



Industrial relations and social dialogue

Challenges and solutions: Case studies on European Works Councils

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Abstract

This working paper investigates the practical implementation of the European Works Council (EWC) Directive at company level. It explores the challenges faced by existing EWCs and provides examples of solutions identified and remaining issues from the point of view of both workers and management. In addition, the paper looks at how EWCs meet the requirements of the EWC Directive in terms of establishing processes of information and consultation. Using case studies, it also examines the extent to which such effective collaboration has gone beyond the EWC Directive's requirements to establish joint work on other issues of common concern.

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Executive summary

Introduction

In the context of globalisation and changes in the organisation of undertakings, strategic decisions affecting workers are increasingly taken at head office level in another country rather than by local management. Such transnational decisions and restructuring projects cannot be addressed by employee representatives at national level alone. The opportunity for workers' voices to be heard in transnational decision making in multinational companies is considered to be an important element of a 'social Europe' and a contributing factor to the establishment of a European system of industrial relations.

This working paper builds on case study findings to assess the operation of European Works Councils (EWCs) in 11 multinational companies, any remaining challenges, and factors and approaches that help to overcome such challenges. It also considers reasons for the non-establishment of EWCs in three companies meeting the criteria set out in the EWC Directive.¹ This limited number of case studies cannot be considered to be representative of all EWCs, as is the case for most qualitative case-study-based research on EWCs carried out in recent decades. Furthermore, there is a tendency for case study research requiring interviews with both management and employees to be biased towards better-functioning EWCs. To understand the case study practices in relation to the wider body of knowledge on the operation of EWCs, this paper puts the case study findings into context with the broader literature on EWCs.

Policy context

EU legislation providing for the possibility of establishing EWCs was first passed in 1994, with the intention of improving workers' right to information and consultation in Community-scale undertakings on decisions affecting them. The establishment of an EWC is not automatic but must result from an initiative by management or worker representatives from different countries. In 2009, a recast EWC Directive (Directive 2009/38/EC) was adopted. The directive sought to address a number of shortcomings identified in relation to the original directive. It included the introduction or elaboration of definitions of a number of key concepts, such as 'transnational issues', 'information' and 'consultation', and specified provisions on the right to training and the articulation between European- and national-level information and consultation procedures.

Among the goals of the Recast Directive was the encouragement of the creation of additional EWCs. In 2021, around 1,020 active EWCs were in place, with the estimated coverage rate of undertakings meeting the relevant criteria of around 50%. An evaluation of the Recast Directive carried out by the European Commission found that the Recast failed to halt the declining trend in the creation of EWCs. The evaluation highlighted that, while the Recast Directive had led to some improvements in the operation of EWCs, room for improvement remained, particularly in relation to ensuring effective consultation and encouraging the creation of further EWCs (European Commission, 2016).

This has led to an ongoing policy debate, with trade unions at EU level calling for the revision of the directive, while employers are calling for the sharing of good practices to highlight the added value

¹ Case studies on companies with EWCs involved interviews with both the employer and the workers, whereas for those on companies without EWCs interviews could be conducted only with the workers.

of EWCs. The European Parliament launched two own-initiative reports in 2021, one focusing on the revision of the directive specifically, and the other focusing on democracy at work and the European framework for employee participation rights.

Key findings

- Case study findings indicate that the added value of EWCs in strengthening social dialogue, social peace and understanding of company strategy and culture is appreciated by both employer representatives and employee representatives.
- Information from the case studies supports the findings of research, including the Commission's evaluation report. The research points to some improvements in the quality and scope of information provided to EWCs and the development of a common understanding of what constitutes a transnational issue that requires information and consultation, although many issues clearly remain. The inclusion of clear definitions in EWC agreements and learning over time are important factors in achieving progress in these areas, and were highlighted as significant points of contention in earlier research.
- In three of the case study companies, the text of recital 16 on the interpretation of the concept of transnationality is included in the EWC agreement. In all but one case, the interpretation applied is that of Article 1(4) of the EWC Directive, that is that at least two countries must be affected for the matter to be discussed by the EWC. While it was indicated that in a third of case studies employee representatives had sought to raise what management considered to be purely national issues, both sides considered that a shared understanding of issues to be addressed developed over time. In one company, EWC representatives considered management's interpretation of transnationality to be too narrow.
- Although there are differences in the scale and scope of information provided, in all but one of the case study companies the information communicated by management is appreciated and the establishment of Select Committees is considered to facilitate more regular information exchange and the development of trust. The involvement of relevant management representatives from the fields of human resource management, finance and others, and the commitment shown by Chief Executive Officers in at least two of the companies in attending plenary meetings is seen as helpful in opening up additional channels to obtain information.
- From the workers' perspective, provisions around what is classified as confidential information remains an issue in half of the case study companies. Based on the case studies and the referenced literature, this is considered to inhibit meaningful interaction between EWC members and national employee representatives. In order to improve the flow of information, two case study EWCs have agreed with management what type of information should be considered confidential, for how long and how this can be discussed with national-level representatives.
- With regard to information pertinent to restructuring processes, more than half of case study companies report that significant challenges remain in receiving such information in time to allow employee representatives to react and formulate opinions as part of a meaningful consultation process. In order to address this, EWCs in 4 of the 11 of the case study companies developed detailed processes, timelines and procedures setting out the steps involved in consultation processes and when such consultation can be considered to be finalised. The

example of one company with such processes in place indicates that this does not necessarily guarantee that the timelines are respected.

- Where EWCs were involved in consultations on restructuring projects, this did not lead to any changes in the decisions taken by management but was considered to allow EWC representatives to monitor the implementation of these projects in different countries.
- A number of structural and agency factors have been identified that can impact the effectiveness of the functioning of EWCs. Structural factors that lie outside the purview of the actors in the EWC include the impact of EU and national regulations; the country of headquarters and the associated industrial relations system; economic factors, including the sector, structure and ownership of the company; and the level of internationalisation. Agency factors include the procedural arrangements established to shape the running of the EWC, the personalities involved, interactions with trade unions and the resources available. Agency factors are – at least to some degree – influenced by structural factors, including legislation.
- According to the literature, while factors such as the country of headquarters and associated industrial relations system, company structure and the dominance of country of headquarters representatives in the EWC can affect the quality of interactions in the EWC, cluster analyses identifying different types of EWCs have shown that there is a limited relationship between the country of headquarters and the quality of interactions in the EWCs. Similarly, the legal basis or installation types of EWCs can affect the precise content of agreements. EWCs that are dominated by representatives from the country where the EWC is based can also function effectively for all members, particularly if driven by experienced individuals from an industrial relations system with a strong emphasis on social dialogue.
- Albeit strongly linked with structural factors, agency factors, such as the roles of specific individuals (for example, national and transnational trade union representatives), access to training and the development of clear processes for information and consultation, can contribute to the effective operation of EWCs in line with the requirements of the EWC Directive.
- According to the literature, the key reasons for the absence of EWCs in companies meeting the criteria of the directive, where a process for establishing a Special Negotiating Body has not been triggered by management or employees include:
 - a lack of awareness about the regulations, the role of EWCs and their functioning
 - a negative attitude among management towards the creation of information and consultation structures
 - a lack of interest from employee representatives for various reasons, including a perception that existing structures are sufficient
 - a lack of knowledge about company size and the distribution of employment among employees and their representatives
 - a lack of perceived added value of setting up an EWC
- In the case study companies, a mixture of factors were at play, with the negative attitude of management and a lack of information given to employees the most important.

- The pandemic appears to have had a limited impact on the number of EWC meetings held, with most meetings taking place online. In many cases, the number of steering committee meetings in particular increased, as management and employee representatives discussed the impact of the pandemic on businesses, support measures accessed in different countries, and the health and safety protocols implemented. In half of the case study EWCs, new ways of working during the pandemic and climate change considerations led to discussions about limiting international air travel for committee meetings in the future, while in others half workers and managers continued to favour face-to-face meetings as a way of contributing towards building trust and relationships between members.

Introduction

Social dialogue, including information and consultation at company level, forms an important part of the European social model. European primary law promotes social dialogue (Article 151 of the Treaty on the Functioning of the European Union (TFEU)), recognises the role of social partners (Article 152 TFEU) and guarantees the right of workers to information and consultation (Article 27 of the Charter of Fundamental Rights of the European Union). Around 40 diverse EU directives include provisions relating to employee information and consultation (EESC, 2020), with the most directly operationally relevant being Directive 2002/14/EC on informing and consulting employees and the Recast European Works Council (EWC) Directive (Directive 2009/38/EC). Most recently, principle 8 of the European Pillar of Social Rights states that ‘Workers 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’ (European Commission, 2017). In 2021, the European Parliament began preparing two own-initiative reports: the *Report on democracy at work: A European framework for employees’ participation rights and the revision of the European Works Council Directive* (European Parliament, 2021) and a report, in preparation at the time of writing in March 2022, devoted more directly to the issue of the need to review the EWC Directive.

This paper has therefore been prepared in the context of an ongoing policy debate on the evolution of European-level legislation on national and transnational employee information and consultation. It follows on from the Commission’s evaluation of the implementation of the recast EWC Directive (Directive 2009/38/EC). The evaluation highlighted that, while the Recast Directive had led to some improvements in the operation of EWCs, room for improvement remained, particularly in relation to ensuring effective consultation and encouraging the creation of further EWCs (European Commission, 2016).

In response to an ad hoc request from BusinessEurope, this project was carried out between 2020 and 2022, and was aimed at gathering evidence from case studies on the practical implementation of the EWC Directive.

Purpose of the study

The goal of the study is to look at challenges and solutions found for the operation of EWCs from the points of view of workers and management. It also aims to provide an insight into why some companies that meet the size requirements of the directive have not established EWCs.

More specifically, the objectives of the case study research were to:

- focus on the establishment of processes of information and consultation, including the articulation between different levels of information and consultation as set out in the directive
- assess the extent to which such effective collaboration has gone beyond the directive’s requirements to establish joint work on other issues of common concern
- provide information on the benefits and value of creating EWCs from the points of view of management and workers
- explore the reasons for companies falling under the scope of the directive not setting up EWCs

Approach and methodology

The research sought to integrate the findings from the significant body of literature on the functioning of EWCs, with the completion of 11 case studies of companies with existing EWCs and 3 case studies of companies with no EWC currently in place. In the case of companies with EWCs, interviews were carried out with the employers and employees. In case study research of EWCs, requiring the participation of both employers' and employees' representatives can lead to bias towards better-functioning EWCs. However, it has the advantage of obtaining viewpoints of the same events from both sides. In the case of companies without EWCs, it was not possible to obtain the view of the employers, and only case studies of French companies were possible, which created a bias towards the experience of the French industrial relations system. Findings from such case studies are not generalisable but provide an insight into the operation of EWCs in the selected companies. The study seeks to place such findings into the context of the existing literature on the operation of EWCs. The selection of case study companies took into account the following factors:

- country of headquarters
- national industrial relations model in the country of headquarters
- company size in terms of employment
- sector of activity

Based on these criteria, a longlist of 87 companies with EWCs and 10 multinationals without EWCs meeting the relevant size criteria was established. This was subsequently narrowed down to a balanced shortlist of 15 and 7, respectively. The selection of the final case studies was dependent on both employees and management agreeing to be interviewed, which resulted in the case studies in Table 1 being carried out.

Table 1: Case study companies

Company	Sector	Country of headquarters	Workforce size (approximate, EU)
With an EWC			
Air France KLM	Air transport	France/Netherlands	85,000
Bayer	Chemical	Germany	45,000
Bel Group	Agri-food	France	6,600
CEZ Group	Energy	Czechia	32,000
Club Med	Tourism	France	4,000
Eiffage	Construction	France	66,000
Ericsson	Telecommunications	Sweden	37,000
Ferrero	Agri-food	Italy	36,000*
Generali	Insurance	Italy	45,000
INEOS	Petro-chemicals	United Kingdom	11,000
Inditex	Textiles	Spain	122,000

Without an EWC			
Louis Dreyfus Company	Agri-food	France	23,000
Schiever	Retail	France	6,000
Veepee	Retail	France	3,500

Note: *Worldwide workforce.

1 – Policy context

Background and purpose of the European Works Council Directive

Legal provisions at EU level providing for the possibility of establishing European Works Councils (EWCs) result from a recognition of the need to take into account changes in the organisation of undertakings in the context of globalisation and ongoing restructuring, where strategic decisions affecting the workforce can increasingly be taken at head office level in another country. EWCs were conceived as 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 of Council Directive 94/45/EC) about decisions made by central management affecting them. Such transnational information and consultation structures were seen by policymakers as an integral part of a ‘social Europe’ and a keystone of the establishment of a European system of industrial relations (Savoini, 1995).

The consideration of a need to find a way to adapt the modalities of employee participation emerged at the beginning of the 1980s and was first illustrated in the proposal for a directive known as the ‘Vredeling Directive’, dated 24 October 1980, relating to ‘the information and consultation of employees in undertakings with a complex structure, in particular transnational’. Although this proposal was never adopted, as Member States could not unanimously agree on the text, the consultations surrounding the draft provided an insight into the disagreements that existed between the European social partners from the outset. Generally speaking, on the one hand the European trade union movement argued for the legitimacy and importance of the right of workers to information and consultation on decisions affecting their work and employment in a transnational context. European employers, on the other hand, emphasised the prerogatives of companies in economic decision making. This divergence of views has continued to shape discussions on the development and evaluation of EWCs ever since (De Spiegelaere et al, 2022). However, as will be shown below, this did not prevent the European Trade Union Confederation (ETUC) and BusinessEurope from adopting joint advice on the wording of provisions of the Recast EWC Directive.

Following the Vredeling proposal, several multinationals took the step of creating transnational information and consultation bodies on a voluntary basis, perceiving the need to have a vehicle to communicate and exchange information on company decision making with a transnational impact. Their experiences were considered by the European Commission when it started to work on a proposal for an EWC Directive in 1993. The resulting directive, concerning the establishment of EWCs in Community-scale undertakings, was adopted in September 1994.

The provisions of the directive make it clear that the establishment of an EWC in undertakings or groups of undertakings meeting the aforementioned criteria is not automatic but must be the result of an initiative by the company or employees from different countries (or their representatives). As a result, there can be valid reasons for a Community-scale undertaking not to have an EWC.

The precise definition of the operating rules of an EWC is a matter for negotiation between the company’s or group’s central management and employee representatives from different countries within the special negotiating body. The autonomy given to the actors in the company to organise the functioning of the body by agreement thus allows for a diversity of arrangements and methods of functioning of EWCs.

The establishment of EWCs within multinational companies added a new layer to employee representative bodies (Streeck, 1997). The 1994 EWC Directive left the precise determination of the relationship between these levels open to negotiation. Early research on the establishment and operation of EWCs also emphasised the challenges arising from differences between national industrial relations systems, regulation and cultures.

Varieties of industrial relations systems in Europe

Research relating to industrial relations in Europe has proposed different classifications of industrial relations systems in different country clusters. A classification of different industrial democracy clusters was proposed by Eurofound (2020a) (Table 2). Clusters are based on a number of indicators, including those related to social dialogue and participation rights at company level.

Table 2: Industrial democracy clusters in the EU27 and the United Kingdom

Number	Cluster	Countries
1	Corporatist-framed governance	Austria, Belgium, Luxembourg, Netherlands
2	Voluntary associational governance	Denmark, Finland, Germany, Sweden
3	State-framed governance	France, Italy, Portugal, Slovenia, Spain (and Greece, from 2008 to 2012)
4	Statutory company-based governance	Croatia, Hungary, Slovakia
5	Voluntary company-based governance	Bulgaria, Cyprus, Czechia, Ireland, Latvia, Lithuania, Malta, Romania (and Greece, from 2013 onwards)
6	Market-oriented governance	Estonia, Poland, United Kingdom

Source: Eurofound (2020a)

Research carried out in the years following the transposition of the 1994 EWC Directive showed that many of these bodies faced a number of challenges in meeting the objectives set out in the original directive, particularly in the context of transnational restructuring. The European Commission noted in April 2000, in its report on the application of Council Directive 94/45/EC, that, despite numerous agreements on the establishment of EWCs, a number of key issues remained, in particular:

- legal uncertainties affecting the provisions of the 1994 directive, especially including the definition of transnational issues, the lack of a definition of information, the definition of consultation or the absence of provisions to define information and consultation at different levels
- a lack of timely information and consultation on transnational issues in operational terms
- a high share of companies covered by the directive that could establish such bodies not setting up EWCs (European Commission, 2000)

The Recast Directive of 6 May 2009 (Directive 2009/38/EC) aimed to address those shortcomings. This text was the result of a slow process, with discussions again marked by the absence of agreement between the European social partners to negotiate a revision of the 1994 directive.

However, ETUC and BusinessEurope issued two joint advice letters in the process of the Recast suggesting amended the wording of the Recast Directive.²

Box 1: Key provisions of Directive 2009/38/EC

EWCs can be established in Community-scale undertakings employing more than 1,000 workers within the EU Member States and at least 150 employees in each of at least two Member States and in Community-scale groups of undertakings employing at least 1,000 employees within the Member States and at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.

A request by 100 employees from two countries or an initiative by the employer is required to trigger the process of establishing a body or procedure to inform and consult workers. The composition, competences and functioning of an EWC are defined by an agreement reached by a 'Special Negotiating Body' representing employees and central management. Subsidiary requirements apply in the absence of such an agreement. EWCs are to be informed and consulted on transnational issues affecting workers.

The Recast includes new and important provisions while remaining a compromise text with regard, among other things, to the:

- competence of EWCs and the introduction of a definition of 'transnational issues'
- introduction of a definition of information, pointing out the need to provide information in due time
- reinforcement of the legal definition of consultation in the sense of 'timely consultation'
- articulation between European and national/local information and consultation procedures
- adaptation of the EWC in case of a change in the undertaking structure
- right to training without loss of wages for representatives in EWCs

Despite these regulatory changes, research on the impact of the Recast points out persisting challenges affecting the effectiveness of EWCs. Although studies note some improvements in the timeliness of information provision, genuine consultation in the spirit of the text of the Recast directive³ remains largely absent. Furthermore, there has been a limited impact of the Recast on the creation of additional EWCs (De Spiegelaere, 2016; European Commission, 2016, 2018a; Pulignano and Waddington, 2020).

These continuing challenges are perceived to cause difficulties, as the importance of EWCs is strongly emphasised by the European Commission in its evaluation report. EWCs have proven vital to the development of transnational industrial relations. This statement is part of a general context of renewed ambition with regard to these bodies, which contribute to the development of social dialogue. Social dialogue, more generally speaking, has indeed been re-emphasised as being at the heart of important political initiatives since 2015 (e.g. in the 'New start for social dialogue' initiative but also in principle 8 of the European Pillar of Social Rights,⁴ which 'establishes that workers or their

² More information is available at <http://www.worker-participation.eu/European-Works-Councils/Recast-Directive/Chronology-of-the-EWC-Recast-review-Key-docs>

³ The Recast Directive defines consultation as '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 the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings'.

⁴ See European Commission (2021).

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 companies and on collective redundancies. It sets out not only the right to receive information but also the right to be consulted about any such corporate action, which implies an exchange of views and the establishment of a consistent dialogue with the employer' (European Commission, 2018a, p. 16).

Evolution of European Works Councils

According to the European Works Councils Database⁵ of the European Trade Union Institute (ETUI), in 2021 there were 1,018 active EWCs in place. The growth in the number of EWCs over time is skewed towards the 'transition period' between 1994 and 1996, when Article 13 of Council Directive 94/45/EC provided for the possibility of EWCs being created that were exempt from the rules of the directive, as long as a number of minimum conditions were met. Around 490 'Article 13 EWCs' were established during these two years, with just over 400 created in 1996 alone (De Spiegelaere, 2016, 2022). Recent assessments highlight an overall decline in the creation of EWCs since 1997, with an average of 52 such bodies set up per annum between 1997 and 2008, dropping to an average annual rate of 24 between 2010 and 2018 (De Spiegelaere et al, 2022). This was followed by a further decline to eight European works councils created in 2020 and 2021. Given that one of the aims of the Recast directive was to increase 'the proportion of European Works Councils established while enabling the continuous functioning of existing agreements' (recital 7 of Directive 2009/38/EC), the European Commission's evaluation of the Recast concludes that the Recast Directive provided some impetus for setting up EWCs and renegotiating existing EWC agreements, although it did not stop the decline in the creation of EWCs (European Commission, 2018a).

