Swiss Representation in European Works Councils
Findings from Case studies in Swiss and EU-based Transnational Companies

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Abstract

The EU Council Directive on European Works Councils (EWC) is not binding for non-EU-member Switzerland, but nevertheless affecting Swiss companies and employees in a twofold way:

- Behind the United States, Switzerland is the second most important "home country" for Transnational Companies (TNCs) covered by the Directive but located outside of its geographical scope. More than 100 Switzerland-based companies are covered by the Directive, and a bit less than half of them do have an EWC.

- Due to negotiation successes of European Industry Federations in the 1990s, a large number of EWC agreements - around 160 - foresee the representation of employees in Switzerland on a voluntary basis.

The paper presents preliminary findings of our both quantitative and qualitative research on the distribution and formats of EWCs, their day-to-day practices as well as the position and roles of Swiss representatives therein, based on a number of case studies in both Swiss and EU based TNCs.

Special attention is given to „home country“ vs „periphery“ effects in the functioning of EWCs, the attitude of central management and its representatives in the EWC, the presence or absence of trade union experts, the influence of EWC representation at the workplace level labour relations, the role of „employee consciousness“ and union membership, and the perception of different European Industrial Relations systems by Swiss employee representatives.

We find that the EWC types discovered by Wolfgang Lecher and his co-authors in the late 1990s (from „symbolic“ to „participatory“ EWCs) can still be detected, but we also argue that their concept shows some weaknesses when it comes to explain the pre-conditions for the „operational effectiveness“ of an EWC. The structure of the company itself and the attitude of central management towards employee representation have an impact on the functioning of an EWC as important as the presence of trade union experts, predominant „employee consciousness“ or the internal structuring of the EWC as a transnational employee body.

We argue that in most cases, the „home country“ of a multinational company, and its Industrial Relations system, does have an effect on the EWC, but that there is also a detectable „periphery“ effect, a strategic advantage resulting from the direct access of local employee representatives in subsidiaries to central management that respective local management often has not.

Successful integration of employee representatives from a non-EU country into an institution based on EU legislation is possible as long as there is no objection from either central management or from employee representatives from EU. Nevertheless, only in one case it is verifiable that Swiss employees have directly benefitted from their participation in an EWC. In most cases, EWC level representation has a fuzzy or indirect impact which is difficult to track down.
Introduction

Switzerland is not a member state of the EU and is not likely to become one in the foreseeable future – why are EWCs an issue to be researched from a Swiss perspective?

The starting point for our research project\(^1\) have been two facts well known for a long time, but never thoroughly investigated, neither in research on EWCs nor in research focussed on TNCs in Switzerland:

- According to European Trade Union statistics, Switzerland, behind the US, is the second most important "home country" for TNCs covered by the EWC Directive but located outside of its geographical scope.
- Furthermore, due to negotiation successes of European Industry Federations in the 1990s, a large number of EWC agreements foresee the representation of employees in Switzerland on a voluntary basis.

This means that even though the Directive is not binding for non-EU-member Switzerland, companies as well as employees in Switzerland are affected by it in a twofold way. No other country outside the European Economic Area actually is that much affected by the institution of the EWC.

Our paper is divided into two parts.

The first part presents the findings of a quantitative study on the establishment of EWCs in companies based in Switzerland and on the representation of Swiss sites respectively their employees in EWCs of both Swiss and foreign TNCs. We will show which factors are determining the establishment of an EWC as well as the voluntary representation of Swiss employees.

The findings of our quantitative study have been presented in a more detailed way in an article recently submitted to the Swiss Journal of Sociology (still under review).

The second part presents findings of our qualitative case studies, focussing on several aspects of the institutional settings, daily practices and the structural environment of fifteen EWCs we have looked at more deeply. We contribute to the general research on the impact and the „effectiveness“ of EWCs as pioneer institutions of workplace industrial relations on European level. At the same time, special attention is given to the role of the Swiss delegates within these EWCs.

Some of these case studies are still under way; this paper thus only presents preliminary results and hypotheses for discussion and further elaboration.

\(^1\) The project „European Works Councils and Employees in Switzerland“ is running from November 2012 to April 2015 and is funded by the Swiss National Science Foundation. For more details see http://www.suz.uzh.ch/ebr_en.html
Part I: Findings of the quantitative Study

1. Which Switzerland-based companies have an EWC?

We estimate that 110 companies headquartered in Switzerland fall under the EWC Directive. Out of these companies, we found evidence that 50 do actually have an EWC or, in rare cases, an alternative procedure for information and consultation of employees. This equals to a compliance rate of 45.5% which is higher than the compliance rate of 39.1% calculated by the European Trade Union Institute for all companies likely to be covered by the Directive (www.ewcdb.org, 14.5.2013). Furthermore, the number of 50 EWCs in Switzerland-based companies means that Switzerland, behind the United States, is the second most important „home country“ for TNCs with an EWC located outside the actual geographical scope of the Directive. As a matter of fact, Switzerland plays a role as a home for TNCs active within the EU which is more important than most EU member-states, including Spain, Italy, Finland and Austria.

Which companies do actually establish an EWC, and which ones do not? We have been inspired by earlier findings on the compliance rates in German TNCs (Whittall et al. 2008). It has been assumed that in general a company's information disclosure policy, especially on staff numbers in different countries, is a crucial factor which influences the actual establishment of an EWC – as in many cases of smaller or middle-sized TNCs it is not clear at first sight whether they are falling under the EWC Directive or not. In this regard, there is a difference between companies listed at a stock exchange, either in Switzerland or elsewhere, since stock exchange rules require a certain degree of transparency, and family-owned businesses. The latter enjoy the reputation of being much more discreet. Indeed, we found that the compliance rate is significantly higher among publicly listed (54.2%) than among all other companies (29.0%), out of which most are privately owned. The share of others, such as state-owned or co-operative companies among Swiss TNCs is very small. Other company-related factors influencing the establishment of an EWC could not be detected, however there are indications that company size – itself attracting the attention of trade unions who are usually the actors demanding the establishment of an EWC - is also correlating positively with the existence of an EWC: Compliance is especially high among those companies that are listed in the Swiss Market Index, the Top 20 in market capitalisation at the Swiss Stock Exchange (70%). Factors that may hinder the establishment of an EWC, on the other hand, may be the relative significance of the home country (small size or low importance of subsidiaries in the EU), or an expansion abroad that took place only recently and has not (yet) attracted the attention of European trade unions.

