management %	2018 Central management %	2018 Local management %
Encourage and make facilities available	31.6	33.1	28.3	28.4
Encourage and make some facilities available	26.1	18.2	26.9	21.7
Remain neutral	36.7	41.5	37.5	41.4
Discourage	4.6	5.5	3.3	5.0
Oppose and withhold facilities	1.0	1.7	0.5	1.4
Don't know	1.5	1.4	3.5	2.2
N	927	928	1 346	1 348

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting for 2018.

the involvement of representatives in EWCs are very much in the minority: central management, 3.8 per cent; local management, 6.4 per cent. Although the wording of the questions differed slightly between the 2007 and 2018 surveys, the results are broadly comparable, confirming no change in managerial attitudes towards EWCs over, at least, the past decade. Central management encouraged more than half of EWC representatives to be involved, and local management encouraged about half in 2007. Management have thus remained broadly supportive of, or neutral towards, EWC involvement since 2007. The lower levels of encouragement among local managers may be connected to their belief that EWC involvement means that some representatives have more knowledge than local management about corporate strategy, which may place local management at a tactical advantage (Pulignano and Turk 2016). It is also noteworthy that a higher proportion of central managers encourage EWC involvement and make facilities available to EWCs (55.2 per cent) than are prepared to seek agreed solutions with EWCs (39.3 per cent), suggesting that an element of managerial encouragement is pragmatic and is not accompanied by practical measures.

Disaggregating the 2018 results by the country cluster in which the MNC's headquarters is located reveals no significant differences in the attitude towards the involvement of representatives in the EWC. While specific country outliers in Spain and the US are evident, the extent of central management opposition to the representatives' involvement in the EWC rises to only 10.9 and 7.1 per cent, respectively. To examine the attitude of local management, the point of reference is the EWC representatives' country of origin. Within each of the country clusters, managers were unlikely to discourage or oppose involvement in the EWC: CMEs, 3.5 per cent of EWC representatives reported management discouragement or opposition to EWC involvement; Nordics, 7.8 per cent; MMEs, 6.4 per cent; LMEs, 7.9 per cent; and EMEs, 13.5 per cent. Particularly high numbers of managers discouraged or opposed EWC involvement in Czechia (30.7 per cent), Norway (25.5 per cent) and Poland (13.3 per cent). While the Norwegian result remains a puzzle, the relatively high opposition in Czechia and Poland may be linked to the neoliberal management style adopted within many MNCs that have inwardly invested in these countries (Bohle and Greskovits 2012).

Table 8.9 Are EWC representatives treated unfavourably because of their position?\*

	As an EWC representative, I am treated worse because of my position %	As an EWC representative, I might lose my job because of my work %
Strongly agree	2.8	1.1
Agree	4.8	3.7
Neutral	14.2	9.7
Disagree	35.6	34.0
Strongly disagree	40.1	47.7
Don't know/no answer	2.4	3.7
N	1 373	1 370

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting for 2018.

A final approach to the assessment of managerial attitudes towards EWC representatives asked whether the representatives are treated unfavourably because of their involvement in the EWC. Again, Table 8.9 shows that a minority of EWC representatives report that they are treated worse and that they might lose their job because of their position on the EWC. While the presence of even these small minorities runs counter to the spirit and intention of the legislation, it is apparent that very few representatives are treated unfavourably because of their involvement in EWCs. Furthermore, the EWC results are comparable with those reported from the European Company Survey, where 8.3 per cent of respondents state that they were treated worse and 8.0 per cent thought that their job was under threat because of their involvement in national works councils (Telljohann et al. 2009b).

To summarise, this section has shown that EWC representatives rarely report hostile relations with management. On the contrary, the majority of managers tend to support the involvement of representatives in EWCs and very infrequently treat EWC representatives unfavourably as a result of this involvement. In combination, these findings suggest that the widespread absence of managerial engagement with the EWC is not the result of extensive explicit managerial hostility to the institution.

## Contesting confidentiality

In practice, the definition of ‘confidentiality’ has been contested within national works councils and EWCs since their inception (Guillebaud 1928: 152–188; Timming 2006). ‘Confidentiality’ has been defined by a management HR specialist as one of the three principal issues that prevent EWCs from realising their potential (Hume-Rothery 2004: 86–90).<sup>4</sup> Tension between the parties and within the defined roles of the parties is clear-cut. The EWC legislation, for example, places an obligation on central management to

4. The other two items identified by Hume-Rothery as preventing EWCs from realising their potential were consultation and codetermination.

inform and consult EWC representatives on issues pertinent to the strategic intent of the MNC. On some issues, however, managers feel constrained by stock market regulations, which require them to inform the shareholders before employee representatives (European Commission 2016a; Pulignano and Turk 2016: 28–31). In practice, stock market regulations protect the interests of one group of stakeholders, shareholders, whereas those of a second group, employees, are disregarded. Stock market regulations thus protect the interests of outsiders, while EWC legislation is designed to protect the interests of insiders (Jagodziński and Stoop 2021). Stock market regulations are thus incompatible and inconsistent with the intent of the EWC legislation. Similarly, in order to exert an influence over strategic corporate decision-making, EWC representatives require information and consultation procedures to take place before managerial decisions have been finalised. If management release information before completing their decision-making process, the information received by EWC representatives is likely to be sensitive. The tension implicit in the situation of the EWC representatives is that EWC legislation confers on them a right and a duty to report back to those they represent on the topics discussed at the EWC. Furthermore, the purpose of reporting back is to ascertain the views of workers represented by the EWC representatives. To ascertain these views necessarily means discussing in some detail the topics raised at the EWC, which may be counter to the managerial preference for confidentiality.

In recognition of the tension between the parties on the issue of confidentiality and the contradictions that may arise from the situation of the parties, the Directive and Recast attempted to clarify the practicalities of the situation in stating that ‘members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence’ (Recast, Article 8(1)). Article 8(2) of the Recast adds another level of security to management in that central management ‘is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them’. For both of these Articles, the Recast states that the national transpositions should specify how these rules apply, although, in several countries, this specification has not been implemented while, in others, judicial control is conducted *post factum* with very few possibilities for summary proceedings (Laulom and Dorssement 2015). While not affording *carte blanche* to management, these articles assign to management the initial decision on what is and is not deemed confidential, although what constitutes ‘objective criteria’ remains open to debate. The prerogative assigned to management in deeming material to be confidential, the lack of clarity regarding ‘objective criteria’ and the reliance on national transpositions of the legislation underpin point 9 of the reform agenda proposed by the ETUC (see Appendix B). This point requires a precise specification of the justifiable reasons for withholding information, the time frame over which management may do so and the grounds on which the right of EWC representatives to share information with those they represent can be restricted.

Confidentiality provisions are about the creation of a secure space for protected discussion between management and the EWC (Jagodziński and Stoop 2020). The tension implicit in the practical application of confidentiality provisions coupled with the contestation between the parties raises three specific, but linked, issues. First, to

what extent do management withhold information from the EWC on the grounds that they deem it so sensitive that its release would damage corporate interests? Second, to what extent do management release information to EWC representatives labelled as confidential on the condition that EWC representatives do not share the information with those they represent? Third, if, as implied by point 9 of the ETUC's reform agenda (see Appendix B), EWC representatives are dissatisfied with the practices associated with confidentiality, to what extent do they challenge managerial prerogative on the application of confidentiality? This point is also linked to issues associated with access to justice (Hoffmann and Jagodziński 2021), discussed in more detail in Chapter 9. Each of these issues will be addressed in a separate stage of this section.

### Do management withhold information on the grounds of confidentiality?

Table 8.10 shows the extent to which EWC representatives report that management refuse to disclose information on the grounds of confidentiality. No fewer than 39.6 per cent of all EWC representatives agree to some degree that management often refuse to release information on the grounds of confidentiality, 24.5 per cent are neutral on the question and 33.3 per cent disagree to some extent. Given that the question assumes that EWC representatives have asked for the information that management refuse to disclose, it is apparent from the perspective of the EWC representatives that confidentiality is used by management as a means of restricting the amount of information released to the EWC. The extent of this refusal to disclose information while citing its confidentiality may also contribute to an explanation of why so few managers engage in information and consultation procedures before corporate decisions are finalised: that is, management deem information confidential until the managerial decision is finalised (Kerckhofs 2015; Meylemans and De Spiegelaere 2019).

EWC representatives thought that managers in MNCs headquartered in mixed market economies were the most likely (42.9 per cent) to withhold information on the grounds of confidentiality compared to their counterparts in liberal market economies (41.1 per cent), coordinated market economies (37.4 per cent) and the Nordics (37.1 per cent). In short, managers use confidentiality as a means of withholding information to different degrees dependent on the location of the headquarters of the MNC.

A further point is apposite here. Although the form of the question differed, in 2007, one third of EWC representatives reported that management had refused them information and cited confidentiality as the reason for this refusal, and two thirds of those who were refused information thought that the refusal was not justified.<sup>5</sup> There would thus appear to be no significant change between 2007 and 2018 in the extent to which management deem information confidential as a justification of its refusal to disclose information.

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5. In 2007, the survey asked whether 'your EWC has been refused information on the grounds of confidentiality?' and 'in your opinion, were management justified in withholding the information?'

Table 8.10 Do management withhold information on the grounds of confidentiality?\*

Management often refuse to disclose information on the grounds of confidentiality

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	13.9	25.7	24.5	25.8	7.5	2.7	1 424
EWC representatives based in MNCs with headquarters in:**							
Nordics	16.1	21.0	20.4	29.9	11.3	1.3	280
CMEs	12.2	25.2	25.4	26.8	5.6	4.6	473
MMEs	12.2	30.7	26.8	22.8	4.8	2.8	322
LMEs	15.7	25.4	24.5	23.5	9.3	1.6	342

Notes: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

## Deeming information confidential

Management may deem information confidential while also releasing it to the EWC. In these circumstances, management assume that EWC representatives will not share the confidential information more widely. A survey endorsed by the Commission found that 15 per cent of employers agreed that the release of information to the EWC had led to breaches of confidentiality (European Commission 2016a). A study involving BusinessEurope, however, reported that, while managers responsible for EWCs within MNCs were concerned about confidentiality, particularly regarding the timing of the release of information, they did not think the issue was problematic, and argued that it could be handled within the EWC in a manner similar to arrangements within national institutions of workplace labour representation (Pulignano and Turk 2016: 28–32). No case has been brought to court against an employee representative on the grounds that confidentiality was breached. In contrast, managerial abuse of confidentiality was apparent at Air France where management used confidentiality as a check on the loyalty to the company of the EWC representatives (Stoop 1999: 55). Confidentiality also reached the courts when management at Oracle labelled information about planned redundancies that was in the public domain confidential, thus prohibiting EWC representatives from communicating more widely on the planned redundancies. The Central Arbitration Committee of the UK adjudicated that management at Oracle had used confidentiality excessively (CAC 2018a).

The previous stage noted that confidentiality may be cited as a reason for the non-release of information, thereby depriving EWC representatives of the information required to make a considered decision. In addition, the excessive managerial use of confidentiality when linked to the release of information may restrict the capacity of EWC representatives to communicate with those they represent, thereby impairing their capacity to report back, a legal obligation for EWC representatives.

Table 8.11 I am limited in reporting back due to managerial confidentiality provisions\*

I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	9.0	24.9	22.8	29.8	11.3	2.3	1 424
EWC representatives from:							
Nordics	3.4	22.4	24.7	30.6	16.3	2.7	199
CMEs	5.2	20.5	22.0	32.8	17.2	2.3	530
MMEs	12.5	29.5	21.6	30.3	3.7	2.4	312
LMEs	15.4	26.5	22.8	21.6	12.8	0.9	130
EMEs	6.6	25.1	27.5	30.2	6.3	4.3	253

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

Table 8.11 illustrates the extent to which the managerial use of confidentiality restricts reporting back. Among all EWC representatives, 33.9 per cent agree to some extent that they are limited in talking about their EWC work with those they represent due to the managerial use of confidentiality, 22.8 per cent express neither a positive nor a negative view, and 41.2 per cent disagree to some extent. It is noteworthy that EWC representatives from liberal market economies and mixed market economies are more likely than their counterparts from elsewhere to feel limited in reporting back due to concerns about confidentiality, suggesting, at least, different expectations among EWC representatives regarding confidentiality and/or differences in the perception of national confidentiality regimes.

Table 8.12 extends this analysis by considering how the application of confidentiality impinges on the timing of information and consultation procedures and whether perceived managerial hostility is associated with the use of confidentiality provisions. Regarding the timing of information and consultation procedures, it is clear that EWC representatives provided with information and consultation before the managerial decision is finalised are not overwhelmingly limited in talking with those they represent due to confidentiality constraints: 53.0 per cent disagree to some extent that they are constrained, whereas 29.9 per cent are constrained because of confidentiality restrictions. This finding runs counter to some case study evidence, which expects more constraints on the sharing of information the earlier that information and consultation procedures take place (Kerckhofs 2015). The survey findings, however, confirm other case study evidence demonstrating that EWC representatives in receipt of detailed information at an early stage were not met with particularly demanding confidentiality provisions (Meylemans and De Spiegelaere 2019). Furthermore, the proportion of EWC representatives who feel limited to some degree in talking with those they represent tends to increase the later that information and consultation procedures take place: before management finalise the decision, 29.9 per cent; after finalisation but before implementation, 35.2 per cent; during implementation, 37.1 per cent; and after

Table 8.12 What happens when managers deem information confidential?\*

I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>By timing of information and consultation procedures</b>							
Before the managerial decision is finalised	6.2	23.7	15.1	37.0	16.0	2.1	288
After the managerial decision is finalised, but before implementation	10.0	25.2	27.1	27.1	9.6	1.1	626
During implementation	11.2	25.9	16.9	33.1	12.3	0.7	271
After implementation	7.6	32.6	21.5	25.1	11.0	2.3	137
Don't know	7.5	12.4	32.8	25.0	6.4	16.0	94
<b>The relationship between management and the EWC is hostile</b>							
Strongly agree	10.0	13.5	14.9	34.4	27.3	0.0	16
Agree	27.6	28.0	24.5	12.1	7.0	0.9	69
Neutral	12.6	30.0	27.4	21.3	7.8	1.0	243
Disagree	7.0	25.6	24.1	33.2	8.9	1.4	629
Strongly disagree	6.6	19.2	16.0	36.7	19.0	2.6	337

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

implementation, 40.2 per cent. Clearly, more research is required to explain the pattern observed. Suffice it to say, at this point, that the early provision of information and consultation may occur in EWCs where trust between the parties has been established and such trust underpins the application of confidentiality provisions. In contrast, where trust is absent, management engage in information exchange and consultation at a time that prevents the EWC from influencing the outcome of strategic corporate decision-making and imposes confidentiality restrictions to place further limits on the involvement of worker representatives at all levels of the decision-making process.

Although many factors influence the extent of trust between the parties at EWCs, trust is unlikely to be wide-ranging where there is hostility between the parties. The lower segment of Table 8.12 examines the impact of perceived hostility between the parties at the EWC and the managerial use of confidentiality. The relationship is straightforward: the greater the hostility, the greater the likelihood that EWC representatives feel limited in talking about their EWC work with those they represent. While this result confirms that management use confidentiality to limit the effectiveness of the EWC, it also supports point 9 of the ETUC's reform agenda requiring greater specificity and objectivity on the practical use of labelling material confidential.



## Do EWC representatives challenge managerial prerogative on confidentiality?

Given the extent to which management withhold information by deeming it confidential, the variations between the country clusters on a range of issues concerned with confidentiality and the impact of hostile relations within the EWC on the application of confidentiality, the question arises as to whether EWC representatives challenge managerial prerogative on confidentiality. Case study evidence shows that, by challenging management, EWC representatives can force more information to be released from the bounds of confidentiality, although, under challenge, management tend to refuse to release information earlier (Meylemans and De Spiegelaere 2019). The same research also suggested that the presence of an EWC coordinator may promote the extent of the challenge to managerial prerogative.

Table 8.13 examines the extent to which EWC representatives challenge managerial prerogative on confidentiality and whether this challenge varies in different circumstances. From the outset, it is apparent that 46.8 per cent of EWC representatives agree that they often challenge management over confidentiality, whereas 22.0 per cent disagree to some extent with that statement. As is anticipated, office holders are more likely (52.1 per cent) than EWC members (43.9 per cent) to challenge managerial prerogative on confidentiality. More surprising is that office holders are also more likely (23.4 per cent) than EWC members (20.5 per cent) to disagree with the statement, indicating variation between EWCs on challenging managerial prerogative. Confirming the case study evidence (Meylemans and De Spiegelaere 2019), the presence of an EWC coordinator promotes challenges to managerial prerogative on confidentiality. Office holders, however, report more frequent challenges to confidentiality than EWC representatives in the presence of an EWC coordinator, suggesting that some of the challenges made by office holders are tabled at meetings where EWC members are absent, such as at select committee meetings.

Table 8.13 also shows whether EWC representatives challenge managerial prerogative on confidentiality when they perceive information as being withheld and when confidentiality limits reporting back by EWC representatives to those they represent. There is a strong relationship between the perception among EWC representatives that management withhold information and the extent to which EWC representatives challenge management. No fewer than 70.9 per cent of EWC representatives who strongly agree that management withhold information often challenge management, and 60.8 per cent of EWC representatives who agree with the statement also often challenge management. Even where EWC representatives do not think that management withhold information, around 30.1 per cent of EWC representatives report often challenging management on what information is confidential, thus confirming the extent to which confidentiality is used by management and contested within EWCs. Similarly, when EWC representatives strongly agree (83.2 per cent) or agree (69.0 per cent) that they feel limited in reporting back, they often challenge management on what information is confidential. In short, when EWC representatives think that management are using confidentiality to restrict their activities within the EWC, they are more likely to challenge managerial prerogative.

Table 8.13 Do EWC representatives challenge managerial prerogative?\*

The employee representatives often challenge management over what information is confidential

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	13.0	33.8	26.8	17.4	4.6	4.5	1 424
Office holders	13.4	38.7	21.7	18.7	5.7	2.0	506
EWC members	13.0	30.9	29.5	16.1	4.4	6.2	793
EWC coordinator present	14.2	35.1	24.2	17.4	4.8	4.3	864
No coordinator	10.7	30.9	27.6	21.0	5.6	4.1	293
<b>When information is withheld</b>							
Strongly agree	39.7	31.2	11.3	7.9	6.4	3.6	185
Agree	16.3	44.5	25.7	11.1	0.9	1.5	363
Neutral	6.4	35.8	41.3	10.9	1.6	4.1	335
Disagree	3.6	28.2	25.5	34.1	4.9	3.7	380
Strongly disagree	10.6	19.5	22.6	19.5	24.7	3.1	111
<b>When EWC representatives feel limited in talking with those they represent</b>							
Strongly agree	45.7	37.5	4.5	8.2	4.0	0.1	116
Agree	16.2	52.8	21.9	6.9	1.6	0.6	343
Neutral	8.0	32.0	48.1	8.3	1.4	2.2	326
Disagree	6.4	24.9	25.7	34.3	2.6	6.1	426
Strongly disagree	8.2	22.5	18.5	22.1	23.3	5.4	41

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

In summary, substantial minorities of EWC representatives think that managers often refuse to provide information on the grounds of confidentiality and that they are limited in reporting back because of confidentiality concerns. When relations at the EWC are hostile, these proportions increase. Contrary to expectations, the earlier that management release information, the fewer EWC representatives indicate limits on reporting back. EWC representatives contest the application of confidentiality provisions throughout, suggesting that the greater precision attached to confidentiality proposed by the ETUC would promote more effective EWCs. These findings confirm the centrality of confidentiality as an issue that can be used by managers to undermine the objectives of EWC legislation by denying access to information and the transition of information to those represented by the EWC. These findings also highlight the need for precise definitions of 'confidentiality' and readily applicable, efficient and quick systems of appeal when confidentiality is misused. Such precision and appeals procedures are not in place in the majority of Member States (Hoffmann and Jagodziński 2021), and sanctions for managerial abuses of confidentiality are rare (Jagodziński and Stoop 2021).

## What are 'transnational' issues?

Although the matters discussed at EWCs are supposed to be transnational in character, it was only in the subsidiary requirements of the Directive that the competence of EWCs was 'limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States' (point 1(a)). Unsurprisingly, this definition failed to eliminate debate regarding the definition of 'transnational', as the criterion of two countries was often a constraint and the requirement of relevance for the entire company lacked clarity (Jagodziński et al. 2008; Picard 2010). The 2007 survey, for example, reported that 40.1 per cent of EWC representatives thought management excluded an issue from the EWC agenda because it was deemed to be national, while 45.5 per cent had encountered no such exclusion.<sup>6</sup> Among the 40.1 per cent of EWC representatives who thought management had excluded an issue from the agenda, no fewer than 67.0 per cent did not think that management were justified in excluding the matter. Furthermore, a range of studies showed that EWC representatives also used the EWC as a vehicle to raise local issues with central management, particularly where rudimentary information and consultation arrangements existed locally (Huzzard and Docherty 2005; EPEC 2008). The definition of 'transnational' was thus contested when the Directive was in force, with some cases reaching court, including those at Forbo (2004) and British Airways (2006) (EWCdb).

In recognition of the failure of the Directive to clarify the situation, the Recast stated that 'matters shall be considered to be transnational when they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States' (Article 1(4)). In addition, recital 16 to the Recast states that:

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. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.

Moreover, Article 1(3) states that 'the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues'. As a consequence of these revisions, more EWC agreements included specific definitions of 'transnational' (De Spiegelaere 2016), although research on the transposition of the Recast demonstrated that material from the recitals was excluded in the vast majority

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6. In 2007, the questions initially asked if management had excluded an issue from the agenda of the EWC by deeming it national. Possible responses were 'yes', 'no' and 'don't know'. Among the EWC representatives, 16.4 per cent responded 'don't know'. The survey then asked those who had responded 'yes' to the initial question if they thought that management were justified in excluding the issue from the agenda.

of national legislation (Laulom and Dorssemont 2015), prompting the ETUC to include in its reform agenda point 8 requesting that the material from the recitals be included in the legislation (see Appendix B). A study of the impact of the Recast endorsed by the Commission, however, reported that most EWCs focused primarily on transnational issues (European Commission 2016a), although cases continued to reach the courts, including those at Tenneco (2014) and Vesuvius (2019) (EWCdb). The Commission subsequently explained the continued appearance of national issues on the agenda of EWCs by reference to most EWC representatives simultaneously holding positions of national representation, with the result that they raise pressing national issues (2018b: 24).

The 2018 survey asked EWC representatives to report if there were frequent discussions with management on whether issues were transnational. As is apparent from Table 8.14, 37.7 per cent of EWC representatives think that there are frequent discussions with management about the term ‘transnational’, while 24.6 per cent disagree to some extent with that statement. While the questions in the two surveys were different, it is clear that substantial minorities of EWC representatives regard the practical application of the term ‘transnational’ as problematic before and after the adoption of the Recast.

A possible explanation for frequent discussions about the term ‘transnational’ is that management try to restrict the definition of the term and are not prepared to reach an agreed solution on the matter with EWC representatives. Table 8.14 shows that this may explain some of the frequency of discussions on the term ‘transnational’ insofar as the more EWC representatives think that management try to find agreed solutions, the fewer EWC representatives report that there are frequent discussions over what is transnational. A second possible explanation is that EWC representatives with a national or local identity pursue issues that are not transnational at the EWC, thereby promoting frequent discussions. Table 8.14 shows that this is not the case: EWC representatives who exhibit some form of European identity are more likely to be engaged in frequent discussions on whether issues are transnational than their counterparts with a national or local orientation. Again, this points to management employing restricted definitions of ‘transnational’, which European-oriented EWC representatives challenge. Knowledge of the EWC agreement among EWC representatives is at the heart of a third explanation of the frequency of discussions on the term ‘transnational’. In practice, do EWC representatives have sufficient knowledge to challenge management on their use of the term? Table 8.14 shows that, where EWC representatives claim more knowledge of the legislation, the greater the likelihood of frequent discussions about what constitutes a transnational issue, again confirming the centrality of training and knowledge among representatives for the functioning of EWCs.

Similarly to ‘confidentiality’, ‘transnational’ is a contested term within EWCs, and control over what is deemed transnational influences the information and consultation process. The vague definition of ‘transnational’ included in the Recast was often transposed into national legislation verbatim (Jagodźński 2009) and thus has failed to reduce the proportion of EWC representatives engaging in discussions about the term. The evidence presented here suggests that management define the term ‘transnational’ in order to restrict the scope of the EWC agenda. It remains an open question whether

Table 8.14 Are discussions on whether issues are 'transnational' frequent?\*

There are frequent discussions with management on whether or not an issue is transnational							
	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	0.7	29.0	27.6	20.5	4.1	10.3	1 294
Management make efforts to find agreed solutions with the EWC representatives							
Strongly agree	13.3	12.4	17.5	24.9	18.9	12.9	55
Agree	3.1	30.1	31.6	23.1	3.9	8.2	450
Neutral	10.6	26.4	31.2	20.2	3.0	8.6	487
Disagree	13.9	37.1	19.2	15.9	4.3	9.6	198
Strongly disagree	18.4	38.6	18.6	11.8	1.5	11.1	55
By identification of EWC representative							
No European identity	6.7	27.8	28.1	22.3	3.7	11.5	998
European identity	15.7	33.0	26.8	14.2	5.5	4.8	273
I have a very good knowledge of the content of the EWC Directive							
Strongly agree	23.8	27.4	22.3	18.7	7.8	0.0	118
Agree	9.5	37.3	25.5	21.4	2.6	3.7	438
Neutral	6.5	26.3	39.7	18.4	4.4	4.8	395
Disagree	6.2	25.8	20.2	25.8	3.0	19.0	261
Strongly disagree	4.5	3.4	25.4	13.2	15.9	37.7	47

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

the incorporation of the materials from the recitals into the legislation, as proposed by the ETUC, is sufficient to clarify the operationalisation of the term 'transnational'.

## Conclusion

Chapter 4 demonstrated that the timeliness, quality and utility of information and consultation procedures at EWCs is inadequate from the perspective of EWC representatives. This chapter examined whether the activities of management contribute to the perceived shortfall in information provision. Six wide-ranging points emerge from the analysis. First, there is a hierarchy of engagement with EWCs among managers, with the proportion of managers declining at each ascending level of the hierarchy: presence, appropriate information available, decision-making authority and a willingness to engage with the EWC. Second, the unwillingness of the majority of managers to engage with the EWC diminishes the timeliness of information and consultation procedures, the efficacy of EWCs as a source of information and consultation, and the utility of EWCs as a means of influencing managerial decision-making. Third, European HR managers are the most likely to be present at EWC plenary meetings, but are among

the least likely cohort of managers to have at their disposal the information required by EWC representatives or to have the appropriate level of decision-making authority. Fourth, the unwillingness of the majority of managers to engage with EWCs is not the result of hostility towards EWCs among managers. Fifth, managers use definitions of ‘confidentiality’ and ‘transnational’ to restrict the scope of the EWC agenda. The managerial definition of ‘confidentiality’ coupled with management’s withholding of information also impairs the capacity of a substantial minority of EWC representatives to report back on the events of the EWC to those they represent. In exercising control over the practical definitions of ‘confidentiality’ and ‘transnational’, managers have a means whereby they can exert undue influence on the operation of EWC legislation. Sixth, there is variation within each of the five above-mentioned points dependent upon the country cluster within which the MNC is headquartered. In particular, managers attending EWCs in MNCs headquartered in liberal market economies are viewed by EWC representatives as the least likely to have the appropriate information available or to take any decisions on matters raised at the EWC.

The Commission, BusinessEurope and managers responsible for EWCs within MNCs agree that EWCs have been successfully absorbed into strategic corporate HR strategies (European Commission 2018b; BusinessEurope 2017; Pulignano and Turk 2016). This is likely to explain the predominance of HR managers among managerial attendees at EWCs and confirms a key managerial policy objective: to shape EWCs to meet the requirements of corporate HR strategies. Furthermore, the priority assigned to stock market regulations rather than the information and consultation requirements of the Recast highlights a second managerial priority in the context of EWCs: the interests of employees are downplayed compared to those of shareholders. The data presented in this chapter are consistent with this managerial pattern of prioritisation insofar as the majority of managers do not comply with the information and consultation requirements of the EWC legislation and use a variety of tactics to restrict the flow of information to EWCs. It thus appears that many managers have successfully introduced an alternative agenda on EWCs comprising corporate HR strategies and emphasising the priorities of shareholders while downplaying the information and consultation agenda at the core of the EWC legislation. In short, the majority of managers are not hostile to EWCs, but they want EWCs to add value in HR terms rather than by means of an information and consultation agenda. In so doing, they limit the legal entitlement of workers to transnational information and consultation.