In addition, the Commission found that the adoption of Directive 2009/38/EC has also provided some impetus for the renegotiation of existing EWC agreements. A total of 117 Article 13 and Article 6 EWC agreements were renegotiated between June 2009 and 2011.

In terms of sectoral coverage, the sector with the largest number of EWCs is the metal industry, with 365 EWCs in place in 2021, followed by services (206); chemicals (190); food, agriculture and tourism (106); building and woodwork (74); and transport (38). This is partly due to company size, trade union representation and established social dialogue practices in these sectors. The European Commission's evaluation study shows that since June 2009 more EWCs have been created in the building and woodwork, transport and different service sectors (European Commission, 2016).

⁵ www.ewcdb.eu

2 – Challenges and solutions in the practical operation of European Works Councils

Despite research pointing to some improvements in the operation of EWCs resulting from the recast of the EWC Directive (European Commission, 2016), as well as the many years of experience and the evolution of existing agreements (De Spiegelaere, 2017), existing studies also reveal that challenges remain in relation to the effective functioning of many existing EWCs. This chapter reviews the most pertinent issues, setting the case studies carried out for this research in the context of the broader literature on EWCs, and highlighting approaches adopted in the case study companies to address these challenges. The following five areas are addressed:

- the interpretation and operationalisation of the concept of transnationality
- the timing and quality of information and consultation, particularly in the context of restructuring
- the articulation between the EWC and national/local information and consultation structures
- the management of confidential information

In addition, this section reports on the impact of two ‘external shocks’, Brexit and the COVID-19 pandemic, on the operation of EWCs.

Scope of operation: The definition of transnationality

In its evaluation report on the Recast Directive, the European Commission highlighted that, while the concept of transnationality is better defined in the provisions of the Recast Directive, it often remains difficult for EWC practitioners to interpret in concrete cases (European Commission, 2018a).

From the outset, the remit of EWCs has been to deal with transnational issues, and they are therefore not in any way intended to replace national/local employee information and consultation structures. However, the 1994 directive did not provide a definition of this concept, leading to uncertainty as to how it was to be applied in practice. The Recast Directive sought to remedy this by defining the scope of EWCs’ competences as limited, in short, to issues concerning at least two countries or the whole group undertaking. However, recital 16 of the directive 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.’ Based on this recital, some commentators have argued that it is feasible that an issue concerning only one country can fall within the competence of the EWCs, although the directive itself appears to exclude this (e.g. Jagodzinski (2015), 2015; Laulom, 2018). It is therefore possible that social partners can face ‘grey areas’ where it is unclear if an issue has to be considered transnational and where differences in interpretation are possible. Similarly, employee representatives – not in full possession of the facts, in some instances owing to a lack of strong national information and consultation mechanisms – may

not know if something that employers argue is not of transnational importance could actually have a transnational impact.

Operationalising the concept of transnationality in EWCs

Practice in relation to the interpretation of the concept of ‘transnationality’ is affected not only by the wording of the directive but also by the way in which it has been defined (or not defined) in specific EWC agreements. The case studies do not provide a clear picture of whether or not EWC agreements adopted following the Recast are more likely to include a more elaborate or broader definition of transnationality (for example by including the text of the recital) than agreements concluded prior to the Recast. While three of the agreements that were concluded subject to provisions of the Recast Directive include not only the definition of transnationality contained in Article 1(4) of the directive but also the text of recital 16 (**Eiffage**, **Bel Group** and **Inditex**), this was not the case for **Generali** and **INEOS**, whose EWC agreements are also subject to the Recast. Similarly, one of the Article 13 agreements studied (**Club Med**) was amended in 2018 and includes the definition provided in Article 1(4) but not the text of the recital. At **INEOS**, the EWC interviewee described the frustration among EWC members at what is perceived to be the company’s rigid stance and, in their eyes, narrow view on what should be considered to be transnational. The management interviewee also considered the issue to be problematic but argued that the EWC seeks to inappropriately widen the definition of the concept to raise what management considers to be purely national issues in the EWC plenary discussions. This reflects the findings of a number of studies (e.g. European Commission, 2016; Pulignano and Waddington, 2020). Several of the case studies make it clear that the desire to raise local issues in the EWC can arise from situations where workers cannot rely on local social dialogue to resolve them.⁶ This is suggested by the experience of a very recently formed EWC, that of **Bel**, a transnational group in the food industry. The legal prerogatives of the **Bel Group** EWC are limited to transnational issues. In this respect, case study interviews suggest some possible difficulties, which, however, have not led to significant conflict to date. The management representative explains that at the last plenary meeting (September 2021) the EWC members were very keen to get detailed information on the company’s operations in different countries. In particular, the request made to management was for detailed country sheets/local social reports. This represents a difficulty for the international industrial relations manager: ‘We attribute these requests to the fact that in some countries there may be no employee representation or sufficiently developed representation, and therefore EWC members may want to access this kind of information at European level. However, this is beyond the scope of the EWC and we do not want to bypass our local management.’ Employee representatives considered this to be among the necessary information for the EWC to fulfil its role and in line with the requirements of the directive.

The examples of the EWCs of **CEZ Group** and **Eiffage** appear to demonstrate that, where efforts are made by employee representatives to raise what management consider to be local issues, the requested information is often provided, but it is made clear by human resource (HR) representatives in the meetings that related issues should not be discussed by the EWC, as they are not within its remit. Clarity about the nature of what should be considered to be transnational and

⁶ This may be due to the lack of employee representation structures at local level or to poor relationships between local management and employee representatives at this level.

therefore discussed by the EWC is therefore described as a learning process that can be interrupted by changes in personnel (management and employee representatives).

Box 2: Defining transnational issues – CEZ Group and Eiffage

Issues concerning employees and employers in only one country are excluded from the discussions of the **CEZ Group** EWC, as are changes taking place in several countries at the same time, if these changes are not related to each other. In the beginning, management perceived that there was a tendency for some members to introduce problems of a national or local nature into the EWC. Gradually, the members learned to focus on issues of a transnational nature, although with the turnover of EWC members some new members initially did not understand the role of the EWC and used the opportunity of meeting top management to raise issues that directly affected their sites only. Nevertheless, thus far, managers have not refused to answer questions on such issues, but they do not become the subject of detailed information or consultation within the EWC.

An agreement of 30 November 2016 currently regulates the **Eiffage** EWC. This agreement is the result of the gradual evolution of the regulation of the EWC since it was originally set up in 1998. From 1998 to 2016, the evolution was marked by the conclusion of a succession of time-bound agreements (in 2001, 2006, 2011 and then 2016). These different agreements demonstrate the gradual enrichment of the content of the applicable provisions and therefore the regular re-evaluation of the body's operation. Although both the Director of Employee Relations and the EWC secretary concede that discussions have taken place regarding the definition of transnationality, no recent examples of conflict regarding this issue have been reported. The definition of transnational issues applied in the company is relatively broad, which probably limits the risk of conflict. Above all, it seems that the approach adopted is more pragmatic than strictly legal, with management stating: 'When only one country is concerned by a project and difficulties are encountered, the EWC is used as a relay for local social dialogue. We agree to put the issue on the agenda of the meeting to show that only one country is concerned. So, we don't reduce transnationality in advance, we open a topic and deal with it.' The EWC secretary seems to confirm this general approach: 'We have had few debates in this respect up to now. Management knows that employment issues are important to us and we do not have a permanent debate on them.'

The example of the **CEZ Group** EWC shows that the timeline of developments and the question of whether or not these are transnational when they are temporally separate can pose difficulties in practice.

Box 3: Defining transnationality when central decisions affect different countries at different times – CEZ Group

When the **CEZ Group** EWC was established in 2007, it was a completely new platform for social dialogue, and one of which the various members involved had no experience. The members of the EWC therefore underwent a clear learning process. The chair of the EWC emphasises that it remains challenging to define a transnational issue, particularly in terms of the time frame during which an event must take place in two different countries. If there is a long time between an overarching management decision being made and its effect on different countries, it is not clear to EWC members whether it is still a transnational issue or it needs to be addressed at local level only. As the EWC Directive does not define this time frame, it was also not specified in the EWC of **CEZ Group**. This issue became relevant when **CEZ Group's** management decided to outsource some activities in Bulgaria and was preparing for similar changes in Czechia. The EWC dealt with the matter because the process was

similar in the two countries and its members considered the process to arise from a decision at head office level. In the end, however, outsourcing did not take place in Czechia, so the issue of the applicable time frame was not resolved. The issue has been repeatedly discussed at EWC coordinators' meetings of the European Public Service Union (EPSU), resulting in the recommendation that a time frame within which events in different countries could be considered to be linked should be enshrined in the directive.

An evaluation study of the Recast Directive carried out on behalf of the European Commission found that, overall, close to 90% of EWC representatives surveyed and 85% of employer representatives considered that EWCs focused either solely or almost solely on transnational issues (European Commission, 2016). This is also reflected in the experiences of the case study companies: in one company, concerns about narrow interpretation were raised by the employees, and in three companies employers decided to provide some information in such cases while making it clear that such issues are to be discussed at national level in future. In the remaining companies, after some initial discussions on this issue, it is no longer perceived as causing conflict.

Some of the cases studied reflect an approach that goes beyond the provisions of the directive in the sense that in some examples EWC representatives (often chairs) became involved in issues encountered at national level as a result of their specific expertise. This happened where these individuals were considered by both workers and management to be useful interlocutors in helping to address restructuring situations or disputes at national or local level and was usually linked to their long-standing experience of assisting in consultations and negotiations at national level.

Scale of involvement: Quality and timing of information and consultation

In its implementation report about the Recast Directive, the European Commission pointed out that 'The Recast Directive improved the information for workers in terms of quality and scope but as regards consultation, it has been less effective. Despite having the right to express an opinion, European Works Councils members seem to have little influence in the decision-making process in their companies, notably in cases of restructuring' (European Commission, 2018a, p. 6).

A survey of EWC members carried out by Pulignano and Turk (2016) found that only one in five respondents considered that they were informed and consulted before a relevant management decision was taken. The level of information and consultation linked to relocation and outsourcing decisions was considered to be particularly poor. While additional meetings are seen to provide better scope for higher-quality information and consultation, overall, EWC plenary meetings in particular are largely used as a vehicle for management to deliver information, rather than for employee representatives to influence decision-making through effective consultation processes. In general, it was considered that EWCs received information, albeit not always in a timely fashion. However, real consultation is still largely considered to be mostly absent. These findings are echoed in other post-Recast research on the operation of EWCs (De Spiegelaere, 2016; European Commission, 2016). A large-scale survey of EWCs carried out in 2018 found that, in terms of general company issues, between 26% and 39% of EWC members considered that useful information and consultation took place on issues such as the economic and employment situations of the company (with different shares depending on the precise issue at stake), corporate strategy and new

technology, among other things. Between 27% and 50% considered information to be useful in relation to restructuring, with closures and cutbacks most 'positively' assessed, while information and consultation on outsourcing and subcontracting was considered to be particularly limited (De Spiegelaere and Jagodziński, 2019).

The following sections discuss the experiences of the case study companies in relation to the scale, scope and timing of information provision and consultation and the perceived role played by EWCs in restructuring situations.

Scale, scope and timing of information reported in the case studies

The precise **scope of information** provided varies from company to company. While the economic, financial and employment situations are always included, the scope of other topics to be discussed depends on the specific company and agreement. Among the case study companies, at **Bel Group** the scope of information defined by the agreement is very broad and includes a large inventory of social and environmental issues. At **INEOS**, the list of subjects is more restricted and limited to economic information and its impact on employment. However, the list of topics included in the agreements is often non-exhaustive, thus allowing topics not listed to be addressed in the EWC. This is the case in several case study companies, for example **Generali**, **CEZ Group**, **Club Med**, **Inditex**, **Eiffage** and **Air France KLM**. In the context of the determination of a non-exhaustive list of topics for information, this can occasionally lead to disagreements on issues to be addressed by the EWC, as in the case of the **Eiffage** EWC, illustrated below.

Box 4: Disagreements regarding the scope of information – Eiffage

The **Eiffage** agreement provides a non-exhaustive list of subjects to be addressed. The list does not explicitly include the subject of occupational safety and health (OSH). On this subject, there is disagreement between management and the Select Committee as to whether it is within the remit of the EWC. This was made clear when, shortly before the pandemic, the committee set up a working group on health and safety. The aim was to conduct, with the help of an external expert, a European survey on a subject perceived as common to the group's employees in Europe. This initiative was strongly rejected by management: 'The management was not happy about it at all, so this initiative was not shared at all. We said that we did not want to replace the countries but to contribute to a common European diagnosis in order to then make commitments on the part of the group in this area, but this did not convince them!' The management's point of view is indeed clear. It considers that these issues can only be dealt with effectively at the most decentralised level, on the ground: 'We naturally share with the EWC the statistics we have on health and safety, for example on accidents at work. But beyond that, these issues must be dealt with locally.'

The case studies revealed that **the quality and relevance of the information** received was largely appreciated, indicating that these EWCs are generally an effective means of communicating transnational information. The case studies also shed light on some of the factors which, beyond the text of the agreements or the tools put in place, make it possible to guarantee satisfactory information for the EWC. Access to a variety of interlocutors representing the company's management is certainly one such factor. Several of the EWCs in our sample highlight the possibility of having access, depending on need, to interventions and information provided by the right contact

person within the group (financial manager, legal manager, sales manager, etc.). Such practices were mentioned by **Generali**, **CEZ Group**, **Air France KLM** and **Bel Group**. In this context, the participation of the Chief Executive Officer (CEO) in EWC meetings is also valued, in particular at **Eiffage** but also at **Ericsson**, where the CEO systematically participates in the autumn plenary meeting of the Select Committee.

Another factor that determines whether or not the EWC has access to sufficient and relevant information is the structure of the company's management and, in particular, the ability of central management at group level to collect information from the company's various countries or business units. The case of **INEOS** shows that this condition is not always met.

Box 5: Difficulties in ensuring the internal flow of information – INEOS

INEOS is a multinational that is not listed on the stock exchange, which means that there are no requirements for the company to make certain information publicly available. There are no existing structures through which management collects or requests information from divisional managers, beyond the information provided annually by each business to the INEOS board. There also appears to be some nervousness among management about requesting information from divisional management, which has a degree of autonomy within a decentralised management structure. How much of this is tactical or merely the reality is unknown, but the two combine to make the internal flow of information apparently challenging for the company and, consequently, make it difficult for the EWC to receive information.

Another well-known element of EWCs' ability to be effectively informed is **the continuity of the flow of information** between central management and the EWC. In this respect, the Select Committee or its equivalent often plays a key role. All the EWCs in our sample include such a body, even though its name varies among EWCs: it is known as the parity commission at **Bayer** and as the coordination group at **INEOS**. The body is responsible for ensuring the continuity of the EWC's work and regular contact with group management. In all cases, except that of **Bel**, where the Select Committee is only required to meet once a year with management, this subcommittee has more meetings than the full EWC. This results in more continuous access to information and often enables the establishment of good ongoing lines of communication between the Select Committee and management. In companies with very large EWCs (as in the case of **Bayer**, among the case studies), this body has a particularly important role, as it can be challenging to have detailed discussions in EWCs with more than 100 members.

With a couple of exceptions, the scope and scale of information delivered was appreciated in case study companies. However, when linked with restructuring processes, the information was considered to be delivered too late for the meaningful involvement of EWCs in the planning of a restructuring process in more than half of the case study companies (see the following section).

Scale, scope and timing of consultation

One of the contributions of the Recast Directive is the clarification of the definition of consultation. Defined as a simple dialogue and exchange of views in the 1994 directive, the Recast Directive considers consultation to be '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 the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings’.

According to this definition, the consultation of the EWC must therefore take place in good time so that it can, on the basis of the information provided, express an opinion that can be taken into account by the company.

It is worth noting that this definition of consultation does not necessarily apply to anticipatory agreements, even those revised after the entry into force of the Recast Directive. An example of this among the case studies is the **Club Med** EWC. The anticipation agreement that established the committee was revised in 2018, implicitly taking into account the text of the 2009 directive. However, the definition of consultation retained in the revised agreement differs from that of the directive in that the consultation does not have to take place systematically before the group takes a decision. However, even in cases where the definition of consultation used is that provided in Directive 2009/38/EC, the consultation process is not always clearly defined. This can lead to EWC members assuming that processes should mirror their experiences of national information and consultation, leading to misunderstandings. The chair of the **CEZ Group** EWC illustrates this issue: ‘the problem with “consultation” stems from the complexity of its definition, in which the process cannot be framed very well. From the EWC chair’s point of view, within the information and consultation process, the EWC is rather only an information receiver, which has the opportunity to comment on the information and always receive a response from the top management, which is however not a real consultation.’

In addition to differences in national industrial relations traditions, the process is also affected by differences in the definition of consultation in different EU information and consultation directives. For instance, Information and Consultation of Employees Directive (Directive 2002/14/EC) goes further than the Recast EWC Directive as regards defining ‘consultation’. It provides for consultation ‘with a view to reaching an agreement’ and requires employers to provide a response and their reasons for an opinion.

Developing clear time frames and procedures for information and consultation processes

The term ‘reasonable’ in the context of the reasonable time frame within which the consultation must take place does not always give rise to useful clarification in practice. In the absence of clear timescales, management often seeks to avoid processes that could contribute to delays in decision making, increase the risk of confidential information being revealed prior to decisions becoming official and highlight the prerogative of management to make decisions. However, employee representatives highlight the importance of timely information and consultation to allow the employee representatives to evaluate a project and to produce an informed opinion. A number of EWCs have therefore developed process agreements elaborating timescales and procedures for information and consultation processes.

Box 6: Fostering a genuine information/consultation process – Generali

Since its creation, the **Generali** EWC has not always been properly informed and consulted on transnational strategic projects. From a central HR management perspective, the main difficulty was in defining the notion of consultation, and in particular in determining clearly when an information/consultation procedure can be closed. The fear that information and consultation could delay or negatively affect the decision-making process was clear, and could lead management to favour a simple information provision process and thus give rise to conflicts with the EWC. It seems, however, that the experience gained has gradually fuelled a change in the position of the group's management. In this context, the newly elected EWC secretary asked management to implement a real consultation on transnational operations, that is an information/consultation procedure similar to the one existing in French law for national works councils. This involves, in particular, the EWC receiving information prior to the implementation of the project and formulating an opinion on this basis. These requests were favoured by management. Therefore, in 2020, for the first time, a concrete and detailed information/consultation process was tested on two transnational projects before their implementation. This process can be formalised and consists of several key steps.

- The Select Committee receives a document from management detailing the subject matter before the project is implemented. This triggers the information phase. Everything happens at the level of the Select Committee, which then informs the plenary committee.
- A meeting (with the participation of the EWC representatives of the countries concerned) is held with the top management of the project and a second, slightly more detailed, document is produced by management.
- The Select Committee then draws up a set of written questions and in parallel draws up a statement of opinion.
- The Select Committee requests a second meeting with the top management of the project concerned.
- The Select Committee receives written answers to their previous questions.
- A second meeting is held where the opinion and considerations for which the Select Committee requested a written answer are read and final questions are answered if any remain. This second meeting is the consultation meeting, which closes the process.

The **INEOS** agreement allows a period of 28 days for the EWC to provide an opinion in the event of consultation on the subjects defined in the agreement, starting from the receipt of the information provided by the company. The possibility of shortening this period, if necessary, is provided for by an agreement between management and the Select Committee.

Implementation of additional meetings to ensure regular flow of information

A practical difficulty affecting the ability of EWCs to be consulted in good time is the number of EWC meetings: 'Obviously, the more frequent the plenary meetings, the more likely management may be to share information about forthcoming restructuring projects and to do so in time for the EWC to react' (De Spiegelaere and Jagodziński, 2019). The infrequent nature of plenary meetings means that it is difficult to organise effective and timely information and consultation in this format, despite the possibility of arranging extraordinary meetings provided for in many EWC agreements.