2 This estimation is based on the European Trade Union Institute’s (ETUI) list of companies likely to be covered by the EWC Directive (www.ewcdb.org, 31.1.2013), on data available in the list „Top 2011“ on the largest companies in Switzerland, compiled by the business weekly Schweizerische Handelszeitung, and on our own research.
2. In which EWCs are Swiss employees represented?

In order to determine the number of EWCs in which Swiss employees are represented, we have first checked the definition of the geographical scope in all available EWC agreements. In a second step, we looked at whether a TNC employed staff in Switzerland or not.\(^3\) We found a total number of 472 companies having an EWC installed and employing staff in Switzerland. *So in around half of all existing EWCs, the question whether Swiss sites should be represented or not is at least potentially relevant.* Out of these 472 EWCs, 159 - around one third - do include the Swiss employees. However there is evidence that in some of these cases, the Swiss seats in the EWC are vacant. Furthermore, it is worthwhile to mention that in a small number of these agreements, Swiss EWC representatives enjoy a discriminated status of „guests“ or „observers“. They may not have the right to be part of the select committee, or they may not have full voting rights. 24 EWC agreements foresee the inclusion of Swiss, but the Swiss sites fail to comply with representation criteria such as existence of a manufacturing site or a minimum number of staff. In 41 cases the status of Swiss sites could not be identified. The whole rest of companies – 248 cases or 52% - do not include Swiss representatives in their EWCs.

In order to find the factors that determine the inclusion of Swiss employees, we have coded this population of 472 EWCs according to four criteria:

- Industry (4 Categories: Mechanical and electrical engineering and metalworking; chemical and pharmaceutical industries; services; other manufacturing industries)
- Location of company headquarter (Switzerland, EU, outside EU)
- Legal basis of EWC agreement (namely Art. 13 voluntary agreement vs Art. 6 negotiated agreement)
- Size of Swiss staff (roughly estimated division into „more than 50“ and „less than 50“)

So which companies do include Swiss employees in their EWCs?

Table 1 shows that whereas there is no significant influence of the „industry“ factor, all the other factors are significantly influencing the inclusion of Swiss employees. For the logistic regression of the dependent variable „inclusion of Swiss employees“, all the cases with unknown status regarding the inclusion of Swiss employees had been removed from the population. Furthermore, only EWCs based on either Art. 13 or Art. 6 had been considered\(^4\), as we started from the hypothesis that an inclusion of Swiss employees has been more likely in early established EWCs under Art. 13 than in „late-comers“ established under Art. 6.

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3 In addition to the ETUI EWC database (www.ewcdb.org, as of April 2013), we had asked information from insiders in trade unions and employers organisations, looked at company websites and the Swiss public telephone directory (www.local.ch) and contacted those companies from which either the EWC was unavailable or the wording regarding the geographical scope was rather unclear.

4 In this context, all SE („Societas Europaea“ / European Company) Works Councils, as well as those established without agreement (according to the subsidiary requirements) and some unclear cases had been removed from the population.
Table 1:
Factors determining the inclusion of Swiss employees in EWCs: Model with the significant variables

| BRD (Company belongs to services industry) | 0.574 (2.11)* |
| SCH (Company headquartered in Switzerland) | 1.464 (4.04)** |
| T13 (EWC agreement based on Art. 13) | 0.704 (3.07)** |
| RCH (> 50 employees estimated in Switzerland) | 0.867 (3.37)** |
| _cons | -1.849 (7.12)** |
| Pseudo R^2 | 0.111 |

CHR (Representation of Swiss sites in EWC)  
N 403 (all cases with clear status regarding CHR)

β-coefficients are shown, z-values in parenthesis; * p<0.05; ** p<0.01.

According to these findings and to further calculation of average marginal effects, the most significant factor influencing the inclusion of Swiss employees is the company's headquarter: Swiss TNCs are much more likely to include their Swiss employees, with an „inclusion rate“ of 72%. Another highly significant factor is the „relevance“ of the Swiss site: Those likely to employ more than 50 people in Switzerland have an „inclusion rate“ of more than 42%, compared to an average rate of one third. The most notable result, however, is the fact that EWCs established according to Art. 13 – mainly before September 1996 – are much more likely to include Swiss employees than EWCs established later under Art. 6 (around 43% compared to around 26%). Our respective hypothesis mentioned above has thus been confirmed. The explanation for this is quite simple: In the „pioneering“ phase, and in the high time of negotiation activities between 1994 and 1996, European Industry Federations had a firm eye upon negotiations, and were often represented in the actual employee-side negotiating bodies. The ETUC at the time pursued the strategy to include employees from the two West European countries for which the EWC Directive had not been binding at the time: the United Kingdom (before the adoption of the Maastricht Social Chapter under Tony Blair in 1997) and Switzerland. And as the results of our quantitative study show, they were successful in a significant number of cases, however this is still a minority. We consider this to be an indicator for Switzerland's partial integration into a process of Europeanization of industrial relations, independently of EU membership. Causes for this are the significance of Swiss TNCs which made it appear prudent to take Swiss trade unions on board, and at the same time the relative importance of Swiss trade unions on the European level.

The second part of our study is taking a deeper look into a limited number of such cases – EWCs with Swiss representatives included.
Part II: Findings of qualitative Case Studies

1. Sample and methods

For the qualitative part of our research project, we chose 15 EWCs which do include Swiss employee representatives. Even though Swiss companies are a minority among those 159 which we found to include their Swiss employees in their EWCs, they are overrepresented in our sample with 10 companies, compared to 5 EU-based companies (two German, two British, one French). This is for two reasons: First, in our early research we soon and unsurprisingly found that Swiss actors are more likely to play a prominent role, as EWC presidents or as trade union experts, within companies headquartered in Switzerland. Second, because in earlier case studies on EWCs Swiss TNCs have rarely been included, and if they are (as is the case with Nestlé), Swiss actors do not play any visible role in the game, neither on management nor on employee side.