The managerial restriction of information available to EWCs presents a significant challenge to European policy-makers and trade union organisations. For European policy-makers, the adequacy of the requirement that the ‘[i]nformation and consultation of employees must occur at the relevant level of management’ (Recast, Article 1(3)) is brought into question. On the understanding that legislation cannot guarantee a managerial willingness to engage with the EWC, it should at least ensure that the managers present have the appropriate information at their disposal and decision-making authority rather than simply being at ‘the relevant level’. It is also apparent that, in practice, the revised definitions of ‘confidentiality’ and ‘transnational’ have failed to clarify the situation. The two issues remain contested, and the current arrangements allow management to restrict the information available to the EWC from the perspective

of the EWC representatives. The most fundamental challenge faced by European policy-makers arising from the evidence presented in this chapter, however, is ensuring that managers prioritise and comply with the information and consultation agenda of the EWC legislation rather than downplay it by comparison with corporate HR strategies and the interests of shareholders. While Chapter 9 examines the issue of enforcement, it is apparent, at this point, that ‘sanctions that are effective, dissuasive and proportionate’ (Recast, recital 36) have proved insufficient to ensure managerial compliance with EWC regulations. For European policy-makers, the issue is to implement a system of checks and balances included within which are transparent definitions of terms and an end to arrangements whereby managers hold all the keys regarding the operation of confidentiality provisions and the nature of transnational issues.

The findings presented in this chapter also indicate the breadth of the challenge faced by trade union organisations in ensuring that information exchange and consultation take place at an appropriate standard. The findings confirm that management withhold information from EWCs, which contributes to the failure of many EWC representatives in fulfilling their duties and responsibilities. This withholding of information no doubt contributes to the poor quality of the information and consultation processes (see Chapter 4). While the introduction of legislation consistent with points 8 and 9 of the reform agenda of the ETUC may improve the situation regarding the definitions of ‘confidentiality’ and ‘transnational’ (see Appendix B), this reform alone is unlikely to lead to the required overall improvements in the quality of information and consultation procedures. The ETUC proposal to enforce managerial compliance detailed in point 1 of the reform agenda (see Appendix B) involves widening the range of sanctions and including these in the legislation rather than as a recital, thus improving the access to justice. This brings the analysis to the issue of enforcement, which is the subject of Chapter 9.

## Annex 1

The detailed results for the 'strongly agree' and 'agree' categories for the two surveys are as follows:

	<b>EWC survey (2018)</b> Management make efforts to find agreed solution with the EWC representatives	<b>ECS survey (2009)</b> Management make sincere efforts to involve the employee representation in the solving of joint problems
	<b>Strongly agree and agree %</b>	<b>Strongly agree and agree %</b>
Total	38.5	80.3
<b>Country of company/MNC headquarters</b>		<b>Country of origin</b>
Austria	51.9	84.4
Belgium	53.6	81.4
Denmark	26.9	86.1
Finland	33.0	82.9
France	37.5	77.2
Germany	42.9	82.3
Italy	31.2	75.9
Netherlands	40.4	81.1
Spain	9.0	69.3
Sweden	38.0	78.2
UK	49.9	76.5
Other EEA	55.0	80.2

Source: Eurofound 2014.





## Chapter 9

### Enforcing the rights of EWCs

There are three points of departure regarding the enforcement of the rights of EWCs. First, Chapter 4 shows that EWCs are institutions engaged in information exchange rather than both information exchange *and* consultation, that information is often released too late for the EWC to influence corporate decision-making, and that the majority of EWC representatives do not think that EWCs have an effect on managerial decision-making. The intentions of European policy-makers thus need to be implemented in practice. Efforts to articulate EWCs with other institutions of labour representation (Chapter 5), to promote trade union involvement (Chapter 6) and to make training provisions available (Chapter 7), at best, have mitigated limitations to EWC practice. EWC representatives are thus faced with the challenge of enforcing their rights. Second, Chapter 8 shows that managers responsible for EWCs within MNCs downplay the information and consultation aspects of EWCs in preference for policies directed towards corporate added value, thereby protecting what is known as their ‘managerial prerogative’. Furthermore, many managers use confidentiality as a means of limiting the flow of information to EWCs (Chapter 8) and are not prepared to comply with the terms of the legislation, quoting, among other sources, stock market regulations as restricting their capacity to fulfil information and consultation provisions towards employees (Pulignano and Turk 2016). To enforce the rights of EWCs, representatives must bring pressure to bear on managers in order to force their compliance with the regulatory framework. Third, a key element of the ETUC reform agenda includes ‘effective and dissuasive sanctions, including a right to a temporary suspension of company decisions’ (Appendix B, point 1). In addition to this, in point 2 (Appendix B), the ETUC desires specification of the legal status of EWCs and SNBs to remove obstacles to launching litigation against MNCs that deny these institutions their rights or obstruct them. Point 2 recognises that formal obstacles concerning the legal status of EWCs and their capacity to act in court confront EWCs in most Member States, a situation acknowledged by the Commission (2018a; Jagodziński and Lorber 2015). In short, the ETUC envisages that some EWC representatives will enforce the rights of EWCs and SNBs by means of recourse to law and thus realise the intentions of European policy-makers towards EWCs. The proposed legal reforms are intended to facilitate this process and constitute a development from about 2010 when discussions were under way involving the ETUC and ETUFs about mounting a coordinated strategic litigation campaign based on test cases where EWC practice does not meet the requirements of the legislation (Waddington 2011: 230). Although individual EWCs, with support from ETUFs, have subsequently taken cases to court to enforce rights, there has been no such coordinated litigation campaign to improve EWC practices by setting legal precedents.

European legislators clearly took the initial view that the parties to EWC agreements would voluntarily comply with the legislation even though the Directive included no sanctions for non-compliance. This view was largely reproduced in national law.<sup>1</sup> In a step towards remedying this error of judgement, European policy-makers referred to sanctions in the Recast and imposed general requirements on Member States when transposing the measure to introduce sanctions ‘that are effective, dissuasive and proportionate in relation to the seriousness of the offence’ (recital 36). This clause, however, was included in the Preamble to the Recast, rather than in the operative part of the instrument. In addition, Article 11 of the Recast places an obligation on Member States to ensure that managers and EWC representatives abide by their legal obligations and requires Member States to ‘provide for appropriate measures in the event of failure to comply’ with the legislation together with ‘adequate administrative or judicial procedures [...] to enable the obligations [...] to be enforced’. This action shifts responsibility to the Member States for the introduction of an effective sanctions regime and also means that national practices are likely to influence if and how sanctions are sought in cases of managerial non-compliance.

Contrary to expectations, the uptake of these requirements by Member States has been limited in national transpositions with many retaining the rudimentary enforcement regulations adopted in connection with the Directive rather than introducing new substantive measures (Jagodziński 2014). The approach taken by these Member States is at odds with the requirements of the Recast and is contrary to interpretations of the European Court of Justice, which confirm that enforcement provisions are a substantive matter guaranteeing a ‘genuine rule of law in the European context’, which ‘implies binding rules which apply uniformly and which protect individual rights’ (European Court of Justice 1975: 17) rather than a technical matter. The Commission also acknowledged that enforcement of the Recast is problematic when reviewing the quality of the national transpositions of the Recast (2018b) but declined to take commensurate action to ensure that the legislation that it had proposed could be enforced, although the Commission did start a dialogue with the social partners on this topic (Dorssemont and Jagodziński 2018).

In the context of EWCs, there is a hierarchy of sources regarding their rules of operation and the enforcement of these rules. The legislation, currently the Recast, represents the highest level in the hierarchy and outlines the intentions of European policy-makers regarding objectives and practices. In a manner consistent with legal theory and the legal construct of EU law, European directives may generally not be a direct reference source for representatives or managers responsible for EWCs within MNCs, as directives are addressed by Member States and are not directly applicable to the practice of individual institutions. The national transpositions are the second highest

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1. Given the concerns about the enforcement of EU legislation at national level at the time, this approach was hopelessly optimistic. Well before the adoption of the Directive, concerns surfaced about EU law enforcement in the context of the Single European Act and Article 8 of the European Economic Community. These concerns culminated in a Declaration on the Implementation of Community Law, annexed to the Maastricht Treaty, which required Member States to transpose Community directives fully and adequately into national law within specified deadlines, while ensuring that they are applied with the same effectiveness and rigour as national law (Snyder 1993).

level in the hierarchy of operation and enforcement. The national transpositions enable Member States to ‘tailor’ the strategies of achieving objectives set by European legislation to national industrial relations practices and traditions. It is beyond doubt that Member States are required to transpose EU legislation to ensure uniformity and effectiveness, while respecting the principle of subsidiarity. The extent to which national transpositions meet these criteria, however, is open to debate (Jagodziński 2014). It is also apparent that many of the minimum standards stipulated in European legislation become the standard specified in national transpositions, thus limiting advancement (Jagodziński 2014). A third level in the hierarchy of operation and enforcement is the negotiated agreement of the EWC, the central objective of which is to translate the general framework of the relevant national transpositions into everyday rules suited to the needs of the specific EWC. While these needs are contested (see Chapter 2), agreements underpin the operation of EWCs by regulating, *inter alia*, their objectives, specifying rights and duties, and outlining the resources available. The agreement is the measure in the hierarchy of operation and enforcement that is closest to EWC representatives.

In the absence of an effective legal means to enable EWCs to enforce their rights, it is no surprise that the ETUC and ETUFs emphasise enforcement in their reform agenda and the quality of agreements when EWCs are established. This chapter addresses three key questions regarding practice and enforcement: how knowledgeable are representatives of the regulations that apply to the EWC, what are the practical impediments to pursuing the rights of EWC representatives, and how do EWC representatives advance their rights? To address these questions, the chapter comprises two sections, the first of which examines the familiarity of EWC representatives with the regulations and thus their capacity to enforce the rights of the EWC. This section also examines the efforts of representatives to enforce the rights of the EWC by taking action within the EWC. The second section analyses ‘serious disputes’, as defined by EWC representatives, that might be expected to be taken to court in the event of a failure to agree with management. It assesses how representatives handle serious disputes and the implications of such disputes for trade union organisations. In the light of the scale of managerial non-compliance with the information and consultation regulations, this chapter argues that most representatives do not define this non-compliance as constituting a serious dispute. In seeking resolution of serious disputes, representatives opt for solutions within the EWC and acknowledge the difficulties of initiating legal action.

## **Familiarity with the regulations and their enforcement**

In order to enforce the rights of EWCs, representatives need to acquire knowledge of their rights irrespective of their source within the hierarchy of operation and enforcement. This section establishes the extent of this knowledge and thus whether EWC representatives are equipped to enforce the rights of EWCs. Chapter 7 demonstrated that attendance at training sessions tends to improve the knowledge of EWC representatives of the regulations that underpin the operation of EWCs. The first stage of this section elaborates arguments on the extent of knowledge among EWC representatives about the European legislation (Directive and Recast), the national transpositions and the

EWC agreement. The second stage focuses on the EWC agreement and establishes how EWC representatives view the content of the agreement in relation to practice, the ease whereby it may be improved through renegotiation and the extent to which EWC representatives cite the terms of the agreement to management in attempts to enforce the rights of the EWC.

## Knowledge of EWC regulations

Table 9.1 establishes the extent to which EWC representatives are knowledgeable about the three levels in the hierarchy of sources on EWC operation and enforcement. Reviewing the 'all' results confirms that the EWC agreement is closer to the EWC representatives than the national transposition measures and the European legislation insofar as 64.3 per cent of all EWC representatives agree to some extent that they have a good knowledge of their EWC agreement compared to 42.5 per cent and 37.9 per cent with a good knowledge of European legislation and the national transposition measures. It is also apparent that substantial minorities of EWC representatives are far from knowledgeable about the national transposition measures (29.0 per cent) and the European legislation (26.0 per cent). That more than 15.1 per cent of EWC representatives disagree to some extent that they are knowledgeable about their EWC agreements suggests that a minority of EWC representatives are not be able to enforce their agreement, as they are unaware of the detail of its content.

Table 9.1 also shows that, for each category of EWC representative, knowledge of the content of the EWC agreement is superior to that of either the legislation or the national transposition measures, confirming the relative proximity of the EWC agreement to representatives. Optimistically, office holders are the most knowledgeable about the three hierarchical levels of regulation, with a relatively small minority disagreeing to some extent that they have good knowledge of the EWC agreement (4.2 per cent). There are relatively more office holders reporting that they do not know much about the European legislation (15.2 per cent) and the national transposition measures (17.3 per cent). By comparison, however, EWC members are even less knowledgeable, particularly regarding the national transposition measures and the European legislation. On the basis of these data, it thus appears that any action to enforce the rights of an EWC would be reliant on the actions of office holders, confirming their 'leadership' role within the EWC.

Trade unionists, representatives with a coordinator present, and home country representatives are more knowledgeable than their paired counterparts on each of the three points in the hierarchy of sources on EWC operation and enforcement. Three points emerge from this observation. First, the more wide-ranging training opportunities available to trade unionists appear to be associated with a better knowledge of the regulatory framework (see Chapter 7). Second, differences in knowledge of the levels in the hierarchy of sources are most marked between representatives with an EWC coordinator present and those operating with no coordinator, suggesting that the detailed knowledge of the regulatory framework of coordinators is disseminated to EWC representatives. This finding again confirms the advantages of the ETUC/ETUF policy

Table 9.1 Knowledge about EWC regulations

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
<b>I have a very good knowledge of the content of the European Works Council Directive</b>							
All	8.5	34.0	28.5	22.3	3.7	3.0	1,299
Office holders	14.3	45.5	24.4	13.8	1.4	0.6	469
EWC members	5.6	28.7	30.9	25.7	4.7	4.4	720
Trade unionists	9.0	35.5	28.2	20.6	3.7	3.1	1,116
Non-members	5.9	25.4	30.2	32.1	3.9	2.6	179
EWC coordinator present	6.2	33.4	32.4	23.1	3.6	1.3	799
No EWC coordinator	10.9	39.4	26.9	18.4	2.3	2.0	269
Home country representatives	7.8	34.6	29.8	22.2	3.8	1.8	286
Foreign representatives	8.7	33.8	28.1	22.3	3.7	3.4	1,013
<b>I have a very good knowledge of the content of the national transposition measures on EWCs</b>							
All	7.4	30.5	29.8	24.8	4.2	3.3	1,296
Office holders	13.7	40.7	27.4	15.4	1.9	1.0	468
EWC members	4.2	25.2	31.3	28.9	5.5	4.8	718
Trade unionists	8.1	31.7	30.2	23.1	3.8	3.2	1,113
Non-members	3.5	23.9	27.1	34.6	7.0	4.0	179
EWC coordinator present	8.8	34.2	31.7	20.6	2.6	2.0	796
No EWC coordinator	7.8	33.2	27.8	24.5	5.3	1.4	269
Home country representatives	9.2	32.3	29.0	23.8	3.6	2.1	286
Foreign representatives	6.8	30.0	30.0	25.1	4.4	3.7	1,010
<b>I have a very good knowledge of the content of our EWC agreement</b>							
All	16.7	47.6	17.6	12.2	2.9	3.0	1,290
Office holders	29.6	55.9	8.5	2.8	1.4	1.9	464
EWC members	10.2	45.1	20.5	16.9	3.6	3.8	716
Trade unionists	17.5	48.9	17.0	10.7	2.8	3.0	1,107
Non-members	11.9	39.7	21.2	20.6	3.7	3.0	179
EWC coordinator present	19.9	52.1	15.8	7.7	2.2	2.2	795
No EWC coordinator	18.9	49.4	18.0	10.2	2.6	0.9	267
Home country representatives	19.5	53.7	14.3	7.9	3.2	1.5	280
Foreign representatives	15.9	45.7	18.6	13.5	2.8	3.5	1,010

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

favouring the appointment of EWC coordinators and the centrality of the contribution made by trade union organisations to the application of the EWC regulations. Third, foreign representatives are less knowledgeable than home country representatives on the EWC agreement. For foreign representatives, the national transposition measures that apply to their EWC will not be same as those introduced in their country of origin.

This may explain why home country representatives claim greater knowledge of the national transposition measures than foreign representatives, but the situation remains ambiguous, as the survey did not delineate between the national transposition measures that apply to the EWC and those applying to the EWC representative.

## Operation of the EWC agreement

EWC agreements are negotiated and, by definition, are unlikely to meet all the requirements of EWC representatives. The purpose here is to establish whether the terms of EWC agreements, irrespective of their quality from the perspective of the representatives, are being met in practice: that is, do EWC representatives enforce the terms of the negotiated EWC agreement? As a minimum, practice should match the terms of the EWC agreement. Managers responsible for EWCs within MNCs argued that practice, in many cases, was superior to both the agreement and the terms specified in the Directive; hence, from their perspective, the Recast largely brought the legislation into line with extant practice (Pulignano and Turk 2016). A similar point was made in conjunction with a comparison of the rate of establishment of EWCs and their performance following the adoption of the Recast (De Spiegelaere 2016). If practice is below the standard set in the EWC agreement, it is an indicator of dissatisfaction and of the extent to which EWC representatives need to take action to reach agreed standards. How EWC representatives use the agreement to enforce standards is also examined by reference to the renegotiation of agreements and the extent to which EWC representatives cite the terms of agreements to managers as a means of enforcing their content. This analysis thus centres on the enforcement of rights within the EWC. The next section of this chapter examines the enforcement of rights by recourse to law: that is, by leaving the confines of the EWC and seeking support from external agencies.

Reference to the data for 'all' in Table 9.2 shows that almost a half of the EWC representatives view practice as being consistent with the content of the EWC agreement. A further 9.2 per cent of EWC representatives rate practice to be an improvement on the EWC agreement. Approaching 60.0 per cent of EWC representatives thus think that practice is, at least, consistent with the content of the agreement. No fewer than 22.2 per cent of EWC representatives regard practice as being inferior to the standards agreed in the EWC agreement. It is this group of EWC representatives that should be expected to take action to ensure that agreed standards are maintained in practice. Finally, 21.0 per cent of all EWC representatives do not know whether practice is inferior or superior to the terms of the agreement. The absence of a position on the relationship between practice and the agreement among this group of EWC representatives suggests that they are unlikely to instigate action to improve practice relative to the content of the agreement. It is surprising that 21.0 per cent of EWC representatives 'don't know' how EWC practice ranks alongside the content of the agreement, as only 15.1 per cent of all EWC representatives (Table 9.1) report that they disagree to some extent that they have a good knowledge of the EWC agreement. More than half of those unable to assess practice in relation to the content of the agreement, however, are those with a short experience as an EWC representative. It is noteworthy that, given the low levels

Table 9.2 Practice and the EWC agreement

	Practice is better than what is written in the EWC agreement %	Practice is consistent with what is written in the EWC agreement %	Practice is below the standards set out in the EWC agreement %	Don't know %	N
All	9.2	47.6	22.2	21.0	1,299
Office holders	12.9	52.9	25.9	8.4	468
EWC members	7.2	45.1	20.7	27.1	720
Trade unionists	10.2	47.2	23.0	19.6	1,115
Non-members	3.5	49.0	18.1	29.5	180
EWC coordinator present	9.9	51.5	22.7	15.9	795
No EWC coordinator	11.4	46.0	23.8	18.9	270
Home country representatives	11.0	55.2	19.3	14.5	287
Foreign representatives	8.6	45.3	23.1	23.0	1,012
Article 13	10.2	42.1	21.5	26.2	415
Article 6	8.6	50.4	22.6	18.4	884

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

of satisfaction with the quality of information and consultation procedures (see Chapter 4), almost 60.0 per cent of EWC representatives consider practice to be consistent or better than standards defined in the founding agreement.

The contrast between office holders and EWC members is marked regarding the relationship between practice and the agreement. In particular, office holders are polarised in their evaluation of the situation: they are both more positive and more negative about this relationship than EWC members. Furthermore, markedly fewer office holders (8.4 per cent) than EWC members (27.1 per cent) are unaware of the relationship. This latter point is anticipated insofar as office holders would be expected to work most closely with the agreement. The 12.9 per cent of office holders who think practice is superior to agreement offers some support to the view of managers that practice is on a learning curve and may supersede the content of the underpinning regulations (Pulignano and Turk 2016). In contrast, the 25.9 per cent of office holders who rate practice to be inferior to the content of the agreement suggest that contestation remains a key concern and that many managers are prepared to engage in practices that do not meet the standards of the agreement to which they are signatory.

Polarisation within each category of EWC representative is a characteristic of the assessment of the relationship between the EWC agreement and practice. Throughout, between 42.1 per cent and 55.2 per cent of each category take the view that practice is consistent with the content of the agreement. Similarly, for each category, minorities of EWC representatives view practice to be superior and inferior to the content of the agreement, with those viewing practice to be inferior comprising the larger group in



each category. Apart from home country representatives, the group viewing practice to be inferior to the content of the agreement is at least twice the size of that taking the opposite view. Dissatisfaction with practice is thus more pronounced among EWC representatives than suggested by the managerial view, which regards practice to be superior to the content of EWC agreements in many cases (Pulignano and Turk 2016). The implied learning curve is thus absent in many cases. This observation is particularly important in the context of Article 13 agreements. Article 13 agreements are, by definition, relatively long-standing and *inter alia* are thus most likely to be subject to learning curve effects. This is not the case, however, with similar proportions of EWC representatives operating under Article 13 and Article 6 agreements regarding practice to be both superior and inferior to the content of the agreement. It should also be noted that all EWCs may be subject to a ‘regression curve’ as management and/or EWC representatives change, thus ‘disturbing’ established relationships.

Without recourse to external agencies, there are two options that may be implemented to improve compliance with EWC regulations. First, EWC representatives may seek to renegotiate the agreement to bring it up to the standard required by the legislation and/or the national transposition measures as a remedy to limitations in practice.<sup>2</sup> Second, EWC representatives may take the view that the agreement is satisfactory, but its standards are not upheld in practice, and thus may refer to the agreement within the EWC as a means of promoting respect for agreed standards.

The renegotiation of agreements also allows adaptation to changed circumstances and to new regulations. Chapter 1 noted that, by December 2018, no fewer than 369 (37.0 per cent) of the 998 active agreements had been renegotiated at least once. The extent of this renegotiation confirms that it is a strategy that may be employed to bring the agreement to a standard that meets regulations or changed circumstances. Among the survey respondents, 57.4 per cent reported that the agreement had been renegotiated or amended since 2009, 19.2 per cent indicated that no renegotiation had taken place and 23.4 per cent did not know if a renegotiation had taken place.

Table 9.3 shows that almost a half of all EWC representatives agreed that renegotiating the agreement was tough and time-consuming. This situation is broadly replicated among the different categories of EWC representatives listed in Table 9.3. The consistency of this result suggests that representatives may be deterred from renegotiating the EWC agreement as a means of improving practice by the difficulties inherent in the renegotiation process. Although substantial minorities of EWC representatives do not know whether renegotiation of the agreement is a tough and lengthy process, those closest to any renegotiation, office holders, were the most likely to agree that the process is very tough and time-consuming.

Table 9.4 raises three further points. First, those who had renegotiated or amended the EWC agreement since 2009 were more likely to agree that the process is tough and lengthy than those who had not renegotiated the agreement since 2009, suggesting that

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2. It should be noted that legal standards are binding and enforceable even if the EWC agreement does not make any reference to them.

Table 9.3 Industrial relations environment within the EWC\*

Amending my EWC agreement is a very tough and lengthy process

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	12.3	35.2	25.5	9.2	0.7	17.2	1,291
Office holders	15.2	44.9	20.3	11.3	1.0	7.3	469
EWC members	10.6	30.9	27.3	8.4	0.5	22.3	712
Trade unionists	13.2	35.9	25.9	9.4	0.7	14.9	1,108
Non-members	7.3	31.5	22.9	7.7	0.6	30.2	179
EWC coordinator present	12.1	38.8	25.7	8.2	0.9	14.4	794
No EWC coordinator	14.6	32.8	27.2	13.3	0.3	11.8	267
Article 13	10.4	30.9	28.5	10.7	1.1	18.5	413
Article 6	13.2	37.4	23.9	8.4	0.5	16.5	878
Those who had renegotiated or amended the agreement since 2009	15.3	41.6	23.4	10.2	0.9	8.7	729
Those who had not renegotiated or amended the agreement since 2009	12.5	36.9	29.5	7.7	1.0	12.5	251

Note: \* These responses are only from those EWC representatives who had attended at least one EWC meeting.

experience of renegotiation hardens opinion on the process. Second, trade unionists and representatives with EWC coordinators view renegotiation as a tougher and lengthier process than their paired counterparts. While a range of factors may account for these differences, it is likely that the pursuit of ETUF and trade union objectives by trade unionists and representatives with EWC coordinators may be a contributory factor: that is, management resist elements of the trade union renegotiation agenda, making the process more difficult. Third, and associated with the points mentioned above, representatives whose EWC operates under an Article 6 agreement view renegotiation as a tougher and lengthier process than those with an EWC established by an Article 13 agreement. The difficulties expressed by representatives on an EWC operating under an Article 6 agreement may reflect the impact of renegotiation processes conducted since 2009 to bring their EWC agreements into line with the Recast, as required by the legislation. It is clear, however, that the difficulties encountered in negotiations to bring EWC agreements into line with the Recast did not result in markedly improved information and consultation procedures within the EWC (see Chapter 4).

A second approach to achieving agreed standards of practice without reference to external agencies is for EWC representatives to refer to the EWC agreement as a means of reminding management of their obligations. Based on Table 9.2, it is anticipated that EWC representatives who viewed practice to be inferior to the content of the agreement would refer most frequently to the agreement in any attempts to bring practice to the level stipulated in the agreement. Table 9.4 offers limited support to this proposition.

Table 9.4 EWC agreement: practice and enforcement

Employee representatives at my EWC often refer to the EWC agreement to enforce our rights

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
EWC representatives reporting practice to be better than the agreement	6.1	33.2	29.7	21.7	4.0	4.8	134
EWC representatives reporting practice to be consistent with the content of the agreement	4.0	36.7	33.7	17.0	3.3	4.6	593
EWC representatives reporting practice to be inferior to the agreement	9.3	34.5	33.7	17.5	2.0	2.6	289

Note: These responses are only from those EWC representatives who had attended at least one EWC meeting.

Where practice is viewed as inferior to the content of the EWC agreement, 43.8 per cent of EWC representatives often refer to the agreement as a means of improving practice, where practice and agreement are consistent 40.7 per cent, and where practice is superior to the agreement 39.3 per cent. Where practice is inferior to the content of the agreement, EWC representatives make more frequent references to the agreement in an effort to improve the situation. EWC representatives are thus prepared to take initiatives within the EWC aimed at improving practice and implementing the terms of agreements. That 39.3 per cent of EWC representatives often refer to the agreement when practice is superior to the content of the agreement confirms the contested nature of EWC practice and suggests that maintaining such levels of practice is not a given and that making reference to the agreement is a means whereby superior practice can be maintained.

To summarise, among EWC representatives, knowledge of the EWC agreement is more pronounced than knowledge of the European legislation and the national transpositions. Office holders and EWC representatives with long service are the most knowledgeable on each of the three levels in the hierarchy of sources on EWC operation and enforcement. A substantial minority of EWC representatives are not knowledgeable about the underpinning regulations, suggesting that they are not in a position to enforce the rights of EWCs. While approaching half of the representatives view EWC practice to be consistent with the content of the agreement, more than 22.0 per cent of EWC representatives view practice to be inferior to the terms of the agreement. Although a substantial proportion of EWC representatives consider renegotiation of the agreement to be a tough and lengthy process, more than 36.0 per cent of agreements had been renegotiated by December 2018 as a means of either improving practice or bringing the agreement into line with the Recast. Similarly, and confirming the contestation inherent to EWCs, representatives often have to refer to the agreement to ensure that management comply with its terms, particularly if EWC practice is inferior to the content of the agreement. It should be noted, however, that only a minority of EWC

representatives refer to their agreements to enforce their rights, and the survey data do not allow assessment of the impact on practice of doing so.

## Serious disputes and enforcement beyond the EWC

Since EWCs are contested institutions, the need for enforcement of regulations and agreements within EWCs is wide-ranging. Chapter 2, for example, illustrated that the objectives of management and representatives with regard to EWCs may differ substantively. Similarly, Chapter 4 showed that the standards at most EWCs regarding the quality of information and consultation procedures, the utility of the institution as a means of influencing corporate decision-making and the limited influence afforded to EWCs during restructuring certainly raise questions of enforcement and may underpin conflict within the institution. Similarly, the first section of this chapter demonstrated that renegotiation of the EWC founding agreement and frequent references by EWC representatives to the agreement in attempts to maintain agreed standards are regular features of EWC practice. These practices raise questions about the capacity of EWC representatives to enforce the required standards within EWCs. In contrast, Chapter 5 demonstrated that relations between management and EWC representatives are far from hostile, even though the requirements of the legislation are not met in most instances. This apparent contradiction raises a number of questions regarding the handling of conflict in connection with the operation of EWCs: for example, do representatives view management failures to meet their obligations under the legislation as forming the basis of serious disputes, and do representatives seek remedies in law to enforce the standards of the regulations?