As a result, many EWCs accord a special role to the Select Committee to be informed in case of exceptional circumstances, often with the participation of representatives from affected countries (Eurofound, 2020b). In principle, this can raise concerns around legitimacy, as representation in these bodies is restricted. However, this depends on whether or not powers are formally delegated

to the Select Committee, the level of involvement of affected countries, and the possibility of communicating and exchanging effectively with the wider EWC membership in a timely manner.

It may also be difficult to formulate an EWC opinion through a plenary meeting. In this case, the task of formulating an opinion in the light of the information provided by the employer may be left to the discretion of the Select Committee, with the text subsequently validated by the plenary.

Box 7: Role of the Select Committee in formulating opinions – Ericsson

In non-pandemic circumstances, the **Ericsson** EWC has two face-to-face plenary meetings per year: one meeting in spring every year that rotates between different countries, and one meeting in Stockholm. There are no interpreters; all Ericsson employees are obliged to speak English, the group's official language. First, the company holds a meeting where it presents important items. 'We listen', says the employee representative, 'After that, we have a separate meeting for only the EWC to discuss the matters internally. Thereafter we return to a meeting with the company when we have the possibility to discuss our questions and arguments with the top management. We hand in most queries in advance. After this we have a new meeting among just the Select Committee to discuss whether or not we should write an "opinion" about any issue at stake. If it is decided to take this forward a new Select Committee meeting is held about a week or so later.' Thus far, according to the EWC secretary, all decisions about the content of the texts have been taken unanimously.

Among the case studies, EWCs in five companies have set up some additional specifications regarding the process to be adopted for (information and) consultation, with a greater or lesser degree of specificity in relation to when information linked to restructuring projects is to be provided, the time within which the EWC must provide an opinion and when a consultation process can be considered to be closed. Select Committees (or other restricted bodies) play a particular role in leading such procedures. Beyond this, the case studies show that the privileged field in practice for EWC consultation is that of transnational projects likely to have a significant and negative impact on employment. But this limitation in the field of consultation can also result from the choice of the EWC members, who wish to reserve a demanding procedure for subjects that are truly considered to be a priority from a social point of view.

Box 8: Consultation limited to projects with a significant impact on employment

The 2018 addendum to the **Air France KLM** EWC agreement states that, 'in the event of a strategic project, consultation shall take place, before its implementation, in a timely manner, with appropriate means and contents'. Strategic issues are defined 'as decisions taken at Group level that have a major impact on its organisation, its subsidiaries or its employees'.

The **Eiffage** EWC agreement contains the following text: 'Furthermore, the preferred area for consultation in the eyes of both parties is that of projects likely to have a negative impact on employment.'

In the case of the EWC of **Generali**, the French secretary of the EWC, elected at the end of 2019, quickly asked the management to implement a real consultation on transnational operations, but said, '[I] tried to play it down, to make the central management understand that I would not ask for systematic

consultation as soon as two countries are concerned by a project', and instead wanted to focus on events with significant employment implications.

Information and consultation and restructuring: To what extent do European works councils play a role?

Information and consultation linked to restructuring in transnational companies have always been at the heart of EWCs' prerogatives. EWCs were set up to fill the gap that existed between restructuring decisions taken at transnational level and workers' rights to information and consultation, which were previously confined to local level (see, for instance, De Spiegelaere, 2017). However, as indicated above, a large body of literature has long pointed to the limitations of EWCs' involvement in transnational restructuring (e.g. Eurofound 2015, 2020b; European Commission, 2016; De Spiegelaere et al, 2022), with research demonstrating that EWCs are often only informed after decisions have been taken and as a result are rarely consulted effectively. In this context, it can be helpful to distinguish between three phases of decision making, which may not in all cases be distinct but serve to illustrate the potential for EWC involvement. The first phase involves strategic company decisions regarding a range of issues (location of production, acquisitions, mergers, takeovers, outsourcing, expansion or reduction/divestment of elements of production/service provision, etc.). Depending on the nature of the strategic decision, employment implications for different countries may not always be immediately evident but could in some instances be anticipated. The second phase often involves specific restructuring projects, which may or may not affect several countries, and the final 'implementation' phase revolves around decisions on the precise management of the impact of restructuring decisions (e.g. drawing up social plans). In relation to the first phase – and to a certain extent the second phase – of such processes, the EWC can be informed too late about a project, in part because the information and consultation of the EWC is often initiated only after all the information required to assess the situation of the company has been gathered at central level and/or when confidentiality requirements have been partly waived by management. The consequence is that the EWC is only informed after the project is already very detailed and the decision is *de facto* taken. However, in this context it is still possible that the EWC, while not influencing the strategic decision, can affect the implementation of the restructuring project. In other words, the involvement of the EWC needs to be considered both regarding the strategic decision-making phase and the restructuring project phase, with detailed implementation often considered to be within the remit of local information and consultation structures. However, this does not mean that the EWC could not, in principle, seek to ensure similar approaches to addressing the consequences of restructuring once the details of a restructuring project have been agreed.

Research carried out by Eurofound focusing on transnational restructuring situations involving the transfer of operations from one country to another similarly highlighted a lack of timely consultation, but also showed that in such situations achieving effective collaboration between EWC members from 'sending' and 'receiving' countries can be challenging. This is partly because dialogue with representatives in receiving countries can be difficult, as national information and consultation structures are usually weaker because the countries are often central or eastern European. Defending self-interest can of course also play a role in such situations (Eurofound, 2020b).

The case studies carried out for this project show that the involvement of EWCs in the strategic decision-making phase is rare and largely limited to information, often provided when such strategic

decisions are already taken. Different experiences are evident in relation to information and consultation on specific restructuring projects and their implementation.

European works council involvement in strategic decision making and restructuring projects

A number of the case study EWCs demonstrate a sporadic flow of information on strategic decisions and resulting restructuring projects, whereas in other cases the institutionalised, regular provision of information enhances the possibility for EWCs to be more effectively consulted and involved in restructuring projects.

Box 9: Continuously informing the EWC in the context of ongoing change – Two opposing practices

Growth at **INEOS** has been significant, driven by the acquisition of non-strategic subsidiaries of large multinationals, which the company then restructures to make them profitable. However, information on such acquisitions and restructuring tends to be provided late, making it difficult for the EWC to react and be effectively consulted on these processes where they have a transnational impact.

At **Eiffage**, the group's development strategy is based on a mix of organic growth and acquisitions and aims to increase the proportion of turnover generated internationally. This has led to a wide range of acquisitions over time. The EWC benefits from summary information sheets in the event of an acquisition or disposal project. These provide the EWC with continuous information, upstream of projects,⁷ on the types of projects that occur very regularly within the group. The information sheets have been made available at the request of the Select Committee and a model sheet is included as an annex to the EWC agreement. The sheets are multilingual.

Beyond the information continuously provided to EWCs, dialogue between management and the committee can take place, at least in theory, before the project is fully decided. The empirical work of Pulignano and Waddington (2020) shows that this happens where there is a general climate of mutual trust between central management and the EWC. In the light of this, some EWCs play a proactive role, whereas others assume a more passive role. The case of the Ericsson EWC provides an example of the former, and highlights the importance of management placing a high value on well-established social dialogue.

Box 10: Early EWC involvement – Ericsson

When a new CEO was installed in **Ericsson** three to four years ago, the use of the expression 'HR management' ceased, as the new management considered that humans are not resources but people. According to the EWC secretary, top management encourages a 'speak-up culture' and urges management to listen to the employees' voice. The secretary explains that Ericsson has always been supportive of the dialogue with the trade unions and the EWC. In the words of the industrial relations manager: 'We do not only give the EWC its legal rights, we encourage it because we find it useful.' As a result, it seems that in restructuring situations the EWC is consulted and obtains information when the issue is still unclear and very sensitive.

⁷ In this paper, the term 'upstream' refers to the period when a project has been validated by management but is not yet complete.

The need for management to be certain of the content of a project before any communication can lead to the EWC being informed and consulted at too late a stage in the process for it to have an influence. In this context, management representatives therefore appear to make a decision on when and how the EWC can be involved in strategic discussions that are broader than a specific project, which can then, in relation to a given project, enable the committee to be more active. This desire to develop strategic social dialogue is exemplified by the **Air France KLM** EWC. However, in this case it led to the establishment of an additional, extra-legal dialogue body involving the EWC. While this appears to encourage open dialogue in the company, its impact on the EWC itself could be questioned.

Box 11: Role of the strategic committee – Air France KLM

The role of the **Air France KLM** EWC has been further developed by a practice going beyond the law, which was first formalised in the EWC agreement in 2014. It consists of setting up, in addition to the EWC, a strategic committee. The committee aims to enable the EWC, but also national employee representatives in France (Air France) and in the Netherlands (KLM), to understand the group's strategic issues. Strategic issues are defined as decisions taken at group level that have a major impact on its organisation, its subsidiaries or its employees. The strategic committee brings together 18 employee representatives, including members of the **Air France KLM** EWC appointed by the Select Committee. It meets four times a year and, unlike the **Air France KLM** EWC, is chaired by the group's CEO. This initiative is valued by management and considered useful by the EWC secretary in that it allows for an open and direct informal dialogue with group management at the highest level. This strategic committee is in fact the only place where the group's CEO is asked to explain and present the group's strategy. The secretary explains, 'these meetings are held without an agenda or minutes. The CEO thus answers questions under cover of absolute confidentiality, which is the condition for his participation in this committee.' As a result, this committee is considered very interesting by the EWC secretary: 'for example, the issue of the fleets of both Air France and KLM can be discussed, a subject that is never discussed in a comprehensive way in the French and Dutch bodies and which nevertheless allows the group's strategy to be read and decoded'.

In relation to specific restructuring projects, the case of the **Air France KLM** EWC also reflects the desire to specify the information/consultation process for the committee, with the aim of limiting the negative impact of a transnational restructuring project on employment at local level.

Box 12: Mitigating the negative employment impacts of transnational restructuring – Air France KLM

The **Air France KLM** EWC has developed, particularly for important and transnational restructuring projects, a practical way to address those issues. According to the EWC secretary, 'when the directive indicates that the consultation must take place in due time, we do not know what that means: the question for us was really to "fill in" the notion of due time, to define what happened in this period following the information from the management. And it's not easy to do that only on the basis of plenary meetings.' An example is given by the secretary, applied to a project of restructuring/concentrating service activities in central Europe and Switzerland. The **Air France KLM** EWC receives information on the project from management several months before the project is implemented. The EWC then asks the management to set up an ad hoc 'economic' working group comprising a small number of members from the Select Committee and/or the countries the project

concerns. This working group meets once or twice to obtain additional economic information from management and to discuss the rationale of the project. It also prepares the EWC's opinion. The opinion includes a request to set up another ad hoc working group, this time for social monitoring. The working group will then monitor the social consequences of the project: management specifies the job cuts that will have to be made and the EWC working group questions how the employees affected will be supported over time, in conjunction with the members of the EWC from the countries concerned, if necessary. In the case of the aforementioned strategic decision, this process seems to have limited the number of job cuts to two employees.

The **Bel Group** EWC agreement provides a clear framework for the organisation of informing and consulting the EWC. This agreement elaborates on the definitions of information and consultation in Directive 2009/38/EC. In particular, it stipulates that the information provided on a potential project must include the alternatives examined and rejected. With regard to consultation, it states that the time limit for consultation should be agreed on a case-by-case basis depending on the scale of the measures envisaged. As the example below indicates, the inclusion of such specifications in the agreement does not prevent information from being provided late, precluding meaningful consultation from taking place in advance of decisions being taken.

Box 13: Dealing with a recent transnational restructuring project – Bel Group

Recent events in the group required the **Bel Group** EWC to become involved in an information and consultation process on transnational restructuring in exceptional circumstances for the first time. The operation consists of the transfer of an area of activities as well as of a brand to another international group. This sale affects several countries where the group is established, namely Germany, Italy, the Netherlands and Ukraine. The transformation is part of the group's diversification strategy. This project was announced to the press by management on 19 March 2021. The EWC secretary was contacted 15 minutes prior to the announcement to the press. An extraordinary meeting of the Select Committee was immediately organised on the same day and an extraordinary plenary meeting was scheduled for 29 March. At that time, the management of the group wanted the EWC to formulate an opinion by 6 April. From 19 to 29 March, the secretary collected questions from the EWC members. These initial questions were answered at the meeting on 29 March. During this meeting, the secretary informed management that it was not possible for the EWC to give an opinion by 6 April. In view of this request, the deadline for the EWC to give an opinion was extended to 16 April 2021. The committee held a preparatory meeting on 6 April, which again took place as a plenary meeting.

The preparatory plenary meeting on 6 April enabled the EWC to draw up a new list of questions. At the same time, the EWC's consultation meeting, aimed at formulating its opinion on the project, was postponed once again, from 16 April to 5 May. The EWC received written and translated answers in all EWC languages from management to its new questions. An opinion was then formulated, which requested, among other things, the setting up of a commission to monitor the employment impact of the transfer, involving only the Select Committee and the countries concretely affected.

Impact of the role of European works councils on transnational restructuring processes

It is difficult to give a comprehensive picture of the concrete impacts associated with EWC involvement in the case study examples, especially as the interviews conducted were one-off

interviews and did not allow the follow-up of processes that are still ongoing in some cases. However, the examples show that in the cases of **Bel Group**, **Generali** and **Air France KLM** the procedure resulted in the EWC being able to monitor the implementation of projects at local level. In some instances, this can limit the number of job cuts (see the previous **Air France KLM** example). According to the **Generali** EWC secretary, even if the two information/consultation procedures mentioned previously did not lead to a change in the two projects, they allow the EWC to monitor their implementation. This should make it possible to identify and monitor the social impacts of the projects and thus to maintain a constant dialogue with the group's management.

The case studies also show that collaboration with management and employee representatives from different countries in the EWC and particularly during information and consultation processes linked to restructuring can enhance its capacity to achieve other outcomes, for example drafting transnational agreements.

Box 14: Negotiating minimum social standards for socially responsible restructuring – Bayer

At **Bayer**, the EWC parity commission can conclude joint declarations in cases of transnational restructuring in which both parties agree on the socially responsible implementation of these changes. The main specificity of the EWC in Bayer is its mixed composition, that is the presence of management representatives directly in the EWC and its executive bodies. This is seen as enabling close cooperation between the company's management and employee representatives. In addition, the participation of local managers goes beyond the legislative framework, facilitating the exchange of information between central and national or local management levels and helping to maintain a certain standard of social dialogue and develop a 'Bayer-like approach' in this area within the European part of **Bayer** (see. Eurofound, 2015). However, the heterogeneity of national systems in terms of the setting of the labour market and the labour law framework is clear. The EWC is thus more or less limited to the definition of minimum social standards based on social responsibility in restructuring (portfolio changes, divestments, etc.), which are then applied at local level according to local conditions, customs and rules. A recent example mentioned is the outsourcing of order-to-cash processes, in which the social partners have agreed that all employees will be able to transfer to the new provider of these services, with their working conditions remaining unchanged.

Articulation of different levels of information and consultation

Directive 2009/38/EC leaves it up to the negotiators of the agreements to define precisely the modalities of articulation between European information/consultation and information/consultation at local level. Its recital 37 is a guideline in this respect. It points out the necessary complementarity between European level and local level, stating that the role given to the EWC cannot undermine the competences of local employee representation bodies. In this context, it recommends that the European and local information/consultation processes be conducted simultaneously.

The questions raised in practice are therefore numerous, in particular including the following.

- Can the EWC information/consultation procedure be opened before the local procedures?
- Should the EWC information/consultation procedure be closed before or after the local procedures?

The national legislation transposing the directive does not generally provide answers to these questions. The challenge is therefore to determine how the information received at European level

can feed into local social dialogue and vice versa.⁸ This appears to favour an articulation process that is as clear as possible. However, the case studies carried out for this project highlight a diversity of solutions adopted in different companies and possible resulting issues. In some EWCs, priority is clearly given to the EWC. For example, at **Ericsson** the important position accorded to the EWC leads it to receive information on restructuring projects as a priority and at an early stage. This poses difficulties of articulation with the countries in which the employee representatives have not yet received any information: ‘The most crucial difficulties appear when we have to face serious cut-downs somewhere, the secretary states. The EWC shall be consulted but we get information when the issue is still unclear and very “sensitive”, that is, it is difficult to go out and ask people whether they have got the information or not. Here we have still much work to do when it comes to our contacts with local works councils. Most of the times it works, but we would like it to be clearer who has the relevant information. These are standard co-determination issues when it comes to a reorganization for example. Will changes in the group lead to cut-downs of people? In such cases we know this, but how much do the local works councils know? Our delegates are usually only one or two in the relevant country and they cannot cover info for all business units in the country so they must have possibilities to talk to us to know what they shall say and how to act. Another problem is how to get valuable feedback: how to give and get it.’

From a different perspective, that of a recent EWC whose agreement attempts to take full account of Directive 2009/38/EC, it is evident that issues of articulation can arise despite a detailed agreement on this subject.

Box 15: Uncertainties regarding the articulation between transnational level and national level – Bel Group

The **Bel Group** EWC agreement provides a detailed framework for the coordination of transnational and national information and consultation. The general idea is to allow the different information/consultation procedures to usefully complement each other. In this regard, the agreement organises the concomitance between the European procedure and the local procedures around the idea that the local bodies must have the opinion of the EWC before formulating their own opinions. In the case of a recent transnational restructuring project, the French bodies were informed and consulted before the EWC. This allowed the EWC secretary to start working on a draft opinion of the EWC at an early stage, based on the discussions held in France. However, the secretary wonders whether or not this situation is in line with the agreement and if it is indeed an optimal solution: ‘In fact, France gave its opinion first and I don’t understand whether this is in line with our agreement where the EWC has to give its opinion first. However, I am not sure whether the solution defined in our agreement is good or not. Because, in the EWC, we get global information and I find it difficult to give recommendations to countries on the basis of global information. Wouldn’t it be better to provide detailed local information to the EWC beforehand so that the EWC can more easily produce a useful and informed opinion?’ Furthermore, the EWC were informed about the project before the national bodies in Germany and the Netherlands, two countries directly affected by the project. In Germany, the first meeting of the local committee on the project was scheduled after the launch of the EWC information/consultation procedure. This led to some friction with the German and Dutch representatives at the first extraordinary EWC meeting on 29 March.

⁸ For information about the interactions between EWCs and HR management functions in corporate decisions across the EU, see Eurofound (2020c).

This highlights the difficulties associated with the process of articulation, including with regard to expectations of information and consultation in different industrial relations traditions.

Beyond the articulation of the information and consultation procedures as such, the case studies draw attention to a variety of factors favouring a real link between European level and local level. As research by the ETUI points out:⁹ ‘An EWC does not exist for itself – its purpose is to represent the interests of workers; to share with them the information obtained in the course of EWC work; and to bring their views together into a coherent European position.’

From this perspective, the transmission of information received through the EWC to national level is undoubtedly an essential element, well considered in the case of the **Bayer** EWC: ‘The parity commission (Select Committee) receives relevant information on current events between the annual meetings of the Europa-Forum. On the ground of the parity commission, priority is given to projects that will mean changes for employees in more than one country, e.g. divestments, changes in activities, structural changes, etc., because these topics necessitate a consultation. When the information and consultation process is finalised in a parity commission meeting, the authorised members of the EWC are invited to inform the employees’ representatives in their country about the presented topic. Usually then the local co-determination process – were applicable – starts.’ This type of priority is not necessarily taken into account everywhere. For example, in the case of the **INEOS** EWC, ‘There is little evidence [of] where information provided by management goes or what is done locally with the information, [or] of a formal relationship between the information and consultation process at a local level and that undertaken with the EWC. As far as the EWC representative is concerned, in some instances information is fed from the EWC to local or site level but there is no information available on where this goes or what is done locally with the information. No action to address this issue has been taken by the EWC so far.’ A similar example can be found at **CEZ Group**, where the EWC chair explains, ‘there is room for improvement in disseminating information on the functioning of the EWC among employees, as each EWC member disseminates information at his/her own discretion, which can lead to very different approaches and levels of informing employees in individual countries and subsidiaries’.