We chose companies from different industries: Four belong to the mechanical and electrical engineering sector, four to the chemical and pharmaceutical sector, three to the financial sector (one bank, two insurers), three are consumer goods manufacturers, and one is a building material manufacturer. Furthermore, the companies in our sample differ in size: From very large companies with more than 100'000 employees down to relatively small TNCs with less than 10'000 employees. Diversity is also large with respect to their Swiss employee representatives: We have found EWC members with full rights and EWC members with a mere observer status. We have met representatives from the German as well as from the French speaking parts of Switzerland, Swiss citizens and foreigners (including international commuters), blue-collar and white-collar staff, male and female, members of different trade unions as well as non-unionised employee representatives. Last but not least the selection also depended on the willingness of both employee representatives to take part in the study. It seems that in some cases, this willingness had been negatively influenced by HR managers. Initial contacts in all cases had been made through Swiss employee representatives. These were found either through trade union contacts, or through an independent network of employee representatives. The latter contacts were of particular interest, as it allowed access to companies especially in the financial sector with no collective agreements, and to employee representatives who don’t have relations with trade unions. And these are significant phenomena for industrial relations in Switzerland: Collective bargaining coverage is estimated less than 50%, and trade union density is estimated around 20%. Furthermore, among Swiss trade unions we find a lot of „professional” as well as enterprise or in-house unions alongside, and often in competition with the „classical” socialist and Christian workers unions.

We conducted partly standardised interviews conducted with a number of actors for each company case:

- Management representatives responsible for relations with EWC
- HR managers in Switzerland
- EWC members from other countries (preferably president or similarly prominent position)
- EWC members from Switzerland
The following sections of this paper deal with several factors we identified as potentially relevant for the „effectiveness“ of a European Works Council. „Effective“ in our view is an EWC who is, ideally, in a position to represent the interests of the constituents in a setting of „negotiated involvement“ (Aglietta / Rebérioux 2005, 54). Indicators for such effectiveness are

• The EWC is informed and consulted by management timely and in a respectful manner on transnational issues that are potentially affecting the interests of the company's employees
• The EWC is seen by management as a useful tool rather than as a necessary evil
• The EWC is perceived as a relevant institution / actor by other actors (employee representatives, trade unions) at local sites whenever they are affected by measures decided at company headquarters
• The EWC is accepted by management as a negotiation partner for substantive agreements, such as Transnational Company Agreements (TCA) or European Framework Agreements (EFA)

We would like to state that our findings are part of a „work in progress“, as at the time of the writing of this paper (June 2014), not in all cases investigation could be completed yet.

We will deal first with the institutional aspects (or formalities) of EWCs (2.1), then with aspects related to interpersonal communication within EWCs (2.2), the structural setting in which EWCs operate (2.3), and the issues EWCs are mainly dealing with (2.4).

In a further section we will tackle a number of questions concerning specifically Swiss representation in EWCs (3).

2. Factors determining EWC effectiveness

2.1 Institutional aspects: Do formalities matter?

Institutional aspects we considered are:

• National law:
  Swiss companies are forced to choose an EU member-state under whose laws their EWC operates, and they are free in their choice, provided they have an undertaking in the respective country. This aspect is relevant only in the sense that it reveals management's approach: Choice of UK or Dutch laws are interpreted as an indicator for management looking for the „most employer friendly“ legal system. Austrian, Belgian or German laws are more popular among employee representatives and trade-unionists. No Swiss company ever chose French law.

• Legal basis of EWC agreement:
  Do EWCs with agreements based on Art. 6 of the 1994 Directive work differently from EWCs with
agreements under Art. 13? With our case studies, we cannot confirm Waddington’s findings that Art. 6 agreements were “more advanced” in terms of employee rights than Art. 13 agreements (Waddington 2011, 71f). However, we found some cases of EWCs based on Art. 6 as a consequence of management initially trying to avoid the establishment of an EWC – thus missing the September 1996 deadline and later being forced into an Art. 6 agreement.

• Type of EWC:
  Regarding day-to-day practices, we found only minor differences between the EWCs who are employer-employee mixed bodies („French type”) and those who are employee-only bodies („German type”). But we found evidence that mixed bodies are likely to produce junior management representatives („EWC presidents”) who act as mediators between senior management and the employee delegate. In mixed bodies, the absence of extra resources on the employee side may appear less harming, as meeting logistics are taken care of by management. Some interview partners reported that it was easier to get senior management at the table if the person responsible for the EWC as a whole was a junior manager.

• Management level:
  We found no evidence for the relevance of the management level to which the EWC is attached. Some authors, namely Kotthoff (2006, 103, also Kotthoff / Whittall 2013), argue that only in companies with European management level and a highly integrated supply chain on European level („Eurocompanies”) EWCs gain a „participatory character”. Some companies in our sample, mainly belonging to the consumer goods industry, have the quality of „Eurocompanies”. We found, however, evidence that comparably high quality consultation can also take place in companies with no specific European management level, which means that global management is responsible for relations with the EWC. Thus, being a „Eurocompany”, in our view, is neither a sufficient nor a necessary condition for good participatory practices in an EWC.

• Frequency of plenary meetings:
  There is evidence that two plenary meetings per year make a difference in comparison with only one. They help employee representatives to discuss strategies among themselves more intensively, and give room for internal trainings. In some cases, one plenary meeting per year is reserved for such trainings. Furthermore, two or more meetings per year go beyond the subsidiary requirements and are an indicator for management willing to „give more” than required by law, respectively for employee representatives able to bargain more than required by law.

• Place of plenary meetings:
  In some cases, EWC plenary meetings are regularly held at the company’s headquarters or other strategic places, in other cases they are taking place each time in a different company site. In companies holding two plenary meetings per year, one may take place at the headquarters, and the second one – sometimes an internal meeting without management presence – is rotating. Employee representatives tend to appreciate rotating meetings in order to be able to have a look at different company sites, whereas high management representatives tend to be more available for EWC meetings when they take place at the headquarters. Regardless, we found a clear correlation
between the quality of consultation and regularity of meeting places. This does however not prove any causal connection. Rotating plenaries may be an indicator for „touristic“ motivations prevailing among employee representatives. Plenaries always meeting at the headquarters, on the other hand, may be an indicator for several high management representatives to be involved on a regular basis. In many agreements, extraordinary plenary meetings are foreseen when circumstances are requiring it, however only in a few companies, such extraordinary meetings have been taking place more often than once in five years.