These questions are of particular relevance in the light of the preferences within the ETUC and ETUFs for clarification on the legal status of EWCs and SNBs in order that they may launch litigation against MNCs more easily (Appendix B, point 2) and for the inclusion of effective and dissuasive sanctions in the legislation (Appendix B, point 1). In short, the ETUC and the ETUFs wish to create circumstances where recourse to the law is readily available in instances where management fail to comply with regulations, thereby enabling EWC representatives to seek solutions to managerial non-compliance outside the EWC and strengthening the 'dissuasive' character of sanctions, thus stimulating management to comply with the regulations. Implicit in these proposals is the recognition that it is not possible to ensure managerial compliance with legislation and agreements in all circumstances without, at least, the threat of recourse to law. Such a threat of recourse to law might mitigate the imbalance of power within the EWC where management are the principal source of information and have more resources in the form of financial, legal and corporate policy expertise.

This is not to argue that such a threat is absent under current arrangements. Since 1997 there have been at least 129 cases where EWCs have sought remedies in the courts to enforce regulations, an average of five per year (EWCdb).<sup>3</sup> Consistent with the sources

3. While the EWCdb is the most comprehensive source of information on cases taken by EWCs and SEWCs, it is likely to understate the total number of cases due to issues associated with the compilation of the database.

of dissatisfaction with EWC practice expressed by respondents to the survey, the most prominent topics on which cases were taken to court include the establishment and operation of an EWC and the definitions used in the EWC (114 cases); the quality of information and consultation procedures (94 cases); and corporate restructuring (55 cases).<sup>4</sup> It is also noteworthy that there is a marked national concentration within the cases taken to court, with 42.6 per cent appearing in French courts, 26.4 per cent in German courts and 15.5 per cent in UK courts.<sup>5</sup> These are the three countries with the largest number of EWCs operating under national transpositions, suggesting that the number of cases taken to court is associated with the number of EWCs based in the country. Other factors are also influential, as the number of cases pursued in French courts is greater proportionally than the number of EWCs based in France. Such factors are likely to include the extent of adversarialism and of litigation within national industrial relations systems and the advice offered by trade unions to EWC representatives.

This section examines the views of EWC representatives towards ‘serious disputes’ with management within the institution during the three years prior to the distribution of the survey. The interpretation of ‘serious dispute’ was left to the representatives who responded to the survey. The objective is to identify the extent to which representatives think serious disputes occur, some of the circumstances associated with these disputes and the means representatives pursue to seek resolution of such disputes. To these ends, the section comprises two stages, the first of which identifies the extent to which representatives define disputes as serious, while the second examines the actions taken by representatives to remedy serious disputes. Assessment of these issues allows examination of the viability of the ETUC strategy to facilitate access to the courts and identification of some of the issues that trade union organisations would need to address if such a policy were implemented.

## Presence of serious disputes

Reference to the data for ‘all’ in Table 9.5 shows that 15.4 per cent of EWC representatives report the presence of a serious dispute during the three years prior to the distribution of the survey, while 67.9 per cent indicate that there had been no serious dispute. Given the shortcomings of the information and consultation arrangements at EWCs from the perspective of representatives (see Chapter 4), it is immediately apparent that very few EWC representatives regard the inadequacy of information and consultation procedures as the source of a serious dispute. That 16.7 per cent of all EWC representatives are unaware as to whether there had been a serious dispute in the preceding three years is a further indicator that a substantial minority of representatives are ‘distanced’ from the affairs of the EWC.

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4. More than one topic could be cited in any court case, hence the sum of the number of topics covered by court cases is greater than the actual number of cases taken to court.

5. Of the complete range of court cases, the number of cases that were brought before the French courts is 55; for the German courts, this number is 34; UK courts, 20; Belgian, 5; Austrian, 4; Italian, 3; Slovakian, 2; Swedish, 2; Dutch, 2; Luxembourg, 1; and Norway, 1 (EWCdb).

Table 9.5 Has there been a serious dispute between the EWC representatives and management over the functioning of your EWC during the previous three years?\*

	Yes %	No %	Don't know %	N
All	15.4	67.9	16.7	1,299
Office holders	21.2	74.2	4.6	467
EWC members	12.6	65.2	22.3	721
Trade unionists	17.0	68.8	14.2	1,115
Non-members	7.1	62.7	30.3	180
EWC coordinator present	18.5	68.3	13.3	799
No EWC coordinator	14.4	76.3	9.3	268
Article 13	10.6	68.9	20.5	418
Article 6	18.0	67.4	14.7	881
EWC representatives based in MNCs with headquarters in:**				
Nordics	14.2	67.1	18.8	253
LMEs	23.2	63.8	13.1	310
CMEs	14.2	69.9	15.9	433
MMEs	11.1	69.7	19.2	296

Notes: \* These responses are only from those respondents who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

Office holders, trade unionists and representatives with a coordinator present are more likely to report the presence of a serious dispute than their paired counterparts. In the case of office holders, the greater reported presence of serious disputes may result from a closer proximity to the centre of events. Similarly, the presence of an EWC coordinator and trained unionised EWC representatives may result in a greater knowledge of the rules applying to the EWC, which may also contribute to the occurrence of serious disputes. It is also noteworthy that the 'don't know' responses for each of these categories are among the lowest reported, suggesting that it is a shift from 'don't know' to 'yes' that is the primary influence, whereas the 'no' responses remain fairly constant. Representatives at EWCs operating within the voluntary arrangements of Article 13 agreements are less likely to report the presence of serious disputes than their counterparts at EWCs operating under Article 6, which may reflect longer-standing relationships within the EWC.

Reference to the country clusters shows that representatives based in MNCs headquartered in liberal market economies are the most likely to report the presence of serious disputes. In short, serious disputes are most frequently reported in MNCs based in countries with no long-standing tradition of works council representation. Serious disputes were reported at a high frequency in both US- and UK-based MNCs. Although it was mentioned above that more than 40 per cent of all court cases appear in French courts, the presence of serious disputes in MNCs based in mixed market economies is relatively infrequent, suggesting that peculiarities within national industrial relations systems underpin the pattern of results. It is also apparent that around two-thirds of

Table 9.6 Occurrence of serious disputes and timing of information and consultation procedures

	Serious conflict %	No serious conflict %	Don't know %	N
All	15.4	67.9	16.7	1,299
Before the managerial decision is finalised	8.5	79.1	12.5	261
After the managerial decision is finalised, but before implementation	18.0	67.3	14.7	570
During implementation	17.9	67.3	14.8	243
After implementation	20.3	62.1	17.6	126

Note: These responses are from only those respondents who had attended at least one EWC meeting.

representatives from each of the country clusters do not think that a serious dispute occurred in the three years prior to the distribution of the survey.

Given the absence of serious disputes reported by around two-thirds of EWC representatives and the inadequacy of information and consultation procedures at EWCs, Table 9.6 presents data on the extent to which EWC representatives report serious disputes in relation to the timing of information and consultation procedures. Two points are immediately apparent from Table 9.6. First, the later information and consultation procedures take place, the greater the likelihood that EWC representatives report the presence of a serious dispute. Second, even when the timing of information and consultation procedures precludes representatives from influencing the content of managerial decision-making and the implementation of a managerial decision, the majority of representatives report no serious conflict. In short, when managers fail to comply with the regulation, the majority of representatives do not regard the matter as reason for a serious dispute.

Interpretation of these findings is far from straightforward. A variety of factors are likely to contribute to an explanation, including:

- a tacit, but commonly understood, imbalance of power between EWC representatives and management, coupled with an implicit consensus that management are the distributor and source of information that they can release at will;
- an unwillingness on the part of EWC representatives to engage in conflicts with management, resulting in the downplaying of the infractions of information and consultation procedures, including an unwillingness to admit that they were serious;
- a belief that the model type of information and consultation practices, as outlined in the legislation, is a distant theoretical model, and, in practice, deviations are commonplace and acceptable, and may constitute the ‘norm’;
- an impact of local industrial relations practices, particularly the functioning of works councils and trade unions, regarding sanctions;
- a lack of knowledge or consensus among EWC representatives on how to proceed to address the source of the conflict.

The survey findings do not allow a ranking of the relative importance of these explanations. It is apparent, however, that, although the vast majority of representatives view the quality of information and consultation procedures to be inadequate, very few representatives view this inadequacy to be the source of a serious dispute. On the contrary, around two-thirds of representatives reported the inadequacy of information and consultation procedures as an insufficient reason for a serious dispute. This brings into question the key assumption that underpins the ETUC proposed reform of the legislative position of EWCs and sanctions: namely, will representatives pursue managerial infringements of the regulations in court? That is, if litigation were more readily accessible, would EWC representatives be more willing to address inadequacies within the EWC by turning to litigation? It is this issue that the next stage of the analysis will address.

### Handling serious disputes

This stage examines how those representatives who identified a serious dispute (N = 200) handled the situation: that is, was a resolution to the dispute sought within the confines of the EWC or did representatives take the dispute to court? In selecting those representatives who identified the occurrence of a serious dispute, the analysis focuses on those who would be expected to be most likely to take a case to court to resolve their dispute. Table 9.7 presents the initial results and shows that representatives are likely to pursue several avenues in order to seek resolution of serious disputes. The preference of representatives is to seek resolution of serious disputes within the EWC. Around 80.0 per cent of representatives ‘always’ or ‘mostly’ refer to the founding agreement and more than 70.0 per cent to the legislation in order to resolve a serious dispute, thereby keeping the dispute within the EWC. Procedures for conflict resolution specified within EWC agreements are thus essential if conflict is to be handled within the EWC.<sup>6</sup> Over half (55.5 per cent) of representatives are ‘always’ or ‘mostly’ prepared to seek assistance from a trade union. While, technically, this action may involve going outside the EWC, the presence of a coordinator on the EWC encourages this action, as 60.2 per cent of representatives with a coordinator are prepared to pursue this option. Once again, this confirms the centrality of the coordinator to articulation between EWCs and trade union organisations.

It is relatively rare that an independent mediator is appointed to help resolve serious disputes (19.7 per cent). This is not surprising, as this action not only involves taking the matter outside the EWC, but also requires that an agreement on the independent mediator be reached between management and the representatives. Seeking support from a mediator also brings into question adherence to Article 9 of the Recast, which requires central management and the EWC to work in a spirit of cooperation. It is also apparent that it is relatively rare for the workforce represented by the EWC to be mobilised to provide support (12.0 per cent), further supporting the idea that there

6. The EWCdb includes only 27 EWC agreements that refer to the provision of fees to the EWC should litigation be entered into. Financial resources are thus not readily available to the majority of EWC representatives should they decide to take a case to court.



Table 9.7 How did the EWC handle the dispute(s)?

	Always %	Mostly %	Sometimes %	Rarely %	Never %	Don't know %	N
We referred to the agreement to support our arguments	45.8	33.8	14.5	2.0	0.5	3.3	185
We referred to the legislation (Directive, national legislation) to support our arguments	41.1	30.3	16.6	3.1	7.1	1.9	187
We asked a trade union for help	29.6	25.9	16.1	9.5	14.8	4.7	182
We made use of an independent mediator to resolve the dispute	8.0	11.7	6.8	10.7	51.8	11.1	180
We mobilised workers to support our arguments	5.5	6.5	14.6	17.7	46.8	9.0	181

is a 'distance' between EWCs and those they represent (see also Chapter 5) and that EWCs are not an effective means through which trade union actions can be organised (see Chapter 6). This finding also suggests that forcing management to comply with regulations through the mobilisation of the workforce is unlikely on a wide-ranging basis. Acknowledgement of this point may underpin the ETUC preference for statutory sanctions to enforce managerial compliance, although it should be acknowledged that there have been instances of mass workforce mobilisation in defence of the rights of specific EWCs (Whittall et al. 2009; Müller and Rüb 2009).

A further survey question asked whether legal proceedings were pursued to resolve the serious dispute identified by the representatives. Only 28 representatives, 14.0 per cent of those who reported the occurrence of a serious dispute, indicated that they had pursued legal proceedings, while 152 (76.0 per cent) indicated that no legal proceedings were initiated.<sup>7</sup> As fewer than a quarter of all respondents are content with the quality of information and consultation procedures (Chapter 4), it is remarkable that only 2.2 per cent of them (28/1,299) initiated legal proceedings to seek redress during the five-year period prior to the survey. In general terms, this suggests a reluctance on the part of representatives to initiate legal proceedings, the difficulty of pursuing such proceedings under the current arrangements and/or the resolution of the issues within the EWC.

When faced with a serious dispute, representatives on Article 13 EWCs are less likely to pursue legal proceedings (7.1 per cent) than their counterparts on Article 6 EWCs (16.7 per cent). It remains to be seen whether representatives of Article 13 EWCs are less litigious, work with regulations that impose restrictions on the taking of legal proceedings, are influenced by the voluntary arrangements that permeate Article 13 agreements or resolve the serious dispute within the EWC.

7. Twelve respondents did not know whether legal proceedings had been initiated.

Marked national variations in the initiation of legal proceedings are also apparent. In particular, only 2.6 per cent of Nordic and 8.4 per cent of representatives from coordinated market economies who reported the occurrence of a serious dispute indicated that they had initiated legal proceedings compared to 33.5 per cent of representatives from liberal market economies and 20.3 per cent of representatives from mixed market economies. These figures are influenced by the 25.9 per cent of representatives operating within US-based MNCs and the 34.0 per cent of representatives operating within French-based MNCs who had initiated legal proceedings in connection with a serious dispute. While it is surprising that Germanic representatives who operate within an industrial relations system that is permeated by law do not seek legal redress when confronted by a serious dispute, the fact that representatives operating in French-based MNCs choose to refer to the legislation may explain the high proportion of all EWC cases that arrive in French courts. In short, the data suggest that the French system promotes the seeking of legal redress by representatives.

The reluctance of many representatives to initiate legal action when confronted by a serious dispute raises the question as to why there were no legal proceedings. Table 9.8 presents the answer to this question. Leaving aside the 'other' response option, the most significant reason for not taking a serious dispute to court was that the issue was not important enough to go to court. Of course, this is a contradiction in terms: if a dispute is serious, then it merits being taken to court. It should be acknowledged, however, that additional factors may impinge on the decision not to initiate legal proceedings. Such an action, for example, may be viewed as damaging to long-term relations with management, which may have a more detrimental outcome than the consequences of the issue that is the subject of the serious dispute. Additionally, the absence of a consensus in the EWC may prevent any legal action from being taken. The 17.5 per cent of respondents who report this factor as influencing decision-making on legal proceedings suggest that cultural differences in the interpretation of events and/or differences in relations between home country and foreign representatives may intervene in decisions to take legal action. It also points to the damaging effects a breakdown in consensus among EWC representatives may have on the operation of the EWC.

Two further factors that may result in no legal action being taken and that centre on the support available to EWCs are 'we did not know enough about how to proceed', cited by 10.7 per cent of representatives, and 'we did not have enough resources for a court case', cited by 11.3 per cent of representatives. The absence of knowledge on how to proceed indicates a shortfall in extant trade union training arrangements, although this topic did not figure large in the training requirements of EWC representatives (see Chapter 7). The assessment of available resources is also related to the presence of a coordinator, with 15.8 per cent of EWC representatives without a coordinator mentioning this issue compared to 11.1 per cent of those with a coordinator, suggesting that coordinators may be in a position to wrest additional resources from trade union organisations to assist EWCs. Knowledge about how to proceed was influenced by the presence of a coordinator, with 20.1 per cent of representatives with no coordinator citing insufficient knowledge on how to proceed, while 9.6 per cent of representatives working with a coordinator were in a similar position. Coordinators thus appear to bring knowledge to the EWC on how to proceed with court cases. It should also be noted

Table 9.8 Why didn't the EWC take a case to the court/press charges to resolve the dispute?

	N=167	Yes %
We did not think the issue was important enough to go to court		26.1
There was no consensus in the EWC on this issue		17.5
The possible sanctions were considered too small to invest time and resources in such a process		12.5
We did not have enough resources for a court case (e.g. financial means, expertise)		11.3
We did not know enough about how to proceed		10.7
There are no provisions in national law allowing EWCs (and/or their members) to go to court		9.6
We were afraid of the consequences for the EWC representatives		8.1
The trade union advised us not to go to court		4.2
Other		26.6

Note: Respondents could indicate as many reasons as appropriate, hence the sum of the percentage data is greater than 100.0 per cent.

that every representative who mentioned that 'the trade union advised us not to go to court' worked in conjunction with a coordinator, further suggesting that advice from the trade union via the coordinator may bring experience of previous court cases to the attention of the EWC.

Two further reasons why no legal action was taken are directly related to the ETUC reform agenda. 'The possible sanctions were considered too small to invest time and resources in such a process' was cited by 12.5 per cent of representatives, while 9.6 per cent mentioned 'there are no provisions in national law allowing EWCs to go to court' as a reason for not going to court. The perceived inadequacy of the sanctions among representatives as a reason for not taking legal action lends support to the ETUC reform agenda, which explicitly calls for more demanding sanctions, including those beyond financial penalties, when management fail to comply with the regulations (Appendix B, point 1). The absence of provisions in national law allowing EWCs to go to court reflects the inadequacy of the transposition process and the failure of European policy-makers to exert control mechanisms. It is noteworthy that representatives on EWCs operating under Article 13 were more likely to cite this reason (18.9 per cent) than their counterparts on EWCs operating under Article 6 (6.3 per cent). Representatives thus view the voluntary Article 13 arrangements as having more limited access to legal redress. Two points are raised by these data. First, the Commission has acknowledged limitations in several national transpositions of the legislation (2018a, 2018b), but has declined to intervene to address these limitations. This is contrary to the duty of the Commission (Dorsemont and Jagodziński 2018) and impedes the operation of EWC legislation. Second, any measure to clarify the legal status of EWCs and thus their capacity to take legal action is likely to eliminate some of the reasons why legal proceedings are not initiated and thus facilitate the procedural aspects of EWC operation (Jagodziński and Lorber 2015). That 8.1 per cent of EWC representatives reported that they did not pursue litigation because they were afraid of the consequences of such action is further evidence of the inadequacy of the legal framework, as the finding indicates that these

EWC representatives do not think that the legal framework is robust enough to preclude managerial retaliation. The large proportion of respondents reporting 'other' (26.6 per cent) may be an indication that the issue at hand was resolved within the EWC, but this possibility was not pursued within the survey.

In summary, serious disputes are extremely rare, particularly in the light of the perceived inadequacy of information and consultation procedures. Most representatives attempt to address serious disputes within the EWC, thus emphasising the importance of imparting knowledge of agreements and national transpositions in training programmes, appointing coordinators to provide detailed advice on experiences of other EWCs and setting the terms of EWC agreements to allow for litigation. Very few serious disputes resulted in court cases. A range of factors explain why serious disputes were not taken to court, prominent among which were issues relating to internal EWC politics, such as the need to achieve consensus among representatives, the importance of the issue at the heart of the serious dispute in relation to the ramifications of the court case, and trade union advice. In addition to these issues arising from internal politics, issues relating to the legislation are further reasons why legal action is not pursued, in particular the inadequacy of sanctions and the limitations of some national transpositions of the European legislation.

## Conclusions

From the perspective of the representatives, the majority of managers do not comply with the information and consultation requirements of the legislation. The need to enforce the requirements of the legislation is thus paramount. Efforts to articulate EWCs with other institutions of labour representation, to facilitate trade union involvement and to enhance training opportunities for representatives have proved insufficient to ensure managerial compliance with the legislation and thus the intentions of European policy-makers. To address this situation, the ETUC reform agenda is designed to dissuade managers from non-compliance with the information and consultation regulations by creating the circumstances in which the threat of effective and readily available legal action combined with proportionate sanctions to combat managerial non-compliance is enhanced.

Where EWC practice is perceived by representatives to be inferior to the terms of the founding agreement and where representatives have identified serious disputes, representatives primarily attempt to redress the situation within the EWC by reference to the founding agreement and/or the legislation, rather than going outside the institution and pursuing legal action. To enforce rights within EWCs requires knowledge of the regulations. Among representatives, knowledge of these regulations is widespread but uneven, with knowledge of the founding agreement surpassing that of the national transposition measures, which, in turn, is greater than that of the European legislation. For each of these levels in the hierarchy of operation and enforcement, substantial minorities of representatives are unfamiliar with the regulations governing the institution. While some of these representatives are recent appointees, the extent of unfamiliarity with the regulations suggests that substantial minorities of representatives

are unable to enforce the rights of EWCs. A lack of familiarity with the founding agreement may also contribute to an explanation of why 21.0 per cent of representatives do not know whether practice within the institution matches or is better or worse than the terms of operation specified in the founding agreement. In addition to attempting to improve practice by enforcing the rights of the EWC by reference to agreements and legislation, representatives have also sought to renegotiate founding agreements. Representatives, however, view renegotiation as a tough and time-consuming process, a view emphasised by representatives involved in the renegotiation of agreements since 2009.

Given the extent of perceived managerial non-compliance with the regulation, it is surprising that only 200 representatives, 15.4 per cent of all survey respondents, report the occurrence of a serious dispute and, of these, only 28 representatives indicate that they initiated legal proceedings. Two points arise from these findings. First, for a significant number of representatives, managerial non-compliance with the regulations does not constitute the source of a serious dispute. Second, very few of the representatives who report the presence of a serious dispute take the matter to court. Securing a consensus within the EWC among the representatives, involving the trade union(s) and ensuring that representatives have sufficient knowledge of the appropriate procedures are all factors internal to the EWC that can result in no legal action being taken. In addition, the current regulations reduce the prospect of legal action in that 12.5 per cent of representatives view the sanctions as inadequate and, for 9.6 per cent of representatives, the provisions of the national transposition measures preclude the initiation of legal proceedings.

The implications for the parties to EWCs are wide-ranging. From the perspective of representatives, the majority of managers do not comply with the information and consultation regulations but instead actively pursue the HR agenda, assessed in Chapter 8. BusinessEurope opposed the moderate reference to sanctions included in recital 36 of the Recast in wishing to maintain a position where there were no European-level sanctions for managerial non-compliance with the regulations. The Commission supported BusinessEurope in arguing that any sanctions should remain a matter of national rather than European competence, a position subject to debate in view of precedents on sanction-setting mechanisms in other areas of EU law.<sup>8</sup> In practice, the current situation thus confirms the viability of the BusinessEurope strategy. Moreover, the desire of most representatives to resolve disputes or improve practice by taking action within the EWC supports the BusinessEurope strategy, as this desire reduces the likelihood of court action. Further consolidating the BusinessEurope position and, no doubt, underpinning its resistance to any future change to the sanctions regime, the current threat of legal intervention is insufficient to persuade the majority of managers to comply with the regulations. In these circumstances, BusinessEurope is likely to lobby in favour of the *status quo*, thereby allowing continued and wide-ranging managerial non-compliance with the information and consultation regulations.

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8. On environmental law, see Faure (2010); and, on criminal sanctions for market abuse, see European Commission (2020).

For European policy-makers, these findings constitute a rude awakening. From an initial position in which no sanctions were included in the Directive in the naïve expectation of compliance with the regulations, European policy-makers expected that the reference to sanctions in recital 36 rather than binding measures in the Recast would be sufficient to stimulate national legislators to adopt effective enforcement provisions and thus ensure managerial compliance with the regulations. Clearly, this expectation has not been realised in practice, with the consequence that information and consultation arrangements, a core purpose of the legislation, remain inadequate from the perspective of the representatives. Not only has the Commission failed to introduce an appropriate sanctions regime, it has also failed to monitor and control the quality of the national transpositions regarding sanctions (Dorssemont and Jagodziński 2018). Having acknowledged the problems related to sanctions, the Commission initiated an exchange between Member States on the topic. The results of this consultation remain to be seen. There are no indications, however, that this process will lead to an upscaling of sanctions or an easing of access to the courts.

Three factors compound the situation for European policy-makers. First, representatives cite the limited sanctions available under the current regulations as discouraging claims from being brought: that is, some representatives recognise that there is an issue to address, but do not do so because the regulations do not offer a satisfactory prospect of effective, proportionate and dissuasive redress. Second, it is the duty of the Commission to ensure that EU-level legislation is fully and accurately transposed to national level. It is clear that the Commission is failing in this task (Jagodziński 2014), a point that it acknowledges (2018a, 2018b), with the consequence that there are further limits to seeking legal redress for managerial non-compliance. Third, limits to seeking legal redress are accentuated by the ambiguity in the legal status of EWCs and SNBs in relation to the MNCs within which they operate (Jagodziński and Lorber 2015). European policy-makers acknowledge that these limits exist (European Commission 2018a, 2018b), but they have yet to address them, for reasons they decline to explain. The failure to address these points in practice endorses the BusinessEurope strategy of minimising sanctions to allow continued managerial non-compliance with the information and consultation regulations.

Efforts made by trade union organisations to articulate EWCs with other institutions of labour representation, to promote trade union involvement and to train representatives have been insufficient in overcoming the shortfalls in the Directive and, latterly, the Recast. Furthermore, within trade union organisations, it is implicitly acknowledged that widespread worker mobilisation is unlikely to take place as a means of reforming the legislation, although it has taken place within specific MNCs at times of crisis. To improve the quality of information and consultation procedures, trade union organisations are thus reliant on the actions of European policy-makers. This reliance is manifested in the emphasis on sanctions and access to justice. Although the ETUC welcomed the reference to sanctions in recital 36 of the Recast, it was disappointed that this reference was not included in the legislation as a binding measure and thus had hardly any impact on national enforcement provisions. The reform agenda promoted by the ETUC attempts to rectify this situation and to raise the threat of legislative action as a means of generating greater managerial compliance with the regulations.

The data presented here suggest that taking legal action would be a last resort, as representatives tend to opt for solutions to disputes within the EWC rather than resort to court action. In addition, the data indicate that, for a significant number of representatives, managerial non-compliance with the regulations does not constitute a serious dispute. This brings into question the assumption that underpins the ETUC strategy that representatives will enforce managerial compliance with the regulations by means of legal proceedings or the threat thereof when more effective sanctions and enforcement mechanisms are in place. If the majority of representatives do not view managerial non-compliance as serious, why should they be expected to initiate legal action to address the issue? The practical implication here is that trade union organisations would have to accompany their preferred legislative change with measures to shift the opinion and strategy of representatives. Among the measures that could be employed are support for representatives in the form of more resources, legal advice and training. In addition, the role of the coordinator could be developed to ensure that existing legal decisions and the experience of other EWCs can be brought to the attention of the representatives with the issue at hand and to raise expectations among representatives about the quality of information and consultation procedures. In these instances, actions are likely to require extensive trade union interventions and resources at local level to shift opinions on information and consultation arrangements at European level and within Member States.

## **Chapter 10**

### **Negotiating with management: moving beyond the information and consultation functions**

European policy-makers envisaged the establishment of a multilevel system of transnational industrial relations to accompany and facilitate European integration (Savoini 1995). Discussions throughout the 1960s and 1970s on the form that employee participation in MNCs might take within this multilevel system embraced rights to information, consultation, codetermination and negotiation (Jagodziński 2013: 274). Given that, at the time of their inception, EWCs were the only transnational institutions of employee participation, they were viewed as basic institutions from which institution building and ‘spillover’ effects would advance the development of transnational industrial relations (Ross 1994; Marginson and Sisson 2004: 216–245). Included as part of the envisaged institution building was the possibility of movement beyond the information and consultation functions, as specified in the Directive, to incorporate a negotiations function. More recently, the Commission reiterated this position in arguing that, in adopting a negotiations function, EWCs may contribute to increasing international integration (European Commission 2008e) and that negotiated transnational agreements may contribute to ‘realising the potential of social dialogue’ (European Commission 2012a). To these ends, the Commission has explored the possibility of creating a framework within which transnational negotiations may take place (Ales et al. 2006). This chapter examines the scale, scope and implications of the negotiations function assumed by some EWCs. To introduce the topic, the status of negotiation in founding agreements, reports on EWC practice regarding negotiations, the number of agreements concluded, and the views of the Commission and the social partners are examined.