Another interesting practice that can maintain a regular link and flow of information between the levels is giving EWC members, or at least Select Committee members, the opportunity to visit sites and subsidiaries in other EU countries. Such a right to visit, under conditions that may vary, is found in several of our cases, in particular **Eiffage**, **Club Med**, **Air France KLM**, **Bel Group** and **Bayer**. This last example clearly shows the interests associated with such an opportunity.

Box 16: Quality of relationship between EWC and employees – Bayer

The EWC’s representatives regularly visited **Bayer** employers in individual countries before the COVID-19 outbreak, where they engaged in dialogue with employees and presented the EWC’s work to them. This contributed to raising awareness about the EWC, with benefits not only for the Europa-Forum as such but also for the EWC members representing individual countries, who could point out their

⁹ See De Spiegelaere and Jagodzinski (2019).

activities and role in this body. According to the EWC chair, this could be only partially achieved through electronic media; he considers direct contact to be essential in this respect.

Finally, an essential factor for a good articulation between European level and local level is the very existence of employee representation structures in the different countries where a group is established. The situation in this respect varies greatly between EWCs and among the case study companies. This issue will be discussed further in Section 3.

Confidentiality issues

Confidentiality is regulated by Article 8 of Directive 2009/38/EC.¹⁰ A distinction is made between confidentiality and the withholding of information. Confidential information is information disclosed to the EWC that cannot be shared with employees (while it is deemed to be confidential), whereas withheld information is information that management have the right to hold back because it could seriously damage the company if leaked. The directive leaves room for EWCs to specify and interpret the meaning of confidentiality in their individual agreements, leading to significant variations in the definitions used (Tessier, 2016).

The way in which issues of confidentiality (and indeed withheld information) is managed clearly affects the possibility of the EWC engaging in timely and meaningful consultation, as well as affecting the EWC's ability to share information with employees. Thus, this can potentially hamper the successful articulation of transnational and national information and consultation structures.

A survey of 37 EWCs carried out on behalf of the European Commission in the context of the evaluation of the Recast Directive found that 15% of employers strongly agreed with the statement that the EWC information and consultation processes 'led to breaches of confidentiality'. In contrast, only 2% of employee representatives were of this view (European Commission, 2016).

EWC coordinators interviewed for a study carried out by ETUI raised concerns about what they perceived to be the extensive use of confidentiality clauses. A subsequent survey of EWC members stresses that 'almost forty per cent of EWC members are of the opinion that management "often" refuses to share information with them although around one in three EWC members disagrees with this statement. In other words, only one in three representatives think their EWC is fully informed by the management and is thus able to fulfil its information role. And, given that full information is a condition for real consultation, these figures confirm that many EWCs cannot currently be considered to be forums for consultation' (De Spiegelaere and Jagodziński, 2020, p. 67). These issues are also reflected in the staff working document of the European Commission related to the evaluation report (European Commission, 2016). The document stresses that 'from the inputs of employee representatives, it can be concluded that the Recast provisions had a positive effect on the information process in practice, but some shortcomings were identified, as an extensive use of confidentiality clauses based on Article 8 of the Recast Directive' (European Commission, 2018a, p. 27).

De Spiegelaere and Meylemans (2020) contend that 'there are arguments to defend strict confidentiality where the information provided is early and sensitive'. However, the case studies provided in their study and survey data indicate, 'this story is the exception rather than the rule. For

¹⁰ Provisions are unchanged in the Recast Directive.

the most part, EWC representatives who feel constrained by confidentiality rules are not the ones receiving early information. This suggests that confidentiality requirements are often deployed not to enable real consultation (as they should), but rather to disable the EWC from carrying out its tasks (as they should not)' (p. 47).

However, according to Pulignano and Turk (2016), 'the majority of interviewees report that confidentiality is a concern, but argue that solutions have been found to allay these concerns in most cases' (p. 6). In addition, 'A few interviewees reported that no solution had been found to the question of confidentiality that was acceptable to management and EWC representatives.'

Furthermore, 'the absence of a solution to the confidentiality issue was concentrated in companies where adversarial relations existed between management and EWC representatives and/or there was a marked heterogeneity in expectations within the cohort of EWC representatives' (p. 28).

The case studies covered by this research mirror the somewhat diverse findings of previous research, although confidentiality issues do not emerge as an area of significant concern.

The **Air France KLM** case confirms Pulignano and Turk's (2016) findings about how social partners agree on acceptable practice. The group's management explains that they 'stress confidentiality on strategic topics, as this is a condition for mutual trust', before they start a meeting. However, the EWC secretary sees this as a subject of constant debate because 'if you are a member of the EWC and you come to Paris for three days, you have to be able to share the information received with the employees in your country'. To reconcile these two a priori opposed perspectives, a compromise seems to have been found in practice: 'each document must be marked as confidential (on each page) – and in this case the document cannot be circulated as it stands, but the members can summarise it and make comments', according to the EWC secretary. It seems that this compromise is relatively satisfactory, according to the interviews conducted, and does not lead to insurmountable problems. Management said, 'regarding reduction of staff, sometimes reps already spread the word before local HR announce the facts properly and this can sometimes be difficult – but the intentions of EWC reps are good, they do not mean to break the rules'. We can therefore assume that the climate in this respect is relatively peaceful and that the parties manage to find out solutions together in the event of difficulties: the EWC's secretary said, 'in 20 years I have seen two real problems of confidentiality (communication of stock market or financial information) and on this type of subject I have asked management to specify the period during which we cannot communicate because it is absolutely necessary to frame the duty of confidentiality. So, we have found a certain balance.'

A similar observation can be made at **Generali**; according to the manager interviewed, 'confidentiality is probably the most controversial topic as the Select Committee would like to disclose everything! But in light of this, we have progressively refined our approach, specified it better. In our current agreement, we commit ourselves to define a level of confidentiality on slides we present on an ad hoc basis. Sometimes however, delegates want more but we never have had to impose sanctions. We noticed information leaking sometimes but probably not voluntar[il]y/with no real intention to break the rule. So globally, I would say we now have a good level of trust.' A concrete illustration of this can be found in the successive versions of the agreement governing the EWC. While until 2012 the confidentiality clause was more extensive, it is now much more detailed and protective of members, requiring in particular that, for any confidential information provided, a level and duration of confidentiality be defined by management (Article 8 of the agreement).

Some well-balanced positions seem also to have been found at **Eiffage**, where the agreement currently applicable is more detailed than previous versions. Article 3(7) of the agreement specifies that ‘when information is made public by the group’s management, it is not or no longer confidential’, a stipulation that seems likely to limit an excessive interpretation of the duty of confidentiality imposed on EWC members. However, with regard to the documents included in the EWC’s electronic database,¹¹ the EWC’s secretary mentions some possible problems: ‘Management notes that they circulate in all directions and that this can therefore be a sensitive issue, particularly with regard to the circulation of expert reports, which, unlike the company’s annual accounts, may indeed contain information that is more sensitive for the company.’ However, the management’s point of view puts the importance of the subject into perspective: ‘It is likely that information presented as confidential may circulate, particularly in the trade union networks at a decentralised level. But this has never yet been detrimental to the company.’

Some agreements or practices clearly avoid considering all information to be confidential. For instance, at **Inditex** the agreement stipulates that management can ask for confidentiality but has to explain why, for whom and for how long. There is no breach of confidentiality if the confidential information is shared with another EWC member, the European trade union federation (ETUF) coordinator, a lawyer or an expert. They are also covered by the confidentiality commitment. This kind of provision offers enough clarity to the EWC members. At the very beginning of the EWC, there were minor problems with the confidentiality of the information requested or specific data that were not made available in time because of the lack of coordination between national subsidiaries and the international department that represents the company in the EWC meetings.

At **Ferrero**, to promote the spirit of openness and the free exchange of opinions, the members of the EWC and the union representatives agree not to disclose information to third parties that is communicated to them as confidential, but they are allowed to inform other EWC members or employee representatives at local level.

However, in some cases confidentiality is considered a problematic issue that weakens the role of the EWC, as it is a cause of lack of information and distrust. For instance, at **INEOS**, according to the employee representative, the main obstacle to carrying out the information and consultation processes is confidentiality. In addition, the legal entity and shareholder structure of the company, which allows only some generic financial data to be published, provides very little operational, strategic or performance context that could be useful to worker representatives at European level. According to the EWC representative, confidentiality means that the EWC is informed too late in the decision-making process and is therefore unable to influence the process or even provide an opinion. The employee representative added that confidential information does tend to be provided to the steering committee rather than the EWC, but this happens at the ‘last minute’, after the decision has been made. In other words, the information is provided only hours before the event, preventing the EWC or the steering committee from playing any part in the information and consultation processes.

¹¹ This database hosts all the information shared by management with the EWC (for example, annual reports and information provided in preparation for plenary meetings) and all the documents relating to EWC meetings (notices of meetings, meeting agendas, minutes of meetings and ‘summary statements’, and experts’ reports). These documents, expressly provided for in the agreement, intend to facilitate the circulation of information relating to plenary meetings and Select Committee meetings. They contain brief summaries of the meetings to enable staff representatives at country level to be rapidly informed of their developments.

Similar situations exist at **Club Med**, where confidentiality of information is clearly a sensitive issue. As a matter of principle, management is very attached to this issue and all information presented to the EWC is kept confidential. This general position is limited by the agreement itself (Article 7), which in particular provides, following the 2018 amendment, that a duty of confidentiality can no longer exist once the group has publicly announced a decision. It means that all information (irrespective of how sensitive it is) is covered by confidentiality. Furthermore, it raises questions about the part played by the trade union coordinator: 'all information transmitted to the EWC is confidential, but, before being forwarded to us, this information is always shared with the Social and Economic Committee (work council) in France'. The Social and Economic Committee is also subject to confidentiality rules.

External shocks affecting European works councils: Effects of the pandemic and Brexit

In 2015, a Eurofound report analysed the impact of external shocks on EWCs: in this case, the shocks were the economic and financial crisis of 2008 and the civil aviation crisis following the terrorist attacks of 11 September 2001 (Eurofound, 2015). The main focus was on the role of EWCs in restructuring resulting from these external shocks: 'This hypothesis is built on the assumption that the crisis can have a direct or indirect effect. A direct effect of the crisis occurs when cost reduction measures affect certain EWC activities in terms of cancelled or postponed meetings. An indirect effect occurs through changes in the characteristics of the companies as a result of their response to the crisis, which may affect the functioning of their EWC' (p. 10). The current study again sought to assess the impact of external events on EWCs: in this case, the events were the role of the pandemic and Brexit. By their very nature, the extent and nature of their impact differed between EWCs, with the impact of Brexit largely conditioned by the extent to which companies were either headquartered or had EWC agreements based on United Kingdom (UK) legislation, the presence and size of a UK workforce, and ultimately the exposure of the business to the market impact of Brexit. While the pandemic arguably affected the whole economy and businesses worldwide, the severity of this impact (economically and in terms of related restructuring in particular) tended to be very sector specific. In relation to both events, direct and indirect effects on EWCs can be distinguished.

Impact of Brexit

Brexit affects both the membership in EWCs and potentially the jurisdiction (applicable law) governing the agreement (direct effect), and has potential broader structural effects on companies that could contribute to restructuring (indirect effect). Given the relatively short time elapsed since the end of the transition period and the confounding impact of the pandemic, only direct effects are discussed in relation to the case studies carried out for this research.

Since the end of the transition period (on 31 December 2020), the impact of Brexit on EU law has been confirmed by the European Commission. Its notice to stakeholders (European Commission, 2021a), in summary, confirmed that from 1 January 2021 the following changes were implemented.

- UK employees no longer count when determining whether a group of companies falls within the scope of the EWC Directive.
- UK employees are no longer automatically entitled to representation on an EWC. They may still enjoy a contractual right to that under the terms of an EWC agreement, but their rights are entirely dependent on that agreement.

- If a UK company was previously responsible for a group's EWC, that responsibility has transferred to its group's designated representative agent in the EU. If the group's parent has not designated a representative agent, that responsibility has transferred to the management of the group's establishment or the undertaking in the EU that employs the greatest number of employees in a single Member State.
- The laws governing the EWC/special negotiating body following Brexit are those of the Member State in which the representative agent or management is situated.
- There might be an impact on the composition of special negotiating bodies in the short term, as the UK employees will be disregarded from the calculations.
- Brexit might lead to structural changes in some companies, which would thus require a full renegotiation of the existing EWC agreements (and could have other impacts on company operations and employment, which could fall within the remit of the EWC).

De Spiegelaere and Jagodziński (2020) found that as a result of these provisions linked to the exit of the UK from the EU, around 15% of EWCs would be immediately affected because they were based on UK national law. Furthermore, they estimated that 70% of EWCs had UK representatives prior to the end of the transition period. Based on a large-scale survey of EWC representatives carried out by the ETUI in 2018, the authors find that at the time a rather large proportion of EWCs had already highlighted the impact of Brexit, mostly those that were headquartered in the UK or had UK national law as their legal basis. However, they also find that as many as one in two EWCs with UK members had not yet discussed the issue by early 2018. In this survey, of those EWCs with UK representatives, most assumed that UK members would remain members of the EWC, quite a few did not know if they would remain members and around 16% predicted that they would not remain members.

The high share of previously UK-based EWCs relocating to the jurisdiction of Ireland has given rise to a debate on the effectiveness of dispute resolution procedures in the Irish EWC legislation (Law Society Gazette, 2021).

The case studies carried out for this study show that of the six companies that had UK representatives, five allowed them to remain members of the EWC after Brexit.

In the **Ferrero** EWC, considering the importance and the recognition of the role of the EWC by management and the solid and trusting relationship created over the years, UK delegates continued to be part of the EWC despite Brexit. This means that the UK's delegates continue to participate in all the meetings and have the same rights and obligations as other members. For the **Ferrero** EWC, interviewees considered that Brexit had no (negative) impacts for the EWC and for the implementation of information and consultation rights at transnational level.

The same is the case at **Air France KLM**, where Brexit did not change the composition of the EWC, so the UK continues to be represented. This point did not raise any conflict between the management of the group and the EWC, as our interviews show. The EWC secretary said, 'we voted in plenary a resolution asking to keep the British representatives. This was immediately accepted by the management and so Brexit has no influence on us from this point of view'. Management added, 'We have recently adjusted our protocol (i.e. agreement) to maintain UK representation. We want to keep our UK colleagues in.' This position is hardly surprising given the group's long standing emphasis on effective European representation rather than an EU-only approach (Norway and Switzerland are also represented on the EWC). A management representative said, 'Our agreement includes a general provision about the EWC coverage: Switzerland is part, for instance, so we want to take into account our actual European coverage rather than the EU legal definition.'

Brexit has not affected the **Bayer** EWC, as it is based on a voluntary agreement between employee representatives and employer representatives in the EWC, and participation in the EWC and the number of representatives depend not only on the country's membership of the EU but also on the number of employees in that country. As **Bayer's** management intends to continue operating in the UK, UK representatives also continue to be members of the Europa-Forum. To this end, the **Bayer's** EWC agreement was amended after Brexit (in 2020) to add the UK to the list of non-EU countries represented in the EWC.

Limited effects have also been observed in companies that had already taken into account in their agreement the possible Brexit and the potential for Member States to leave the EU in the future. For instance, the **Bel Group** EWC agreement includes a general clause stating that 'in the event that a country leaves the European Union or the European Economic Area, it will remain within the scope of the agreement. The representatives of these countries will continue with the same rights and prerogatives.' Therefore, the UK has a representative on the EWC, and unless there is a change because of a renegotiation of the agreement when it expires, the situation is not likely to change in this respect.

At **INEOS**, the impact of Brexit has been more significant, as the company is headquartered in the UK and its EWC agreement is governed by UK law. While management and the EWC have already agreed to keep the UK representatives in the EWC (the UK delegation is the largest, with six seats), as of July 2021 (when the case study was carried out) no decision had yet been taken on which EU Member State to designate as the company's representative agent. Although the EWC raised the issue with management, and the latter agreed to discuss the matter with the EWC, the issue remained unresolved as at July 2021.

The situation was very different at **Ericsson**, where management and employee representatives have achieved strong and trust-based social dialogue over the years, with practices going beyond the legal requirements. Despite this, management indeed decided that the UK representatives had to leave the EWC immediately. It told the EWC representatives that there were already countries in Europe that were not members of the EU and therefore had no representation within the EWC, so it had no intention of making an exception for the UK. The HR representative said, 'For us, not having a pure European or EU organisation as we are a global company, it would be very odd to have UK participation and not allow other European non-EU countries in. It sends the wrong signal to those countries. It is important to us to treat the countries with the same conditions in the same way.' Although employee representatives proposed an amendment to the EWC agreement that would have allowed UK representatives to remain part of the body, management did not agree. According to the EWC secretary, 'we were stunned: it was so far from the traditional Ericsson way of thinking, since the UK has always been one of our big countries'. They stressed, 'It is now up to the British trade unions to take the fight,' adding, 'We might support them, but it is not a primary task for the EWC. We have made our point clear: the UK should still be represented, but we have not much more to do.'

Although **Inditex** also has operators in the UK, the situation is specific and Brexit had no noticeable impact on the EWC's activity, as the UK had never appointed representatives (despite being eligible; the same is the case for Ireland).

The impact of Brexit has not yet been discussed or resolved at **Generali**, and there is therefore still uncertainty as to whether British representation will be maintained in future, even more so perhaps because the 'Anglophone markets' (including the UK but also the United States) do not seem to be a strategic target for the group.

Brexit has not affected the **CEZ Group**, **Club Med** or **Eiffage** EWCs, as these groups have no employees in the UK.

Impact of COVID-19

The global pandemic has clearly affected the work of EWCs in a number of ways. More directly, travel restrictions meant that face-to-face meetings were essentially impossible for much of 2020 until early 2022. Furthermore, COVID-19 had a significant economic impact on the organisation of work. The scale and nature of these effects were clearly affected by the sector of activity, the nature of national support measures in terms of financial support to businesses and other assistance aimed at protecting employment and workers' health and safety (such as short-time work or temporary unemployment measures, and other measures such as mandated teleworking, as well as on-site OSH measures to limit the spread of the virus). Although the economic impact was severe, employment effects were often cushioned by government measures, and the longer-term economic effects of the crisis (and its impact on restructuring and employment) are yet to emerge in many sectors. Finally, the change in the mode of working hastened by the pandemic has contributed to a discussion on future ways of working, including for EWCs. Table 3 summarises the extent to which the pandemic affected the day-to-day operation of EWCs in terms of the frequency of meetings, the issues discussed and debates about future ways of working.

The table demonstrates that, overall, the pandemic did not lead to a reduction in the number of EWC meetings. In fact, four case study EWCs reported an increase in the number of Select Committees (or equivalent committee) meetings, with a number of companies reporting significantly more regular exchanges, particularly between management and Select Committees. All meetings moved online and despite some teething problems in some instances (particularly in relation to interpretation), these were considered to have functioned well. Overall, the quality of social dialogue at transnational level was not considered to have been damaged by the pandemic. However, a small impact on the availability of training (often combined with EWC meetings) was noted by some EWCs.