• Topics subject to Information and Consultation as defined in the agreement:
Five out of fifteen EWCs in our sample define the topics to be discussed in the EWC either below or more or less exactly according to the subsidiary requirements of the Directive. Interestingly, both Art. 6 EWCs are among them. One of these five only has information, but no consultation rights. The most frequently mentioned topics going beyond the subsidiary requirements are: Health and safety related matters (8 cases), environment protection (7 cases), and training (6 cases). Some agreements also mention topics like gender and equal opportunities, data protection, corporate social responsibility, and even remuneration systems and employee performance management. Two agreements mention additional topics separated from the „subsidiary“ ones as „examples“ or „options“. In some cases, there is a connection between the issues as defined in the agreement and the overall character of the EWC. Other EWCs are busy with additional topics without explicitly mentioning them in the agreement. Furthermore, a wide range of topics discussed in an EWC has a value in itself – both for management and for employee representatives. But at the same time, this may also be an indicator for an EWC moving away from the „hard“ issues it was made for towards a chatroom for all kinds of topics.

• Internal Structure of EWC:
The absence of an Select (or „executive“ or „restricted“) Committee – even within a „small“ EWC comprising less than 10 delegates - is clearly an obstacle for the establishment of good working relations both within the EWC and between EWC and management. This is the case in two EWCs of our sample – one even in a medium-sized EWC. Large committees (more than 5 members) may be supplemented by a second-level committee (2 to 4 members) which is more agile and can uphold contacts with the relevant management level as well as with the whole EWC in-between meetings. In some EWCs it seems that a rather large select committee in which all relevant countries are represented is somehow acting as the „real EWC“, especially if plenary meetings take place only once a year whereas the select committee holds regular meetings with management 3 or 4 times a year. Select Committees are often in a position to meet extraordinarily, in addition to or instead of extraordinary plenary meetings, e.g. in order to interfere into restructuring processes and in such cases additionally involving the concerned local employee representatives. In one of our cases – a company operating three quite different businesses – the EWC has set up thematic Working Groups as sub-structures covering certain businesses, in addition to the Select Committee. This structure seems to work quite well, too.
• Country representation:
Representation of all countries in the EWC, regardless of staff size, is a close-to-subsidiary-requirements negotiation result which may be an indicator for the inability of the employee side to bargain substantial concessions in other matters – in fact the subsidiary obligation to have all countries covered by the Directive represented in the EWC is an excellent bargaining chip to be used by the employee side. In some cases we observe a link between the existence of functioning structures of employee representation at national level and the right to be represented in the EWC, especially when it comes to integration of new member states.

• Adaptation of agreement to the new EWC Directive 2009:
This is an indicator for management willing to adjust to the new legal circumstances, even if this is, under Art. 13, not strictly required. At the same time this is, of course, an indicator for well-informed, well-advised and self-confident employee representatives

Based on these observations, we dare to define „best practice“ in relation to institutional aspects as follows: Being agile through a well-designed internal structure, representation of all relevant sites by elected employee representatives, two plenary meetings per year and the right for at least the select committee to hold extraordinary meetings when circumstances demand it, and, in addition to that, topics subject to information and consultation beyond the subsidiary requirements, are the institutional factors that make an EWC effective.

Even though there are correlations between some of the institutional aspects discussed above and the effectiveness of an EWC, we do not consider them as determining the impact of an EWC. Institutional regulations favourable for the employees are rather consequences of a comparably strong position vis-à-vis the management than the actual causes for such position. Some of these regulations, such as the well-designed internal structure and the right to convene in extraordinary circumstances are necessary conditions for a proper functioning of an EWC, but they cannot be seen as sufficient. More important are the factors we are dealing with in the next sections, namely aspects of interpersonal relationships and communication patterns (2.2), and the national industrial relations settings in which an EWC is embedded (2.3).

2.2 Communication aspects: How do interpersonal relationships matter?

• Interpretation:
Interpretation in the native languages of EWC delegates is seen as crucial where it happens, but not missed where it is limited or does not happen. The absence of interpretation determines the selection of representatives according to their linguistic competencies. Some EWC delegates are selected on the basis of the linguistic competencies, and these people have no problem or even tend to be fine with such a restriction. Multilinguism, or at least a basic knowledge of English, is crucial for EWC presidents, in order to be able to communicate with other delegates, and often with management, in between official meetings.

Actors tend to justify the absence of interpretation by the fact that „English is our corporate language“. One may expect that in the finance industry EWC monolingualism is more frequent than
in manufacturing companies, but in our sample this is not the case: Two out of three monolingual EWCs are from the mechanical engineering industry, whereas two out of three finance-industry companies in our sample do provide interpretation in their EWCs. Interpretation, however, is also a major cost factor, it makes up the lion's share of any EWC budget. Therefore interpretation into some languages may be used as bargaining chip in negotiations by employee side in order to achieve other substantial concessions by management. This is the case with languages whose speakers normally consider themselves to be proficient English or German speakers (e.g. Scandinavian languages, Dutch).

- Internal communication:
  Regular communication among EWC Select Committee members, and a good information flow with the rest of the EWC members, ideally in both ways, „top-down“ as well as „bottom-up“, is usually seen as important. Many actors report a deficit in this respect.

- Management presence in the EWC:
  We did not find any correlation between an either regular or occasional presence of the CEO at EWC plenary meetings and the general quality of an EWC. In some cases, however, actors attribute some importance to CEO presence as a sign of respect for the EWC, and tend to criticize CEOs not willing to appear before an EWC meeting. In companies with clear European management structures, usually the Head of the European business is the highest-ranking manager appearing before the EWC.
  In one case, we found the situation that national HR managers present at EWC meetings (which is in general rarely the case) were confronted in later negotiations taking place on national level with statements made by central management in the EWC in their presence. This kind of effect seems to occur especially when also national trade union representatives are present at the EWC. Furthermore, if an EWC is a networking platform not only for employee and trade union representatives, but also for HR managers from all over Europe, it has an extra added value for management.