The Directive and the Recast explicitly specified information exchange and consultation to be the primary purposes of EWCs. A negotiations function is neither mentioned nor precluded in the legislation, the imprecision of the measures being designed to promote institution building (Jagodziński 2007a, 2012b). By 2000, 11 EWC founding agreements (2.4 per cent of the total) made provision for a negotiations function to supplement the information and consultation functions (Carley 2001: 9–11). This proportion had risen to 3.1 per cent by 2010 (Waddington 2011: 167), at which level it remained until 2015 (De Spiegelaere and Jagodziński 2015: 26). In contrast, 9.8 per cent of 71 Article 6 agreements expressly excluded a negotiations function for EWCs (Carley and Marginson 2000), a proportion that had risen to 11.0 per cent by 2015 (De Spiegelaere and Jagodziński 2015: 28). The vast majority of EWC founding agreements thus follow the ambiguity of the legislation and neither explicitly allow nor prohibit a negotiations function.



A discrepancy between the content of agreements and practice is discerned by research. Of 39 EWCs examined in 2004 and 41 examined in 2007, 14 and 8, respectively, reported that a joint text or agreement had been negotiated even though the EWC founding agreement was silent regarding a negotiations function (ORC 2004, 2007). More than a quarter (27.9 per cent) of EWC representatives in 2007 reported that the founding agreement allowed for the negotiation of joint texts and agreements, and no fewer than 83.3 per cent of these EWC representatives indicated that a joint text or agreement had been negotiated (Waddington 2011: 167). Similarly, in 2018, 34.2 per cent of EWC representatives indicated that the EWC was involved in the negotiation of a formal signed agreement with management in the five years prior to the distribution of the survey.<sup>1</sup> On the basis of this evidence, it appears that EWC practice has advanced beyond the formal content of EWC agreements and that some EWC representatives have assumed that the ambiguity of EWC agreements and legislation does not preclude the EWC from adopting a negotiations function.

What is beyond doubt is the growth in the number of agreements with international coverage. By December 2018, the European Commission/International Labour Organization (hereafter Commission/ILO) database recorded 321 such agreements.<sup>2</sup> This database includes both global framework agreements (GFAs), which are intended to promote fundamental labour standards across all sites operated by MNCs and issues concerned with corporate social responsibility, and transnational company agreements (TCAs), which tend to cover aspects of work and/or relations between employers and workers.<sup>3</sup> There is no formal distinction drawn between GFAs and TCAs in the Commission/ILO database. The first TCA was concluded at Danone in 1988; thereafter, it is estimated that the number of TCAs rose from around 50 in 2002 to around 160 by 2018 (European Commission and ILO various). The total of transnational agreements in the database is thus split between GFAs and TCAs. Trade union organisations in the form of global union federations (GUFs) are the primary campaigners for and signatories of GFAs on behalf of labour (Rehfeldt 2015). Both national trade unions and EWCs are signatory to a minority of GFAs (Müller et al. 2013). Attention here, however, is directed towards TCAs, the majority of which are the result of negotiations involving EWCs and ETUFs (Telljohann et al. 2009a, 2009b; Rehfeldt 2015). The

1. The survey question was explicit in asking 'Was your EWC involved in the negotiation of a formal signed agreement with management in the previous five years? By this, we do not mean an agreement on how to run the EWC (EWC agreement), but an agreement on a policy issue (such as a framework agreement or a transnational company agreement).' On three counts, however, these data should be treated with some caution. First, where there were several respondents from the same EWC, there was not a uniform answer as to whether a formal signed agreement had been concluded. Second, although they were the subjects of different questions within the survey, there may have been some confusion between formal signed agreements and joint texts. Third, there is some confusion among representatives between the EWC founding agreements and other agreements and joint texts, leading to an overstatement of the extent of negotiation (Müller et al. 2013).
2. Neither the Commission nor the ILO claim that the database contains all transnational agreements. On the contrary, it is acknowledged that there are likely to be missing cases.
3. The Commission defines a global framework agreement (GFA) as that negotiated by MNCs and global union federations representing workers at the global level by sector of activity. GFAs aim to promote and mentor fundamental labour standards across the worldwide operations of MNCs, in particular in the areas of freedom of association and the right to collective bargaining, but also of good labour relations and decent conditions of work. In contrast, a transnational company agreement (TCA) comprises reciprocal commitments, the scope of which extends to the territory of several states and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives (see European Commission and ILO various).

database does not suggest that some 160 EWCs have concluded a TCA, as several TCAs have been agreed in specific MNCs. In addition, attention is also focused on joint texts and informal arrangements. Joint texts are written understandings on the subject in question agreed by management, EWCs and ETUFs. The enforcement of joint texts is contentious (Jaspers 2012). Informal arrangements are negotiated between the EWC and management and form the basis for European company regulations on aspects of industrial relations and working conditions, but are not necessarily available in a written form (Müller et al. 2013: 40). The content of many informal arrangements applies to features of the HR agenda pursued by management (see Chapter 8). Reliable data on the number of joint texts are not available. The same is the case for informal arrangements, although a study of such arrangements in metalworking suggests that 26.0 per cent of EWCs operated with agreed informal arrangements in place (Müller et al. 2013: 41).<sup>4</sup> The key issue for the purposes of this chapter is that TCAs, joint texts and informal arrangements are negotiated outcomes, involve EWCs to some degree and constitute movement beyond the formal transnational information and consultation agenda.

The growth in the number of TCAs, joint texts and informal arrangements, particularly after 2000, was welcomed by the Commission, which viewed the development as institution building towards a European system of industrial relations (European Commission 2008e; Morin n.d.). The initial response from the Commission was to convene a series of ‘study seminars’ and to explore the prospect of establishing a framework within which transnational negotiations could take place. The study seminars were primarily concerned with mapping the concluded agreements, identifying their substantive content and comparing their procedural terms (European Commission 2006a, 2006b). Concurrently, the Commission established a research team to examine the features of a legal framework within which transnational negotiations could take place. While emphasising that it would be necessary to ‘avoid confusion between workers’ involvement and collective bargaining tools and aims’ (Ales et al. 2006: 37), the framework within which transnational negotiations might take place was envisaged as underpinned by law and as specifying the legal status of agreements, the procedure whereby such negotiations take place, the negotiating agents and the conditions for the binding effect of concluded agreements (Ales et al. 2006: 33). Retaining the positive tenor of the initial publications, the Commission subsequently focused on how transnational agreements would contribute to a ‘new articulated industrial relations system’ embracing local and global levels (Morin n.d.) and formalising the monitoring of the number and content of agreements (European Commission 2008f) of which the above-mentioned database is a key element. An Expert Group was established that presented a range of options regarding future initiatives on TCAs. Responding to the Report of the Expert Group (2012), the Commission issued a Staff Working Document that reviewed the options and was intended to promote debate within and between the social partners (European Commission 2012a).

In responding to the Staff Working Document, BusinessEurope embarked on a well-trodden path in arguing that ‘there is no need for EU policy on TCAs’ (BusinessEurope

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4. As these authors acknowledge, this study should not be taken as indicative of all EWCs. It is likely that developments in the engineering sector were in advance of those in other sectors (Müller et al. 2013: 40–43).

2012). As with EWCs, BusinessEurope stated that the development of TCAs was best left to voluntary arrangements and that a single EU instrument would not address the challenges associated with TCAs. More specifically, BusinessEurope questioned the Commission's assumption that the absence of a legal framework had discouraged managers from concluding such agreements, argued that most TCAs are 'declarations of intent' rather than legally binding agreements and thus do not require a supporting legal framework, and viewed proposals on a framework within which disputes arising from TCAs could be settled as superfluous because such disputes are rare (BusinessEurope 2012). In short, BusinessEurope rejected any European-wide framework for transnational negotiations.

Research on managerial involvement in transnational negotiations focuses on operational rather than political matters. It appears that MNCs with cooperative systems of industrial relations are the most likely to conclude TCAs (Hadwiger 2014; Müller et al. 2013; Ales 2018). Managers also cite TCAs and joint texts as a means whereby Europe-wide policies for MNCs can be agreed and subsequently implemented (Leonardi 2015; Whittall et al. 2017). Prominent among such policies are those on health and safety, equality, work-life balance and corporate restructuring (Helfen et al. 2012; Eichorst et al. 2011). In addition, managers view TCAs and joint texts as vehicles to promote HR policies designed to encourage employee commitment, facilitate corporate change and promote a corporate identity among employees (Broughton et al. 2020; Teissier 2012). In this regard, TCAs are a further development of managerial approaches to EWCs in seeking corporate added value.

The adoption of a negotiations function by some EWCs is problematic for trade union organisations, albeit for different reasons than for BusinessEurope. Trade unionists argue that EWCs are not trade union organisations, do not have a mandate to negotiate, do not have a right to strike and are committed to working 'in a spirit of cooperation' (Article 9, Recast). Each of these features is viewed as limiting the capacity to negotiate and is contrary to reaching agreement on contested issues (ETUC 2006). Furthermore, trade unionists argue that the classic dual system of industrial relations, which underpins the introduction of EWCs, is based on the separation of participation arrangements within the company conducted by works councils or their equivalent, and collective bargaining undertaken outside the company by trade unions. From the perspective of trade unionists, allotting a negotiations function to EWCs would blur the separation between participation and collective bargaining, a separation historically also supported by employers' associations, as it kept trade unions out of the workplace (Sisson 1987). Trade union organisations thus reject the assertion that EWCs are 'transnational bodies par excellence' (Ales 2018: 7) that are representative of employees in all circumstances. Instead, trade unionists argue that ETUFs should be primarily responsible for negotiations with MNCs on transnational issues, with EWCs undertaking a secondary or auxiliary role (ETUC 2016b).

To convert these principled positions into practice, the initial response of the ETUFs was to assign responsibility for the ratification of TCAs to standing committees with the brief of handling issues associated with EWCs and MNCs (Pulignano 2010). The intention was to create circumstances whereby only these standing committees of the

ETUFs ratified TCAs (for example, see EMF 2006, 2011). In developing this position, the ETUC and the ETUFs have proposed a *Roadmap on Transnational Company Agreements* (ETUC 2016a) at the centre of which is an optional legal framework for TCAs, which negotiators may opt into, in writing, thereby committing the TCA to its provisions. Among the provisions of the optional legal framework are: assigning to the ETUFs the leading role in negotiations; involving EWCs in the negotiation of the TCA and the monitoring of its operation; including a non-regression clause; and including details of the formal content of the TCA and its scope (ETUC 2016a).<sup>5</sup> Several of these provisions borrow from the legal framework initially explored by the Commission (Ales et al. 2006) and are intended to articulate ETUFs and EWCs within a system of negotiations. These provisions also constitute an attempt to introduce a legal framework, albeit an optional one, to the conduct of transnational negotiations. As such, the legal approach promoted by the ETUCs and ETUFs contrasts with the voluntary approaches advocated by BusinessEurope, suggesting that the impasse that characterises EWC developments is likely to be perpetuated through TCAs. The key point of differentiation is that the legal framework for TCAs proposed by the ETUC and ETUFs is optional rather than a hard law requirement, thereby allowing managers of MNCs and trade union negotiators to opt in. For BusinessEurope, any mention of any form of legal framework is unacceptable. The next section of this chapter presents the data on the themes introduced here. It illustrates the extent to which a negotiations function has supplemented the information and consultation arrangements formally allowed by the EWC legislation.

## Charting the scale and scope of the negotiations function

This section comprises three stages, each of which examines, in turn, the scale of negotiations conducted by EWCs and union involvement, the scope of TCAs, and the extent of satisfaction among EWC representatives with the concluded TCAs. The section argues that joint texts and TCAs are growing in number and cover a wide range of topics. Although trade union organisations are involved in the majority of negotiations, a substantial minority of TCAs are negotiated solely by EWCs.

### Scale of negotiations and union involvement

Table 10.1 shows that almost a quarter of EWC representatives reported that their EWC had concluded a joint text with management in the three years prior to the distribution of the survey and more than a third of representatives reported involvement in negotiations on TCAs in the five years prior to the survey. These representatives sat on 166 EWCs in the case of joint texts and on 169 EWCs where the negotiation of a TCA had taken place. Compared to the Commission/ILO database, which reports a total of

5. In addition, the optional legal framework refers to the disclosure of the mandate of the parties to the negotiations, the protection of the workers and trade unionists involved in the negotiations, and the inclusion of a 'more favourable' clause whereby the more favourable of two competing clauses in different agreements is to apply (ETUC 2016b).

Table 10.1 Extent of joint texts and transnational company agreements\*

	Concluding a joint text with management (3 years)		Involved in the negotiation of a formal (signed) agreement (5 years)	
	% yes	N	% yes	N
All	23.1	1 345	34.0	1,324
EWC coordinator present	22.7	823	34.8	813
No EWC coordinator	27.6	280	37.0	276
EWC representatives based in MNCs with headquarters in:**				
Nordics	19.9	261	24.7	257
CMEs	24.2	448	33.4	437
MMEs	21.6	305	51.2	299
LMEs	26.3	323	24.2	324

Notes: \* These responses are only from EWC representatives who had attended at least one EWC plenary meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

about 160 TCAs negotiated between 1988 and 2018, with some MNCs having concluded several TCAs, EWC representatives report a more widespread negotiations function.<sup>6</sup> There is no comparable database to that of the Commission/ILO for joint texts. It is thus not possible to compare the survey results against an accredited source. The ‘all’ results presented in Table 10.1 demonstrate beyond doubt that substantial minorities of representatives view negotiations as an EWC function to supplement the formal information and consultation arrangements. In this sense, and in a manner consistent with the expectations of functional spillover theories, institution-building based on EWCs has been under way for some time.

The presence of an EWC coordinator appears to restrict the negotiation of joint texts and TCAs. This finding raises two points. First, EWC coordinators are generally union members and represent the ETUF within the EWC. Lower rates of negotiation of joint texts and TCAs in the presence of EWC coordinators thus suggest that ETUF policies opposing an independent negotiations function for EWCs are sustained by ETUF representatives coordinating EWCs. In the absence of this opposition, management tend to conclude more TCAs and, particularly, joint texts. Second, when negotiations take place in the absence of an EWC coordinator, as reported by 37.0 per cent of EWC representatives, there are likely to be fewer opportunities for articulation between the EWC and the ETUF and, consequently, limited access to the ratification procedure of the ETUF standing committees.

A key point to emerge from the data disaggregated by the country clusters of the MNC in Table 10.1 is that the range of EWC representatives who report the presence of a joint text is relatively narrow (+/- three percentage points) compared to that for TCAs (plus 17 percentage points to minus 10 percentage points). There would thus appear to

6. See footnote 1 above for the qualifications regarding these data.

be more of a consensus between clusters on joint texts than on TCAs. The two country clusters recording the smallest proportions of EWC representatives who indicate the presence of TCAs are the Nordics and the liberal market economies. Both of these country clusters are characterised by single channel systems of representation in which the negotiations function, whether inside or outside the company, is exclusively the domain of trade unions. For management and workers' representatives, the tendency is thus to view trade unions as the institution through which negotiations are conducted rather than EWCs. The liberal market economies cluster is the only one where a greater proportion of EWC representatives report the negotiation of a joint text than report a TCA. This may be a result of the large number of UK- and US-based MNCs in the cluster where management are more comfortable with the less binding joint texts than TCAs and are more interested in limiting trade union involvement.

The relatively large proportions of representatives with TCAs sitting on EWCs in MNCs based in coordinated market economies and, particularly, mixed market economies are consistent with earlier findings demonstrating that TCAs are concentrated in French- and German-owned MNCs (Rehfeldt 2013, 2015; Rüb et al. 2011). Many of the countries in these two clusters operate dual channel systems of representation in which works councils engage in negotiations, as distinct from collective bargaining, with management within the company (Müller-Jentsch 1995). In France, trade unions have a legal monopoly over collective bargaining, leading managers to opt for trade union involvement (Tchobanian 1995; Rehfeldt 2015). In these contexts, negotiations conducted by EWCs are an extension of national practice. The extent of union involvement in national practice is likely to differ depending on the extent of unionisation among works council representatives and the constitutional arrangements for the selection of works councillors, particularly union involvement therein. As the selection of EWC representatives is a matter for Member States to address by reference to national practice, it is likely that union involvement in transnational negotiations will also vary. It is this topic that the presentation will now discuss.

To evaluate the extent of trade union and EWC involvement in TCA negotiations, the EWC representatives who reported that their EWC was involved in such a negotiation were asked about the role of the trade unions in that process. They could choose between four options: where the EWC took part in the negotiation with the involvement of a ETUF; where the EWC took part with the involvement of a national trade union; where the EWC negotiated without the involvement of a trade union; and where the EWC representatives did not know about trade union involvement in the negotiations. As it is conceivable that both an ETUF and a national union were involved in the same negotiations, the respondents could indicate more than one answer. Of those respondents who had been involved in a TCA negotiation, 40.2 per cent reported that the ETUF was involved, 28.6 per cent indicated that a national union was involved, 21.1 per cent revealed that only the EWC was involved and trade unions were absent, and 15.7 per cent did not know which parties were involved in the negotiations. Table 10.2 groups these answers into three categories: a trade union was involved in the negotiation (63.2 per cent of EWC representatives with a TCA), no trade union was involved in the negotiation (21.1 per cent), and the EWC representative does not know the answer to the question (15.7 per cent).

Table 10.2 Trade union involvement in negotiations\*

Transnational company agreements:				
	Trade union involved %	No trade union involvement %	Don't know %	N
Total	63.2	21.1	15.7	406
EWC coordinator present	73.1	14.8	12.1	274
No EWC coordinator	56.6	28.2	15.2	80
Percentage of unionists serving as EWC representatives				
0–69%	51.5	31.6	16.9	61
70–99%	69.4	26.5	4.1	70
100%	80.2	8.2	11.7	145
EWC representatives based in MNCs with headquarters in:**				
Nordics	64.6	13.7	21.7	56
CMEs	57.3	28.8	13.8	136
MMEs	65.2	19.8	14.9	132
LMEs	66.5	17.8	15.7	80

Notes: \* These responses are only from EWC representatives who had attended at least one EWC meeting.

\*\* There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

The 21.1 per cent of EWC representatives who report that a TCA was negotiated without the involvement of a trade union organisation substantiates trade union concerns that their exclusion may result in agreements that may impinge on collective bargaining arrangements or terms and conditions negotiated elsewhere. It is very likely that a substantial proportion of TCAs concluded exclusively by EWCs have not been subject to ratification by an ETUF standing committee. It is noteworthy, however, that the proportion of EWC representatives reporting the conclusion of a TCA without union involvement is markedly lower than the 48.6 per cent of TCAs that were signed by EWCs without union involvement in 2013 (Rehfeldt 2015).<sup>7</sup> Although the measures utilised in the two studies differ, Rehfeldt uses TCAs and their signatories in the 2013 study, whereas the 2018 survey relies on EWC representatives involved in or reporting TCA negotiations, the 2018 data suggest that greater union control over TCAs had been achieved between 2013 and 2018.

The presence of an EWC coordinator and higher rates of unionisation among the EWC representatives are associated with greater union involvement in the negotiation of TCAs. When an EWC coordinator is present, for example, almost three-quarters of EWC representatives report that a trade union was involved in the negotiations, suggesting that the ratification procedure required by the ETUFs would also be in place. Even in

7. Rehfeldt (2015) refers to European framework agreements rather than TCAs but defines them in the same way as TCAs are defined here as a means of distinguishing them from global framework agreements.

the absence of an EWC coordinator, more than half of the EWC representatives report union involvement in the negotiations. It is noteworthy, however, that a minority of representatives report the presence of an EWC coordinator but no involvement of a trade union in negotiations, suggesting limits to the link between some coordinators and ETUFs, limitations to the monitoring procedures of some ETUFs, or decisions within the EWC to exclude trade union organisations from negotiations. There is a direct relationship between higher rates of unionisation among EWC representatives and union involvement in the negotiation of TCAs. In totally unionised EWCs, only 8.2 per cent of EWC representatives report TCAs negotiated by the EWC without union involvement compared to 80.2 per cent of EWC representatives reporting union involvement. In contrast, where the EWC is not 70.0 per cent unionised, a half of EWC representatives report TCAs negotiated with union involvement, while almost a third report TCAs negotiated only by the EWC. From the union perspective, these data substantiate the policies of ensuring that each EWC operates with a coordinator and that union members should sit on EWCs. The data also illustrate the dangers for trade unions from a negotiations function assumed by EWCs, especially where unionisation is very low; for example, in many industries within private-sector services, there is a possibility of TCAs being agreed, which may impinge on collective bargaining without union involvement. The legal status and enforcement of such TCAs at a national level, however, remains a topic of debate (Jagodziński 2012a, 2012b; Sobczak 2012; Van Hoek and Hendrickx 2009).

Turning to the country cluster of the MNCs shows that the outliers are EWCs based in MNCs within coordinated market economies where the extent of trade union involvement in negotiation is relatively low and EWCs are reported by representatives as the most likely to negotiate a TCA without union involvement. This result reflects national practices where dual systems of workplace participation are in operation. Negotiations conducted by Austrian, Dutch and German works councils on issues separate from collective bargaining and excluding direct trade union involvement, for example, are commonplace (Traxler 1998; Visser 1995; Müller-Jentsch 1995). As the data indicate, however, some works councillors from these countries are prepared to engage with trade unions for transnational-level negotiations in contrast to the predominant approach at national level (see also Müller et al. 2013). In the largely single channel systems that characterise many countries within the Nordic and liberal market economy clusters, the proportion of EWC representatives reporting TCAs negotiated by EWCs without trade union involvement is relatively low, but is not non-existent, suggesting that EWCs retain a degree of independence from unions in such circumstances. The legal monopoly for collective bargaining held by trade unions in France is likely to underpin the relatively high union involvement in TCAs in mixed market economies: that is, many French managers of MNCs opt to replicate national arrangements in involving trade unions in transnational negotiations (Rehfeldt 2015). It is clear from these data that attempts by trade union organisations to establish a uniform approach to trade union involvement in transnational negotiations will be extremely difficult without a supportive legal framework, as national traditions and practices are likely to influence EWC practice.



## Scope of TCAs

Many studies demonstrate the broad range of topics covered by TCAs (Broughton et al. 2020; Telljohann et al. 2009b). In addition to asking whether a trade union organisation was involved in the negotiation of TCAs in the previous five years, the questionnaire thus asked EWCs representatives to identify the scope of the concluded TCAs. Respondents could tick as many boxes as were appropriate from a list, which included ‘other’. As is apparent from Table 10.3, more than a quarter of EWC representatives ticked the ‘other’ box, suggesting that the list of topics provided in the questionnaire did not specify all the pertinent topics.

The first data column of Table 10.3 illustrates the scope of the topics included in TCAs and the proportion of EWC representatives reporting that a specific topic was included in the TCA concluded by the EWC on which they sit. The range of topics reported by EWC representatives as the subject matter of TCAs is an indicator of the extent of institution building initiated by the establishment of EWCs. The prevalence of transnational restructuring and health and safety in TCAs reported by EWC representatives in 2018 replicates previous analyses of the content of TCAs (Telljohann et al. 2009b: 23–29) and confirms the centrality of these issues within transnational operations.

Chapter 4 showed that prominent items on the agendas of EWCs are health and safety, transnational restructuring and anticipation of change. EWC representatives regard the information and consultation practices associated with these topics to be inadequate, particularly in the case of transnational restructuring. It is thus no surprise that representatives attempt to address the limitations of the legal framework for EWC information and consultation practices by means of more formal TCAs. More EWC representatives mention health and safety as the subject of TCAs than any other topic. This lends further support to the argument outlined in Chapter 4 that health and safety is a matter subject to European legal regulation, and it is thus apposite that MNC-wide policies be applied, whether by information exchange and consultation or by negotiation. Both procedural and substantive TCAs have been concluded on transnational restructuring and anticipation of change as a means of addressing the shortcomings of the legal framework. Procedural TCAs on these topics tend to focus on the timing of information and consultation procedures when restructuring is envisaged (Broughton et al. 2020; Rehfeldt 2015). The timing of information and consultation procedures in such circumstances is supposed to be regulated by EWC legislation. The inclusion of formal agreed terms in TCAs on the timing of information and consultation procedures is an indicator of the inadequacy of the EWC regulations and the perceived need among EWC representatives to supplement EWC regulations. However, the extent to which procedural TCAs can improve the position of EWC representatives in relation to management is open to question (Jaspers 2012). Substantive TCAs specify binding terms in cases of restructuring, work organisation, corporate relocations, plant closures and redundancies (Telljohann et al. 2009b; Müller et al. 2013). These topics are very similar to those of the subsidiary requirements agenda (see Chapter 4). Substantive TCAs on restructuring are thus also attempts to mitigate the limitations of the EWC regulations by means of a formal agreement. The extent to which such agreements mitigate the limitations of the EWC regulations is unclear. In a sense, substantive TCAs

Table 10.3 Content of TCAs and trade union involvement\*

N=450

Topic	EWC reps reporting topic included in TCA %	EWC reps reporting trade union involved in negotiations %	EWC reps reporting only EWC involvement %	Don't know %
Health and safety	42.8	66.8**	15.8**	17.4**
Corporate social responsibility	37.7	64.3	23.5	12.2
Transnational restructuring	33.8	67.5	20.8	11.7
Equal opportunities	32.0	65.7	17.8	16.4
Data protection	26.5	69.8	13.0	17.3
Training and development	24.8	79.6	9.0	11.4
Staff mobility	24.6	62.5	34.6	2.9
Human resource management	21.6	57.6	26.8	15.6
Trade union issues	19.4	83.5	10.6	6.0
Anticipation of change	14.9	82.5	1.6	15.9
Subcontracting	11.5	68.3	25.0	6.7
Remuneration issues	11.0	45.2	37.7	17.2
Other	28.9	61.7	21.2	17.1

Notes: \* These responses are only from EWC representatives who had attended at least one EWC plenary meeting.

\*\* These data express the proportion of EWC representatives who reported trade union involvement, EWC involvement or did not know who negotiated the TCA on the topic in question.

may be regarded as alternatives to the renegotiation of EWC founding agreements, as they may broaden the scope of EWC practice without modifying the underpinning regulation.

Chapters 2 and 8 demonstrated that managerial objectives for EWCs include the pursuit of a corporate HR agenda to which information and consultation arrangements are secondary and the introduction of uniform practices throughout MNCs to accommodate the increasing European integration of operations. It is thus no surprise that EWC representatives report corporate social responsibility (37.7 per cent) and HRM (21.6 per cent) as featuring in TCAs. The appearance of these items within TCAs confirms that managers are also concerned to formalise aspects of a corporate agenda by means of agreements. Agreements on these topics have been concluded following managerial initiatives (ETUC and BusinessEurope n.d.: 6–11). TCAs on equal opportunities, data protection, training and development and, in certain circumstances, staff mobility reflect the extent to which some MNCs have moved towards establishing uniform European standards, thereby simplifying relations between sites. If, for example, a uniform training and development system is in place within an MNC, employees at the same level within that system may be transferable within the MNC.

Two further points are apposite regarding the first data column of Table 10.3. First, in the absence of any regulatory underpinning to the involvement of trade union organisations in the day-to-day operations of EWCs, the appearance of trade union issues in TCAs indicates attempts to formalise involvement. Second, while there is considerable variation in the content of TCAs on subcontracting and remuneration, the inclusion of these issues in some TCAs is indicative of the proximity of the content of TCAs to collective bargaining. Many national collective agreements at sectoral and company level, for example, deal with subcontracting and remuneration. The appearance of these issues in TCAs substantiates concerns expressed within trade union organisations that the exclusive right to collective bargaining held by trade unions can be placed in jeopardy by some TCAs.

The final three columns of Table 10.3 specify EWC representatives' perceptions of the involvement of trade unions and EWCs in the TCAs concluded. The data were thus designed to establish whether there are patterns of trade union inclusion or exclusion in the negotiation of TCAs by topic. In practice, there are no obvious variations. For the majority of the topics, trade unions were involved in between 60.0 per cent and 70.0 per cent of the negotiations. Even on issues likely to be drawn from a managerial agenda, HRM for example, trade union involvement was almost within these parameters. 'Anticipation of change' and 'trade union issues' were the principal exceptions to this situation. Very few EWC representatives cited 'anticipation of change' as the subject matter for a TCA, suggesting that the result may be a statistical aberration. The involvement of trade unions in the negotiation of TCAs on the related topic of transnational restructuring, for example, was within the 60/70 per cent parameters. The active involvement of trade unions in the negotiation of TCAs on 'trade union issues' is anticipated as trade union attempts to formalise their EWC involvement in the absence of supportive legislation.