Table 3: The impact of COVID-19 on EWCs – an overview

Company	Number of EWC meetings	Information and discussion about the impacts of COVID-19	Consideration about future changes in EWC operation
Air France KLM	No changes in plenary meetings/increase in the number of Select Committee meetings	Yes (civil aviation company – economic and social impacts)	Yes – mix between online and face-to-face meetings and increase in the number of meetings (plenary and Select Committee)
Bayer	No changes except the cancellation of one extraordinary meeting (2021)	Yes – continuity of activity and OSH measures	Yes – mix between online and face-to-face meetings
Bel Group	No changes in the number of meetings	No – short information only	No

CEZ Group	No changes in the number of meetings	Yes – impact of COVID-19 on strategy, activities and HR policies in EU countries	No – clear preference for face-to-face meetings
Club Med	No changes in the number of meetings	Yes – good level of information on economic and social impacts	No – emphasis put on the importance of face-to-face meetings
Eiffage	Large increase in the number of Select Committee meetings	More Select Committee meetings dedicated to the impact of COVID-19 (activities, OSH measures)	Management interest in developing online EWC meetings
Ericsson	Increase in the number of meetings	Yes – information about the impact of COVID-19	Management interest in developing more online EWC meetings
Ferrero	No change in the number of EWC meetings	Yes – economic and social impacts of the crisis	No
Generali	No change in the number of meetings	Yes – information about OSH measures and HR policies (telework, information technology equipment)	EWC secretary interest in more EWC meetings (online – both Select Committee meetings and plenary meetings)
INEOS	Less plenary meetings but increase in the number of Select Committee meetings	Yes – impact of COVID-19 on the agenda of the EWC meetings but issue became less prominent over time	Discussion about the mix of online and face-to-face meetings
Inditex	No changes in the number of meetings	Yes – OSH measures and measures to safeguard employment	No

In terms of future ways of working, in six of the case study EWCs their experience of the pandemic (and to some extent considerations of the need to curb international air travel in the context of climate change) led to calls for a greater mix between online and face-to-face meetings in the future. In four cases, this approach appears to receive some support from both management and employers, whereas in two cases, the move to online or mixed modes of meeting was only supported by management representatives. Five EWCs (both management and employees) continue to favour face-to-face meetings as a more effective way to exchange information, and build good working relationships and trust.

Some differences emerged with regard to the issues discussed by EWCs and the extent to which COVID-19-related socioeconomic and employment impacts, and implications for ways of working (for example in relation to OSH) were considered transnational or purely national issues. Broader economic and employment impacts were discussed in most EWCs, although more detailed discussions on the use of national employment support measures in particular largely remained the remit of national information and consultation bodies. OSH measures introduced to manage the

impact of COVID-19 and prevent the spread of the virus were debated at the level of the EWC in four of the case study companies.

3 – Key factors supporting and hindering the effective operation of European works councils

A substantial body of research on the operation of EWCs and the experiences of the case study EWCs in dealing with some of the key challenges facing these transnational worker information and consultation bodies demonstrates that establishing and maintaining their effective functioning is a learning process. If built on mutual trust and the development of shared objectives, cooperation between and among management and employees usually improves over time as trust develops and learning takes place regarding different management structures and industrial relations traditions. However, this improvement is not always a linear process, with progress sometimes reversed by changes in personnel, the evolution of organisational structures or exposure to challenging circumstances, which can contribute to a breakdown in established trust-based relationships.

Identifying the factors that explain the more or less effective functioning of EWCs in delivering their role as set out in the EWC Directive is important in providing learning regarding areas for improvement in the establishment and operation of EWCs. As already indicated in the previous section, the experience of each EWC is different, although there have been various efforts to classify them into different typologies. The most influential, developed by Lecher et al (2001), classifies EWCs into the following four groups (De Spiegelaere, 2021).

1. ‘Symbolic’ EWCs exist formally but have very little real activity. The information provided is minimal and there is little to no consultation. Management drives the process and EWC members take little initiative to upgrade the functioning of the works council.
2. ‘Service provider’ EWCs obtain information and are involved in disseminating this to their constituencies, but there is no real consultation. These EWCs are quite often characterised by a strong national chair, or team, leading the process. The EWC is therefore seen as serving national-level processes of information and consultation.
3. ‘Project-oriented’ EWCs are more proactive in organising working groups. They focus on the development of projects that aim to improve transnational information and consultation. There is sufficient exchange of information and real consultation of employees.
4. ‘Participatory’ EWCs are characterised by well-functioning employee representation and management that appreciates employee input. These EWCs tend to go beyond the mere legal requirements of the directive.

Other classifications focus more on the extent to which EWCs have developed a transnational identity or remain dominated by one or several national information and consultation structures and actors (e.g. Marginson, 2000; Kotthoff, 2006). More similar to the approach taken by Lecher et al (2001), Stöger (2011) identifies four types of EWC: EWCs that are ‘collective actors’, characterised by relationships between employers and employees that are based on trust, and able to influence corporate decision making; EWCs acting as ‘transnational support networks’, which are useful for sharing information between representatives from different countries but do not effectively influence decision making; EWCs that are ‘forums for presentation’ by central management, characterised by low levels of trust and used by management to legitimise decisions; and ‘blocked’ EWCs, which essentially only exist on paper owing to a lack of interest from both management and workers.

Studies also distinguish between different types of interaction that determine the effectiveness of EWCs (Lecher et al, 2001):

1. **The EWC and management:** This field of interaction refers to the degree to which management sees the EWC as a legitimate partner. In symbolic and service-oriented EWCs this is hardly ever the case. As a consequence, the information provided is insufficient and there is no real consultation process.
2. **EWC members internally:** This second field of interaction refers to relationships between employee representatives. This can be characterised by open or concealed conflict, by cohesion or by the existence of a clear dominant employee representative or group of employee representatives. In cases of open conflict (more often present in symbolic EWCs), keeping information confidential may be a real challenge, as some EWC representatives may communicate among each other on their own terms.
3. **The EWC and national level:** This refers to communication between the European and national levels of employee representation. Again, the relationships between them may be constructive or very unsubstantial.
4. **The EWC and trade unions:** This last field of interaction concerns the role of trade unions in relation to EWCs. Trade union support may enable EWCs to challenge the unjust use of confidentiality and thus improve transparency. On the other hand, it may increase management's unwillingness to disclose sensitive information where third parties are present.

In order to address the essentially 'qualitative', case-study-based methodology underpinning the classification of EWCs, De Spiegelaere (2021) proposed a quantitative analysis of some of the factors influencing the operation of EWCs. This study finds that around half of EWC representatives consider that they are part of what he calls 'transnational forum' EWCs in which no one country's interest is perceived to predominate and the body acts as a catalyst for information exchange without necessarily having a strong impact on decision making; another 14.4% say that they are part of the negative perspective of 'dominated' or 'marginalised' EWCs. In the former, representation from one country tends to predominate, relationships with management tend to be poor and articulation of local information and consultation tends to be seen as substandard, while the latter is characterised by similarly poor relationships with management and articulation. Among the more positively assessed EWCs, 14.3% describe their experience as being 'participative', with articulation perceived as very good, no one country dominating the EWC and relationships with management perceived as good. Close to 20% are assessed as 'spearhead' EWCs, with indicators similarly positively assessed as in participative EWCs but a greater perception that one country predominates. However, this does not have a negative impact on the operation of the EWC.

In terms of the factors that can have a positive or negative impact on the effective operation of EWCs, the literature tends to distinguish between 'structural' and 'agency' factors (Marginson et al, 2004), with structural factors essentially lying outside the direct purview of the actors in the EWC (e.g. the impact of European regulations, economic and organisational factors, and the weight of the country of origin on EWCs), while agency factors are directly related to the choices and attitudes of the actors involved in the EWC. In this respect, the attitude of management towards the EWC, the degree of cohesion between employee representatives in the EWC (that is, their ability to interact regularly with each other, to adopt common positions, etc.) and the nature of the EWC's interactions with management are noted in several studies, with procedural arrangements directly related to the functioning of EWCs, the capacity of actors to engage in joint initiatives beyond the competences

established in law, the various resources allocated to EWCs, and interactions between the EWC and the European trade union movement also of significance. De Spiegelaere's (2021) quantitative analysis broadly confirms the relevance of both structural and agency factors in explaining the varying degrees of influence and effectiveness of EWCs across companies. Structural and agency factors are closely interlinked, and it should be borne in mind that structural factors can shape and enable agency factors (such as the involvement of trade unions).

Eurofound (2015) highlighted a variety of factors that can affect the functioning of EWCs, based on a series of case studies: the impact of Directive 2009/38/EC; various characteristics of companies (country of origin, sector of activity, number of employees and degree of internationalisation); and the impact of the economic crisis of 2008. Beyond these, the study also showed the possible impact of several other factors, such as cultural differences between the countries represented in an EWC, continuity in the composition of the EWC; involvement in restructuring processes (as a lever for increased EWC involvement through information/consultation); interpersonal relationships between the key players in an EWC (management and employee representatives); and the investment of management in supporting the EWC.

It therefore seems clear that the extent to which the operation of EWCs is in line with the spirit and provisions of the directive or indeed goes beyond this in terms of joint working depends on a range of factors. This chapter identifies, on the basis of the results of the 11 case studies and against the backdrop of the existing literature, the factors that influence the operation of these EWCs, bearing in mind that these case studies are not representative (Table 4).

Table 4: Summary of relevant structural and agency factors affecting the effectiveness of EWCs

Structural factors	Agency factors
Impact of European and national regulations on EWCs	Procedural arrangements directly related to the functioning of EWCs
Country of headquarters/controlling undertaking	Capacity of players to engage in joint initiatives beyond the law
Industrial relations system	Resources allocated to EWCs
Installation type	Individuals involved in the EWC
Economic and organisational factors	Role of experts
Sector	Interactions between the EWC and the European trade union movement
Structure of company/ownership	
Level of internationalisation	
HR management policies and practices	

Structural factors

Regulatory factors

The legislative framework affecting the operation of EWCs relates not only to the provisions of the EWC Directive and the Recast, but also obviously to the national transposition of the directives. According to the evaluation of the transposition and implementation of the Recast by the European Commission, most Member States transposed the directive either verbatim or with very similar wording. It concludes that (at the time of the assessment) ‘only in three Member States does the national legislation not seem fully compliant with the minimum standards set out in key substantive provisions and in 11 Member States for other provisions’ (European Commission, 2018a, p. 14). On the other hand, 15 Member States were considered to have provisions that are more detailed than those in the Recast Directive, being more protective for employees and/or more precise than the provisions in the directive.

Country of headquarters/controlling undertaking

The national legislation providing the basis for individual EWC agreements is determined by the country of headquarters or controlling undertaking of the group. In order to assess the impact of country of headquarters on the functioning of EWCs, several studies cluster countries based on the ‘varieties of capitalism’ framework, distinguishing between Nordic, liberal-market economy, emerging market economy, coordinated market economy and mixed-market economy companies (De Spiegelaere, 2021; De Spiegelaere et al, 2022). Using country of headquarters within these clusters as a co-variate, de Spiegelaere finds a relatively limited relationship between these clusters in terms of whether EWCs are characterised as ‘marginal’, ‘dominated’, ‘spearheaded’, ‘participative’ or as transnational forums (mentioned previously in this chapter), with the exception of mixed-market economy companies. According to this study, ‘representatives in these EWCs are more likely to be in the “dominated” type and less likely to be in the “participative” type’ (De Spiegelaere, 2021, p. 502).

Influence of industrial relations systems

Europe’s diverse industrial relations systems can affect the operation of EWCs in a number of ways. This includes the influence of country of headquarters (or indeed the cost country for EU subsidiaries in the case of companies headquartered outside the EU), the industrial relations background of the EWC chair and other influential actors in the EWC, the industrial relations culture and employee representation systems within which the members of the EWC are rooted.

Much of the early literature on EWCs focused on the challenges associated with bringing about good collaboration and mutual understanding between employee representatives on transnational information and consultation bodies coming from different industrial relations traditions (Bicknell and Knudsen, 2005; Timming, 2010). While many EWCs have built up years of experience and have benefited from training to address such issues, these factors retain some relevance, not least due to the turnover of representatives on EWCs.

The influence of the industrial relations system in the country of origin of the group can undoubtedly play a role in the way management perceives the role of the EWC. It could be assumed that in countries where there is a strong tradition of social dialogue with mutual respect between the social partners, EWCs function more effectively than those whose home country has a weak industrial relations culture. This pattern is reflected in the case studies analysed. At **Bayer**, the first German works council, which was established in 1948, advocated for the formation of a corporate culture

based on co-determination (*Mitbestimmung*). Over the more than 70 years of the works council's operation, the co-determination concept has been developed and consolidated and is now an integral part of **Bayer's** corporate culture. The interviewed employee and management representatives refer to an approach based on mutual dialogue and cooperation between the employer and employees as a 'Bayer-like approach'. It is therefore not surprising that this spirit of cooperation can be found within the EWC of **Bayer**, which has the particularity of being composed not only of employee representatives, but also of management (60 employees and 40 managers) and in particular of those responsible for industrial relations in the various countries where it is established in Europe.

Similarly, at **Ericsson** the two parties interviewed underlined the influence of the Swedish model in the functioning of the EWC, where the level of trust and respect between central management and the EWC is indisputable and allows the involvement of the EWC upstream in the decision-making process.

Box 17: Positive dialogue between management and unions – Ericsson

The first EWC agreement by **Ericsson** was signed in January 1995 and revised in April the same year. It originates from the Swedish tradition of co-determination and consultation, codified in the Co-determination Act of 1976 (*Medbestämmandelagen*). The interviewed employee representative says that Ericsson has always been positive regarding the dialogue with the trade unions and the EWC: 'We not only give the EWC its legal rights, we encourage it because we find it useful', says the interviewed manager. They add, 'My impression is that we, in Sweden, are more generous regarding what should be considered information and consultation.'

On the other hand, the absence of a strong culture of social dialogue restricts the role of the EWC to the strict scope of the operating procedures provided for in the agreement, with the logic, for central management, of respecting the legislation on EWCs without going beyond it. This is, for example, the case at **INEOS**, where dialogue with employees in the UK seems disparate (not all sites have recognised trade unions) and sometimes conflictual, while in the other countries, the quality of social dialogue depends on the social dialogue systems in place before the entity was bought by INEOS. There is not really a culture of social relations within this group, which presents itself as a 'federation of businesses', and consequently the EWC is not considered an important interlocutor by central management.

Conversely, the strength of the social dialogue system in the country of origin may lead to a reduction in the role of the EWC in favour of the employee representative bodies of the country of origin, particularly where an EWC is strongly predominated by representatives from the country of headquarters. Although following the merger of **Air France** and **KLM** overall improvements were made to the EWC agreement, drawing on two previous agreements rooted in different industrial relations cultures, because employee representatives in both countries already had broad access to information and consultation at national level, sometimes little added value was perceived in the EWC, whereas representatives from smaller countries in this body may use the EWC as a channel to compensate for the absence or weakness of social dialogue in their countries.

A somewhat comparable situation can be found in the EWC of **Club Med**, which can be seen to be in 'competition' with the French works council. Although owned by a Chinese shareholder (FOSUN),

the group has kept its head office in France, where a central works council (the Social and Economic Committee) has been established. Thus, the EWC coexists with a French employee representation body positioned to the group's parent company. To date, this committee is both much more present and much more valued within the group than the EWC. Above all, it gives the French employee representatives the opportunity to engage in dialogue with the group's management. In this context, the EWC may appear to them as a secondary body.

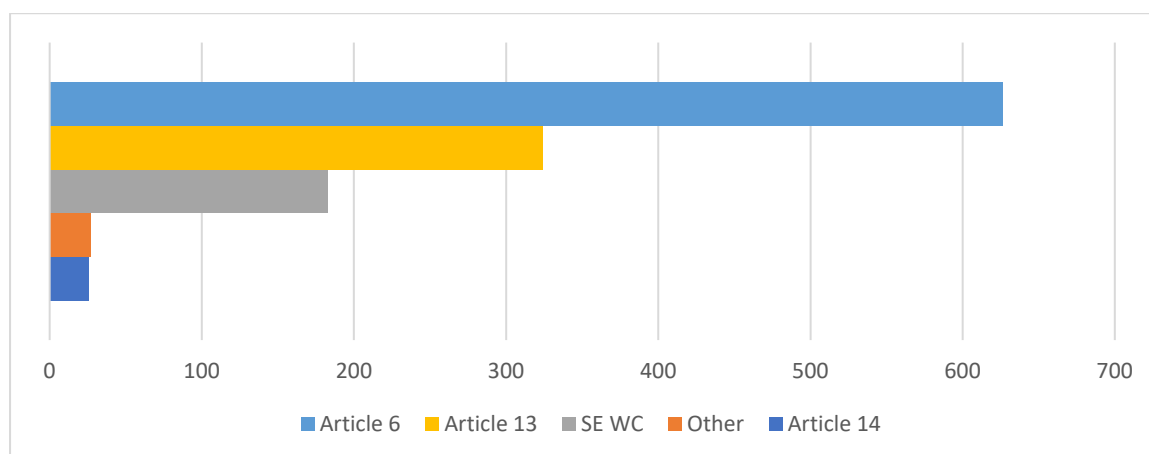
Another lesson learned from the case studies is the influence of EWCs that have a good social dialogue, inherited from the functioning of the social dialogue in the country of origin, on industrial relations in other countries of establishment. For instance, **CEZ Group** has a strong social dialogue in Czechia, and this seems to be 'exported' to EWC level. It explains that the EWC also intervenes in local issues in foreign countries to try to solve industrial disputes. The chair of the EWC perceives that the level of social dialogue has been gradually improving across the group, to which, according to him, the EWC could contribute, because it has enabled the exchange of experiences between representatives of individual countries.

The existence of staff representation structures in all countries is likely to feed into the EWC, to allow the council to feed into a social dialogue in the countries. Conversely, the lack of information and consultation structures and employee representation at national level can be a source of weakness for EWCs, but the presence of a transnational structure can also support the development of employee representation at national level or provide a forum for representation where this was previously unavailable. At least one case study shows that, depending on the sector of activity, the lack of employee representation from certain countries is not always limited to countries with weaker industrial relations systems. For instance, due to a lack of employee representatives in some countries, many countries are not represented in the EWC at **Inditex**. In some cases, no representatives had been appointed by the corresponding national union federations. This is the case for the eastern European countries, such as Romania, and the cluster of countries comprising Bulgaria, Croatia, Hungary, Slovakia, Czechia, Denmark, Greece, Ireland and the UK. In Sweden and Finland, elected representatives within the EWC have resigned from their mandate for personal reasons. The national unions have not yet appointed other members. In short, the actual composition of the EWC consists of 19 of a total 25 representatives who were initially elected.

Installation type

Given that both the directive and the Recast provided for a transition period, which allowed for agreements to be negotiated (or renegotiated) without taking full account of the requirements of Council Directive 94/45/EC (in the case of Article 13 agreements) and of the Recast (in the case of Article 14 agreements), the issue of the legal framework shaping the establishment, agreements and operation of different EWCs attains additional complexity.

In addition, as shown in Figure 1, over 180 currently active EWCs are European company works councils.

Figure 1: EWC bodies currently active, by installation type

Notes: Article 13 includes pre-1996 UK agreements; SE WC, European company works council.

Source: European Works Councils Database, 2022

Article 14 of the Recast directive essentially excludes Article 13 agreements from the requirements of the directive, including situations where such agreements are adjusted because of changes in the structure of the undertaking. The same applies to agreements concluded pursuant to Article 6 of Council Directive 94/45/EC signed or revised in the transposition period of the Recast (June 2009–June 2011). Although this provision in principle limits the impact of EU legislation on a significant share of EWCs, the case studies carried out for this paper show that the content of such legislation can have an impact beyond the agreements covered by the Recast and those negotiated after June 2011. Four of the EWCs studied were installed following the Recast and therefore follow its provisions. However, even among the agreements pre-dating the Recast (including Article 13 agreements), their original content has been renegotiated to take into account the new concepts and definitions of the Recast to some extent. Having said that, the fact that Article 13 agreements in particular are not bound by the requirements and definitions of the Recast does mean that any amendments made can fall short of the spirit of Directive 2009/38/EC.

At **Eiffage**, a series of time-limited agreements made it possible to improve the content of the initial agreement by taking into account the changes within the group but also the provisions of Directive 2009/38/EC. At **Ferrero**, the Article 13 agreement signed in 1996 has been regularly updated – every four years – and takes into account the definitions of the Recast, with both the secretary of the EWC and management agreeing that the functioning of the EWC is compliant with the most recent European and national legislation. At **CEZ Group**, the agreement of 2007 has evolved over the time, including the main provision of the Recast. An amendment to the agreement was signed in December 2009, extending the information and consultation topics to include health and safety at work. In 2012, the agreement was again amended in accordance with Directive 2009/38/EC, as incorporated into the Czech Labour Code. At **Club Med**, the 1999 agreement was renegotiated in 2018 in the light of the concepts of the 2009 directive (especially as the ETUF European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT) led the negotiations), which led to improvements in the text. Despite this, the new agreement only makes the prior consultation of the EWC on the employer's decisions an objective to be achieved (and therefore not 'systematic').