- Trade union co-ordinator or expert
  We found a great variety of both formal rules and actual practices regarding the involvement of experts, usually from trade unions, in EWCs. Differences of sector-specific trade union policies are still detectable: In the mechanical engineering (metalworking) sector, three out of four companies do have a national trade union co-ordinator or other expert with full right to be present at the meetings with management, whereas in the chemical companies investigated, experts are often not welcome at meetings with management. In the food and tobacco sector, trade union experts are invited, and the role is assumed by global or European industry federation secretaries. In the financial sector, we did not find any EWC who is currently advised by such expert – even though on paper the right to such advice may exist.
  We found that experts are indeed relevant in terms of giving expertise, e.g. when it comes to legal issues such as exploring the possibilities offered by the new EWC Directive. Nevertheless, trade-union co-ordinators with dominant roles may also marginalise the respective EWC presidents. In one
case, we found that EWC co-ordination was taken care of by local trade union secretaries of the company’s main production site – and this constellation clearly obstructed the development of the EWC as a supranational body: These trade union co-ordinators openly declared that for them, job security in that site was the highest priority (see also 2.3: „negative home-country effect“).

The most important factor for the „equilibrium of power“ between EWC president and trade-union co-ordinator, as well as among EWC members, however, is the experience of core actors and the quality of their interpersonal relationships.

- **Links with local works councils, public relations:**
  Information of local works councils and the whole workforce, respectively, is very much up to the individual delegates’ discretion. Only in a small number of cases, the EWC president or trade union co-ordinator is issuing newsletters or similar information formats available to staff as a whole, or even to the general public on the internet.

- **Change of information and communication flows between actors:**
  There is evidence that the existence of an EWC is likely to influence the information and communication flows within a TNC – both between management and employee representatives locally (a), and between different levels of management (b).

  *We identify this as a „bypass effect“:* Information and communication bypass and as a result supplement the traditional „proper channels“:

  a) We distinguish between a „real dimension“ and a „symbolic dimension“: There is a „real dimension“ in some cases when an EWC delegate is informed earlier or in a more detailed way than his / her HR or line manager on certain issues which are relevant for the site. This is however not very often the case, and it applies mostly for sites at the periphery. Management, of course, seek to avoid such situations, once they get aware of this effect. But there is also a „symbolic dimension“ lying in the fact that the local works councillor has met the group CEO and other high-ranking persons from central management in person whereas the local manager probably never has the chance to do so. Furthermore, in one case we were told the story of local managers urging the EWC delegate of his site to express dissatisfaction with orders from „above“ vis-à-vis central management in the EWC meeting.

  b) Between central management and local sites: Central management representatives often mention the EWC as an instrument to get „unfiltered information“ on what is going on locally, without interference of local management. Management is „earthened“ in the sense of getting direct access to the problems and preoccupations of ordinary workers all over Europe. And in several cases, it was mentioned that timely consultation and dialogue within the EWC helps to avoid clashes and conflicts on local level – or at least to identify the potential for labour conflicts at an early stage.

Based on these further observations, we can again define a best practice: Ideally, EWC documents and discussions are translated and interpreted into all represented languages, EWC core actors are able to communicate in more than one language including English, regular communication both internally and with relevant management representatives takes place in-between both plenary and select committee meetings.
EWC core actors are unionised and entertain official links with a trade union expert who is available when needed but does not interfere in a paternalistic way into company industrial relations. Furthermore national management presence in EWC plenary meetings helps to smoothen follow-up in negotiations at national level.

2.3 Structural setting: Which aspects matter?

- EWC background resources:
  As found by other researchers (Bicknell 2007), German Central Works Council presidents often take the role of EWC president, also in non-German companies. This is also the case in a significant number of cases in our sample – even more if we take into account not only nominal “presidents” but other EWC core functions as well. When interviewing German representatives, we found a high ability and willingness to speak out, and at the same time a high degree of reflection concerning the role of the EWC and the actors within and around it. This is definitely due to the comparatively privileged position of works councils in Germany and to their high level of unionisation and union consciousness. Both of these factors contribute to self-confident and outspoken behaviour. An extraordinarily good resource endowment allows German works councillors, in some cases, to have an assistant paid by the company working exclusively for EWC matters. This can also be found in some Austrian companies (Stöger 2011), but generally not in Switzerland – with the remarkable exception of one of our cases, but in this very case, for other reasons, the extra resources are not used for the EWC (see below „negative home-country factor”).

At this point, we want to draw attention to another crucial aspect: Are „high standard“ EWCs with a high number of consultation procedures taking place and therefore consuming a lot of working time and efforts from employee representatives not mere „hamster wheels”? EWC select committee members, or in some cases also trade union co-ordinators, are kept busy with institutional, even bureaucratic matters around the functioning of an EWC. Some of the Swiss EWC presidents mention that EWC work is „on top of“ their local or national employee representation work. It is an open question whether employee side resource input into EWCs and revenue in favour of the employees as a whole, are somehow balanced. (And here we are not speaking about „symbolic“ EWCs whose value for employee representatives mainly consists in tourism, staying away from work, and socialising.)

- Home-country effect:
  By home-country effect we mean the specific impact of the TNC's home-country actors and home-country industrial relations on the functioning of an EWC as a whole.
  We distinguish between a „negative“ (a) and a „positive“ (b) home-country effect.
  a) In such a case, the EWC president and / or the trade union co-ordinator from the home country prioritise good labour relations „at home“ over investing into a strong European employee representation. Willingly or not they contribute to the structural weakness of the respective EWC. We found this effect in two cases of Swiss companies. In one case of a rather „effective“ EWC we found evidence that a majority of delegates consciously and repeatedly elects representatives from another
than the company's home country as EWC president in order to avoid such „negative home-country effect“.

b) Here, the EWC president and / or the trade union co-ordinator from the home country see themselves as „advocates“ of the periphery (Kotthoff 2006 with regard to German cases) and share their knowledge with delegates from the periphery. In the case of German headquarters or subsidiaries there may be a „co-determination effect“ added: Confidential information gained through the presence of works councillors in Supervisory Boards may implicitly or explicitly shared with colleagues from other countries (Stöger 2011). We did not find clear evidence for that, but heard some Swiss delegates complain that such information was not shared by their German colleagues.