## Satisfaction with the TCA

This stage of the analysis examines the satisfaction of the EWC representatives with TCAs. In the absence of a European legal framework, there is a debate on the utility of TCAs. Although rare, extant studies of the utility of TCAs illustrate differences between EWC representatives. Representatives from the home country of the MNCs tended to downplay the utility of the TCAs signed in Volkswagen and ArcelorMittal, regarding them as largely symbolic, as they committed management to social dialogue, which was already the norm (Whittall et al. 2017; Teissier 2012). In contrast, foreign EWC representatives viewed these TCAs more positively, as they provided opportunities to develop social dialogue at local level beyond current practices. Similar arguments were made for the New Member States (NMSs) where industrial relations practices are not as wide-ranging and TCAs constitute a means whereby practices regarded as the 'norm' in Western Europe may be extended in coverage to CEE (Adamczyk and Surdykowska 2012). Extant studies also show that satisfaction among EWC representatives with a TCA may depend on the extent of trade union involvement in the negotiation process. The guidelines developed by trade union organisations are intended to ensure the quality of TCAs and clear mandating procedures, and have led some to suggest that union-led

Table 10.4 In general, how satisfied are you with the formal agreement(s) concluded in your MNC?

	Very satisfied %	Satisfied %	Neither satisfied nor dissatisfied %	Dissatisfied %	Very dissatisfied %	N
All	9.6	49.8	34.1	5.2	1.3	399
Trade union was involved	9.1	56.9	26.9	5.1	2.0	252
Trade union was not involved	9.2	39.4	48.3	3.1	0.0	79
Don't know	12.8	33.7	45.1	8.4	0.0	65
EWC representatives from:						
Nordics	14.5	47.0	36.4	2.1	0.0	45
CMEs	11.9	50.1	29.2	7.8	1.0	153
MMEs	5.8	48.9	39.5	4.5	1.3	92
LMEs	10.6	57.7	26.5	2.6	2.6	36
EMEs	11.3	40.8	40.0	6.9	1.1	73
Foreign reps	11.7	47.9	33.2	6.2	1.0	333
Home country reps	9.7	57.7	27.9	3.3	1.4	104

Notes: These responses are only from EWC representatives who had attended at least one EWC meeting.

negotiations resulted in more detailed and precise agreements with a greater chance of enforcement through union channels at national level (Gennard 2009; Guarriello 2019). Table 10.4 presents the survey results on these themes.

The 'all' data of Table 10.4 show that there is general, but far from overwhelming, satisfaction with the TCAs that have been negotiated: almost 60.0 per cent of EWC representatives are satisfied to some degree with the TCA, and more than a third are indifferent. Dissatisfaction with TCAs, however, is marginal. Such a distribution of views should perhaps be expected on what is a negotiated settlement involving a degree of compromise and what is regarded by management within some companies as a success of social dialogue. With some variation, the broad pattern of results illustrated by the 'all' data is reproduced among the different cohorts of EWC representatives shown in Table 10.4.

Trade union involvement in negotiating a TCA raises satisfaction among EWC representatives with the TCA, largely as a result of a decline in the extent of indifference. Although the absence of union involvement in the negotiation of a TCA leads to lower levels of satisfaction among EWC representatives, it does not increase the extent of dissatisfaction. These results confirm arguments that union involvement in the negotiation of TCAs is a source of satisfaction among EWC representatives (Gennard 2009; Guarriello 2019), but do not allow comment as to whether it is the precision of union-negotiated TCAs or union enforcement of the TCA that underpins increased satisfaction.

With regard to the country of origin of the EWC representatives, it is to be anticipated that representatives from emerging market economies would be most satisfied with TCAs, as such agreements are likely to raise the floor of rights and practices for workers in the New Member States (Adamczyk and Surdykowska 2012). This expectation is not realised. On the contrary, EWC representatives from emerging market economies express the least satisfaction with TCAs compared to their counterparts from the other country clusters. This situation may reflect a sense of disappointment with the content of TCAs among EWC representatives from emerging market economies. If expectations are high that TCAs will prove helpful in improving workplace relations with management and in developing systems of industrial relations but their content is insufficient to improve these situations, EWC representatives from emerging market economies may be disappointed with TCAs. EWC representatives from liberal market economies are the most satisfied with TCAs, suggesting that TCAs represent an opportunity to raise the profile of social dialogue for these representatives. This argument would have been supported had foreign representatives been markedly more satisfied than their home country counterparts with TCAs, as observed in some case studies (Whittall et al. 2017; Teissier 2012). The data do not support this argument. More than two thirds of home country representatives are satisfied to some extent with TCAs compared to 60.6 per cent of foreign representatives. Where a TCA has been negotiated, it is likely that some home country representatives were involved in the negotiation. It is thus possible that the higher rates of satisfaction among home country representatives arise from their involvement in, and identification with, the negotiations. The survey data do not allow examination of this proposition.

## Conclusions

EWC representatives report a growing number of joint texts and TCAs covering a wide range of issues. Although trade unions are reported as being involved in the negotiation of TCAs by almost two-thirds of EWC representatives, more than 20.0 per cent of representatives indicate that such agreements are negotiated by EWCs alone. The composition of EWC representation influences the extent to which EWCs act as sole negotiating agents insofar as the presence of a coordinator and high rates of unionisation among the representatives are associated with greater union involvement in the negotiation of TCAs. There is no marked variation in union involvement by the subject matter of the TCA, although EWC representatives are more satisfied with TCAs negotiated with trade union involvement than those negotiated by EWCs alone.

The implications of these findings for policy-makers are challenging. For BusinessEurope, the situation is clear-cut. BusinessEurope does not oppose TCAs *per se* but expresses outright opposition to any framework within which transnational negotiations might take place and a preference for voluntary arrangements on a company-by-company basis irrespective of the number of joint texts and TCAs negotiated (2012). This preference reflects the current situation. BusinessEurope, however, acknowledges that TCAs may lead to win-win situations allowing ‘collaborative solutions to overcome difficulties’, the implementation of policies and actions of common interest, and better planning for business developments (ETUC and BusinessEurope n.d.: 18).

For the Commission, the growing number of joint texts and TCAs is a welcome spillover from the establishment of EWCs, achieved without any formal intervention. The formal information and consultation rights afforded to EWCs by the legislation can be supplemented by a transnational negotiations function in practice. The Commission acknowledges that these developments facilitate European integration, foster social dialogue, and facilitate dealing with restructuring, works reorganisation and employment issues by enhancing trust and cooperation between the social partners (2008e; 2012). These developments, however, place European policy-makers in a similar quandary regarding transnational negotiations as the one they find themselves in regarding EWCs: namely, the framework for future development is lacking. On behalf of the Commission, the different features of a prospective legal framework within which transnational negotiations can take place have been identified and subsequently refined (Ales et al. 2006; Expert Group 2012). Initiatives concerned with transnational negotiations were referenced in the Social Agenda for 2005–2010, which envisaged the drawing-up of a European framework for negotiations involved in ‘transnational collective bargaining’ (European Commission 2005a). Endorsement of this proposal was immediately forthcoming from the EESC (2005) and the European Parliament (P6\_TA(2005)0210), which later consolidated its position during 2013 in a resolution on cross-border collective bargaining and transnational social dialogue (2012/2292(INI)). Thereafter, apart from attempting to stimulate debate between, and elicit opinions from, the social partners (European Commission 2012a), the Commission has failed to act on the initiative that it set in train: in practice, once again favouring the unclear *status quo* expressed by BusinessEurope. This ‘no-action’ position, however, is further evidence of a lack of commitment within the Commission to ensure legal certainty, declared as one of the objectives of the Recast (recitals 7, 21 and 37).

The presence of single and dual channel systems and variants thereof within Member States results in a range of national workplace practices regarding negotiations. On the assumption that trade union organisations are involved in transnational negotiations and a separation is maintained between such negotiations and collective bargaining, there is no opposition ‘in principle’ to the development of a transnational negotiations function from within trade union organisations. The policy question is: how should the development of transnational negotiations be managed? To accommodate the initial growth in the number of joint texts and TCAs, and the increasing range of their subject matter, the ETUFs assigned to extant standing committees with responsibilities for EWCs and MNCs the brief of monitoring the responsibility of ratifying TCAs. The ETUFs thus established a procedural means of handling transnational negotiations. Compared to earlier data, it would appear that the proportion of TCAs negotiated solely by EWCs without union involvement has declined. More than 60.0 per cent of EWC representatives reporting the negotiation of a TCA during the five years prior to the distribution of the survey indicated that the agreement was concluded with trade union involvement. It seems likely that these TCAs would be submitted to the ETUF standing committee procedure. Furthermore, data presented here show that the presence of EWC coordinators and high rates of unionisation promote union involvement in transnational negotiations. More problematic for trade union organisations are the 21.1 per cent of EWC representatives who report that transnational negotiations were conducted solely by EWCs without trade union involvement. Although coordinators present at some of

the EWCs that conducted independent negotiations may have submitted the result of the negotiations to the ETUF for scrutiny, this procedure is unlikely to be universal. Furthermore, it seems likely that the scope of TCAs will continue to expand. In these circumstances, differences between transnational negotiations and collective bargaining and between transnational and national agreements may be blurred, particularly in the areas of remuneration and subcontracting.

The ETUC has also expressed concerns about the enforcement of terms settled through transnational negotiations (ETUC 2016a, 2016b). For the ETUC and ETUFs, a resolution to the ratification and enforcement issues is the establishment of the optional legal framework outlined earlier in this chapter. While such a framework is not a hard law measure intended to generate fairly uniform results, as it requires the parties to opt in, it constitutes a step away from the voluntary procedures preferred by BusinessEurope. The debate on the future development of transnational negotiations has thus reached an impasse similar to that on EWCs: BusinessEurope wishes to retain voluntary arrangements, while the ETUC and ETUFs wish to implement a framework within which transnational negotiations can be conducted and the results enforced. Concurrently, the Commission is ‘sitting on its hands’, resisting the views expressed by the European Parliament and EESC, and ignoring evidence on the policy issues associated with transnational negotiations, even though much of this evidence was generated at its own behest.

## Chapter 11

### Conclusions and prospects

European legislation in the form of the Directive and the Recast created and subsequently developed the initial opportunity for lay representatives to meet, network and present their concerns to management, as well as to engage in information and consultation activities with senior managers from MNCs. In addition to the intended and formal processes involved in the establishment of EWCs, information and consultation procedures and the selection of representatives, the legislation prompted institution building within trade union organisations intended to support the formal processes. In this context, standing committees were established by the ETUFs to monitor and ratify developments, training and advice arrangements were set in place, and procedures were implemented to articulate EWCs with other institutions of labour representation. The voluntary components of the legislation and the inclusion of a wide range of minimum, rather than actual, standards have ensured that the development of EWCs is uneven and qualified, and subject to negotiation within MNCs.

Exacerbating the unevenness in the development of the institution are the contested positions of the parties involved. European policy-makers view the legislation as creating circumstances for transnational information and consultation procedures that will add value to the MNCs within which they take place. The legislation, however, is characterised as soft law (Dorsemont 2010) with ambiguities in the definitions of key terms and scope for negotiation on the actual standards set in practice within each MNC. BusinessEurope opposed legislation of any form, but, when it recognised that legislation or a recast version thereof was politically inevitable, lobbied for soft rather than hard law elements with low minimum standards. BusinessEurope now acknowledges that the legislation has enabled managers to develop transnational HR strategies that benefit MNCs (2008). Managers responsible for EWCs within MNCs identify a wide range of added value elements as accruing from the legislation, while acknowledging that delivering on the information and consultation agenda is problematic and, hence, downplayed (Pulignano and Turk 2016). Evidence presented in this volume, for example, shows that the quality and timeliness of information and consultation procedures are generally poor and, in cases of corporate restructuring, do not allow EWC representatives to bring influence to bear. BusinessEurope argues that opting for non-binding solutions with rudimentary enforcement regulations ensures flexibility and does not generate burdens on MNCs. In practice, this approach allows managers to control information and consultation processes. A third competing position is that of trade union organisations. While welcoming the legislation in principle, trade unionists were disappointed with the content, particularly the voluntary elements, and the weakness of the minimum standards. It was accepted by trade unionists that the



Directive was a compromise solution. An understanding that the Directive would be reviewed in 1999 mitigated initial concerns, as it was thought that a revision would address the weaknesses of the Directive. The preference for hard law among trade union organisations contrasts markedly with the preference of European policy-makers for soft law and that of BusinessEurope for voluntary solutions. Trade union organisations view the poor practices of EWCs, particularly those associated with the inadequate quality of information and consultation procedures, as justifying the case for more wide-ranging hard law elements in the legislation, together with the reform of some substantive elements. Differences between the parties to EWCs on these and other issues ensure that the institution is contested, with the result that, to a considerable extent, each EWC is the result of circumstances specific to the MNC within which it is embedded.

In addition to being contested institutions, EWCs are institutions in process insofar as their condition recorded by the survey in 2018 will not remain constant. As social partners with different priorities contest the institution, there is no certainty as to the direction of any subsequent change. Such change may lead to more robust information and consultation arrangements or may accentuate the pursuit of managerial transnational HR strategies. In the light of contestation, it is reasonable to assume that both of these lines of development will be pursued in different EWCs. Some EWCs may remain stationary in their development, while others may regress from relatively advanced stages of development to a more rudimentary stage when confronted by adverse circumstances (Mählmeyer et al. 2017) Similarly, the institution is relatively immature with the initial legislation adopted in 1994 and subsequently amended in 2009.<sup>1</sup> While the Recast of 2009 does not appear to have had a marked impact on information and consultation practices, the commitment placed on the Commission to report on the implementation of the Recast (Article 15) and the subsequent debate may promote further legislative change, which, in turn, may lead to even further institutional change. In this context, the development of the institution will be influenced by decisions taken by policy-makers at European level and within Member States.

The uneven development of the institution raises the question of how many EWCs are compliant with the legislation. Case study evidence reported in Chapter 1 suggested that only a minority of EWCs experience consultation (Lecher et al. 2001: 134) or are involved in corporate decision-making processes (Kotthoff and Whittall 2014: 257–262), with the consequence that it is estimated that no more than 20 per cent of EWCs have developed to a stage where consultation with management has taken place (Kotthoff and Whittall 2014: 7). While based on the proportion of EWC representatives rather than of EWCs, the evidence presented in this volume is similar. EWCs are certainly institutions engaged in information exchange rather than both information exchange *and* consultation. On average, for example, 29.0 per cent of representatives report ‘useful information and consultation’ on items drawn from the subsidiary requirements agenda compared to 44.2 per cent reporting ‘useful information, but no consultation’ (Table 4.2). While the 29.0 per cent reporting ‘useful information and consultation’ in 2018 is an increase

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1. In addition to the adoption of the Recast Directive, the coverage of the legislation changed with successive enlargements of the EU and the reversal of the UK opt-out.

on the 18.8 per cent reporting similar circumstances in 2007 (Table 4.2), these data indicate the progress that remains to be made if the intentions of European policy-makers are to be realised in practice. Similarly, only 20.8 per cent of representatives report information and consultation procedures as taking place before the managerial decision on the issue is finalised (Table 4.5), and 22.1 per cent report that EWCs are either ‘very effective’ (4.2 per cent) or ‘effective’ (17.9 per cent) as a means of influencing management decisions (Table 4.7). Regarding corporate restructuring, 46.9 per cent of representatives were involved in an extraordinary meeting called to discuss such events, only 26.1 per cent of which reported that the extraordinary meeting took place before management had finalised their decision on the matter at hand. In summary, the evidence suggests that between 20.0 per cent and 25.0 per cent of representatives view EWCs as realising the intentions of European policy-makers, a range broadly consistent with the estimation emerging from case study evidence.

The context of uneven development, contestation between the parties to EWCs, the realisation that EWCs are an institution in process and an acknowledgement that around three-quarters of representatives think that managers fail to comply with the regulations form the backdrop to these concluding remarks. It should also be noted that the situation of EWCs in 2018 has changed in detail but not in principle since 2007 when the initial survey was conducted, evidenced most clearly by the somewhat smaller majority of representatives dissatisfied with information and consultation arrangements in 2018 (71.0 per cent) compared to 2007 (81.2 per cent). The scale of reform required to meet the intentions of European policy-makers regarding the provision of information and consultation to the representatives of workers within MNCs thus remains vast. The 2018 survey data demonstrate that the reforms included in the Recast are insufficient to realise the intentions of European policy-makers in practice. Subsequent reform intended to realise these objectives, therefore, must be wide-ranging. To elaborate these issues, this conclusion will proceed in four sections. The first three sections will elaborate the position of the Commission and European institutions, BusinessEurope and managers, and trade union organisations on EWCs in the light of the survey evidence. The section on trade unions will also present the views of EWC representatives on the ETUC reform agenda. Unless otherwise stated, the evidence to be presented in these sections is drawn from the 2018 survey. The brief fourth section will speculate on the future development of the EWCs in the light of the evidence presented in this volume, the history of the development of the institution and the contrasting positions of the parties to the institution.

## **European Commission and other European institutions**

During a long and hard-fought campaign, the Commission overcame resistance from some Member States, particularly the UK, BusinessEurope and national employers’ associations to introduce the Directive, a process facilitated by the shift to qualified majority voting on the issue of information and consultation rights. At the time of its adoption, the Directive was viewed as an element of a nascent European industrial relations system in which employee participation promoted by the legislation would act as a counterweight to the impact of the European single market and allow worker

representatives to influence developments within such a market. Directives 2001/86/EC on the involvement of employees within European companies and 2002/14/EC on informing and consulting employees at national level exemplify further attempts to consolidate a European system of industrial relations (Jagodziński 2013).<sup>2</sup> The shift in the political direction pursued by the Commission and other European institutions, marked by the ascendancy of neoliberal policy prescriptions, led to the downplaying of the initial purpose of the Directive and of the Commission's commitment to develop a social dimension to the internal market (Chapter 2). The requirement to review the Directive by September 1999 enshrined in Article 15, for example, was implemented, and shortcomings in the measure were identified, but it was only in 2009 that minor reforms were adopted in the Recast. Similarly, the Commission report on the implementation of the Recast required by Article 15 of the Recast acknowledges a range of shortcomings (European Commission 2018a, 2018b) which have yet to be addressed by substantive reform. On the occasion of the adoption of the Directive, the Commission initially followed the line advocated by BusinessEurope, which argued that reform was not necessary (2008). In taking this position, the Commission ignored recommendations for more wide-ranging reforms from both the EESC and the European Parliament, even though the latter was heavily influenced by the right-of-centre and neoliberal EPP. Only the political intervention from the French Presidency of the Council compelled the Commission to abandon the same stance as BusinessEurope and adopt the Recast (Jagodziński 2009: 119). It remains to be seen how the Commission will eventually respond to the compelling evidence supporting reform of the Recast. There is reason to suggest, however, that only a similar political intervention to that of 2008 will induce the Commission to alter its current stance.

The situation of the Commission and European policy-makers is addressed in detail by reference to the information and consultation objectives expected from EWCs, institution building, negotiation and the current policy position. In the first three of these fields, the expectations of European policy-makers have yet to be realised. It is also clear that the Commission needs to make a substantial shift in policy if it is to address the shortfalls inherent in EWCs.

## Information and consultation rights

The primary purpose of the legislation concerns two interlinked features associated with information and consultation rights. The first of these features is intended to realise one of the fundamental rights of the EU to enable workers via their representatives to be informed of and to influence managerial decision-making; the second is to provide added value to MNCs in the form of improved decision-making, which contributes to improved economic performance (Mizrahi 2002; Krieger 1992). Issues associated with added value will be discussed below in the section on management. In the short-term, assigning influence to worker representatives over managerial decision-making

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2. Other measures directed towards the same objective in the field of transnational worker participation include those on collective redundancies, transfers of undertakings, the European cooperative society, takeover bids and cross-border mergers.

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was expected to mitigate the adverse effects of corporate restructuring, which the Commission correctly anticipated would be intense during the initial development of the European single market. In the longer term, enabling worker representatives to influence managerial decision-making was viewed as an element of a European social dimension to accompany the process of European integration.

Regarding the provision of information and consultation services to worker representatives, the evidence presented in this volume is clear-cut. The vast majority of representatives are unable to influence the content of managerial decision-making. In addition, EWCs tend to be, at best, institutions engaged in information exchange rather than both information exchange *and* consultation. The primary objective of the legislation is thus not being achieved for between 75.0 per cent and 80.0 per cent of the representatives. Management action or inaction is at the heart of this situation on four inter-related counts: most managers release information too late to enable worker representatives to influence the content of managerial decision-making; they do not engage in consultation; they do not seek agreed solutions with the EWC; and many of them cite confidentiality as a means of restricting the exchange of information and consultation on a wider range of issues. It is also questionable whether the majority of managers wish to engage in information exchange and consultation with EWCs. Given that these features characterised EWC practice before the Recast (Waddington 2011: 219–228), the current situation is a measure of the failure of the Recast. Even if all the improvements in the proportion of representatives reporting ‘useful information and consultation’ between 2007 and 2018, increasing from 18.8 per cent to 29.0 per cent, are assigned to the Recast, it is apparent that the measure has proved insufficient to address the challenge at hand. It is likely, of course, that some of the representatives reporting an improved performance between 2007 and 2018 do so on the basis of a learning curve rather than legislative change (De Spiegelaere and Waddington 2017). Indeed, managers responsible for EWCs within MNCs regard the Recast as merely bringing the legislation into line with practice: that is, ensuring that the legislation catches up with the learning curve (Pulignano and Turk 2016: 79–83). In short, the Recast has failed to allow EWCs to meet the expectations of European policy-makers regarding their primary information and consultation function. This situation is recognised by the Commission, particularly with regard to shortcomings in the consultation process which mean that EWC representatives have ‘very little influence in the decision-making process in their companies, notably in cases of restructuring’ (2018b: 6).

A purpose of the legislation on EWCs was to mitigate the imbalance between social and economic aspects of European integration. The inadequacy of the information and consultation services available to worker representatives fails to reinforce the social aspects of European integration and brings into question the commitment of the Commission to social sustainability, as outlined in the Europe 2020 strategy. Furthermore, the Commission recognises the imbalance in the information and consultation function of EWCs in that the social aspects enabling EWC representatives to influence corporate decision-making are being downplayed, whereas the economic aspects in the form of corporate added value are being accentuated (European Commission 2018a, 2018b), but has yet to suggest a means whereby this imbalance can be corrected.

## Institution building

A second aspect of the situation of the Commission and other European institutions with regard to EWCs concerns institution building. The focus here is on the direct impact of the legislation on institution building, particularly on the growth in the number of EWCs. In addition, the involvement of trade unions in the operation of EWCs is assessed together with the impact on articulation of reporting back requirements, as these features indicate a change in the character of institution building promoted by European policy-makers. Institution building implemented by BusinessEurope and trade union organisations to accommodate the arrival of EWCs are discussed in subsequent sections of this chapter.

The most straightforward form of institution building promoted by the legislation is the creation of EWCs and SEWCs. By December 2018, there were 998 EWCs in operation. As fewer than 50 EWCs were established before the adoption of the Directive and almost 500 were formed between September 1994 and September 1996, it is clear that the legislation promoted significant institution building that would have been unlikely in the absence of the Directive.

Figure 1.1 shows that the rapid growth in the number of EWCs between 1994 and 1996 was followed by a period of much slower growth to 2018. The Commission acknowledged that the rate of formation of new EWCs was too slow and regarded the establishment of new EWCs as a specific objective of the Recast. To this end, the Recast placed a duty on managers to release information on the size of the workforce (Article 4(4)) and to set in place the conditions necessary for the establishment of EWCs in the form of communications, translation and interpretation services (Article 4(1)), while providing for management and the appropriate employers' associations and trade union organisations to be informed about the initiation of negotiations to establish an EWC (Article 5(2)(c)). These measures failed to increase the rate of formation of EWCs after 2009 (Figure 1.1), confirming that the amendments included in the Recast are insufficient to meet the objectives they were intended to achieve. Again, this failure of the Recast and the reasons for it are acknowledged by the Commission (2018a: 39), albeit without any accompanying commitment or recommendation for reform.

In the absence of a registration procedure, there is no certainty regarding the number of MNCs that meet the workforce thresholds specified in the legislation. The most recent estimate advanced by the Commission is that 2,400 MNCs fell within the scope of the legislation in 2018, with an accompanying rate of coverage of 44.2 per cent.<sup>3</sup> Almost a quarter of a century after the adoption of the Directive, established institutions do not cover more than half of the MNCs that fall within the scope of the legislation. The limits to the institution building directly generated by the legislation are thus clear-cut.

Another feature of institution-building directly influenced by the legislation concerns the involvement of trade union organisations. For reasons never explained and to the chagrin of trade unionists, the term 'trade union' did not appear in the Directive. The

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3. The Commission reports that 1,060 EWCs and SEWCs were in operation at the time of its estimate of 2,400 MNCs falling within the scope of the legislation, hence the rate of coverage is 44.2 per cent (2018a: 19).

trade union response to this exclusion was to promote their involvement in the form of trade unionists serving as EWC representatives and the appointment of unionised EWC coordinators to advise on practice and policy, to support the (re)negotiation of agreements and to organise training for EWC representatives. Inevitably, without any legal underpinning, the extent to which these aspects of the trade union response were applied varied between EWCs, in no small part due to variations in the level of unionisation within MNCs. Over time, however, it would appear that trade union organisations developed practices that consolidated their involvement despite their exclusion from the Directive (Waddington 2011: 28–55).

The Recast marked a shift in policy within the Commission regarding the role of trade unions in institution building. In particular, the Recast ensured that trade union organisations may be called upon by SNBs to provide experts (Article 5(4)), have the right to participate in negotiation meetings at the request of the SNB (Article 5(4)), and are informed when negotiations directed towards the establishment of EWCs commence (Article 5(2)(c)). In addition, indirect endorsement of the trade union role was provided by recital 33 and Article 10(1), which acknowledged that representatives require training to undertake their transnational duties. As trade union organisations provide much of the training available to EWC representatives, these measures in practice consolidate trade union involvement. The inclusion of trade union organisations in the institution building process recommended by the Recast was opposed by BusinessEurope, which, in response to a late draft of the legislation, commented that ‘the text is biased in favour of trade unions, giving them undue legal recognition and a major role that corresponds neither to their influence in Europe nor to the interests of workers themselves’ (2008). The Commission thus rejected the position taken by BusinessEurope in this regard.

A further feature of institution building developed by European policy-makers concerns the introduction of a requirement in the Recast (Article 10(2)) for EWC representatives to report back to those they represent. This measure was introduced on the understanding that vertical articulation between EWCs and those they represent is poor, with the consequence that there is a political ‘distance’ between EWCs and those they represent. The objective of the reporting back requirements was thus to shorten this distance and anchor workers in information and consultation processes beyond the act of voting for EWC representatives every four years. The survey data demonstrate that, although the inclusion of a right to report back is a necessary condition for vertical articulation, it is insufficient to ensure the outcomes intended by European policy-makers (Chapter 5). Managements are influential in ensuring the distance between EWCs and other institutions of labour representation within the MNC remains wide. How managers ensure that this is the case is discussed below.

## Negotiation

Prior to 1990, industrial relations negotiations at European level were restricted to relatively sparse interchanges between BusinessEurope and the ETUC, often within tripartite arrangements involving the Commission (Falkner 1998: 55–77). A wide range of initiatives were launched to promote negotiation between the social partners at

various levels to promote European integration, included among which were initiatives involving EWCs. Four aspects concerning negotiation involving EWCs have been raised in this volume: negotiations between BusinessEurope and the ETUC to develop EWCs, negotiations within MNCs, the inclusion of a negotiations function in EWC founding agreements, and the negotiation of TCAs and joint texts. In each of these aspects of negotiation involving EWCs, the situation is qualified in no small part due to the contestation between the social partners inherent in the institution.

At the European level, negotiations between BusinessEurope and the ETUC were built into social policy formation by the Social Policy Protocol to the Maastricht Treaty. Fundamental differences between the social partners effectively rendered the negotiations that took place on EWCs as ineffective in reaching agreed positions that were subsequently adopted as legislation. In 1993/1994, for example, BusinessEurope and the ETUC were unable to reach agreement on a draft directive proposed by the Commission. This failure to agree enabled the Commission to table further drafts, out of which emerged the Directive. The impact of the negotiations was indirect insofar as some of the positions taken by the social partners in the failed negotiations were incorporated into the later drafts proposed by the Commission. Similarly, the view that no revision of the Directive was necessary advanced by BusinessEurope after 1999 was contested by the ETUC. These divergent positions precluded a negotiated revision of the Directive. Only when the French Presidency of the EU made it apparent that a revision would take place was BusinessEurope prepared to enter into negotiations on a revision, effectively on the premise of 'damage limitation'. The ETUC regarded the change of position on negotiations by BusinessEurope as a ploy to take the process beyond the time limit of the French Presidency, thereby eliminating any opportunity for a revision. As BusinessEurope was not prepared to negotiate within an agreed time limit, the ETUC rejected the negotiations option (Jagodziński 2009: 124).