An example of elaborated definitions and requirements of the Recast on an agreement negotiated after 2011 can be found in the case of **Bel Group**. This includes, for example, an article dedicated to

the articulation between information and consultation between European and national levels, and in relation to the treatment of confidential information.

Box 18: Focus on confidentiality requirements – Bel Group

The **Bel Group** EWC agreement allows national and transnational information/consultation procedures to usefully complement each other. The agreement specifies the concomitance between the European procedure and the local procedures around the idea that the local bodies must have the opinion of the EWC before formulating their own opinions (see Article 18 of the agreement). The **Bel Group** agreement also contains a remarkably detailed regulation of the confidentiality duty to prevent abuses of confidentiality requirements. It aims to guarantee a reasonable use of confidentiality, well beyond what is provided for in Directive 2009/38/EC. This means provision by the management of objective reasons justifying the requirement for the confidentiality of a given piece of information; definition of the audiences with regard to whom confidentiality is required; and definition of the temporal limits to the duty of confidentiality. The agreement also enables, in the event of a dispute on this subject, the EWC to challenge the confidentiality requirement by a majority vote and to give the Select Committee the task of seeking a negotiated solution with central management. However, in practice information was provided late. In 2021, the management launched a transnational restructuring project regarding one of the cheese brands operated by the group, namely Leerdammer. Overall, the operation consists of the transfer of an area of activities as well as the brand to another international agri-food group, Lactalis. This sale affects several countries where the group is established through transfers of companies and therefore transfers of employment contracts, namely Germany, Italy, the Netherlands and Ukraine. This transformation is part of the group's diversification strategy and in particular the search for a medium-term balance, directly linked to changes in consumers' eating habits, between turnover from the sale of cheese products on the one hand and fruit and vegetable products on the other. This project was announced to the press by management on 19 March 2021 and just before the EWC steering committee meeting.

Thus, the various cases studied show that the legislation is an element that can strengthen EWC agreements. Having said that, as already indicated in Section 2, research has shown that in terms of EWCs playing an effective role in transnational restructuring through information and consultation processes, amendments to the texts of agreements alone often have a limited impact. Studies show that EWCs that functioned relatively well prior to such amendments largely continue to function well after the amendments, whereas those reporting issues regarding the quality of interactions with management (or between employee representatives) continue to do so (ETUI, 2018).

Among the case studies, EWCs based on Article 13 agreements at **Bayer** and **Ericsson** are considered to function well whereas some recent agreements negotiated subject to the Recast fail to have a clear role in the group, and information and consultation processes are limited (e.g. **INEOS**).

In conclusion, the nature of the agreement can have an impact on functioning but is not a guarantor of good functioning.

Economic factors

A number of factors that can be categorised under the umbrella term ‘economic factors’ can arguably influence the effectiveness of EWCs. These include the sector of activity, the level of internationalisation of the group, the company structure, the structure of ownership and the level of exposure to globalisation pressures or indeed economic or health crises. These factors are often interconnected, amplifying impacts for certain EWCs (e.g. the impact of the pandemic on the aviation sector).

Sector of activity

As discussed in Section 1 of this paper, the sector of activity can affect the likelihood of EWCs being established. For example, EWCs remain less common in some service sector companies, partly because the establishment of multinational companies is more recent in subsets of the sector (e.g. health and care). This renders a more quantitative assessment of the representation of service sector EWCs in different clusters of EWCs as described previously more challenging. Bearing in mind this proviso, one study finds that EWC representatives in the service sector are more likely to be part of the ‘marginalised’ or ‘dominated’ types of EWCs and less likely to be in ‘participative’ EWCs (De Spiegelare, 2021).

Level of internationalisation

Different arguments have been put forward in the literature in relation to the impact of the level of internationalisation of a group on the likelihood of establishing an EWC and on the effective functioning of the body. With regard to the latter, it has been argued that EWCs in groups with low levels of internationalisation, which are predominated by employee representatives from the country of headquarters, these transnational bodies play a more limited role and information and consultation at this level remains secondary to national employee information and consultation structures (e.g. Whittall et al, 2009; Timming, 2010). However, other research points to the potentially positive influence of experienced employee representatives from one or several countries taking the lead to push the EWC agenda forward (e.g. Hertwig et al, 2011). In the classification system put forward by De Spiegelare (2021), these diverging impacts resulting from the dominance of one or a small number of countries is the main distinguishing factor between the ‘dominated’ and ‘spearhead’ EWCs: ‘In the “dominated” type, one or a group of countries governing the functioning of the EWC goes together with some very negative perceptions regarding articulation, relations with management and union relevance. In the “spearhead” cluster, EWC representatives also think that some countries dominate but here there is a much more positive evaluation of the other fields of interaction and the effectiveness of their EWC.’ Given the share of EWC representatives in different clusters of EWCs, it is argued that dominance can be a serious issue as highlighted in case study research, but that the ‘positive effects of some countries taking the lead might be undervalued in the research’ (p. 506).

This assessment is echoed by the case study research carried out for this study. For instance, **Eiffage** is a group whose workforce is largely concentrated in France but is considered to function relatively effectively with a range of interesting information-sharing practices, such as the database for information sharing mentioned above and the development of summary information sheets in the event of an acquisition or disposal project. This tool was set up to provide the EWC with continuous information, upstream of projects, on the types of projects that occur very regularly within the group. In addition, there are regular links between the EWC and the group’s management (including its chair). The same general observation can be made about the **Air France KLM** EWC, in a group

where most of the staff are employed in France and the Netherlands. Similarly, in the case of **CEZ Group**, where about 57% of the workforce was located in Czechia before the divestments in some countries, the EWC is generally considered to function well and plays a significant role in supporting employees outside Czechia.

However, there is little doubt that the development of a group internationally leads to the greater legitimisation of the setting up and development of an EWC, as in the case of **Bel Group**, where the EWC was explicitly set up in 2019 as part of the group's increased internationalisation. It is this same desire to cover the internationalisation of the group that led to the inclusion of Ukraine in the geographical scope of the EWC.

Groups that are largely internationalised, such as **Generali**, which sees the EU as being at the heart of the group's present and future activities, consider that the EWC plays a central role. Similarly, at **Ericsson**, which operates in more than 140 countries and has only 35% of its workforce in the EU, the EWC has full legitimacy and functions efficiently. The same applies to **Bayer** (more than half of the workforce is outside the EU) and **Inditex** (48% of the workforce is outside the EU). Although these groups are highly internationalised, including outside the EU, they are headquartered and maintain a strong representation in the EU, which is considered to highlight the importance of the EWC.

However, in some of our cases there is a discrepancy between the EWC, which covers only the EU territory, and the reality of the group's activities, which are largely located outside the territory of the Union. This type of situation may fuel a desire on the part of employee representatives to have, beyond the EWC, bodies for global dialogue, as the example of **Club Med** shows.

Structure of company/structure of ownership

The case studies demonstrate that company structure in relation to the homogeneity of its activities as well as structure of ownership can also have implications for the operation of EWCs. On the one hand, a stable and family shareholding, as at **Ferrero**, **Inditex** and **Bel Group**, seems to favour an open approach to dialogue with the staff representatives, and therefore also with the EWC. On the other hand, groups that favour a rapid return on investment, such as that of the owner of **Club Med** (the Chinese group FOSUN) or the three individual shareholders of **INEOS**, tend to give the EWC a rather marginal role. This is all the more true in the **INEOS** group, which is not listed on the stock exchange and has few obligations in terms of external financial reporting, depriving the EWC of easy access to information on the performance and strategy of the company. Although many EWC representatives raise the issue of obtaining information late, as this is not disclosed by management, with stock market rules as the rationale provided, this situation can be worse in a company that are not obliged to publicise any information.

The fact that **CEZ Group** is a state-owned company, with the state remaining the majority shareholder, does not seem to have any influence on its EWC, which seems to operate in a manner quite similar to those of private groups.

Company structure in terms of the homogeneity or heterogeneity of operations can also have an impact on the EWC. The more homogeneous the activity of the company, the more transnational employee representatives are likely to share common concerns, which reinforces coherence between the members (as seen in the examples of the **CEZ Group** and **Eiffage**). However, in a group where the activities are very diverse the members of the EWC will find it more difficult to identify projects or challenges that concern them all.

Human resource management policies and practices

In terms of HR management practices within multinational companies, three basic approaches can be distinguished:

- strong centralisation and coordination of HR policies
- strong decentralisation of HR policies and decisions to local level
- decentralisation of the detail of HR policies with coordination at central level

It might be assumed that a high degree of centralisation of HR management practices occurs in companies seeking to build a strong transnational corporate image and could strengthen the role of transnational employee information and consultation as part of this process (Gilson and Weiler, 2018).

This is, for example, the case for **Bayer** and **Ericsson**.

Box 19: Fostering the principles of mutual trust and respect – Bayer

At **Bayer**, central management plays an important role in defining corporate HR policies. A strong centralising element is evident in its functioning: the EWC is, among other things, a tool for disseminating a culture of social dialogue and values as established at the headquarters (while maintaining local legislative boundaries and respecting differences in cultural backgrounds). Among the values are the principles of mutual trust and respect, dialogue between management and employee representatives, and an emphasis on finding consensus. This is also reflected in the fact that HR managers from all countries also meet separately in the context of EWC meetings to exchange information and develop certain training content and HR policies together.

However, the case studies do not show a clear pattern in this regard. For example, the case of **Club Med** demonstrates an asymmetry between the relatively centralised character of HR practices and the secondary importance accorded to the EWC when it comes to the discussion of common approaches to strategies affecting employment and working conditions.

Air France KLM, **Eiffage**, **Ferrero** and **Generali** provide examples of decentralised decision making in HR management, with overarching strategies nonetheless elaborated at central level. This can allow the EWC to be involved in information and consultation on strategic orientations, with detailed elaborations of approaches left to national/local information and consultation structures. For example, **Generali**'s EWC is discussing the main principles of post-pandemic working practices, including hybrid work arrangements. A global policy will be formulated following the conclusion of collective agreements on the issue in several countries, such as France and Italy. Thus, even in the case of the decentralisation of HR policies, the EWC retains a role and may even have an influence on the main lines of HR management policies. At **Air France KLM**, the importance of regular communication between the different levels of HR management is emphasised, which leads to the EWC having relevant contacts and information.

However, very strong decentralisation can make it difficult for EWCs to intervene in decision making. This is the case at **INEOS**, which presents itself as a 'federation of companies'. The company's head office employs fewer than 50 people and each INEOS division has its own CEO, executive board and HR department. The role of the central HR function is focused solely on providing policy templates and general guidance across the groups. Individual INEOS businesses have their own, highly autonomous, HR function that deals with day-to-day workforce issues.

Finally, the case of **CEZ Group** underlines the difficulty of HR centralisation policies in transnational groups. Although the **CEZ Group** holding company strongly centralises its HR policy at the level of its subsidiaries and establishments in Czechia, it affords a great deal of autonomy to its foreign subsidiaries. These companies do not cooperate with the headquarters in the field of HR and apply their own personnel policy. According to the chair of the EWC, unified HR management across the entire **CEZ Group** is difficult to imagine owing to significant differences in the setting of national labour markets, work-related legislation and the nature of individual companies.

Agency factors

Agency factors are those aspects affecting the operation of EWCs that are directly related to the choices and attitudes of the actors involved. They include the content of EWC agreements (which goes beyond the minimum established in EU and national legislation), including, for example, the elaboration of clear procedures and processes for information and consultation, the resources allocated to the EWC, the role and contribution of individuals involved in the EWC, interactions between the EWC and the European trade union movement, the role of experts, and the capacity and willingness of actors to engage in joint initiatives going beyond the requirements of the law. Agency factors do not exist in isolation but are closely interlinked with structural factors.

Presence of clear procedures for information and consultation

As indicated in Section 2, as the directive gives parties a great deal of autonomy to shape the EWC agreement, it is possible for them to seek to clarify the information and consultation procedures – beyond the legal provisions alone – or to organise them in such a way that they can promote the more effective operation of the EWC, particularly in transnational restructuring situations. This can involve setting up precise processes and timescales (detailing what information is to be provided and when and the specific form of consultation, giving an opportunity to access expertise, respond formally and receive a reaction, etc.). In a number of cases, such protocols also explicitly address the articulation between different levels of information and consultation.

Furthermore, as well as having clear procedures, the frequency of meetings is seen as an important factor contributing to the good function of EWCs. Owing to the cost and challenges of organising large plenary meetings, many EWCs have sought to achieve much more regular interactions through the establishment of Select Committees (or similar bodies). This is generally perceived to have a positive impact, but clear feedback lines must be established with the full plenary to avoid such bodies taking on a function that almost bypasses the EWC plenary. Confidentiality considerations come into play in this regard. Examples of these issues and associated effective practices are discussed in Section 2 and are therefore not reiterated here.

Resources allocated to European Works Councils

Directive 2009/38/EC devotes some of its provisions to the resources allocated to EWCs to exercise their missions. Article 6 states that EWC agreements must define the financial and material resources to be allocated to the EWC, while the subsidiary requirements stress that ‘the operating expenses of the European Works Council shall be borne by the central management’, which also ‘shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner’. Article 10 states that EWC members must have the necessary means to represent European workers and a right to

training without loss of wages. Furthermore, the directive expressly recognises, for the first time, the role of ETUFs, which can participate as experts in meetings to negotiate agreements and assist worker representatives in an advisory capacity. Finally, the subsidiary provisions of the directive recognise EWCs' right of recourse to external expertise.

The level of resources granted to the EWC therefore strongly depends on the quality of the agreement, which generally provides details on this point, and on the quality of social dialogue within the company, as, with a few exceptions linked to the allocation of a budget to the EWC, the EWC can incur expenses only with the agreement of the employer. The level of resources available to the EWC can therefore have an impact on the quality and effectiveness of its operation, as this determines the number of meetings, access to experts, training and site visits, and other communication tools. This affects the council's ability to network, strengthening transnational culture, and develop a clear understanding of company strategy and processes, all of which are likely to influence the effectiveness of transnational information and consultation. Different aspects of budgetary expenditure are of relevance here.

The EWC of **Generali** benefits from resources defined by the agreement as temporary working groups whose participants, for instance, have access to time off, the right to training, the possibility of calling on external expertise and the possibility of incurring, with the agreement of management, the expenses necessary for the EWC's activities. Similarly, for **Air France KLM**, the agreement sets out a range of resources available to the EWC: time-off credits, the right to training, the right to circulate information and the right to expertise. Such rights are rather common in all EWCs, but the scale to which they are afforded differs – for instance, in terms of number of days of training or the amount of time off credits given – from several hours for members to the equivalent of a full-time position for the secretary of the committee (see the later section 'Time off').

Access to training, time off and expertise

In its 2018 evaluation report, the Commission states that, among these resources, 'The right to training without loss of wages is largely respected and constitutes a major support for European Works Councils' representatives in exercising their roles in multinational companies.' It also notes that 'the Recast Directive does not impose administrative, financial and legal obligations in a way which would constitute an unreasonable burden for companies' (European Commission, 2018a).

In this context, all the EWCs in our sample benefit from resources, the nature and importance of which vary from one company to another. From this point of view, there is therefore, more than for other subjects, a relative homogeneity between the studied EWCs (Table 5).

Table 5: Budget, and access to training and expertise in the case study EWCs

	Autonomous EWC budget	Right to training	Recourse to external experts/support	Other material or financial resources
Air France KLM		X (8 days/mandate)	X (financial ceiling)	X (assistant, office, website)
Bayer		X (individual and group training rights)	X	X (agreement with the management possible to cover needs of the EWC)

Bel Group	X (€30,00/year)	X	X	X (access to computer/phone line)
CEZ Group		X	X	X (costs of the EWC's activities borne by the company)
Club Med		X (annual training budget of €15,000)		X (time-off credits)
Eiffage	X (€60,000/year)	X (1 training session/year)	X	
Ericsson		X	X	X (dedicated staff)
Ferrero		X (annual training)	X	X
Generali		X	X	X (agreement with the management possible to cover needs of the EWC)
INEOS		X	X	X
Inditex	X (annually)	X	X	X (access to computer/phone line)

Training

Not all case study EWCs have an autonomous budget for expenses other than those directly paid by the company (such as the costs of organising meetings, interpreting and translating). It can nevertheless be significant when it exists. This is the case at **Eiffage**, where the EWC has a budget of €60,000 per year. This is to be used for EWC activities independent of the two annual meetings, but also of the training budget (which is a distinct budget) and of the 'external expertise' budget. So this autonomous budget covers the travel expenses of the Select Committee for visiting countries/units, the interpretation costs necessary for Select Committee meetings and possible costs of translating documents issued by the Select Committee. Each year, the Select Committee reports to the EWC plenary the use made of this budget.

Even in the absence of such means, our interviews do not show that it is particularly difficult for the EWCs in our sample to obtain the necessary funding from management, even if it is conceivable that such requests may be more or less easily met depending on the specific situation of each company and the good management of the funds allocated by the EWCs themselves. For example, at **Generali** the EWC can incur, with the agreement of management, the expenses necessary for its activities.

The right to training paid for by the company also seems to be widespread, although here, again, there are specific features for each EWC in terms of its content and duration (number of days available). In many cases, training provision is linked to the organisation of plenary meetings, with training being delivered either ahead of or after such meetings.

Box 20: Emphasis on training – Ferrero

Every year, a joint training seminar is organised in **Ferrero** with the goal of developing and increasing the skills of the worker representatives, and fostering constructive dialogue and exchanges between the representatives of the company's management. The seminar takes place over one or two days, and addresses issues chosen jointly, primarily from the following: social dialogue and industrial relations systems; corporate social responsibility, sustainable development policies and good practices; competitive and market scenarios that are significant to the Ferrero group; and new developments in the field of EU labour and welfare legislation.

The programme of and the experts who conduct the seminar are chosen jointly by the chair and the secretary, with the support of the organising secretariat. In accordance with the training topics and issues discussed in each seminar, the parties recognise the relevant role of the experts as a useful tool to stimulate the discussion and to enrich the information, giving an external point of view. Topics such as economic changes, global competition and social rights are usually the starting points for the joint training sessions, held to improve the responses of the group to the challenges posed by the global markets, the ethical and social implications of business operations, the protection of workers and sustainable development policies.

In terms of the nature and provider of training, some provisions are quite restrictive, as is the case for **INEOS**. The EWC agreement stipulates that the 'time, costs and training provider' (including travel and accommodation costs) will be jointly agreed and that EWC 'requests for training will not be unreasonably denied'. In other words, all aspects of the training have to be approved by management. However, some EWCs have a budget and can freely choose their providers. The **Club Med** agreement provides for a budget of €15,000 per year, which has to cover all the costs related to the training, such as interpretation costs and pedagogical costs. Members are free to choose the provider they wish in the framework of this budget. At **Air France KLM**, the budget does not appear in the agreement, but the Select Committee defines the content of the training courses. The EWC secretary explains that the EWC 'organise[s] two types of course: a basic 3-day course open to all members but primarily intended for newcomers and, every 2 years, an "advanced" course organised in Brussels on the ETF [European Transport Workers' Federation] premises, to learn about the evolution of Europe, visit institutions (EESC [European Economic and Social Committee], European Parliament, etc.) and to benefit from the intervention of experts and other secretaries of other EWCs'.

Not all agreements indicate a volume of training. Where they do, there are wide variations. The volume can be expressed in terms of training days per year (one per year at **Club Med** and **Bel Group**) or per mandate (eight days per mandate of four years by **Air France KLM**). Other agreements include a right to one training session per year with no specific volume in terms of days.

In some cases, training is provided around the time of the annual meeting, for example at **INEOS** or **Ericsson**. At **Ericsson**, the annual 'Stockholm' meeting includes one day of further training and

education, for instance including sessions on how to cope with cultural differences, held by ETUI, and on labour law and accountability, as well as strictly technical courses, such as about 5G and **Ericsson's** solutions. In 2020, training was provided on how to hold virtual meetings, which was very relevant during the COVID-19 pandemic. At **Generali**, two plenary EWC meetings per year are planned, but the second one is for only EWC delegates and is dedicated to training. At **Bel Group**, in addition to the main training organised at the beginning of the mandate, EWC members have a right to annual training if a particular need arises in connection with the plenary meeting. This option has not yet been used in practice.