We wonder what the existence of a home-country effect depends on: Is it the numerical weight of the home-country delegates within the EWC which usually is the consequence of the weight of home-country staff? Are certain home-countries (such as Germany) more likely to dominate than others (such as the United Kingdom) – as a consequence of the quality of their respective industrial relations? Our findings do not converge into a clear direction: Looking at the four companies with the highest weight of Swiss employees among the global workforce, two show a clear home-country dominance within the EWC, two do not, and in one, the non-Swiss delegations even managed to keep the Swiss in a discriminated position.

- Periphery effect:
  In many cases, the utility of the EWC is regarded as higher for periphery delegates than for home-country delegates (Waddington 2011, 93). Besides, the „bypass effects“ mentioned above affect communication flows more likely in the periphery than in the home country, where local works councils often do have direct access to central management regardless of the existence of an EWC.

2.4 EWC Issues: What are EWCs actually busy with?

When asked what were the most important topics discussed in their EWC, more than half of the employee representatives interviewed in the course of our research replied „it is mainly about restructuring“. First of all, this corresponds to both the intentions behind and the content of the EWC Directive, and it corresponds also to most of the EWC agreements: What other purpose should an EWC have than to be a tool for employees to discuss business cases of a transnational nature and with more or less severe impact on employees - from redundancies in a site suffering from overcapacity or high production costs to the sale or closure of plants and whole businesses?

But this is not as obvious as it seems: In many cases, employee representatives, including EWC presidents or secretaries, stated that information on important business cases are being revealed to them only the night or even one hour before a public announcement is made. This practice is usually justified by management with stock-exchange rules against insider trading. Other companies deal differently with such issues of confidential nature, apparently treating EWC delegates and even their colleagues in works councils at national level as insiders the same way as managers involved in the case are treated. Nevertheless it is still unclear to us how crucial timely information – defined as „a few weeks before the general public“ - is for an EWC's capacity to deliver an opinion in the frame of the consultation process, or even to exert any influence
upon management decisions. In this respect, we have to distinguish between consultation about a measure as such, and consultation about the implementation of a measure – namely about social compensation, redundancy payment schemes etc. This consultation, on European as well as on national level, usually takes place after the public had been informed on the key figures. In some of the cases we investigated, the most interesting question in this context is the one about the articulation, and possibly the contradictions, between European and national consultation and negotiation processes.

If restructuring in a company is of merely national or local nature, as is the case in less integrated companies whose jobs in a specific site depend not on transnationally defined company strategies but rather on the market success of the site's specific products – is there still a role for an EWC? The evidence we found for such cases is ambiguous: We found one case of a comparably small manufacturing TNC based in Switzerland whose EWC is rather „symbolic“, one of the reasons for this being the less integrated nature of the company's supply chain. However we found another case of an EWC engaged in discussing not only national but also transnational issues of a less controversial nature. This indicates that if key actors on both sides (EWC and management) are interested in cultivating the EWC and making use of it, they will find issues to discuss even if there are not many from a „puristic“ point of view.

Nevertheless, a focus on less controversial issues in combination with a use of the EWC as a body involved in negotiations on substantive agreements can also be the result of an „overdose“ of restructuring issues: Employee side opinion leaders are frustrated with their EWC only being a platform for discussing „bad news from above“, hence being limited to a merely reactive role. So they may initiate their own agenda and try to get management on board with discussing less controversial issues however important for an employee representative agenda, such as health and safety, corporate demography management, gender equality, and diversity. At the same time, EWC experience with continuous restructuring, redundancies and plant closures may result in the signing of agreements or joint texts with management on principles of socially responsible restructuring. We identified four such cases. We found two more cases of ad-hoc agreements concluded between management and the EWC limited to introduce accompanying measures to specific restructuring projects. It seems that the conclusion of such substantial agreements, be it with the EWC or with a transnational Trade Union Federation, necessitates an EWC whose core persons already formed a team which, through experiences of frustration and through controversial discussions and continuous protests have gained a certain degree of respect from management side.

On the other hand, dealing with less controversial issues can also be seen as a management strategy for „appeasing“ an EWC by feeding it small bites of negotiation success. Besides substantial agreements on non-controversial issues and on restructuring, we also found two cases of rather useless joint texts called „code of conduct“ and „social charter“ that have an alibi character and cannot be seen as an indicator of a strong culture of participation on transnational company level.

Another interesting set of obserations can be subsumed under the title „The Power of Comparison“: EWC helps rebalancing the „power of comparison“: The „power of comparison“ from „above“ which finds its expression in continuous benchmarking of manufacturing sites, performance management of teams and even individual staff members etc. faces a counterpart from „below“: Employee representatives from different countries are comparing their working conditions, national employee participation practices, social insurance
systems, but also more company-specific rules and procedures: Exchange of experience on remuneration systems, redundancy payment schemes, and other issues which in a more formal understanding are not „EWC business“, may give an EWC an added value virtually „through the back door“. Some employee side actors even see this function as the only remarkable benefit they see in the institution. This aspect can be seen as typical for „service providers“ EWCs in the early typology of Lecher et al. (1999).

3. Specific aspects of the Swiss representation in EWCs

As our case studies are focussing on the Swiss representatives in EWCs, we add some remarks on the representation of Swiss sites and employees in the EWCs we investigated.

• Who delegates the Swiss representatives to EWCs?

This is a mere institutional aspect, and definitely not a question in countries with clear legal rules regarding employee representation, such as Germany, Austria, or France. In Switzerland, however, not only national transposition of the EWC Directive, but also a clear legal framework for workplace employee representation on local or national level is lacking.