Negotiations within MNCs have been widespread, illustrated by the negotiations that underpin growth in the number of EWCs. The imprecision of the terms included in the Directive and Recast, the absence of definitions for key terms and the reliance on minimum rather than actual standards in the legislation necessitated negotiations initially between management and the SNB and, during any renegotiation of EWC agreements, between management and the EWC. In these respects, the legislation achieved its objective in promoting transnational negotiations within MNCs. Limits to the promotion of such negotiations are also apparent. Estimates suggest, for example, that EWCs have been established in fewer than half of the MNCs falling within the scope of the legislation. To hinder the setting up of EWCs, some managers initially withheld information on workforce size (Case C 440/00, *Kühne and Nagel*; Case C 349/01, *ADS Anker*; Case C 62/99, *Bofrost*), hence the amendment in the Recast (Article 4(4)) to prohibit such tactics. Similarly, some managers refuse to commence negotiations on the establishment of an EWC, leading to the 'automatic' establishment of an EWC under the subsidiary requirements (EWC News 2016; ArbG Berlin, Beschluss vom 15.07.2016, 26 BV 4223/16). On the workers' side, some home country representatives resisted the establishment of EWCs on the grounds that such a development would dilute and/or impair their influence with management (Whittall et al. 2008).

A further limit on the negotiations function rests on managerial reluctance to concede a negotiations function or the failure of EWC representatives to pursue such a function to add to the information and consultations rights included in the legislation. In 2000, only 2.4 per cent of EWC founding agreements made provision for EWCs to engage in negotiations (Carley 2001), a proportion that remained almost constant until 2015 when 3.0 per cent of agreements included such a provision (De Spiegelaere and Jagodziński 2015: 26). It remains a moot point whether the terms of agreements have been superseded by practice, as, in 2007, 21.3 per cent of EWC representatives stated that their EWC had engaged in negotiations, a proportion that had risen to 34.0 per cent by 2018. While the accuracy of these data is debatable,<sup>4</sup> the point remains that only a minority of EWC representatives engage in negotiations beyond those around the founding agreement. This is not to downplay the institution building elements of the legislation in that these negotiations take place without any legal framework, suggesting that there is a spillover, which could lead to an appropriate form of regulation at some point in the future (Jagodziński 2007).

Consolidating the point that a negotiations function beyond that around the founding agreement involves a minority of EWC representatives are data on the negotiation of TCAs and joint texts, which appear to be increasing in number. It should also be acknowledged that the subject matter of some of these TCAs and joint texts is designed to address the shortfalls inherent in the practices of EWCs linked to the legislation (Chapter 10). The failure of the legislation to ensure the involvement of EWC representatives in decision-making on corporate restructuring, for example, prompted several EWCs to negotiate agreements on procedures to handle corporate restructuring. In this context, the inadequacy of the legislation has promoted negotiations intended to remedy the legislative shortcomings.

### Where do European institutions go from here?

At this juncture, it is apparent that there are marked qualifications in the fields of information and consultation, institution building and negotiations with regard to the intentions of European policy-makers. Although EWC representatives reported marginal improvements in the quality of information and consultation procedures following the adoption of the Recast it is far from clear that it was the Recast rather than learning curve effects that was responsible. Irrespective of the source of this marginal improvement, only about 20.0 per cent to 25.0 per cent of EWC representatives are content with the current quality of information and consultation procedures. Furthermore, the rate of formation of EWCs did not accelerate after 2009. The Recast thus failed to remedy the shortcomings of the Directive and to realise the intentions of European policy-makers. This failure places the Commission in a quandary on three counts.

4. As argued in Chapter 10, the question on negotiations was clear in that it asked 'Was your EWC involved in the negotiation of a formal signed agreement with management in the previous five years? By this, we do not mean an agreement on how to run the EWC (EWC agreement), but an agreement on a policy issue (such as a framework agreement or a transnational company agreement).' The authors suspect that respondents interpreted this question by reference to negotiations *per se* rather than those directed towards framework agreements or transnational company agreements. The resultant data are thus likely to overstate the involvement of EWC representatives in negotiations beyond the founding agreement.



First, current EWC practice meets neither the requirements of the Community Charter of the Fundamental Social Rights of Workers (1989), those of the Charter of Fundamental Rights of the European Union (2000), nor those of the European Pillar of Social Rights (2017). The Charter of the Fundamental Social Rights of Workers states that information and consultation should take place in due time, particularly in cases of technological change, collective redundancies and corporate restructuring (point 18). The Charter of Fundamental Rights of the European Union insists that '[w]orkers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided by Community law and national laws and practices' (Article 27). The European Pillar of Social Rights, adopted in November 2017, states that '[w]orkers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies' (Principle 8). The failure of EWC practice to meet these standards that underpin European social policy constitute an imperative for change. Furthermore, the Commission has acknowledged these limitations of EWC practice in these fields (2018a, 2018b) and is thus formally obliged to act in its capacity as 'guardian of the Treaties' (Article 17(1), TEU) to align EWC practice with the content of the Treaties.

Second, the Recast was formally excluded from the 'fitness check' exercise launched by the Commission to assess the viability of EU legislation (SWD(2013)). In reporting on the Recast in a similar style to the 'fitness check', however, the Commission identified a series of 'inconsistencies' with other directives on information and consultation adopted as EU legislation (2018a: 42). These inconsistencies mark points where the Recast is weaker than other extant legislation with regard to the range of information that should be made available, the time frame for information and consultation procedures, and the obligation on management to respond to opinions expressed by worker representatives or to consult with a view to reaching an agreement.<sup>5</sup> The Commission thus acknowledges that the Recast is weaker than other legislation adopted in the field of information and consultation. To strengthen the Recast in these areas is thus necessary, but merely brings it into line with other legislation in the field. Of course, it should be noted that weak legislation is only one aspect of the challenge faced by EWCs. Enforcing existing legislation is just as problematic (Chapter 9).

Third, the Commission lacks a strategy and the political resolve to address the shortfalls in the current situation that it recognises. Until the ETUC withdrew from the initiative, the centrepiece of the Commission's strategy to improve the performance of EWCs was the preparation of a 'practical handbook for EWC practitioners' (2018b: 8) in which best practice would be shared on the assumption that it would subsequently be adopted throughout the institution. This proposal constitutes the culmination of a process that

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5. The informal fitness check of the Recast Directive conducted by the Commission identified the Recast Directive to be weak compared to Directive 98/59/EC on collective redundancies with regard to the range of information that should be made available; compared to Directive 2001/23/EC on transfers of undertakings with regard to the time frame for information and consultation procedures; and compared to Directive 2002/14/EC on the information and consultation of workers with regard to the obligation on management to respond to opinions expressed by worker representatives or to consult with a view to reaching an agreement (European Commission 2018b: 42).

has passed through various stages, for the most part reproducing the events following the adoption of the Directive.<sup>6</sup> Given that the Recast only emerged following the intervention of the French Presidency, it is clear that, in the absence of a substantial revision agenda proposed by the Council or the European Parliament, the Commission can be expected only to maintain the *status quo*. Marked changes in the social policy direction of the EU prompted by the Presidency of Ursula von der Leyen may also lead to an altered stance within the Commission towards EWCs, but, at the time of writing, there is little evidence to suggest that this may be case.

Putting aside the ETUC withdrawal from the case study handbook initiative, which resulted in its demise (see Chapter 2), it is difficult to imagine how such an initiative could have addressed the scale of the challenges faced by EWCs. By definition, best practice is a contested term. Employers' associations and trade union organisations, for example, already distribute best practice examples to affiliated organisations in the form of handbooks, guidelines and training. These best practice examples emphasise different points depending on whether they originate in employers' associations or trade union organisations. Extant practice is currently influenced by the distribution of such material. Furthermore, it is likely that the Commission would have been reliant on those organisations that already distribute case studies to source the material for its handbook. It is also questionable whether further material on the minority of EWCs that are functioning adequately can inform decision-makers within the majority of underperforming EWCs of how to move forward. If management withhold information and do not consult with an EWC as a matter of choice, what useful information is gleaned by the EWC representatives confronted by such a management approach from a best practice handbook produced by the Commission that is not available in best practice manuals published by trade union organisations?

## Employers' associations and management

Employers' associations and managers responsible for EWCs within MNCs have pursued a bifurcated strategy in which BusinessEurope has attempted to politically subvert the institution at European level, whereas managers have exploited the lack of precision in the legislation to promote corporate objectives within MNCs while downgrading information and consultation requirements. The two elements of this strategy mirror that of German employers in their attempts to promote deregulation and liberalisation (Kinderman 2005). No claim is made here that these two strategic elements are coordinated. On the contrary, it is clear that a majority of managers responsible for EWCs have not heard of, or do not communicate directly with, BusinessEurope (Waddington et al. 2016: 68–71). Although the two elements of the

6. These stages in the reporting on the Recast Directive are very similar to those following the review of the Directive: Article 15 deadline for review of Directive (September 1999); identification of shortcomings of the Directive (post-1999), arising from a conference convened by the Commission, expert group meetings and reviews of academic evidence; presentation of reasons for not amending the Directive (post-1999); need to adopt other legislation on information and consultation; transpositions not completed; insufficient time to assess performance; conduct of case studies to illustrate best practice (2004); intervention by the French Presidency and adoption of the Recast Directive (September 2009).

strategy are relatively independent, they serve the same purpose: that is, ensuring that the legislation can be manipulated to serve corporate interests. In this section, the two elements of the employers' strategy will be examined separately.

## BusinessEurope and employers' associations

BusinessEurope and European employers' associations argue for deregulation and liberalisation of the European economy. Since the financial and sovereign debt crisis of 2008, this argument has focused on policies favouring austerity, weakening trade unions and collective bargaining, enhancing wage flexibility and limiting job security (BusinessEurope Reform Barometer, various dates). Within the context of these policy preferences, it is no surprise that BusinessEurope has steadfastly opposed legislation on information and consultation rights at European level and advocated voluntary solutions on a company-by-company basis. The presence of directives on information and consultation of workers is thus contrary to the preferred position of BusinessEurope. Two points are inextricably linked to this observation. First, differences in the preferred positions of BusinessEurope and trade union organisations have rendered the negotiation of agreed solutions between the social partners almost unworkable. Second, to minimise formal engagement with the processes of negotiation of information and consultation legislation, BusinessEurope has not implemented any wide-ranging institution building. The constitution of BusinessEurope, for example, still requires unanimity among member organisations in order to proceed, effectively offering a 'way out' of negotiations if one member organisation dissents from the majority view and allows a veto to any single member organisation. The absence of institution building by BusinessEurope is problematic for its relations with MNCs. Managers responsible for EWCs, for example, think that some institution building should be implemented by BusinessEurope in the form of the provision of legal support, more benchmarking of best practice and the delivery of managerial training (Waddington et al. 2016: 71). It is also evident that, by acting within such rigid arrangements, BusinessEurope has distanced itself from managers responsible for handling EWCs and the practices implemented by managers (Waddington et al. 2016: 63–72).

BusinessEurope opposed the adoption of both the Directive and the Recast. In both instances, it lobbied to resist or delay the measures and offered negotiations with the ETUC as a tactical ploy to the same ends. Eventually, political developments generated circumstances in which BusinessEurope was no longer in a position to resist legislation. In the case of the Directive, these circumstances centred on a perceived need to adopt social policy measures to complement those directed towards the European single market, whereas the intervention of the French Presidency undermined the resistance to change in the case of the Recast. When political opposition to these measures was deemed to be no longer sustainable, BusinessEurope adopted a number of positions in principle, including a preference for subsidiarity and proportionality, a call for the legislation to be minimalist in its coverage, requirements and enforceability, and a proposal for voluntary elements to be included in the Directive and retained in the Recast. These positions in principle also underpin the opposition of BusinessEurope to an EU policy on TCAs (2012).

The opposition of BusinessEurope to the Directive and Recast was layered insofar as both measures were also opposed on operational grounds. BusinessEurope argued that the Directive would, *inter alia*, slow corporate decision-making, entail significant costs, be conflictual and negatively affect investment, while also claiming that it disregarded established practice and national law (UNICE 1991a). Similarly, operational opposition to the Recast was expressed in terms of its impact in raising 'high obstacles' to effective corporate decision-making, its bias in favour of trade unions, and its perceived function as a straitjacket in forcing MNCs to adapt to a one-size-fits-all regulation (BusinessEurope 2008). While these operational concerns are second level compared to its objections in principle, they raise two points. First, BusinessEurope provides no evidence to support the operational concerns it raises, which remain assertions. Second, evidence from managers responsible for EWCs contradicts BusinessEurope's assertions on EWCs as a significant cost, and on the Recast as raising high obstacles to effective decision-making and acting as a straitjacket (Weber et al. 2000; Pulignano and Turk 2016: 53–89). In addition, the research endorsed and funded by the Commission corroborates the managerial research and confirms the positive role played by trade union organisations in EWCs, finds no evidence of a slowing of managerial decision-making, and shows an integration between national law and practice and EWCs (European Commission 2016a; EPEC 2008; Vitols 2006). In short, each of the operational concerns raised by BusinessEurope is open to question and lacks supporting evidence.

The absence of supporting evidence on these operational concerns has not prevented BusinessEurope from achieving the objectives *vis-à-vis* the in principle objections to the institution. The reliance on low minimum standards, the limited coverage and the imprecision of the definitions within the legislation are testament to the efficacy of BusinessEurope lobbying and advocacy of its positions in principle. These features of the legislation ensure the 'flexibility', subsidiarity and proportionality required by BusinessEurope. Furthermore, the inclusion of Article 13 in the Directive guaranteed a voluntary element to the legislation, which BusinessEurope managed to extend in the Recast through the exclusion of agreements signed under Article 13 from legislative coverage. Adherence to these positions in principle and the enlisting of political support from European policy-makers has thus enabled BusinessEurope to shape much of the content of the legislation. As a consequence, political debate is now long removed from the hard law-based harmonisation proposals that included codetermination and characterised much of the period before 1990. Political debate is also far removed from the mass of research evidence on the shortcomings of EWCs. Although BusinessEurope was unable to prevent the adoption of the legislation, it has, ever since, successfully campaigned to subvert the legislation and to create circumstances within which managers can manipulate the legislation to secure corporate advantage without necessarily complying with the information and consultation requirements or facing legal consequences for breaches of the legislation.

### Managerial pursuit of corporate objectives

The legislation explicitly obliges management to engage in information exchange and consultation with workers' representatives. Within the context of the different national

variants of the European social model, European policy-makers assumed that such information and consultation arrangements would contribute to corporate added value and introduce a social element to the European single market (Savoini 1995; Recast, recital 23). Seeking improvements in corporate added value and engagement in information and consultation processes were thus not viewed as antithetical by the policy-makers who drafted the legislation. Subsequently, worker representation and social dialogue at corporate level were recognised as essential for sustainability in general and corporate sustainability in particular (European Commission 2019). Many managers do not share these views. The survey evidence demonstrates that managers downplay the provision of information and consultation to worker representatives while accentuating the pursuit of corporate added value. Only 1.5 per cent of EWC representatives, for example, report that managers engage in information and consultation procedures before decisions are finalised and are willing to engage with the EWC (Chapter 8). Managers have thus exploited the imprecision and ambiguities in the legislation that result from the activities of BusinessEurope to advance a separate agenda at the crux of which is corporate value added. BusinessEurope (2017) and the Commission (2018a, 2018b) acknowledge the extent to which this HR agenda directed towards corporate value added has become embedded. Furthermore, the Recast has raised levels of satisfaction with the legislation among managers while concurrently failing to increase significantly satisfaction among EWC representatives (Commission 2018b: 38–39).

With regard to information and consultation rights, between 75.0 per cent and 80.0 per cent of EWC representatives report that managers fail to comply with the information and consultation requirements of the legislation. Among the areas where non-compliance is marked are the absence of consultation; the release of information only after management have finalised their decision-making processes, thereby eliminating any prospect of EWC representatives influencing the content of managerial decision-making; and the use of definitions of ‘confidentiality’ and ‘transnationality’ to limit information and consultation activities. In consequence, the vast majority of representatives view EWCs as an ineffective means of influencing management decisions. Furthermore, although European HR managers are the most likely to attend EWC meetings, they are also among the least likely to have available the information required by EWC representatives and to have the appropriate decision-making authority.

Managers cite an obligation to comply with stock market regulations as a reason for their failure to comply with EWC legislation (Commission 2016a; Pulignano and Turk 2016: 28–31). In practice, managers assign precedence to one group of stakeholders, shareholders, over another, employees. In addition, many managers question the underlying assumption of European policy-makers that employee participation and cooperation is a key element of European company performance. Only 37 per cent of managers, for example, report that a cooperative model of labour management decision-making improves company competitiveness in Europe (Vitols 2006: 146). A substantial proportion of managers thus ideologically question a key assumption of the legislation, which is also likely to contribute to their failure to comply with EWC legislation.

Two further observations are linked to these findings. First, the Recast has not markedly improved the rate of compliance with the legislation among managers. The Recast thus failed to meet one of its key objectives. Second, the inadequacy of managerial information and consultation arrangements impairs the capacity of trade union organisations to articulate EWCs with other institutions of labour representation within the company. In particular, the withholding of information and the absence of consultation limit the interest in EWC activities among those represented by the EWC, as the information is often available through other sources. Similarly, when information is released only after management have finalised their decision-making processes, the benefits of acquiring information from the workforce by EWC representatives are significantly reduced, as such information cannot be used to influence management (Chapter 5). As a result, the policy objectives of ‘permitting suitable linkage between the national and transnational levels of dialogue’ and creating ‘linkage between the Directives and the levels of informing and consulting employees established by Community and national law and/ or practice’ promoted by the Recast (recitals 21 and 37) are effectively obstructed.

The managerial downplaying of information and consultation requirements has been accompanied by ever more sophisticated HRM policies intended to secure corporate value added. Immediately following the adoption of the legislation in 1994 and the establishment of the initial EWCs, managers reported value added accruing to MNCs from the institution (Lamers 1998; Hume-Rothery 2004; Vitols 2003). By 2016, no fewer than 70.0 per cent of managers reported that EWCs added value to the MNC, and 55.0 per cent thought that the benefits of EWCs outweighed the costs, whereas only 19.0 per cent thought that the costs outweighed the benefits (Pulignano and Turk 2016: 73–79). This situation was confirmed by BusinessEurope, which argued that the majority of managers see ‘that the EWC can add value to the company’, particularly by ‘building on an environment of trust, mutual respect, cooperation, a positive attitude and engagement’ (2017). In addition, managers report value added as arising from enhanced employee commitment to the goals of the enterprise, the promotion of corporate identity and the reduction or elimination of conflict (Pulignano and Turk 2016: 63–73). These findings were confirmed by a study endorsed by the Commission which showed that, over time, employers have been increasingly content with the legislation, as it has led to more effective decision-making, enhanced productivity, improved internal company communications and increased trust (Commission 2016a). The Commission acknowledges the benefits accruing to MNCs from EWCs (2018a, 2018b). In so doing, the Commission identifies a contrast between increasing satisfaction with the legislation among managers responsible for EWCs because of the value-added benefits and no increase in satisfaction among EWC representatives, the vast majority of whom are unable to influence company decisions (2018b: 38–39). In practice, the evidence demonstrates a shift in the utility of EWCs away from the initial target group of workers with a deficit of information and consultation towards a managerial HR agenda.

The presence of legislation on information and consultation arrangements constitutes a defeat for BusinessEurope, which prefers voluntary rather than legislative solutions in these areas. BusinessEurope, however, was able to ensure that its positions in principle resonated throughout the legislation with the consequence that a majority of managers

have been able to manipulate EWC practice to secure corporate value added while downplaying the information and consultation provision to worker representatives. The Commission acknowledges this imbalance. Furthermore, managers responsible for EWCs disagree with many of the operational objections to the legislation raised by BusinessEurope and instead view the legislation as sufficiently flexible for them to achieve their objectives.

## **Trade union organisations and worker representatives**

Chapter 2 showed that trade union organisations had campaigned for 25 years for the inclusion of transnational information and consultation provisions to accompany economic aspects of European integration before the adoption of the Directive in 1994. Disappointment with the content of the Directive was mitigated by Article 15, which committed the Commission to review the measure by 1999. Trade unionists thought that this review would lead to much improved legislation. Disappointment with the Recast, however, prompted the ETUC to formulate a reform agenda (Appendix B) in the hope of spurring further change. While this reform agenda is directed towards ensuring that EWC practice is more akin to the initial intentions of the European policy-makers who drafted the legislation, it is much curtailed when compared to the content of the pre-1990 legislative proposals.

To review the position of trade union organisations and worker representatives towards the legislation and its reform, this section comprises two stages. The first stage assesses the impact of trade union attempts to ameliorate the limitations of the legislation. The second stage presents the views of EWC representatives on the reform agenda of the ETUC. The argument running through these two stages is that measures taken by trade union organisations to improve EWC practice to date have proved insufficient to overcome the shortfalls of the legislation. As a consequence, the gap between the intentions of European policy-makers and EWC practice remains wide. To narrow this gap is the objective of the proposed reforms tabled by trade union organisations.

### Trade union responses to the limitations of the legislation

In response to the inadequacies of the legislation revealed by EWC practice, trade union organisations instigated a range of reforms and practices intended to mitigate the shortcomings of the legislation, its implementation and its enforcement. Institution building, articulation, trade union involvement and training were the foci of these reforms and practices. The impact of these four reforms and practices will be assessed below.

In contrast to BusinessEurope, trade union organisations favoured the establishment of a European system of industrial relations to complement the economic aspects of European integration enshrined in the single market and were thus prepared to build institutions to participate in the elements of such a system as they were established. To this end, the Stekelenburg Report, *For a More Efficient ETUC* (1990), recommended a

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broad division of labour between the ETUC and the ETUFs, with the former taking prime responsibility for political relations with the Commission, and the ETUFs focusing on industrial matters, which include day-to-day responsibility for the oversight of EWCs. Of course, the distinction between political and industrial responsibilities is not rigid: the generation of ETUC policy on EWCs, for example, was the responsibility of a committee chaired by the ETUC with a membership drawn from the ETUFs and affiliates.

Within the ETUFs, committees were established initially with a brief to monitor and support EWCs and latterly to monitor and support EWCs, SEWCs and developments within MNCs. In all ETUFs, these committees are now standing committees, usually supported by permanent employees of the ETUFs, with members drawn from affiliated trade unions. These committees assist special negotiating bodies, provide guidance on EWC best practice regarding agreements and EWC activities, oversee EWC founding agreements and their renegotiation, and ratify any TCAs that may be concluded. In most ETUFs, a TCA is not considered valid unless ratified by the appropriate committee, thereby ensuring a degree of trade union control over such developments. In short, the ETUFs built an infrastructure within which EWC and SEWC practices could be monitored with the objective of improving practice. It should be noted, however, that the resources available to these committees is limited, with the consequence that the support available to EWC representatives is also restricted.

A second area in which trade union organisations have sought to mitigate the shortcomings of the legislation concerns articulation. In practice, trade union organisations have promoted horizontal communication among representatives between meetings and vertical communication between representatives and other institutions of labour representation within the MNC and with those represented by the EWC. Where horizontal and vertical communication are intense, representatives try to establish agreed positions and are more likely to develop a European identity and engage in cross-border solidarity. The challenge for trade union organisations is that fewer than half of the representatives are in frequent contact with their fellow representatives between meetings; most employees represented by EWCs are not well informed about, or arguably interested in, EWC activities; and representatives do not tend to ask for input from the local level to inform their decision-making at the EWC (Chapter 5). In short, when horizontal and vertical communication are in place, positive effects are reported, but such communication is only in place for a minority of representatives, with the consequence that national and plant identities, rather than a European identity, tend to inform the activities of EWC representatives. Two factors with origins in managerial practices inhibit communication. First, management limit communication between representatives and the local level and visits to the different sites of the MNC. Managers do this by applying confidentiality provisions (Tables 8.10 and 8.11) and preventing EWC representatives from visiting the different sites operated by the MNC (Table 5.13). Second, the majority of managers do not engage in consultation and/or fail to provide employees with timely information and consultation (Table 4.2). In consequence, representatives are less likely to prioritise vertical communication, as events at the EWC are likely to have been superseded elsewhere within the MNC (Chapter 5). Although the Recast endorses the right to report back and confirms the intentions of European policy-makers to reduce the isolation of EWCs from events



within the MNC, the terms of the Recast and the national transpositions are insufficient to address the challenge. Furthermore, trade union organisations have been thwarted in their attempts to intensify horizontal and vertical communication as a means of mitigating the shortcomings of the legislation on a widespread basis.

A third aspect of the trade union strategy to improve EWC performance concerns trade union involvement in EWCs. While the exclusion of any reference to trade unions in the Directive frustrated trade unionists, the specification of a limited role for trade unions in the Recast represented an acknowledgement by European policy-makers of some of the roles undertaken by trade unions in the operation of EWCs. In this sense, the Recast constituted a political step forward, as it provided some legal underpinning to selected forms of trade union involvement in the institution. This legal underpinning, however, is restricted to trade union roles in the establishment of EWCs rather than in their day-to-day operation. Independently of this legal underpinning, trade union organisations have sought to ensure that a coordinator is appointed to liaise between each EWC and the relevant ETUF, and that trade unionists are selected to serve as representatives. Both of these practices are associated with a higher quality of information and consultation procedures (Table 4.4), but not to the extent that the quality of those procedures meets the expectations of European policy-makers. The challenge for trade union organisations is that a substantial minority of representatives are not unionised and that almost 20.0 per cent of representatives report that their EWC operates without a coordinator, while a further 21.3 per cent do not know if there is a coordinator (Chapter 3). On these issues, trade union policies are beneficial, but improvements are required to achieve a more complete coverage. The addition of legal underpinning to a trade union role in the operation of EWCs would no doubt enable trade union organisations to extend the coverage of coordinators and thus improve practice.

A fourth element of the trade union strategy to mitigate the limitations of the legislation comprises the provision of training. Although the Recast introduced a right to training for EWC representatives, it has not led to an increase in the proportion of representatives actually attending training events (Table 7.1). Trade union organisations are integral to the training provision available to representatives and have recently focused on the delivery of single EWC training (Table 7.3). The benefits of training in terms of skill enhancement, awareness of the duties of transnational representatives and knowledge of the regulations are wide-ranging (Tables 7.5 and 7.7). Attendance at training events, however, is not enough to promote a higher quality of information and consultation procedures at the EWC (Table 7.6). Training is thus a necessary but insufficient element of any attempt to overcome the shortcomings of the legislation. From a trade union perspective, the volume of demand from representatives for more training and the provision of training on specific topics, notably analysis of corporate financial data and the strategies of MNCs, are outstanding demands that have yet to be met (Table 7.8). Similarly, it is open to question whether the resources, many of which are available through the budget lines of the Commission, and the time devoted to the training of EWC representatives constitute 'value for money' for trade union organisations given the marginal effects of training on EWC practice.

## Searching for a viable regulatory framework

The principal concern within trade union organisations and among EWC representatives is to create circumstances in which the legislation functions in practice as intended by the European policy-makers who drafted the measures. As noted above, the reforms and practices introduced by trade union organisations have, at best, mitigated the shortcomings of the legislation rather than ensured consistently satisfactory EWC practices. In this context, the ETUC drew up its reform agenda (Appendix B). Chapter 2 showed that the content of this reform agenda is significantly curtailed in comparison with the content of earlier proposals on transnational information and consultation arrangements, reflecting lowered expectations and current political realities. At the heart of the ETUC reform agenda are measures designed to improve EWC practice and raise it to a standard compatible with the initial expectations of European policy-makers. Gone are proposals to extend the coverage of the legislation by lowering the workforce size thresholds, to include a codetermination right to supplement information and consultation rights, or to increase the frequency of plenary meetings. Central to the current ETUC position is the introduction of more rigorous enforcement mechanisms. The objective here is thus to determine the extent of support among EWC representatives for this reform agenda. To this end, Table 11.1 reports the views of EWC representatives on aspects of the ETUC reform agenda.

While by no means a 'hard and fast' distinction, the items listed in Table 11.1 are concerned with strengthening the legal framework, promoting articulation with trade unions and improving operational matters. EWC representatives prioritise measures to strengthen the legal framework and to limit managerial discretion, highlighting the stark inadequacy of the current regulations. Furthermore, several of these measures were emphasised by EWC representatives in 2007 (Waddington 2011: 198–199), indicating a long-standing dissatisfaction with the legal framework and the limited impact of the Recast.<sup>7</sup> Although there are differences in degree, it is also apparent that support among EWC representatives is marked for all items of the ETUC reform agenda listed in Table 11.1.