In addition, some EWCs organise their training with the support of their ETUF, which offers an opportunity to share practices and link the EWC to sectoral issues dealt within the European social dialogue and/or at institutional level. This is the case for **Air France KLM** with European Transport Workers' Federation and **Eiffage** with the European Federation of Building and Woodworkers. These training sessions are a good opportunity to strengthen the link between the EWC and the ETUF, so that the ETUF can provide support or advice to the EWC.

Time off

An important factor for the proper functioning of an EWC is the time given to its members and in particular to the EWC secretary to fulfil their mandate. Traditionally, agreements provide for two formulas: either it is specified that the members have the time necessary to carry out their mandate, or the members have a quota of paid hours over the year in order to carry out their mandate. However, in some cases the two formulas are mixed. For instance, at **Ericsson** the EWC has two half-time positions, and all other representatives are allowed to take the time they need for EWC tasks. Important variations between EWCs exists in this field. At **Eiffage**, members of the steering committee have up to 10 days per year to carry out their mandate, while the other members have 5 days per year. At **Bel Group**, an annual time limit of 15 hours is allocated to EWC members, while 30 hours is allocated to steering committee members and 35 hours is allocated to the secretary of the EWC. 10 hours per month are allocated to **Club Med** EWC steering committee members. At **INEOS**, the agreement states that the company will bear the costs associated with the communication of EWC matters to the wider **INEOS** workforce, including by providing members with paid time off to carry out such tasks.

External expertise

The right to use external expertise is present in several EWCs (e.g. **AIR France KLM**, **Bel Group**, **Generali** and **Eiffage**) but not in all (e.g. **Club Med**). The meaning given to the idea of external expertise itself seems to vary according to the country of origin of the EWC. For example, while in the French EWCs it covers the use of experts external to the trade unions, this is not the case in the **Bayer** EWC. In the case of **Bayer**, the EWC closely collaborates with and makes extensive use of the infrastructure of the trade union *Industriegewerkschaft Bergbau, Chemie, Energie*, for example accessing legal advice and European trade union representatives and assistance. Even the largest trade union confederation in Germany, the German Trade Union Confederation, of which *Industriegewerkschaft Bergbau, Chemie, Energie* is a member, occasionally helped with some EWC-related topics. Given this differentiation, the experience of the **INEOS** EWC is interesting.

Box 21: Use of external expertise – INEOS

The agreement distinguishes between trade union and independent experts and allows the **INEOS** EWC to appoint one of each, with the costs of both not being unreasonably refused. The external independent expert helps the employee representatives to communicate with management by assisting the group in writing letters and emails, and providing advice on the legal aspects of the agreement and EWC's operations, and is available to provide advice and guidance as it is needed. Although there is no agreed budget for external support, the agreement does specifically provide for this, and in 2019 management agreed to fund ad hoc advice and support, for example for day-to-day issues and participation in steering committee meetings with management. As for the trade union expert, the EWC has the support of an expert from Unite the Union in the UK, on behalf of IndustriAll Europe, the ETUF. The trade union expert participates in EWC meetings and meetings of the coordination group, which the interviewee said the group finds very helpful: the knowledge and experience of the union official provides additional insight for EWC members on the regulations, the chemical sector (they are also a national officer responsible for this sector) and the structure of the European trade union movement, especially the federations. The union expert has been able to bring their knowledge of the work of the federations and this has been useful to the EWC.

Beyond this, one of the difficulties associated with the mobilisation of external experts by EWCs may be financial, at least when they are external to the trade union movement. But difficulties may also relate to national differences in the usefulness of this type of support. For example, in the **Bel Group** EWC, where the right to use external expertise is established in the agreement, the secretary explains that the support was not used in the context of a recent major restructuring: 'Overall, management is a bit afraid of using external expertise because of the cost. Furthermore, not all countries understand what the use of an external expert means in practice, what its usefulness is. They are therefore not spontaneously in demand.'

Another point that the case studies illustrate is the links between EWCs and the ETUFs to which they belong. In this respect, there are differences between EWCs. In some of the case study EWCs, the link between the EWC and the ETUF is strong and long standing. This is, for example, the case for **Air France KLM**. This has an influence on training provisions and explains the opportunity for the EWC, as set out in the agreement, to request the participation in plenary meetings (including preparatory and debriefing meetings) of a European Transport Workers' Federation advisor to support the EWC. The link between the EWC and the ETUF also supports the development of trade unions in the countries covered by the group and allows the EWC to get information about the aviation sector as a whole, practices in other EWCs and legal developments related to EWC regulation. In the **Club Med** EWC, the role of the EFFAT trade union coordinator, who is also the former EWC secretary, is explicitly recognised by the current agreement. The coordinator ensures regular communication between EWC members and the federation. The **CEZ Group** EWC, on the other hand, provides a more mixed picture of the role played by the European federation in relation to the EWC. In the past, EPSU representatives were also invited as experts to EWC meetings, but neither the EWC nor the management considered this cooperation to be very beneficial. It turned out that colleagues from international organizations do not necessarily have a closer knowledge of the functioning of social dialogue in the particular context and tend to apply a European-level perspective, so there were some areas of friction during the discussions. The EWC subsequently stopped inviting experts from EPSU to meetings. The fact that the management perceived the presence of experts from

European organizations rather as disturbing contributed to this decision. In addition, the presence of EPSU representatives required additional interpreting expenses, as communication with them took place in English, which is not the language of the CEZ Group Group's EWC. The EWC members expect to invite European experts to the meetings in case of problems in the EWC, but so far everything has always been resolved without external intervention.'

Processes and experiences of going beyond the information and consultation requirements of legislation

When the EWC representatives are not satisfied with the information and consultation processes, it could be considered unlikely they would propose initiatives beyond the information and consultation rights. Launching social dialogue on issues of common concern can also be easier in companies where the information and consultation processes are considered positively by the employees' representatives. However, some cases show relevant initiatives in contexts where information and consultation rights are not respected. Furthermore, if social partners are satisfied with the information and consultation processes, this also opens up a way to expand the role of the EWC. Several practices are raised in the case studies where the EWC plays a significant role, even if this role is not explicitly provided for in the relevant directives.

Transnational agreements

One way of achieving company-level social dialogue at transnational level revolves around the adoption of transnational collective agreements, signed at European or international level. The ability to reach such agreements has sometimes been argued to be a sign of a well-functioning dialogue culture, but case studies show that such agreements have also been reached in the context of EWCs where the information and consultation processes, including in the context of transnational restructuring, are not always considered to be operating effectively by the employees. It has also been argued that negotiating such agreements can advance the dialogue and lead to further joint work (beyond the requirements of the directive). While this is the case in many EWCs and shows a capacity for more effective dialogue, there are also examples where one-off transnational negotiations have not led to further agreements of a similar nature.

According to the database on transnational collective agreements established by the European Commission and International Labour Organization, there are around 330 such agreements in place in 2022. A study by IRES identified 166 European-level company agreements, of which 121 were signed by an EWC and 85 were signed by an EWC alone (Rehfeldt, 2021). The topics addressed by such agreements vary widely, including issues around career and skills development and health and safety (approximately 60 agreements in total); transfers, subcontracting and outsourcing, and equal opportunities (approximately 50 agreements in total); the impact of restructuring on the workforce and wages and benefits (around 40 agreements in total); ethics and governance and social dialogue (around 30 agreements in total); and recruitment policies, data protection, mobility and fundamental workers' rights (less than 15 agreements each). In previous studies (da Costa et al, 2012), the authors distinguished between two types of agreements: substantive agreements and procedural agreements. The latter are influenced by the French legislation on the forward-looking management of jobs and skills of 2005–2006 and are signed almost exclusively by French transnational companies. Research by IRES also indicates a slowing down in the number of European transnational collective agreements after 2008 (Rehfeldt, 2021). This is attributed to mandating procedures adopted by ETUFs (e.g. IndustriAll Europe) requiring a two-thirds majority of the trade

unions in each country concerned for negotiating a mandate for agreements in which they are involved.

For instance, at **Club Med** the EWC has been able to initiate transnational negotiations and engage directly with management. Although important, these initiatives do not seem to have led to the progressive and continuous strengthening of the role of the EWC. Indeed, these agreements have not led to other joint initiatives between the group's management and the EWC for several years. This could be explained, at least in part, by the changes experienced by the group since 2015, from the arrival of a new majority shareholder to the pandemic, and by changes in the organisation of and in the personnel within the industrial relations department of the Europe/Africa zone.

Box 22: Joint statement on tackling the impact of digital transformations – Inditex

During the pandemic Inditex began the implementation of a restructuring process of its commercial network that resulted in the closing of stores and the loss of many temporary and part-time jobs. This process was already in place to some extent prior to the pandemic. But according to an EWC representative, the pandemic was a determinant of the acceleration of its implementation. Crucially, the services federations of the General Union of Workers and the Trade Union Confederation of Workers' Commissions, the main national union organisations in Spain, concluded an agreement at national level within the group for the reallocation of redundant staff, which set the basis for the adoption of a joint statement by the EWC about the digital transformation plan that was set out in the extraordinary plenary session in December 2020. The joint statement outlines the commitment of the parties to 'safeguarding work, training staff and in order to tackle the new functions derived from digital transformation' (Inditex, 2020). In practice, this is translated into a non-binding agreement by which all the employees concerned by the restructuring process should get access to an alternative employment offer within the groups' commercial branch. The conclusion of the joint statement was pointed out by both union and company representatives as a good test for the development of the consultation and information rights enshrined in the EWC agreement.

The existence of a transnational negotiation dynamic between the **Generali** EWC and the group's management is obvious and is reflected today in the existence of several joint European declarations. Going beyond information/consultation is not, however, a matter of course for the group's management and is more a matter of a process that seems to have been strengthened over time: 'From the start, [in] early 2000, we applied strictly the rules, in relation to information and consultation. But we did not want to go beyond. However, the stability of the EWC delegations as well as on the management side and also changes in group HR management progressively led us to go beyond the law.' The current secretary of the EWC, elected at the end of 2019, confirms this relative difficulty expressed by management to engage in processes that go beyond the law: 'at the time, there was not much and management was not very receptive: they told us that the EWC is not legally entitled to negotiate, that this is a matter for the ETUFs. However, we managed to conclude a joint declaration on diversity and inclusion in 2019 and very recently another one on major crisis management, so the initial legal reluctance is no longer apparent, even if it is not a natural inclination for the group.' In fact, it seems that the group's unilateral introduction of the European Social Charter in 2006 was the starting point for a process that continues today: management said, '[the] 2006 social charter was the kick off, but then we came to joint declarations to assess macro trends and put in place guidelines, no compulsory rules but political orientations'. As a result, there are now three joint European declarations: (1) *Generali promotes telework*, concluded on 16 May

2017 (Generali, 2017); (2) *Joint declaration: Generali is committed to inclusion and diversity*, concluded on 26 June 2019 (Generali, 2019); and (3) *Joint declaration on the emergency crisis*, concluded on 10 May 2021 (Generali, 2021). Further negotiations are expected on the ‘new normal’, to give a framework for remote and hybrid work. However, these agreements are, legally speaking, not binding and are analysed as a unilateral commitment of management, as there is no EU legal framework to make those agreements binding. All of these texts were signed by the group’s HR department and by the EWC’s Select Committee, which confirms the driving force of these two collective players in the dynamics of European social dialogue within **Generali**.

Even though these texts still contain general principles rather than detailed prescriptions, in line with the group’s positioning, the latest text is much more detailed than the first, which perhaps indicates a gradual deepening of the negotiations. All these documents explicitly stress that they are in line with the existing agreements or declarations of the European social partners, particularly in the insurance sector. In our opinion, this shows the group’s desire to be part of the social dialogue context of the sector to which it belongs and thus to enhance its position. As a result, the outputs of the European sectoral social dialogue also seem to be among the factors in the development of transnational negotiation within **Generali**. Moreover, the fact that certain subjects were already, before the negotiation, the subject of group policies is clearly a facilitating element of the negotiation: this is notably the case for the joint declaration on diversity and inclusion, which is part of a more global and pre-existing group policy.

At **Bayer**, the parity commission, which consists of representatives of the EWC and of management, has the capacity to negotiate, in particular when internal EWC procedures need to be adjusted (see Eurofound, 2015), but has also set framework conditions for restructuring. In 2002, negotiations between the parity commission and the company’s management resulted in the creation of the social charter, which sets minimum social standards for all **Bayer** employees, and in 2006 minimum social standards were set in the Diversity Agreement. Structural changes affecting employees then usually lead to the conclusion of joint declarations in which both parties agree on the socially responsible implementation of these changes. The participation of local managers goes beyond the legislative framework to facilitate the exchange of information between central and national or local management levels and help maintain a certain standard of social dialogue and develop a ‘Bayer-like approach’ in this area within the European part of **Bayer** (see Eurofound, 2015). The heterogeneity of national systems in terms of the setting of the labour market and the labour law framework also seems problematic to the chair of the EWC, who from his position perceives how difficult it is for employee representatives in the EWC to formulate common goals. The EWC is thus more or less limited to the definition of minimum social standards based on social responsibility in restructuring (portfolio changes, divestments, etc.), which are then applied at local level according to local conditions, customs and rules. An example is the current outsourcing of order-to-cash processes, in which the social partners have agreed that all employees will be able to transfer to the new provider of these services, while their working conditions will remain unchanged.

Setting up working groups

Working groups or similar joint initiatives, sometimes established in preparation for the drafting of a joint text, or sometimes working on an ongoing or time-limited basis on an issue of common concern, are another way in which EWCs can work beyond the remit of the directive and potentially foster (and draw on) a good environment for collaboration. At **Inditex**, a working group was

established on gender equality, with the development of training sessions by specialists in the field from UNI Europa.

At **Ericsson**, a working group was established on how to benefit from remote working following the experience of the pandemic. Although it was set up at the instigation of management representatives, the EWC secretary believes there are elements on the agenda that could benefit the EWC.

To confirm the relevance of workers' health and safety protection in workplaces, a health, safety, and corporate social responsibility laboratory was established at **Ferrero** with the objective of promoting the awareness and the exchange of experiences and good practices between EWC members from different countries. The laboratory is composed of a permanent working group, with a representative for each country and one delegate as the chair. The working group meets two times a year, at the institutional and the training meetings, with the assistance of the health and safety representative for the group in planning the activities and collecting and disseminating information and good practices for prevention measures and proposing to the EWC the adoption of awareness-raising initiatives. A first step towards the sharing of health and safety values within the group in Europe was drafting a document containing 10 simple rules of conduct and action. The initiative was disseminated through the newsletter *Euronotes*, distributed to workers in all the European plants of the group.

In 2001, at Air France, before the merger with KLM, the group's management, the Air France EWC and ETUC signed the Air France Social Rights and Ethics Charter. This text resulted from high-level debates between EWC members and the former Air France CEO, held through a dedicated EWC working group. This led the **Air France KLM** EWC to keep the provisions on working groups in the 2006 EWC agreements and in the subsequent amendments to this text.

Facilitating local social dialogue

Beyond the traditional information and consultation processes, the EWC may improve the social dialogue at local level or solve some disputes at this level, even if the aim of EWCs is to deal with transnational issues.

For instance, the chair of the **CEZ Group** EWC perceives that the social dialogue level has been gradually improving across the group. According to him, the EWC could contribute to this, because it has enabled the exchange of experiences between representatives of individual countries. In the history of the **CEZ Group** EWC, examples of how its work has contributed to negotiating a suitable solution at local level for employees in difficult situations can be identified. During the process of selling Romanian and Bulgarian assets, for example, the EWC actively participated in negotiating new conditions for employees and contributed to the conclusion of an agreement binding on the new employer, which guarantees employees the same working conditions, including the preservation of the existing collective agreement. In the specific case of the Romanian and Bulgarian divestments, the EWC supported the local trade unions. In addition, it intervenes in situations where the communication between employer and employee representatives is blocked and helps 'restart' the dialogue and the negotiating process. In such cases, the EWC acts as a mediator that helps remove the barriers to this process. The chair of the EWC believes that the EWC can do so thanks to the overall setting of the social dialogue and the perception of the importance of the partnership between employees and the employer in the company. If the local social partners have found themselves in a stalemate and have needed to call on higher authorities, it has been useful to invite

representatives of both top management and employees (i.e. the chair of the EWC) to intervene, as this helps clarify the views of both parties involved. The personal contact between the chair of the EWC and the main representatives of the social partners from each country and the fact that the local employee representatives see the EWC as a body that can be turned to if negotiations need to be moved to transnational level also play a role here. In some cases, the misunderstandings between the two parties were due to the Czech management that operated in the given country expecting employee representatives to act similarly to what is common in Czechia. In some cases, beyond its competences, the CEZ Group EWC becomes an intermediary in resolving complex situations of collective bargaining in individual countries or branches. If the chair of the EWC is asked to help by colleagues from individual countries and considers the issue relevant, the chair will inform top management and usually initiate a stakeholder meeting in that country with representatives of the EWC and top management. The aim of the EWC's intervention in these cases is to unblock negotiations between the social partners in the country so that they are able to find a compromise solution, and this effort has always been successful in such cases. This was the case, for example, for the impending strike in Bulgaria or for the problem of collective bargaining in Romania. In this sense, the chair of the EWC uses the close relationships he has built during the operation of the EWC with the representatives of the individual countries.

At **Club Med**, the EWC agreement recognises the right of the EWC secretary and the trade union coordinator to access all the group's villages located on the territory of the EU (Article 5.6) with the prior agreement of the management. Furthermore, although the EWC is not, as a matter of principle, recognised as competent to be informed and consulted on non-transnational issues, management, in agreement with the EWC secretary (Article 3), may decide to provide information concerning a single country. These two provisions give the EWC the opportunity to act at local level, as a facilitator or mediator. Certain issues, in particular the closure of a village in one country, may potentially justify such a role.¹² In addition, the history of the EWC provides examples of such a role when villages were closed in Spain in 2019. The EWC coordinator was informed, went to the villages and was invited to attend the local negotiations. This 'meddling' can be explained by the desire to support weakly organised employees locally, relying on the EWC trade union coordinator and/or the EWC secretary, who benefit from the protection afforded by their mandate and their geographical proximity to central management if there is a need to intervene at this level to resolve a local conflict. It should be noted that, although distinctly from the EWC, the EFFAT-International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) trade union coordinator has played this role for a long time, well beyond the borders of the EU.

Personal factors

In terms of industrial relations, human factors are obviously important, especially because it is clear that one of the keys to the good functioning of an EWC is the building of a relationship of trust between the members of the EWC and between management and the EWC members. At the same time, the EWC members need to be re-elected at local level to stay in the EWC for more than one mandate. Arguably, stability in membership can promote the building of trust and experience. This therefore also requires EWC members to maintain a relationship of trust with the employees who elected them.

¹² According to the group's 2019 corporate social responsibility report, village closures are negotiated in accordance with local legislation.

Furthermore, a number of case study examples also show that high-level management involvement in the EWC can also be a supporting factor, as it demonstrates the company's commitment to the body. The CEO's involvement at **Ericsson** is considered in this light. At **Eiffage**, the two plenary meetings per year are always chaired by the chair of the group. The chair is seen at this level as the best possible interlocutor, carrying the strategic vision and a very thorough knowledge of the group in its diversity. The EWC benefits from the personal involvement of the CEO and the levers of action opened up by this direct contact at the highest level of the group.