So it is no surprise that we found different delegation principles according to which Swiss sites are represented. In cases where there is an elected employee representation body can be

a) **Unitarian representation:** There is only one employee representation body for all the workforce of the respective company in Switzerland.

b) **Umbrella representation:** There are several employee representation bodies for different sites or different socio-professional groups (e.g. blue-collar / white-collar employees), but they form an umbrella representation body similar to a German Central Works Council (Konzernbetriebsrat).

c) **Monopoly representation:** There are several sites in Switzerland, but only one has an elected employee representation body, thus only this site is represented in the EWC, regardless of its size.

d) **Proportional representation:** There are several employee representation bodies (as in case b), and they are all represented in the EWC.

e) **Representation through co-ordination:** There are several employee representation bodies (as in cases b and d) but not all can be represented in the EWC. Co-ordination is thus needed and in the cases we researched done through the respective trade union. In other cases, however, HR management may interfere in the co-ordination process.

f) Sometimes, there is neither an elected Employee representation body nor any recognised trade union within the Swiss sites. We did not investigate such cases in-depth, but there is evidence that in such companies, Swiss representatives are in some cases elected by the whole workforce, as is often the case in British or Irish non-unionised sites, and in other cases selected by management, as is occasionally reported about representatives from CEE countries.

• Links with trade unions:

Normally, the EWC does not play a major role in communication between trade union officials and even well-rooted employee representatives who are EWC delegates. In our perception, this depends on the interest the respective trade union officials have in EWCs rather than on the relevance or performance of the EWC as such. EWCs are usually not a priority issue on higher union ranks, and
in the one exceptional case we detected it was, huge strategic differences between union officials and „their“ Swiss EWC delegation emerged. But in most cases, even well-informed and interested union officials tended to repeat the views of „their“ EWC delegates when they were asked about their knowledge on a specific case.

There are, however, clear correlations between unionisation and the individual „employee consciousness“ of Swiss EWC delegates, and in some cases, competition between different trade unions are reflected at the level of EWC representation.

• **Position of Swiss delegates within the EWC:**

In many companies, mainly in the German-speaking part, Swiss delegates have a „political“ approach quite different from what one may call „mainstream unionism“. They are either not unionised, as in the finance sector, or they are members of white-collar enterprise or in-house unions (Hausverbände) who show a high degree of identification with the respective company and are notorious for their employer-friendly political approach. This is in some cases clearly resented by EWC delegates from other countries, and in one case even proved to be the reason for formal discrimination of the Swiss delegates. In other cases, Swiss delegates were encouraged by management to stand for the presidency of the EWC.

But not in all cases, Swiss representatives are perceived as „moderate“, „employer-friendly“ or „harmless“. We even found the rare case of a Swiss blue-collar representative who isolated himself within the EWC by articulating radical „anti-management“ positions. In other cases, it became clear that staying outside of „mainstream unionism“ does not necessarily mean to be unable to represent the interests of his / her constituents in a firm manner, and to gain respect among other EWC delegates. Asked about their perception of differences in terms of industrial relations within their EWC, most Swiss EWC delegates mentioned how different the industrial relations and rights of employee representatives in the big countries neighbouring Switzerland - Germany and France – are: Meeting German works councillors and / or French unionists can be an eye-opener to them. This leads to the next question:

• **What makes Swiss delegates gain a profile and play a distinctive role within an EWC?**

In general we found that white collar representatives from Switzerland, who often are not representing „traditional trade unions“, play a more active role inside EWCs than blue collar representatives. Some of them, however, originally have a blue-collar professional background and acquired higher education while working for the company. In general, profiled EWC delegates have been working for the same company for a long time (from ten years up to forty-five years), have served as local employee representatives for a long time and seem to be widely respected by their colleagues. Some of the younger, upwardly mobile white collar delegates seem to take the EWC as an opportunity for their personal development. This does not represent an obstacle for them to take an active role within the EWC for some time, but they keep a personal perspective quite different from the first group. Furthermore we found a respectable number of Swiss EWC delegates who are migrants, or commuters living in Germany and working in Switzerland. Some of the German migrants openly mentioned as their motivation to become employee representatives that their fathers...
had been works councillors in Germany.

We found that the standing of a Swiss delegate is also influenced by the relevance and the position of the Swiss site within the TNC: Firstly, if the company's headquarter is in Switzerland, Swiss representatives are more likely to play an important role within the EWC, as their colleagues often tend to appreciate their closeness to central management (see also 2.3: „home-country effect“). All the Swiss presidents of EWCs we got to know are from Swiss companies. Furthermore, some sites, production as well as R&D, are occupying niche positions within the company, and restructuring there is rather for local reasons than due to transnational benchmarking within the company. Other sites, again no matter whether production, R&D, backoffice or administration, are constantly under pressure and often affected by restructuring measures decided on a higher level, thus Swiss representatives should in their own self-interest be anxious about information and consultation happening on EWC level. Nevertheless, we also found Swiss representatives from „niche“ sites playing active or important roles in their EWC. This may be due to their personal abilities, but is also an indicator for topics prevailing in the EWC that are not linked to restructuring – such as health management or demography where a broad understanding of the topic is more important than self-interest.

Summarizing, we find that committed Swiss EWC members typically are well-qualified white collar employees, either members of a „classical“ or of an in-house union or even of both. If they are home-country representatives they are willing to share experience. If their site is not affected by transnational restructuring, they feel at ease becoming active on „non-controversial“ issues in specific projects within the EWC. In any case they usually have a non-parochial attitude and are respected by their non-Swiss colleagues as constructive, easy-going and solidarity-oriented. A good knowledge of foreign languages, be it English, be it French for German-speakers, or Italian for second-generation immigrants is often found among such delegates.

At the end we would like to discuss a hypothetical scenario: What actually would happen if Switzerland adopted the EWC Directive? Switzerland may adopt the Directive either by joining EU or EEA, or based on a bilateral agreement with EU. The unilateral adoption of the Directive and the adoption of an EWC law alone would not be sufficient, as enforcement Swiss representation in the EWC of a foreign company may require a decision of a foreign court. The probability that either of this will happen in near future is close to zero. Nevertheless it is worthwhile to ask what would change with relation to Swiss representation in EWCs if the EWC Directive became binding for Switzerland.