Table 11.1 shows that the four items most heavily supported by EWC representatives are concerned with strengthening the legal framework and addressing shortcomings in the current legislation. Prohibiting the implementation of a managerial decision before consultation and higher quality information are fundamental matters that were implicit in the Directive but, due to the tentative wording of the legislation and the absence of monitoring of the transpositions by the Commission, failed to materialise in practice. Similarly, a demand for information on a wider range of topics illustrates the limitations on the scope of EWC agendas constrained by the inclusion of a narrow subsidiary requirements agenda that has acted as a standard-setting catalogue of competences (ETUI and ETUC 2013: 89–104). A more rigorous sanctions regime is explicitly requested in the form of stronger sanctions and is implicit in the demand

7. In 2007, the options for the reform agenda question were different, but 'consultation to take place before operational management decisions are implemented', 'time limits on the provision of information by management', and 'information to be provided by management on a wider range of issues' all received index scores of 4.22 or above, where 5 was the maximum score (Waddington 2011: 198–199).

for prohibition of the implementation of managerial decisions before consultation has taken place. While this position is understandable in the context of managerial failures to comply with the terms of the legislation, the implication is either that the threat of stronger sanctions will compel more managers to comply with the legislation or that EWC representatives will become more likely to pursue legal remedies. To be effective, the pursuit of legal redress is likely to require accompanying facilities to ensure easier access to justice for EWCs, such as a formal recognition of their legal standing towards courts of law, financial assistance to pursue cases and access to legal expertise. Chapter 9 shows that EWC representatives do not generally pursue legal remedies, even though they recognise that the quality of information and consultation procedures does not meet the standard set in the legislation. It remains to be seen whether EWC representatives are inhibited from going to court because of vague and inefficient legal frameworks, or whether they decide against taking legal action because they perceive the current sanctions as inadequate, thus diminishing the benefits of pursuing a legal resolution.

The Recast provided a legal underpinning to the involvement of trade unions in the establishment of EWCs, and research funded and endorsed by the Commission acknowledged the beneficial role undertaken by trade union organisations in supporting the day-to-day operation of EWCs (Commission 2016a). EWC representatives require the Commission to convert this acknowledgement into a legal measure by extending the legal underpinning of trade union involvement to strengthen articulation between trade union organisations and the operation of EWCs. Around half of the EWC representatives, for example, think that ‘trade unions should have more rights to assist my EWC’ and that ‘trade union organisations should provide more support to my EWC’, while 75.0 per cent think that ‘my EWC should have access to more resources’ including expertise, which is likely to emanate from trade union organisations. It should also be noted that office holders, representatives with a coordinator and trade unionists support these three measures more strongly than EWC representatives as a whole. Similarly, in 2007, ‘guaranteeing a formal trade union role’ and ‘guaranteeing a trade union seat on the EWC’ were points of agreement among the majority of EWC representatives (Waddington 2011: 198–199), confirming an enduring demand among representatives for trade union articulation with EWC operations.

Finally, Table 11.1 demonstrates wide-ranging support among representatives for measures to facilitate the day-to-day operation of EWCs. In particular, and consistent with both the ETUC reform agenda and the data presented in this volume, EWC representatives strongly support the introduction of more facilities for employee-only side meetings and improved access to the different sites of the MNC. Contrary to the ETUC reform agenda, however, 58.2 per cent of EWC representatives argue that ‘there should be more meetings per year’. The relatively low level of support for this issue contrasts with the marked effects of large numbers of plenary meetings on perceptions of the quality of information and consultation procedures (Tables 4.4 and 4.6). In their efforts to strengthen the legal framework, promote articulation between EWCs and trade union organisations and improve operational matters, EWC representatives do seem to be on a never-ending treadmill. Although they recommended very similar changes to improve the institution in both 2007 and 2018, and the Commission acknowledges

Table 1.1.1 How should the functioning of the EWC be improved?

	All			Office holders			Representatives with a coordinator present			Trade unionists		
	Support %	Neutral %	Disagree %	Support %	Neutral %	Disagree %	Support %	Neutral %	Disagree %	Support %	Neutral %	Disagree %
Management should be prohibited from implementing a decision before consultation has taken place	83.1	10.1	4.4	87.7	6.9	3.9	83.0	10.6	4.4	84.4	9.4	3.8
My EWC should be informed about more topics and issues	82.7	12.5	2.4	78.8	17.1	2.5	82.0	13.0	2.8	83.4	12.0	2.5
There should be stronger sanctions if management do not comply with the agreement or the law	79.3	14.1	2.1	82.2	13.7	1.9	80.7	14.1	2.4	82.1	12.8	1.4
My EWC should receive higher quality information	75.9	16.7	5.5	78.7	15.2	4.6	77.0	16.3	5.7	76.8	16.4	5.2
My EWC should have access to more resources (time, money, expertise)	75.0	17.3	5.0	76.9	17.0	4.5	75.9	16.5	5.1	77.7	15.4	4.4
EWC representatives should be able to meet among themselves more frequently	71.4	21.2	5.0	72.1	18.0	7.5	72.4	20.1	5.5	73.5	20.0	4.5
The EWC should receive more help to understand the information provided	70.9	21.1	5.4	70.4	22.0	5.7	70.7	20.4	6.2	72.7	19.9	5.0
EWC representatives should have better access to the different sites of the MNC	64.1	23.9	7.4	62.7	27.5	6.5	63.2	25.4	7.3	66.9	22.4	6.5
There should be more meetings per year	58.2	25.8	14.4	56.9	27.6	14.8	59.5	24.2	14.6	59.7	26.2	12.6
Trade unions should have more rights to assist my EWC	54.9	27.3	10.9	58.2	28.3	9.6	56.7	27.9	10.6	60.5	25.7	8.9
Trade union organisations should provide more support to my EWC	50.3	33.9	9.3	55.9	29.5	10.7	51.1	34.3	8.9	54.6	33.9	6.8
Select committee meetings should be more frequent	42.9	33.5	14.9	51.5	29.3	16.6	45.1	32.2	15.5	44.0	33.2	14.4
N	1301–1312			456–470			796–804			1116–1125		

Note: The percentage data in the column headed 'support' refer to respondents who answered 'strongly agree' or 'agree' in response to each statement; in the column headed 'neutral', respondents answered 'neither agree nor disagree', while the column headed 'disagree' contains the responses from representatives who replied 'disagree' or 'strongly disagree'. Respondents who answered 'don't know' are excluded from the table, hence the percentage data do not add up to 100 per cent. The values of N are those of all respondents who answered the question irrespective of the response. Only representatives who had attended at least one plenary meeting are included.

and, on occasion, has produced evidence in support of these proposed changes, it has consistently failed to initiate the necessary procedures to implement them.

To summarise, workers' organisations have always been disappointed with the content of the legislation, and so minimising the adverse effects of the legislation has emerged as a major concern for them. To that end, trade union organisations established an infrastructure within which policies and practices associated with EWCs and MNCs could be established and monitored. In addition, initiatives to articulate EWCs with other institutions of labour representation, to involve trade unionists in their operation and to provide training were implemented. Despite the breadth of these initiatives, the quality of information and consultation procedures remains sub-standard. In consequence, the ETUC has tabled a reform agenda intended to address the shortcomings of the legislation. Since 2007, the majority of representatives have supported elements of this reform agenda.

## The way forward<sup>8</sup>

The European social dimension is an ambiguous concept comprising various national social models and social policies adopted by the EU. Although EU social policies have different relations with the various national social models, they can help to integrate national social policies within a unified European framework (Menz 2015; Streeck 2019). By the mid-1990s, the integrative elements of the European social dimension led to suggestions that a 'corporatist policy community' based on social partnership and centred on the Commission was in the making (Falkner 2016: 277). This policy community, whose character was certainly open to question (Streeck 2019), was not at all robust and, as a result, it was short-lived. Interrelated structural and political factors contributed to its demise.

In structural terms, EU social policy is formulated and implemented within a polity comprising two tiers: transnational institutions and nation states. Successive enlargements of the EU added to the complexity of the relations between these two tiers (Bonfeld 2002; Habermas 2012: 12–52). Furthermore, the two-tier structure is suited to neoliberal regulation rather than the establishment of robust social policy, corresponding institutions and redistributive interventions: the former is less likely to challenge national sovereignty, while the latter requires greater democratic legitimisation and is more likely to challenge national sovereignty (Majone 1993; Scharpf 2009). The structure of EU policy-making thus does not favour social policy interventions, leading some to suggest that European social policy has been 'subsumed' within neoliberal market-building and suffers from a democratic deficit (Beck 2013: 66–86; Streeck 2019).

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8. The focus here is on the possible political development of EWCs within the framework of the policies of the Commission, other European institutions and the social partners. Future research possibilities are thus excluded. There is a range of research options, however, that arise directly from this study. For example, further analysis of the survey data could examine differences between EWC and SEWC representatives, contrast the views of representatives from different countries and assess the variation between EWC representatives within the same EWC. Similarly, case study research could be directed towards unearthing the detail that underpins the survey findings reported here: that is, to consolidate the survey results.

Political factors linked to the demise of the corporatist policy community centred on neoliberal market-building at European level, initially exemplified by Commission proposals on market reform (1993) and drives for national competitiveness within larger Member States.<sup>9</sup> In combination, these developments relegated the different aspects of the social dimension to secondary concerns (Offe 2003). Discussions around the integration of European welfare states, hard law interventions and the upward harmonisation of social measures fell away. As illustrated by both the Directive and the Recast, the social policy legislation that was enacted relied on low minimum standards, subsidiarity, imprecision regarding key terms and voluntary elements rather than the hard law approach that characterised earlier proposals. The transformation of European social policy into a productive factor was also accentuated by the terms of monetary union where competitive wage devaluation and deregulation of labour rights compensate for the absence of competitive monetary devaluation (Degryse 2012). Furthermore, there were significant implementation failures at national level of the rudimentary social policy measures that had been adopted (Falkner 2005). Subservience of the social dimension to markets was consolidated by the Viking and Laval judgments (Deakin 2012; Ghailani 2008), while the contraction of national variants of the social model was prompted by the demands of the Troika following the financial and sovereign debt crisis (ETUI and ETUC 2014) in Cyprus (Ioannou and Sonan 2019), Greece (Katsaroumpas and Koukiadaki 2019), Ireland (Maccarrone et al. 2019) and Spain (Fernández Rodríguez et al. 2019). As a consequence, even by the reckoning of the Commission, these countries are now treated as poor performers on measures of social convergence and the promise of progress (2018c: 17).

This is a far from auspicious backdrop to the case for the revision of the Recast. Recent debates around the European Pillar of Social Rights implemented through the European Semester initially generated some qualified enthusiasm about a revival of the social dimension (Rasnača 2017). This qualified enthusiasm has tended to dissipate as the primary indicators of the social scoreboard were directed towards Member States rather than transnational developments, and low and worsening levels of the implementation of country specific social recommendations were recorded (Al-Kadi and Clauwaert 2019), leading some to suggest that the European Pillar of Social Rights is a mere addendum to economic and financial policy (Hacker 2019: 55; Dorsemont and Jagodziński 2018). In addition, there are, at the time of writing, unknown effects of Brexit and the Covid-19 crisis to consider. While the scale of the effects of these developments are also unknown, they will have a ‘disturbance’ impact on policy-making that is likely to take precedence over social policy implementation. Brexit and the Covid 19 crisis will, no doubt, be cited by some policy-makers at European level as reasons to delay social policy development and, yet, in terms of their likely effects on corporate restructuring, they are precisely the type of events that European policy-makers initially thought best addressed through institutions of transnational employee participation (Savoini 1995).

9. The Third Way of British Prime Minister Tony Blair, the *Neue Mitte* of German Chancellor Gerhard Schröder and the privatisation and fiscal restraint of French Prime Minister Lionel Jospin, for example, centred on increasing national competitiveness through domestic reform and placed the European social dimension as subservient to national reform objectives.

As for the social partners, it is highly unlikely that negotiations between BusinessEurope and the ETUC will result in a revision of the Recast. The positions of the two social partners are so wide apart, both in principle and in detail, that meaningful negotiations without third-party intervention are difficult to envisage. The prospects for third-party intervention are also not hopeful. As argued above, a change in political stance is required within the Council for attention to be directed towards social policy in general and EWCs in particular. Given the reluctance of DG Employment to advance social issues and the problem of social inertia elsewhere within the Commission, such a change is most likely to come from within Member States. Since 1999, however, an intervention on EWCs has taken place only once, when France held the Presidency in 2008. In the medium term, it is more likely that the attention of the Council will be directed towards the ramifications of Brexit and the Covid 19 crisis. The European Parliament and the EESC have regularly recommended more far-reaching changes to the legislation that have subsequently been adopted. Lobbying of the European Parliament and the Member States by the ETUC thus represents a potential way forward. While there is no certainty that history will repeat itself, it should also be noted that the Commission has consistently rejected the promptings of the European Parliament regarding a revision of the legislation. At the time of writing, the European Parliament has yet formally to respond to the submission by the Commission of its report on the Recast but it is preparing an enquiry into the operation of EWCs.<sup>10</sup> ETUC lobbying may influence the content of any formal response and thus inject some dynamism into the revision process.

The Commission could also intervene as a third party. Such an intervention could arise from two points already acknowledged by the Commission. First, the Recast has had a limited impact on EWC practice and has not produced the intended effects. The Commission cites evidence to this effect (2018b) and has funded research with a similar red thread (European Commission 2016a). Second, EWC practice does not meet the requirements of the Community Charter of the Fundamental Social Rights of Workers (Article 18), the Charter of Fundamental Rights of the European Union (Article 27) or the European Pillar of Social Rights (Principle 8). In short, the Commission acknowledges evidence that the current legislation does not function as intended and that current arrangements fall short of the regulatory requirements that underpin the social dimension of the European project. In these circumstances, an intervention by the Commission is not beyond the realms of possibility, but it would constitute a *volte-face*. The Commission could also intervene to ensure that the national transpositions of the legislation regarding sanctions are consistent with the Recast. For now, however, the Commission appears to remain wedded to the delay of any revision of the legislation. The now-defunct handbook initiative was the most recent exemplar of delaying tactics. The scale of corporate restructuring likely to result from Brexit and the Covid-19 crisis may act as a stimulus to the Commission, but it is equally as feasible to argue that such restructuring will be cited as a reason for further delay.

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10. The European Parliamentary Research Service, which assisted in gathering the research for this book, published a European value-added assessment of the Recast Directive that reviewed the operation of the measure and highlighted the competing positions of the social partners on the issue (Müller 2021).

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Greater certainty can be assigned to BusinessEurope, which will not initiate negotiations on the revision of the legislation and will not voluntarily concede an extension of the legal framework on worker participation. While the ETUC reform agenda is explicit, is supported by the overwhelming majority of representatives and is underpinned by a vast array of evidence, trade union organisations do not have the independent means to implement the revisions deemed to be required. The mobilisation of workers represented by EWCs and/or representatives who sit on EWCs to bring pressure to bear is an unlikely option, although, in the past, specific events at Renault and Hoover have succeeded in pushing for legislative change (Lapeyre 2018: 132–134, 175). Trade union organisations are thus likely to be restricted to lobbying European institutions while citing the voluminous evidence in support of the reform agenda. Within EWCs, trade unions may develop articulation, trade union involvement and training provision to minimise the shortcomings of the legislation, while perhaps also pursuing campaigns within MNCs based around specific themes, such as increasing the frequency of plenary meetings. The results of the 2018 survey are thus, in principle, the same as those of the 2007 survey. Minor details may differ, but the undeniable argument remains: most EWCs are not yet fit for purpose and are still ‘in the making’.





## **Appendix A**

### **Compiling the database**

This Appendix discusses how the survey was designed and implemented, the response to the survey and how the respondents differed from the target population. Appendix A demonstrates that, while it is not possible to be entirely confident of the capacity to generalise from the results, this survey provides the largest source of information available and offers unparalleled knowledge about existing biases. The results of the survey therefore present a wealth of examples of 'best practice'. To review the issues identified, Appendix A includes sections on the populations of institutions and representatives with which the survey is concerned, the construction of the sample, and the character of responses by reference to institutions and representatives. A weighting procedure designed to correct some of the biases was applied and is explained in greater detail in the final section.

Throughout, Appendix A refers to the population of both EWC representatives operating under the Directive or Recast and SE works council (SEWC) representatives operating under Directive 2001/86/EC. By adhering to this procedure, the researchers were able to generate structured samples for both groups of representatives. While this volume focuses exclusively on EWC representatives, future publications will examine the position of SEWC representatives. Underpinning this approach is the recognition that there are key differences in the existing legislation. Directive 2001/86/EC, for example, makes no reference to in-depth assessments, nor does it require representatives to report back. With regard to the country of origin of the MNCs opting for the two regulatory regimes, companies of German origin form a disproportionately large percentage of those opting for Directive 2001/86/EC. It is acknowledged, however, that many of the arguments advanced here for EWCs are likely to apply to SEWCs.

#### **Study populations: EWCs, SEWCs and representatives**

The aim of the survey was to collect information on the views of employee representatives in two types of institutions of worker representation in MNCs: EWCs and SEWCs. When the research commenced in July 2017, 975 EWCs and 140 SEWCs were known to be active (EWCdb). Both EWCs and SEWCs bring together employee representatives from different countries. Accordingly, two study populations can be distinguished: the combined EWC and SEWC population, and the population of representatives serving in these bodies. The aim of the survey was to collect data from the population of representatives. However, there is no exhaustive or reliable source of information available for this population: in other words, there is no centralised list of employee

representatives who sit on EWCs and SEWCs. For this reason, the survey sampled the first population: EWCs and SEWCs, in order to gain access to the second: employee representatives.

To identify the population of EWCs and SEWCs, the EWCdb was used. This database collates information on all existing EWCs and SEWCs, their founding agreements and the MNCs where they operate. The EWCdb is by no means an exhaustive database, but it is by far the most exhaustive source of information on such institutions currently available. In an effort to minimise the coverage error arising from the omission of some EWCs and SEWCs, several preventative strategies were implemented to collect the most complete information possible (De Spiegelaere 2017). When sampling was undertaken in July 2017, the 1,115 EWCs and SEWCs registered as active in the EWCdb were used as a sampling frame.

Information from the EWCdb was also used to estimate the size and basic characteristics of the population of representatives. The EWCdb includes the founding agreements of EWCs and SEWCs, which often contain information on their composition, in particular the number of representatives from each country. Given that the approach adopted relied on the assumption that this information is representative for the population, it was used to estimate the total population of representatives. Of the 1,115 EWCs and SEWCs active at the time of the sampling, agreements were available for 999 (89.6 per cent). A full content analysis for each agreement was required. For 56 agreements available at the time, such an analysis had not yet been undertaken. When sampling was undertaken, 943 agreements (84.6 per cent of all EWCs and SEWCs) were thus analysed, 571 (51.2 per cent) of which contained information on the distribution of seats. This information was extrapolated, resulting in an estimated combined population of EWC and SEWC representatives comprising 17,974 individuals: 15,768 EWC representatives and 2,206 SEWC representatives. It is important to note that this estimation is based on the assumption that the information collected on seat numbers from the agreements is not biased. In the light of the information available, there is no way of verifying the validity of this assumption, resulting in a 'best guess' approach.

## **Constructing the sample**

In the absence of a central database on EWC and SEWC representatives, it is not possible to construct a direct random sample. It was therefore necessary to rely on an indirect approach. The first step in this process involved the creation of a stratified random sample of EWCs and SEWCs. The stratification was based on one variable: the sector of activity of the parent MNCs. These sectors of activity are important, as they are widely represented in the European trade union federation (ETUF) responsible for each EWC. The ETUFs listed below are responsible for coordinating the establishment of EWCs and SEWCs in the following sectors:

- industriAll: metal, chemical, energy, automotive, aerospace, defence, pharmaceutical and shipbuilding industries
- UNI Europa: commerce, cleaning and security, finance, gaming, graphical and

- packaging, hair and beauty, ICTS, post and logistics, media and sport
- EFFAT: food, tourism and agriculture
- EFBWW: building and woodwork
- ETF: transport sector
- EPSU: public sector, health and social services, and utilities

The distribution of EWCs and SEWCs is not equal across all sectors. IndustriAll is responsible for over half of the total number of active EWCs and SEWCs. In consequence, the stratified sample was disproportionate in that almost all of the EWCs and SEWCs established by the smaller ETUFs and only a selection of those set up by industriAll and UNI Europa were included. The EWCs and SEWCs associated with industriAll and UNI Europa were selected at random. Based on the sector of activity of the MNCs, a stratified sample was created comprising 846 EWCs and SEWCs. That number was based on the initial objective to collect responses from 2,000 representatives. An expected rate of return of 25 per cent meant that it would be necessary to contact 8,000 representatives. As the average EWC or SEWC has 16 representatives and it was anticipated that around 60 per cent of the EWCs and SEWCs in the sample would respond, it was decided to sample 840 EWCs and SEWCs. In the light of the decision to include all EWCs and SEWCs established by EFBWW, EFFAT, ETF and EPSU, in order to reach a total of 840 EWCs and SEWCs, it was necessary to select a random sample of 76 per cent of those established by industriAll and UNI Europa. A more detailed explanation of the stratification is provided below.

In a second step, the stratified sample of EWCs and SEWCs was used to construct the sample of representatives. This information was collected using two approaches. First, the EWCs and SEWCs were contacted through main points of contact. Generally speaking, EWCs and SEWCs have a president or chairperson and/or an EWC coordinator, nominated by the ETUF, who are responsible for the functioning of the institution. These contact persons, who hold information about the representatives, were instrumental in distributing the survey to them. The advantage of contacting representatives through these contact persons is that it made it possible for all representatives of an EWC or SEWC to be contacted, regardless of their home country or union affiliation. The disadvantage of this strategy was the amount of time involved in trying to contact all EWCs and SEWCs in the sample, especially given that there was no contact information available for a large number of them.

At the same time, a second method was used to contact the EWCs and SEWCs through the national unions and confederations in the different Member States. These organisations often implement policies to support EWC and SEWC representatives from their country by providing them with training and other forms of assistance. Like the chairpersons and presidents, the unions are important gatekeepers to the population of EWC and SEWC representatives. The advantage of this approach was that representatives from a large number of EWCs and SEWCs could be contacted. Only the responses provided by those who were part of the sample are presented in this volume. Other responses have been used in presentations made to specific trade unions. The disadvantage of this second approach is that contact can be made only with the members of a specific trade union from a specific country, resulting in potential bias

in the responses. Overall, information was collected in this manner from trade unions in 19 different countries.

One of the concerns raised during preparation of the survey was to ensure that non-members of trade unions would be selected to participate, which was assumed to be far from straightforward, as the two gatekeepers to EWC and SEWC representatives are EWC coordinators, the vast majority of whom are unionised, and national trade unions. While EWC coordinators may be able to provide access to non-members, national trade unions are not in a position to do so. Furthermore, the two sampling methods used do not guarantee access to those EWCs that do not have an EWC coordinator or any union members. There was no probability of such EWCs and SEWCs being included in the sample and, consequently, the survey. While the survey design tried to limit the over-representation of trade unionists, it is unlikely to have done so.

These two approaches made it possible to contact all representatives from 185 institutions in the sample (173 EWCs and 12 SEWCs) and a selection of them from 320 other institutions (286 EWCs and 34 SEWCs). Altogether, 5,099 representatives (4,746 EWC representatives and 353 SEWC representatives) in the sample were invited to participate in the survey.

In a third step, the 5,099 EWC representatives were contacted via e-mail to participate in a web-based survey comprising 69 questions, many of which required multiple responses. Responses were verified, and several reminder e-mails were sent to the participants. For some EWCs and SEWCs, the surveys were distributed physically before, during or after special training sessions.

The survey thus used a stratified cluster sample to identify representatives from a select number of EWCs and SEWCs. These EWCs and SEWCs were contacted using various means, resulting in the survey being sent to 5,099 representatives operating within 505 institutions (459 EWCs and 46 SEWCs). All responses were anonymous.

## **Overall response**

Unfortunately, not everyone who is invited to participate in a survey will do so. This non-response can occur for various reasons and may introduce a bias in the results. This section discusses the different steps in the survey process and the different sources of non-response that occurred by initially focusing on the institutional level and then the representatives themselves.

At the institutional level, the guiding questions are: did the survey manage to secure responses from a sufficient number of EWCs and SEWCs; and was a significant bias introduced at any point in the sampling process? These questions were examined by looking at three institutional characteristics: the sector of activity, the home country of the MNC and whether the institution is an EWC or SEWC.

Table A.1 EWC and SEWC population, sample and response

All institutions	N	Proportion of population %	Proportion of sample %
Population	1,115		
Sample	846	75.9	
Direct response	185		
Indirect response	320		
Total response	505	45.3	59.7
At least one completed survey	365	32.7	43.1
EWCs	N	Proportion of population %	Proportion of sample %
Population	975		
Sample	728	86.1	
Direct response	173		
Indirect response	286		
Total response	459	47.1	63.1
At least one completed survey	335	34.4	46.0
SEWCs	N	Proportion of population %	Proportion of sample %
Population	140		
Sample	118	84.3	
Direct response	12		
Indirect response	34		
Total response	46	32.9	39.0
At least one completed survey	30	21.4	25.4

Table A.1 shows the number of EWCs and SEWCs in the population, the sample, the institutions for which contact information could be collected, and the institutions from which at least one representative completed the survey. Of the total of 1,115 EWCs and SEWCs recorded as active within the EWCdb, a total of 846 institutions (728 EWCs and 118 SEWCs) were selected as the sampling frame. Using the methods mentioned above, contact was made with representatives in these 846 institutions. This resulted in 185 ‘direct responses’, meaning that all employee representatives of the institution could be contacted (173 EWCs and 12 SEWCs). At 320 other institutions, a selection of employee representatives could be contacted (286 EWCs and 34 SEWCs). This means that representatives were contacted (459 EWCs and 46 SEWCs) at 505 institutions (45.3 per cent of the population or 59.7 per cent of the sample). As not all representatives replied, the survey collected at least one response from 365 institutions, 32.7 per cent of the total population or 43.1 per cent of the sample. Of these, 335 were EWCs comprising 34.5 per cent of the population and 46.0 per cent of the sample, and 30 were SEWCs comprising 21.4 per cent of the population and 25.4 per cent of the sample.

Table A.2 Reasons for non-response

	N	%
No contact details	328	49.6
No answer	307	46.4
Refusal	3	0.5
Other/unknown	23	3.5
Total non-response	661	
Response	185	

The main source of non-response is the inability to obtain a direct response from the 846 EWCs and SEWCs selected. The approach of contacting a key person in the EWC or SEWC was successful for only 185 of these (21.9 per cent of the sample). Table A.2 thus examines the reasons for non-response. Almost half of this 'direct non-response' can be explained by the absence of contact details for the institution. In another 46.4 per cent of cases, the contact attempts were unsuccessful, as there was no reply to the request to participate. On a more positive note, only three contacts refused to participate: one because of a lack of time and two because they did not want to participate in the survey. Another 27 cases are marked 'other/unknown'. In these cases, there is doubt as to whether the EWC or SEWC is still active or which MNC it is functioning in.

In a next step, responses were verified to ascertain whether they were clearly disproportionate in relation to three characteristics: the sector of activity, the country of the MNC's headquarters and whether it was an EWC or SEWC. Table A.3 summarises the information relating to the sector of activity. As discussed above, a disproportionate stratified sample was drawn of EWCs and SEWCs based on the sector of activity. This was done in order to ensure sufficient participation of institutions from the smaller

Table A.3 EWC and SEWC population, sample and response: by ETUF

	Population		Sample		EWCs and SEWCs within which a representative could be contacted				EWCs and SEWCs from which at least one completed survey was returned	
	N	%	N	%	Direct	Indirect	Total	%	Total	%
EFBWW	71	6.4	67	7.9	20	21	41	8.1	29	7.9
EFFAT	102	9.1	98	11.6	26	30	56	11.1	43	11.8
EPSU	14	1.3	13	1.5	4	8	12	2.4	11	3.0
ETF	36	3.2	35	4.1	9	13	22	4.4	20	5.5
industriAll	634	56.9	449	53.1	99	203	302	59.8	222	60.8
UNI Europa	258	23.1	184	21.7	27	45	72	14.3	40	11.0
Total	1,115		846		185	320	505		365	

Table A.4 EWC and SEWC population, sample and response: by country of company headquarters

	Population		Sample		EWCs and SEWCs within which a representative could be contacted				EWCs and SEWCs from which at least one completed survey was returned	
	N	%	N	%	Direct	Indirect	Total	%	Total	%
Austria	18	1.6	18	2.1	8	4	12	2.4	7	1.9
Belgium	40	3.6	37	4.4	18	13	31	6.1	24	6.6
Denmark	26	2.3	21	2.5	3	8	11	2.2	10	2.7
Finland	43	3.9	26	3.1	17	5	22	4.4	22	6.0
France	129	11.6	109	12.9	24	39	63	12.5	46	12.6
Germany	246	22.1	189	22.3	20	83	103	20.4	70	19.2
Italy	36	3.2	30	3.5	9	6	15	3.0	12	3.3
Netherlands	64	5.7	51	6.0	9	20	29	5.7	21	5.8
Spain	13	1.2	13	1.5	4	5	9	1.8	7	1.9
Sweden	71	6.4	57	6.7	16	17	33	6.5	27	7.4
Switzerland	47	4.2	34	4.0	8	16	24	4.8	19	5.2
United Kingdom	102	9.1	77	9.1	10	22	32	6.3	19	5.2
United States	168	15.1	114	13.5	21	58	79	15.6	51	14.0
Other EEA	55	4.9	33	3.9	8	8	16	3.2	11	3.0
Other non-EEA	57	5.1	37	4.4	10	16	26	5.1	19	5.2
Total	1,115		846		185	320	505		365	

sectors. For EPSU, ETF, EFBWW and EFFAT, virtually all known EWCs and SEWCs were selected for participation. Only information and consultation procedures and EWCs based on the subsidiary requirements were excluded from the sample. For UNI Europa and industriAll, a random sample of 76 per cent of the population was drawn. This disproportionate stratification is reflected in the data. Table A.3, for example, shows that there are relatively more EWCs and SEWCs from the smaller ETUFs in the sample than in the overall population. The intended under-representation of industriAll EWCs and SEWCs is reversed in an over-representation of the institutions that could be contacted and within which at least one survey was completed. While relatively few EWCs and SEWCs from industriAll were selected in the sample, they tended to show higher response rates than the others. The reverse is true for the UNI Europa EWCs. The intended under-representation was accentuated due to the relatively lower response from EWCs and SEWCs. While 23.1 per cent of all EWCs and SEWCs are established by UNI Europa, only 11.0 per cent of the institutions from which survey responses were secured are set up by UNI Europa.

Table A.4 examines the distribution of EWCs and SEWCs over the countries in which the MNCs are headquartered. The second and fourth columns of data compare the population and the sample. The largest divergence is observed for France where the



sample is greater than the population by 1.3 percentage points) and the US where the sample is 1.6 percentage points lower than the population. These differences are small and result from chance.

Comparing the overall response with the sample and the population, however, illustrates clearer differences. In the first step (number of EWCs and SEWCs that could be contacted) and the second step (number of EWCs and SEWCs with at least one full response from a representative) of the response process, there is a clearly disproportionate non-response. The first step shows an over-representation of Belgian EWCs and SEWCs, while German- and UK-based EWCs and SEWCs are under-represented. In practice, it proved more difficult to make contact with EWCs and SEWCs from German and UK companies compared to their counterparts from other countries. Comparing the last two columns – EWCs and SEWCs with at least one completed survey – to the overall population distribution again shows an over-representation of Belgian EWCs and SEWCs. There is also an over-representation of Finnish EWCs and SEWCs. The under-representation of German and UK-based EWCs observed in the first response step is even more pronounced in the second.

## **EWCs and SEWCs at the level of representatives**

The previous section focused on responses at the institution level. In this section, the attention shifts to responses from EWC and SEWC representatives. The guiding question here is whether or not the survey results are representative for the population of EWC and SEWC representatives. To address this question, a comparison is made between the estimated population characteristics, those of the sample and those of the EWC and SEWC representatives who responded.

Up to this point, it has been established that 5,099 representatives received the survey. These representatives constituted 28.2 per cent of the estimated total population. Of the 5,099 representatives, 4,951 (97.1 per cent) were sent an invitation via e mail to complete an online survey. The other 148 representatives (2.9 per cent) received paper versions of the survey: 30 questionnaires were sent by normal mail and 118 were handed out at training sessions.

Table A.5 shows that, of the total of 5,099 representatives, 1,479 (29.0 per cent) completed the whole survey. A further 156 representatives (3.1 per cent) started the survey and answered at least 25 per cent of the questions, but did not complete the survey. These surveys were deemed as 'useable'. A further 397 respondents started the survey, but answered very few questions. These responses were discarded. There were thus 1,635 questionnaires (1,479 + 156) that were useful for the project, constituting a rate of return of 32.1 per cent. Responses to the survey amount to 9.0 per cent of the total estimated population of 17,974 representatives.

This section looks at the majority of the sample that did not respond to the survey. Table A.5 shows that 7.7 per cent could not be reached due to incorrect e-mail addresses. Almost 2 per cent were 'oversampled', meaning that those contacted indicated that they

Table A.5 Response and reasons for non-response

	N	Proportion of sample %
<b>Response</b>		
Completed the survey	1,479	29.0
Completed at least 25 per cent of the survey	156	3.1
Total response	1,635	32.1
<b>Non-response</b>		
Completed very few questions	397	7.8
No response	2,508	49.2
Opted out	79	1.5
Oversampled	87	1.7
Incorrect e mail address	393	7.7
Total non-response	3,464	
Total sample	5,099	

were not or were no longer EWC or SEWC representatives. Another 7.8 per cent began the survey but completed less than a quarter of it, while 49.2 per cent of non-responders simply failed to reply to the request for participation. Only a minority of respondents explicitly chose to 'opt-out' of the survey (79 or 1.5 per cent of the total sample).

Table A.6 shows the estimated population distributed over sectors, the distribution of EWC and SEWC representatives within the sample, and the distribution of the responses from representatives. Reflecting the disproportionate stratification applied, there is a slight over-representation of representatives from sectors organised by the EFBWW, EFFAT, EPSU and ETF, coupled to an under-representation of representatives from industriAll and UNI Europa. A comparison between the sample and the responses reveals no significant differences between sectors, none of which showed a disproportionate number of representatives who replied or failed to reply to the survey. Comparing the distribution in the estimated population with the distribution in the responses, however, shows the under-representation of representatives from industriAll and UNI Europa and a slight over-representation of the other ETUFs. Again, this is consistent with the disproportionate stratification performed at the institutional level.

The EPSU sample comprises 214 representatives, while the estimated population size was 203 representatives. This apparent anomaly can be explained by the presence of all EWCs and SEWCs established by EPSU being included in the sample and the relative ease of contact. Additionally, EWCs and SEWCs established by EPSU appear to be larger than average, resulting in the estimation of the total population being lower than the number of representatives to whom an invitation to participate was sent.

Table A.7 compares the distribution of the estimated population with the sample of representatives and responses disaggregated by EWCs and SEWCs. In comparing the

Table A.6 Population, sample and response by sector

	Estimated population		N	Sample		N	Response	
	N	%		%	%			
EFBWW	914	5.1	453	8.9	131	8.0		
EFFAT	1,642	9.1	621	12.2	197	12.0		
EPSU	203	1.1	214	4.2	70	4.3		
ETF	599	3.3	292	5.7	112	6.9		
industriAll	10,358	57.6	2 872	56.3	898	54.9		
UNI Europa	4,258	23.7	647	12.7	227	13.9		
Total	17,974		5,099	28.4	1,635			

sample with the population, Table A.7 depicts an over-representation of EWC members and an under-representation of SEWC members. This is consistent with the findings at the institutional level, which showed that it was more difficult to make contact with an SEWC than an EWC. No disproportionate pattern is observed when the responses are compared with the sample, suggesting that, once contact was made, the response rate of EWC and SEWC representatives was similar. In practical terms, the 1,520 respondents from EWCs constitute the value of N for this study and comprise 9.6 per cent of the estimated population of EWC representatives. These respondents work in 335 EWCs, which is 34.4 per cent of all EWCs.

Finally, Table A.8 compares the population, sample and responses by reference to the country of origin of the EWC and SEWC representatives. It is noteworthy that, from the outset, the country of origin of some 300 EWC and SEWC representatives in the sample could not be determined with certainty. With this caveat in mind, comparing the sample with the estimated population shows that there is a considerable under-representation of representatives from France, Italy and the UK. There is also a small over-representation in the sample of representatives from Belgium, Germany and Poland. This situation is neither new nor unexpected insofar as respondents from different countries do not reply to surveys at the same rate.

Comparing the response with the sample reveals only minor differences. The relative proportion of the French EWC and SEWC representatives appears to have decreased by more than three percentage points. A possible explanation for this is that, at

Table A.7 Population, sample and response by institutional type

	Estimated population		N	Sample		N	Response	
	N	%		%	%			
EWC	15,768	87.7	4 746	93.1	1 520	93.0		
SEWC	2,206	12.3	353	6.9	115	7.0		
Total	17,974		5,099		1,635			

Table A.8 Population, sample and response by country of origin of representatives

Country	Estimated population		Sample		Response	
	N	%	N	%	N	%
Austria	587	3.3	141	2.8	56	3.4
Belgium	970	5.4	427	8.4	163	10.0
Bulgaria	88	0.5	40	0.8	22	1.3
Croatia	16	0.1	22	0.4	13	0.8
Czechia	366	2.0	184	3.6	52	3.2
Denmark	459	2.6	83	1.6	44	2.7
Estonia	67	0.4	20	0.4	6	0.4
Finland	559	3.1	170	3.3	52	3.2
France	2,619	14.6	558	10.9	128	7.8
Germany	3,217	17.9	1,048	20.6	328	20.1
Greece	201	1.1	34	0.7	15	0.9
Hungary	191	1.1	124	2.4	42	2.6
Ireland	345	1.9	40	0.8	20	1.2
Italy	1,207	6.7	232	4.5	80	4.9
Latvia	48	0.3	11	0.2	3	0.2
Lithuania	38	0.2	22	0.4	8	0.5
Luxembourg	144	0.8	29	0.6	9	0.6
Netherlands	876	4.9	140	2.7	55	3.4
Norway	425	2.4	82	1.6	38	2.3
Poland	414	2.3	261	5.1	85	5.2
Portugal	379	2.1	55	1.1	15	0.9
Romania	162	0.9	84	1.6	39	2.4
Slovakia	145	0.8	60	1.2	18	1.1
Slovenia	57	0.3	15	0.3	11	0.7
Spain	1,118	6.2	360	7.1	116	7.1
Sweden	772	4.3	198	3.9	82	5.0
Switzerland	277	1.5	41	0.8	12	0.7
United Kingdom	2,195	12.2	329	6.5	123	7.5
Other	33	0.2	289	5.7	0	0.0
Total	17,974		5,099		1,635	100.0

the same time of the surveying period, another survey was distributed to a large proportion of the French EWC representatives by French trade union confederations. It is likely that potential French respondents might not have distinguished between the surveys or might have been tired of answering questionnaires. The difference between the distribution of the population and responses from French representatives is pronounced at eight percentage points. In practice, the survey contacted relatively

fewer French representatives, and those that were contacted responded at a lower rate than representatives from other countries, leading to a pronounced under-representation of French respondents. This problem of under-representation is seen not only in the case of French respondents: representatives from Italy, the Netherlands and the UK are also under-represented in the response to the survey. Representatives from Belgium, Germany, Hungary and Poland, on the other hand, are over-represented. Representatives from these countries were more likely to respond to the survey than representatives from the countries that were under-represented. For the purpose of analysing the data, a weight factor was applied to correct for the differences between the estimated population of representatives and the responses to the survey. The next section discusses the application of the weight factor.

## Weighting procedure

The weighting procedure was used to ensure that the results of the survey are 'representative' of the whole population. As explained above, the survey was intentionally imbalanced through disproportionate stratification. It was also unintentionally imbalanced due to disproportionate non-response. A weight factor corrects for both the intentional and unintentional imbalance by increasing the weight assigned to under-represented groups and reducing the weight assigned to over-represented groups in the calculation of the results. The use of the weighting procedure means that the results of analysis should be closer to the estimated population value (Dorofeev and Grant 2006: 45). Mirroring these two reasons for weighting, a weight factor can be calculated in two steps: a design weight and a non-response weight. The design weight corrects for the disproportionate stratification, while the non-response weight corrects for the disproportionate non-response. As the disproportionate stratification was intentional, the weighting procedure applied consisted of a single step, which compared the distribution of the responses with the estimated population distribution.

In calculating weight factors, a distinction is drawn between cell weighting and marginal weighting. Marginal weighting is a multi-stage process applied when the exact 'expected' distribution of some categories is unknown. Cell weighting is a more intuitive single stage process used when the distribution of the population is known. In this process,

Table A.9 Weight factor by ETUF

	Population %	Unweighted sample %	Weighted sample %
EFBWW	6.4	8.0	4.5
EFFAT	9.1	11.8	9.0
EPSU	1.3	3.0	1.0
ETF	3.2	5.2	3.2
industriAll	56.9	61.0	58.3
UNI Europa	23.1	11.0	23.9

Table A.10 Weight factor by country of company headquarters

	Population %	Unweighted sample %	Weighted sample %
AT	1.6	1.9	1.0
BE	3.6	6.6	3.7
CH	4.2	5.2	4.5
DE	22.1	19.2	22.3
DK	2.3	2.8	2.5
ES	1.2	1.9	1.1
FI	3.9	6.0	4.1
FR	11.6	12.6	12.2
IT	3.2	3.3	3.4
NL	5.7	5.8	6.0
SE	6.4	7.4	6.2
UK	9.1	5.2	9.2
US	15.1	14.6	15.5
Other EEA	4.9	3.0	3.1
Other non-EEA	5.1	4.4	5.2

the expected response of a cell (a combination of categories) is compared with the actual response. The weight is calculated by dividing the cell target by the actual number of respondents in the cell (Dorofeev and Grant 2006: 53).

The cell weights of the population of representatives were calculated for different cross-sections based on three variables: sector, country of origin of the headquarters of the company and type of institution. Tables A.9 and A.10 demonstrate the impact of including the weights by comparing the distribution of the estimated population of EWCs and SEWCs, the unweighted response of EWC and SEWC representatives to the survey and the weighted responses of representatives to the survey by reference to sector and the country in which the company is headquartered. The two tables show how the weight factors correct for observed over- and under-representation.

For the population of representatives, the cell weights for different cross-sections were calculated based on the three variables: sector, country of origin of the representative and type of institution. Tables A.11 and A.12 illustrate the effect of including the weight variable by comparing the distribution of the estimated population of representatives, the unweighted responses to the survey and the weighted responses to the survey by reference to country and type of institution. The two tables show that inclusion of the weights ensures that the survey results are more representative of the total estimated population on these variables.

Table A.11 Population, unweighted survey and weighted survey responses by nationality of respondents

	Estimated population %	Unweighted survey %	Weighted survey %
Austria	3.3	3.4	3.0
Belgium	5.4	10.0	5.6
Bulgaria	0.5	1.3	0.4
Croatia	0.1	0.8	0.1
Czechia	2.0	3.2	2.1
Denmark	2.6	2.7	2.6
Estonia	0.4	0.4	0.1
Finland	3.1	3.2	3.1
France	14.6	7.8	15.0
Germany	17.9	20.1	18.2
Greece	1.1	0.9	1.1
Hungary	1.1	2.6	1.0
Ireland	1.9	1.2	2.0
Italy	6.7	4.9	6.8
Latvia	0.3	0.2	0.0
Lithuania	0.2	0.5	0.2
Luxembourg	0.8	0.6	0.7
Netherlands	4.9	3.4	5.0
Norway	2.4	2.3	2.3
Poland	2.3	5.2	2.2
Portugal	2.1	0.9	2.1
Romania	0.9	2.4	0.7
Slovakia	0.8	1.1	0.8
Slovenia	0.3	0.7	0.2
Spain	6.2	7.1	6.4
Sweden	4.3	5.0	4.4
Switzerland	1.5	0.7	1.4
United Kingdom	12.2	7.5	12.6

Table A.12 Population, unweighted survey and weighted survey responses by ETUF

	Estimated population %	Unweighted survey %	Weighted survey %
EFBWW	5.1	8.0	4.5
EFFAT	9.1	12.0	9.0
EPSU	1.1	4.3	1.0
ETF	3.3	6.9	3.2
industriAll	57.6	54.9	58.3
UNI Europa	23.7	13.9	23.9





## **Appendix B**

# **Reform agenda of the European Trade Union Confederation (2017)**

### **ETUC position paper**

### **For a Modern European Works Council (EWC) Directive in the Digital Era**

Adopted at the ETUC Executive Committee on 15-16 March 2017 in Malta

The 20th anniversary of the EWC Directive in 2016 is one reason for assessing EWC-related achievements and shortcomings when it comes to representing the workers' interests in transnational companies. The EWC Directive stipulates that the European Commission should deliver an assessment 'not later than June 2016', but some delays occurred and the assessment will be delivered in spring 2017. An increase in the overall number of EWCs due to the EWC Recast did not materialise. Whereas some improvements can be achieved from the trade union side, other advances are impossible without a substantial improvement of the EWC Directive. All too often, workers' involvement is a mere formality and has limited impact as EWCs continue to be presented with a 'fait accompli', especially in the event of transnational company restructuring. In the digital era, new societal, technological and structural challenges are requiring a strengthening of EWC tools. Digitalisation will not wait. It is taking place now. EWCs must have the means to shape it.

Therefore, after long and in-depth discussion with its affiliates, the ETUC has identified the following main priorities for making workers' rights to information and consultation effective and solving difficulties in the practical implementation of the EWC Directive:

1. Enforcement of rights arising from the Directive through effective and dissuasive sanctions, including a right to a temporary suspension of company decisions with a national trade union prerogative. The implementation of information and consultation in practice is often inadequate and information is provided too late. The ETUC requests, above all, that there should be effective enforcement. Information and consultation must be an integral part of company decision-making at all levels: local, national and transnational. Before management takes a final decision, the transnational information and consultation process must be properly conducted and completed. In this context, the definition of consultation (in Article 2.1 g) should be strengthened so that the opinion of the EWC 'shall' (instead of 'may') be taken into account by the management. The differences in levels and scope of sanctions defined at national level must be reduced, with the aim of meeting the requirement of being 'effective, dissuasive and proportionate' and to ensure a level playing field.

The ultimate sanction should be to nullify company decisions in case of breach of information and consultation procedures, on the condition that the national trade unions directly affected by the decision support a suspension and/or nullification.

2. Ensuring access to justice. Specification of legal status of EWCs and Special Negotiating Bodies (SNBs) as legal actors. Definition of legal means to launch litigation against the company in defence of rights conferred by the EWC Directive.
3. The role of ‘representatives of competent recognised Community-level trade union organisations’ in Article 5.4 should be reflected in the subsidiary requirements. A right for trade union experts to participate in all EWC and Select Committee meetings and to have access to all sites is a necessary condition for supporting and coordinating the EWC’s work more effectively.
4. Ensure a more efficient coordination between local, national and European levels. Information and consultation rights must guarantee that the EWC can deliver its opinion before consultation is finished at the respective level. The EWC must be able to communicate with the national level whenever necessary, especially before and after EWC/SE meetings. The necessary resources and rights, such as access to sites, must be ensured.
5. A comprehensive definition of ‘controlling undertaking’ to include contract management, franchise systems and joint ventures. Objective criteria to determine the location of the ‘representative agent’ and ‘central management’ must be laid down to avoid regime shopping and use of letterbox companies.
6. After 20 years, there is no longer justification for exempting old, so-called voluntary (Pre-Directive, Article 13) agreements. Double standards must be ended by bringing them into the scope of the Directive. To ensure a level playing field and legal clarity, all provisions laid out in the Directive must apply to all agreements, either automatically or by renegotiation based on clear fall-back provisions embedded in transitional rules to ensure continuity for the duration of renegotiations.
7. Improve and clarify the rules for negotiations with SNB (clear time frame for the first SNB meeting, pace of SNB meetings, clear obligation of central management to establish an EWC if subsidiary requirements are to apply).
8. The concept of ‘transnational character of a matter’ (recitals 12 and 16) should be consolidated and incorporated in the main body of the Directive. There must be an enforceable comprehensive right of the EWC to be informed and consulted throughout the decision-making process.
9. Prevent abuse of confidentiality clauses by clarifying more precisely on what grounds, under what circumstances and how long a company may withhold information, and on what grounds EWC members’ right to share information with stakeholders (particularly employee representatives) can be restricted. Clarification is needed because management all too often does not provide sufficient information

regarding the confidentiality rules and hinders EWC delegates in their necessary communication at European and national level.

10. Strengthen the subsidiary requirements to improve the practical functioning of the EWC (e.g. rights and means of Select Committee, enlarged list of topics).

(ETUC 2017)



## Appendix C

### Specifying the variables

In identifying some of the sources of variation within EWCs, Chapter 3 introduced several of the variables that appear in subsequent analyses. The reasons underpinning the use of these variables are explained at the point of use within the chapters. These explanatory variables draw on the individual or political characteristics of the representatives, the constitutional arrangements of the EWCs, differences between countries or a combination of these factors. The values of N reported below are the unweighted values. No fewer than 1,520 EWC representatives responded to the survey. Missing values are excluded from the outline specification, but where the values of N do not sum to 1,520, the total of respondents, the remainder are the missing values, unless otherwise stated. In subsequent chapters, some of these variables are manipulated or combined to form additional variables. These processes are described at the point of implementation.

*EWC representatives* (N = 1,520). This variable comprises all the respondents to the survey.

*EWC representatives from single channel* (N = 642) and *dual channel* (N = 504) *systems of representation*. Countries regarded as having single channel systems include: Belgium, Bulgaria, Croatia, Cyprus, Denmark, Finland, Greece, Ireland, Italy, Latvia, Malta, Portugal, Romania, Sweden and the United Kingdom. Those with dual channel systems include: Austria, Germany, Luxembourg, the Netherlands and Spain. Some countries have a system of representation that is neither an unambiguously single nor an entirely dual channel system. Representatives from these countries (Czechia, Estonia, France, Hungary, Lithuania, Norway, Poland, Slovakia, Slovenia and Switzerland) are excluded from this variable.

*Unionised EWC representatives* (N = 1,289) were those respondents who indicated that they were a member of a trade union, and *EWC non-members* (N = 214) were those who had not joined a trade union.

*Unionisation of the EWC*. Respondents were asked to specify the extent of unionisation among the representatives on their EWC. Three categories are used: *100 per cent unionisation of the EWC* (N = 508), *between 70.0 per cent and 99.9 per cent unionisation* (N = 216), and *between 0.0 per cent and 69.9 per cent unionisation* (N = 236).

*EWC members* (N = 817), *office holders* (N = 518) and *substitutes* (N = 153). EWC members serve as representatives on the EWC, but hold no office within the EWC. Office

holders may act as chairperson, secretary or president of the EWC (N = 188), serve as a member of the select committee or its equivalent (N = 297) or hold some other office (N = 94). Office holders may hold more than one position within the EWC. Substitutes are those who attend an EWC meeting when the member is unable to attend. Many substitutes (N = 45) have never attended an EWC meeting and are thus excluded from consideration when views on meetings are sought.

*Home country representatives* (N = 331) and *foreign representatives* (N = 1,188). This variable combines the country of origin of the MNC with that of the EWC representatives. Home country representatives include all EWC representatives in an MNC with headquarters in the same country as that of their nationality. Foreign representatives are those who serve on EWCs with headquarters in a country that differs from that of their nationality. EWCs operating in MNCs based outside Europe, by definition, comprise only foreign representatives.

*Representatives from EU-based MNCs* (N = 1,147) and *representatives from non-EU-based MNCs* (N = 372). Representatives from EU-based MNCs serve in EWCs established in MNCs whose headquarters are located in one of the 28 Member States of the EU. Representatives from non-EU-based MNCs serve in EWCs established in MNCs based outside the EU, including Australia (N = 8), Canada (N = 23), Japan (N = 39), South Africa (N = 7), Switzerland (N = 105) and the United States (N = 177).

*Article 13 representatives* (N = 486) and *Article 6 representatives* (N = 1,025). This variable allows an assessment of the impact of the legislation that underpins the institution within which the representative operates. Article 13 representatives include: (i) those representatives functioning under Article 14 of the Recast Directive, which afforded agreements concluded between 5 June 2009 and 5 June 2011 as well as Article 6 agreements revised during this period a special status in which the definitions and principles of the Recast Directive apply, but not the 'new obligations' included in the Recast Directive (Picard, 2010); and (ii) those representatives functioning under agreements concluded in accordance with Article 13(1) of the Directive and with Article 3(1) of Directive 97/74/EC (extending the Directive to the United Kingdom) to continue their extant status if renegotiated during the period 5 June 2009 to 5 June 2011. The very few EWC representatives who served on EWCs functioning within different legal frameworks, principally the subsidiary requirements, are excluded from this variable.

*EWC coordinator present* (N = 896) and *no coordinator present* (N = 303). It is the policy of all ETUFs to select an EWC coordinator to work in conjunction with each EWC. This variable allows an assessment of the impact of this policy where it has been implemented.

*Select committee present* (N = 1,304) or *no select committee present* (N = 191). All of the ETUFs recommend that a select committee be set up within each EWC. While current legislation encourages EWCs to establish select committees, it is not mandatory for them to do so.

*Two or fewer plenary meetings* (N = 1,337) and *three or more plenary meetings* (N = 142). All the ETUFs argue that a single meeting of the EWC each year is insufficient. This variable assesses the impact of moving away from the statutory minimum of one meeting per year.

*Training received* (N = 866) and *no training received* (N = 516). This variable pertains to EWC representatives who had and had not received any training enabling them to undertake their duties at the EWC within the three years prior to the distribution of the survey.

Respondents were asked to state whether different managers attend the EWC and at what frequency. The data indicate the number of EWC representatives who stated that a particular manager is present and, in square brackets, the number who stated that the manager always or almost always attends the plenary meeting. *CEO present* (N = 1,314 [686]), *MNC/European HR manager present* (N = 1,334 [1,181]), *MNC/European finance manager present* (N = 1,295 [692]), *MNC/European operations manager present* (N = 1,229 [638]) and *national/plant-level manager present* (N = 1,241 [465]). Respondents were able to indicate where more than one of these categories of manager are present, hence N may be greater than the number of respondents.

MNC headquarters country clusters: the *coordinated market economy (CME)* cluster (N = 502) includes representatives in MNCs headquartered in Austria, Belgium, Germany, the Netherlands or Switzerland; the *Nordic* cluster (N = 291) includes Denmark, Finland, Norway and Sweden; the *mixed market economy (MME)* cluster (N = 354) includes France, Italy, Portugal, Spain, Greece, Luxembourg and Cyprus; the *liberal market economy (LME)* cluster (N = 363) includes Australia, Canada, India, Ireland, Malta, the United Kingdom and the United States. There were very few EWC representatives in MNCs based in Central and Eastern Europe (N = 8), hence there is no category for MNCs headquartered in emerging market economies (EMEs). The allocation of countries to the different country clusters was based on Hall and Soskice (2001), Hancké et al. (2007), Molina and Rhodes (2007), and Mykhnenko (2007).

EWC representative country clusters: the *CME* cluster (N = 557) includes EWC representatives from Austria, Belgium, Germany, the Netherlands and Switzerland; the *Nordic* cluster (N = 209) includes Denmark, Finland, Norway and Sweden; the *MME* cluster (N = 338) includes Cyprus, France, Greece, Italy, Luxembourg, Portugal and Spain; the *LME* cluster (N = 137) includes Ireland, Malta and the United Kingdom; the *EME* cluster (N = 278) includes Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.





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## **European Works Councils: contested and still in the making**

Stan De Spiegelaere, Romuald Jagodziński and Jeremy Waddington

Following the adoption of Council directive 94/45/EC (the EWC directive) more than 1,250 EWCs were established. This industrial relations institution was intended to ensure transnational information and consultation were available to worker representatives within MNCs that met the thresholds of the legislation. Initially the quality of information and consultation met neither standards required by the directive nor those specified in EU Charters and Treaties. In consequence, a recast directive (2009/38/EC) was adopted with the intention of remedying the shortcomings of the initial legislation.

By means of survey evidence this book demonstrates that the recast directive has also failed to ensure EWC operations of the required standard. In particular, the timing and utility of information and consultation is inadequate with the result that most EWCs are institutions of information rather than information and consultation.

The book also shows that EWCs are contested institutions. BusinessEurope prefers voluntary rather than legislative solutions and, only when politically compelled, enters into meaningful negotiations on legislation with the objective of limiting the coverage of the measure and the obligations it imposes on management. Managers have also developed strategies to use EWCs to achieve corporate objectives. Consistent with these approaches European policy-makers have limited any legislative change to improve information and consultation even when research that they have commissioned illustrates the shortfalls. In contrast, trade unionists have campaigned for legislative change to ensure adequate standards of information and consultation, while also taking action to promote trade union involvement in EWCs, to articulate EWCs with other institutions of labour representation and to provide training to EWC representatives. This book traces how this contestation underpins the development of EWCs and assesses how this contestation is likely to impact the future development of EWCs.

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