We see several effects in such a case:

1. The actual discrimination of Swiss representatives in some of the existing EWCs, such as the confinement to a status of „guests“ or „observers“, would come to an end. The roles of Swiss delegates in EWCs would be strengthened which might contribute to an intensification of the observable dynamics within EWCs.

2. The question of the delegation principle would probably be solved through respective legal determinations on national level – even though such determinations would only constitute a „subsidiary requirement“, EWC agreements in general stick to these when it comes to rules how
As soon as the workforce in Switzerland will be counted when determining whether a company falls under the Directive, it is likely that a number of new EWCs in Swiss or other companies would be created. This may partly explain why Swiss employer organisations are strongly against the adaptation of the EWC Directive.

There would be an unknown number of new representations, however not in all companies with EWC and employees in Switzerland, as often representation of a country in the EWC requires a minimum of employees. We estimate that the number of Swiss delegates in all EWCs would less than double: 150 to 200 further Swiss employee representatives would get involved in the multidimensional EWC dynamics we have analysed in this paper.

Swiss companies would no longer have the choice of national law, as Switzerland would have its own transposition law on EWCs.

Uncertainty for companies (and for EWCs confronted with the “Swiss question”) would end, and a more uniform regulation of industrial relations at company level in Europe would be enabled. The basically voluntaristic character of this regulation would be weakened to a certain degree, and a more even playing field (for companies and employee representation alike) will be created.

There will be hardly any influence on employment levels in Switzerland. Only in one out of 15 cases we found a direct impact of an EWC on employment, i.e. that some jobs were saved in Switzerland thanks to the fact that Swiss sites were covered by a Transnational Company agreement negotiated with EWC involvement. In some other cases, redundancies may have been delayed due to the EWC consultation process taking place before or parallel to national consultation. Minimum requirements for redundancy payment schemes may also apply, according to specific Transnational Company agreements.

4. Conclusions and Outlook

We have examined several institutional aspects which we found to be of lesser importance (2.1), compared to other aspects, such as the changes in interpersonal communication resulting from informational “bypass effects” (2.2). We have observed different effects related to the structural setting of an EWC into a specific company and into national industrial relations. These effects often are not the same for home-country and for periphery delegates which makes it difficult to qualify an EWC as a whole, without taking into account different experiences and perceptions of delegates from different backgrounds (2.3). Furthermore we have seen that besides the core issues of transnational restructuring, there are other, less controversial topics EWCs are busy with (2.4). In the last section we have discussed what participating in EWCs means for employees in Switzerland: Despite their “voluntary” status, several Swiss employee representatives are well rooted in their relative EWCs, but on the other hand participation in EWCs results only in exceptional cases in tangible benefits for employees in Swiss sites (3).

In EWC research, several typologies have been developed in order to classify the EWCs examined
according to their „effectiveness“. The typology developed by Lecher and his co-authors at the end of the 1990s still has its virtue in identifying either the stages an EWC may go through, or as a tool for identifying EWCs according to what they are actually doing: Nothing of any relevance („symbolic“), exchanging information among employee representatives and trade unions („service provider“), strategically defining goals for the employee side and working for them („project-oriented“), establishing a company level social dialogue with management („participatory“). Later typologies developed by Kotthoff (2006) and Stöger (2011), are designed according to the same imperative of „ranking“ EWCs according to their „effectiveness“.

For us, however, it is still unclear what actually a „good“ or „effective“ EWC is. EWCs are neither homogeneous bodies nor is their evolutionary dynamics irreversible in the sense of steady progress from a „basic“ or „primitive“ to a „more advanced“ stage. It is true that we did find merely symbolic EWCs (in the sense of the aforementioned typologies) as well as EWCs with participatory practices, including timely information and consultation, and the conclusion of transnational company agreements. We found managers using the EWC for their own (legitimate) purposes, and we found those looking at it as a „necessary evil“. But we also found cases which are very hard to put into a drawer: How to deal with an EWC that had gone through a regression from nearly participatory to merely symbolic practices? How to deal with the case of an EWC with full trade union expert participation kept symbolic by exactly these trade union experts who are more interested in home-country representation than in transnational dialogue on company level?

And above all, how can we measure the „effectiveness“ when it comes to the original aim of the institution – to constitute an employee-side countervailing power to the internationalisation of business? Is there any EWC who is in the position to prove that it had contributed to the preservation of jobs, or to the improvement of redundancy payment schemes? Of course there are actors who do report such success from the point of view of employees, or at least claim such success being the merit of the EWC. Does an understanding of an EWC as a lieu of a zero-sum power game between capital and labour really correspond the practical realities? If we see a company as a complex cybernetic system, then we would measure the quality of an EWC in its contribution to the improvement of informational flows and multiplication of communication feedback loops. Indeed, we found cases in which the management would not want to miss the EWC anymore for exactly these reasons. But in a setting of permanent company restructuring, frequent M&As, and intense competition among individual sites, resulting in high staff turnover on all levels, the EWC is merely a sideline in a “war of attrition”, and its chances to grow “cybernetically” decreases drastically.

But more attention is needed to weigh effects that are rather rarely found and that are not of the typical daily business of the ordinary EWC against other, at first sight maybe less spectacular effects. Among these we would list learning effects for local employee representatives when they get to know their peers from other countries and sites, the enhanced power of comparison or the subtle but sustained informational „bypass effects“ described in this paper under 2.2.

A typology of EWCs which is more-dimensional and at the same avoids teleological or normative implications in the sense of „each EWC should reach stage 4“ is still to be developed. What about an EWC typology,

5 The four types are: „Symbolic“, „Service providers“, „Project-oriented“, and „Participatory“ (English terms according to Waddington 2011, 20). Whereas it is – according to the authors – up to the respective EWCs to go through the first three types, or stages, the „highest stage“ (the „participatory“ EWC) can only be reached if management is willing to let the EWC effectively participate (Lecher et al. 1999, 64ff).
characterized by a cluster-like categorization of day-to-day practices identifying different trajectories instead of a hierarchical arrangement? At the same time the evolutionary dynamics of EWCs should be studied more deeply than we have been done until now: What are the determining factors that transform an EWC from „symbolic“ to „something more than symbolic“? What exactly is the threshold? And, on the other hand, what are the factors that can make an EWC devolve or regress?

References