As regards relationships between EWC members, the stability of and the relationships of trust within the Select Committee are important factors. This is the case, for example, at **Eiffage**, **Air France KLM** and **Generali**, where the secretary underlines that the dialogue between the members of the Select Committee is all the more easy, as they have worked together for a significant period of time and can ensure the regular flow of effective communication. According to the people interviewed from **Generali**, it is clear that the stability of the management team and of the secretariat – the secretary is in her first term of office but was already in the previous steering committee – explains the favourable evolution of the functioning of the EWC, which has progressively obtained more information and better involvement in the decision-making process with the setting up of real consultations. At **Eiffage**, the very regular communication between the director of social relations and the secretary of the EWC are considered by both actors to be a factor explaining the good functioning of the EWC. It is a factor that promotes trust. This factor is also linked to other factors explained earlier, such as the 'home country effect': the fact that the two actors are French, and therefore speak the same language, and the fact that they cross paths regularly at the **Eiffage's** head office, are also factors that facilitate the construction of this bond of trust.

On the other hand, at **Club Med** the changes experienced by the group since 2015, from the arrival of a new majority shareholder to the pandemic, through changes in the organisation of and in the personnel within the industrial relations department of the Europe/Africa zone, have frozen the work of the EWC.

In some EWCs, some figures also play a central role. For instance, at **Air France KLM** the secretary has been in the role since the creation of the EWC (2006). At **Club Med**, the former EWC secretary is still present as the EFFAT-IUF coordinator and is the 'memory' of the EWC (and of the transnational social dialogue). The situation is similar at **Eiffage**, where the former EWC secretary had to leave the secretariat but immediately afterwards was nominated by the ETUF European Federation of Building and Woodworkers as coordinator for the EWC, ensuring a smooth transition to the newly elected secretary.

In the **CEZ Group** EWC, the personal contact between the chair of the EWC and the main representatives of the social partners from each country and the fact that the local employee representatives see the EWC as a body that can be turned to if negotiations need to be moved to transnational level play a central role in promoting the EWC as a facilitator in cases of local disputes.

Research has similarly demonstrated the importance of key personalities and the potentially negative impact on the operation of EWCs of key driving forces (Mählmeyer et al, 2017).

Role of experts

The directive stipulates that EWCs may ask to be assisted by an expert. The use of experts is rather common in the case study EWCs, but they have different profiles and objectives. Experts can also be drawn from ETUFs, and their role is also discussed below.

External expertise

As previously mentioned, at **INEOS** management funded an external expert study to assess the impact of the COVID-19 pandemic across **INEOS** businesses. This is the first time such an initiative has been undertaken and has been financially supported by the company. The idea of the report was proposed by the EWC expert as a means of generating better, more informed engagement between management and EWC and of providing the company with an understanding of the kind of information that is relevant and helpful to the EWC: it was a tool to assist in the evolution of the EWC and to develop management's understanding of its role in the process.

External experts can also improve the information and consultation process in the event of restructuring. In 2020, for the first time a concrete and detailed information/consultation process was set up by the secretary of the **Generali** EWC as part of a transnational project initiating a new joint venture aimed at creating a global platform of digital services and solutions for the benefit of all the group's companies (the Generali Operations Service Platform). The process was then quickly replicated and applied, in the first half of 2021, to another transnational project (DUKLA, aimed at consolidating the group's activities in Czechia and Slovakia). In this context, the Select Committee had to build, with the support of an external expert, a standard structure for its opinions that did not exist before. The EWC secretary of course very much welcomes this recent development. Even though the two procedures mentioned did not lead to a change in the two projects, they allowed the EWC to monitor their implementation. The management representative was also positive in that this emerging practice makes it possible to clarify the procedure: 'Releasing an opinion is an invention of the EWC secretary and we are satisfied with it because it puts a clear end to the process. Already in 2014, we managed to close a transnational project implying redundancies in different countries with a memorandum of understanding. But this was not really an opinion, so yes, I think our practice has been improving over time.' The consultation at this time was not as developed as it was in 2020 on the two projects mentioned. The trust built over time, the experience of the new EWC secretary and the support of the expert led to this progression.

However, the case studies also show that it is possible that the potential role and added value of the use of experts is not always fully appreciated and used, as was the case for the relatively newly established EWC at **Bel Group**. The EWC did not use its right to call in an external expert in the procedure of selling the brand Leedarmer, started in March 2021, although this possibility was apparently discussed. The EWC secretary reflected that: 'Overall, management is a bit afraid of using external expertise because of the cost. Furthermore, not all countries understand what the use of an external expert means in practice, what its usefulness is. They are therefore not spontaneously in demand. In order to overcome these difficulties, including the financial issue of recourse to expertise, I have asked, beyond the project to sell Leerdammer, that the expert mobilised by the French works council come to present the group's developments at international level at the ordinary plenary session in September 2021.'

Role of European trade union federation coordinators

The directive recognises the role of ETUF experts to support the special negotiating body established to negotiate an EWC agreement. Often the expert will then follow the EWC once created, as numerous agreements include provisions, as mentioned in the subsidiary requirements, that ‘the European Works Council or the Select Committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks’. The important role of ETUF coordinators was highlighted by **Club Med** and **Air France KLM**, providing additional expertise and knowledge and access to training.

In his quantitative assessment of the variables affecting the effectiveness of the operation of EWCs (and therefore the cluster type in which they are represented), De Spiegelaere (2021) finds that trade union support and training ‘increase the odds of belonging to a well-functioning EWC type’. However, such factors are considered to be insufficient to overcome structural obstacles.

4 – Added value of European works councils

According to an explanatory memorandum of the European Commission report on the application of the 1994 Directive (European Commission, 2018b), for multinational companies EWCs ‘allow improving the communication between the employees and the central management. The benefit for employers can lie in increased trust and engagement from workers, bringing in their knowledge and experience. A shared understanding of the transnational challenges facing the company and the involvement of employees in the decision-making on possible solutions can also facilitate the introduction and increase the impact of strategic choices made by central management within a multinational company.’ As regards employees, EWCs ‘allow for the prevention or mitigation of the negative effects of restructuring on employment and working conditions’ (European Commission, 2000). However, the possibility of being informed and consulted in restructuring situations is not considered to be the only area where EWCs can become involved. According to the European Commission, ‘European Works Councils will have an increasingly relevant role to play in formulating fair and sustainable responses at company level to the transnational impact of challenges linked to digitalisation, globalisation and demographic change. They can address a wide variety of issues, such as the introduction of new technologies and the related training needs, the strategic development of the company in a changing market environment, or best practices in accommodating an ageing workforce’ (European Commission, 2000). This can be achieved, for example, by concluding transnational collective agreements, which goes beyond the direct remit of EWC set by the directive, but is one expression of transnational social dialogue that can benefit both workers and employees.

From a worker’s perspective, the ability of employee representatives to exchange information with colleagues from different Member States provides an important opportunity to gain a better understanding of the business, and strategic and restructuring decisions, as well as employee rights and working conditions more generally. A similar exchange between HR leads from different countries, where present, can have a similar positive effect.

This section aims to describe the added value of EWCs both from management’s perspective and workers’ perspective in relation to the core elements of remit of these transnational information and consultation bodies with regard to building a corporate identity, strategic planning and decisions, and specific restructuring projects, as well as broader benefits linked to an improved social dialogue climate. Research by Eurofound has demonstrated that employees in high-involvement organisations report a higher level of work engagement, which is linked to higher levels of well-being, reduced absence, delayed retirement, more opportunities for skills development and improved productivity (EESC, 2020; Eurofound, 2020d). A study involving interviews with management representatives involved in EWCs suggest that while managers in most firms with EWCs view the institution positively, roughly one in five do not. Around 70% argued that the EWC brought added value (Waddington et al, 2016).

Strategic orientations and building a corporate identity

Studies addressing the perceptions and engagement of managers with EWCs show that even when these transnational information and consultation arrangements are perceived as a cost, the benefits of the ability of managers to promote a corporate identity, and inform employee representatives of strategic orientations, with the aim of achieving greater understanding and buy-in and as a result a

better and more peaceful industrial relations climate are often seen to outweigh the costs (Lamers, 1998; Hume-Rothery, 2004; Waddington et al, 2016). The presence of a forum for transnational voice has been argued to provide the potential to foster the development of a culture of participation with transnational knowledge exchange contributing to better informed and more productive decision making (Fiedler et al, 2020). However, this does not necessarily mean that the engagement of EWCs goes beyond information as outlined above but rather the instrumentalisation of EWCs by management solely as an information-sharing body (e.g. Weber et al, 2000; European Commission, 2016; Pulignano and Waddington, 2020; De Spiegelaere et al, 2022).

This view is reflected in some of the case study EWCs. For instance, the HR manager from **Club Med** explains that management ‘would like to be able to conduct medium or even long-term strategic reflections with the EWC and therefore not to focus on day-to-day issues’, meaning that the EWC should focus on important issues rather than on ‘small’ ones, including ‘minor’ transnational projects such as ‘non-significant reorganisation’. In his view, the EWC members know their country and should be able to feed into the group’s strategic thinking with the local information they have but also with their ideas.

In some case, management considers that employee representatives do not always have the capacity to have such strategic discussion with management, which should raise the question of whether or not sufficient training has been made available to enable the EWC to participate in cross-border social dialogue and to contribute to the company’s economic performance. At **Eiffage**, the HR manager notices that ‘representatives are not always able to ask questions at the required strategic level considering the CEO’s involvement in the body; the dialogue thus often remains formal and suffers from a certain stiffness or dogmatic postures on the part of the representatives or some of them’. Such assessments are rejected by trade unions, which on the other hand often consider that management are unwilling to engage in effective dialogue and consultation beyond the delivery of general corporate information.

Some of the case studies highlight this ability to influence decisions, even on strategic issues. For **CEZ**’s management, within the EWC, both parties can share their views on strategic issues. This helps management on the one hand gain feedback on individual decisions and on the other hand better clarify its motivations for individual decisions, which aids the employee representatives’ understanding and acceptance of them.

Therefore, the EWC may have an impact on corporate policies, as the **Ericsson** case highlights. At the autumn meeting in Stockholm in 2020, the management presented the new Code of Business Ethics before the EWC. This code draws from the United Nations declaration of human rights, which was launched in 2021, and according to the secretary of the **Ericsson** EWC, ‘it is obvious that the EWC has made a crucial impact on the code due to our right to consultation’.

The EWC can contribute to the construction of a common culture within the group. From this perspective, the **Air France KLM** EWC is seen by management as a means of linking Air France and KLM, which is again considered to be essential: ‘from a social dialogue point of view it’s always important to have a link and common culture between countries for an airline company and also to have a link between Air France and KLM (so that KLM can have a view about what is done in Air France and the opposite) and it’s necessary to foster a common culture, this is really, really important’.

In addition, in term of cultural dissemination, the EWC is also a body seen as able to put in place some 'social standards' at group level, through various means, as demonstrated by the **Generali** case. Such social standards may also be set through adoption of agreements: the role of EWCs in terms of negotiating agreements to improve working conditions was documented in several case studies (**Air France KLM**, **Bayer**, **Generali** and **Inditex**).

This added value of EWCs in this regard is therefore partly dependent on the experience acquired by the EWC and its achievements but also on the willingness of both sides to engage in effective trust-based information and consultation as required by the directive and where desired on remits beyond these issues.

Contribution to effective decision making and social peace

Apart from the recognition of its strategic role, the main task assigned to EWCs by EU legislation is to be informed and consulted on transnational projects. For the employer, this provides the opportunity to share their rationale and approach to such projects in an effort to garner understanding and buy-in and help to ensure ongoing social peace. The opportunity can also be used to gain expertise from employee sides in how to manage restructuring processes in a socially responsible way or indeed to find suitable alternatives to suggested courses of action.

From the employees' perspective, in this context a transnational information and consultation forum provides the opportunity to exchange information both formally and informally with employee representatives from other countries (as well as with relevant management representatives) to gain an understanding of company strategy, employment and working conditions in other countries and to establish contacts to exchange information on a more ongoing basis in a way that can influence employee representatives' strategy in response to company projects with a transnational impact, particularly when coupled with the effective exchange with employee representatives in local information and consultation structures.

In order for this to provide added value there has to be a willingness and capacity to exchange effectively at this level, which depends on all the factors outlined in Section 3.

For both the management representative and the secretary of the EWC of **Bayer**, the EWC is mainly an opportunity to carry out social dialogue at a higher level and exchange information between headquarters and local actors. They also believe that the EWC is of great benefit to employee representatives, who can exchange experiences and gain access to information through the EWC from a completely different perspective than in the national social dialogue. Thanks to the discussion of individual topics at European level, they gain a deeper insight into the processes that take place in the company. Furthermore, the secretary of the EWC appreciates that the information is provided well in advance and that representatives of all countries participate in the dialogue.

There is also potential for the EWC as an extra channel for communication to reduce the risk that conflicts or tension escalate because of misunderstandings. At **Bayer**, when planned changes are being negotiated at local level, the stakeholders already have some emotional distance, as they have had enough time to assess the situation and respond to the information obtained through the EWC members. In addition, if consultation process or even negotiations take place in the parity commission, this gives legitimacy to the planned changes, not least because in many countries employees do not have the opportunity to participate in co-determination and do not have access to information and consultation to the same extent as employees in the parent company. **Bayer's**

management sees as one of the main benefits of the EWC that this information and consultation body serves as an intermediary between headquarters and national actors, which can be used as an advisory body before dealing with actors at national level. Although from their point of view it would be possible to run the company even without EWC, they believe that it contributes to social partnership, social peace in the group and the easier implementation of large restructuring projects.

However, as discussed in the literature and demonstrated by the case studies, overall effective consultation on transnational restructuring projects currently remains relatively rare, meaning that the potential of EWCs to add value to such processes is not fully exploited.

Strengthening social dialogue

The development of effective information and consultation processes at EWC level in line with the requirements of the directive can contribute to strengthening the social dialogue climate at company level in a number of ways, including by contributing to the exchange and possible conclusion of common strategic policies on a range of issues, which can in turn support a better corporate identity and employee attachment to the company. It can also contribute to the improvement or development of social dialogue at local level through learning, particularly for countries where employee information and consultation practices were previously too widespread or well entrenched.

Similarly, going beyond the requirements of the directive in a number of case study companies, key EWC representatives have also been able to use their experience to contribute to solving local disputes. For example, at **Bayer** during a restructuring process in Italy the main representatives of the industrial relations unit and the chair of the EWC were in close contact with Italian colleagues from the local HR department and employee representatives. Through them, there was intensive exchange of information and support for local actors without the headquarters intervening in the local negotiation processes. The chair of the EWC used his access to management and succeeded in negotiating an extension of half a year for Italian colleagues to settle the closure of the branch and additional funds to support redundant workers. In the past, EWC officials have been involved in similar situations in other countries, such as Poland and Spain, where there was a threat of a strike due to the insufficient communication of planned changes to employee representatives and a lack of transparency in the whole process. The chair of the EWC and his HR management counterparts intervened by providing employee representatives with information on planned changes and the reasons for them, and even by arranging an additional budget for local management in order to minimise the social impact of the changes. The escalation of the situation was thus prevented. In Croatia, the parity commission helped establish works council structures.

At **CEZ Group**, during the process of selling Romanian and Bulgarian assets the EWC actively participated in negotiating new conditions for employees and contributed to the conclusion of an agreement binding on the new employer, which guarantees employees the same working conditions, including the preservation of the existing collective agreement. In the specific case of the Romanian and Bulgarian divestments, the EWC supported the local trade unions. Also at **CEZ Group**, the EWC plays a role in improving social dialogue within the different countries that are part of the council. The secretary of the EWC perceives that the level of social dialogue has been gradually improving across the group. According to him, the EWC could contribute to this, because it enables the exchange of experiences between representatives of individual countries. The EWC is of great

importance as the highest layer of social dialogue in the group. The EWC intervenes in situations where the communication between employers and employees is blocked and helps 'restart' the dialogue and the negotiating process. In such cases, the EWC acts as a mediator that helps remove the barriers to this process.

5 – Reasons for the absence of European works councils

One of the aims of the Recast Directive was to increase the proportion of EWCs established. As mentioned in Chapter 1, while the Commission's 2018 evaluation report considers that the Recast has provided some impetus for the setting up of EWC, it concedes that the Recast has failed to halt the decline in the rate of establishment of EWCs (European Commission, 2018a). This finding is confirmed, for example, by De Spiegelaere (2017). Since 2015, there has been a declining trend in the number of EWCs created, from 44 in 2015 to 26 in 2019 and only 7 in 2020. During the pandemic, a number of negotiations on the setting up of EWCs have been suspended (e.g. at Amazon, Ramsay Générale de Santé and Worldline).

According to the latest data from the ETUI, it is estimated that less than half of eligible companies have set up an EWC (De Spiegelaere, 2016). Another study by the same author finds that one in three companies involved in transnational restructuring between 2013 and 2015 did not have an EWC (De Spiegelaere, 2017).

Reasons for the non-creation of European works councils

The creation of EWCs in companies meeting the relevant criteria for the establishment of an EWC is not automatic but must be requested either by management or by a set number of employees or their representatives and there can therefore be valid reasons for no EWC being present in 'qualifying' companies. The literature provides several explanations for why eligible companies have not created an EWC. A German study from 2015 gives four main reasons (Whittall et al, 2015).

- In the company, there may be a lack of awareness and basic knowledge about the regulations, EWCs and their functioning, especially on the part of staff representatives.
- Management may be unwilling to create transnational information and consultation structures, which can be linked to a broader negative attitude towards trade unions and/or formal employee representation.
- Employee representatives from the country of headquarters may not be keen to share their good contacts within central management with other European colleagues because they are keen to keep their direct access to central management.
- Insufficient information about company size and the distribution of employment may be available: 'the employee representatives and union officers need to have information about the company size. They need to know whether or not their company is eligible for establishing an EWC' (Olijslagers and De Spiegelaere, 2019). De Spiegelaere (2016) considers the legal instruments provided by the Recast to boost the establishment of new EWCs (relating to the transition period, information provided to trade unions and clarification on who should provide the necessary information for the negotiations) to have been proven to be ineffective and insufficient.
- There may be a lack of perceived added value of the setting up of an EWC, mainly in very decentralised companies where strategic management decisions are taken at national or local level.

A study focusing on Belgian companies (ETUI, 2019) categorised three types of multinational companies eligible to establish an EWC:

- companies in the process of establishing an EWC (two companies in the sample)
- companies that have developed what could be described as a 'functional equivalent' of an EWC and therefore see little value in establishing one (two companies in the sample)
- a third group (nine companies) that were not in the process of establishing an EWC and did not have a functional equivalent

The study identified similar reasons for this to the German study, but added further considerations regarding the specificity of these companies.

- All companies lacking an EWC had a rather weak unionisation rate among the workforce and dysfunctional local works councils.
- A fear among employees that management may exploit the situation to reduce working conditions in the country of headquarters to harmonise the working conditions within the group.

The fear of losing a special relationship with management, which was an important variable in Germany, was not found in Belgium.

For the current study, seven companies meeting the relevant criteria of the directive but not having established EWCs were contacted and three case studies were carried out on the basis of interviews with employees, as no employer was willing to be interviewed. The following findings therefore only present the employees' views and focuses on the experience of French companies, thus also reflecting the specificities of this particular industrial relations system. The findings briefly presented reflect the abovementioned reasons for the non-establishment of EWCs. In two of the case study companies, initiatives to request the establishment of an EWC had been taken. At **Veepee**, the initiative came from a trade unionist who verbally asked management at a works council meeting if they were planning to set up an EWC. However, no further action had been taken since. At the **Louis Dreyfus Company (LDC)**, the representative trade unions have officially asked management to start negotiation with the support of the ETUF EFFAT.

Although the reasons for not setting up an EWC thus far echo perfectly the studies mentioned previously, it is also clear that in all cases several reasons are intertwined and it can be difficult to establish a one key driving factor. This complex set of interacting reasons is discussed in more detail in the following sections.

Employers' reluctance to establish a European Works Council

According to employee representatives, at **Veepee** and **LDC** management are not willing to set up an EWC, while at **Schiever** management has not taken any position on the issue, as employee representatives did not launch an official request because they perceived that the response from management would be negative. At **LDC**, management is clearly reluctant to start negotiations despite a request made on behalf of the trade unions by the ETUF EFFAT.

Lack of social dialogue and pre-existing information and consultation bodies at national level

The lack of willingness on the part of employers can also be linked to a lack of or poor social dialogue and pre-existing information and consultation bodies at national and local levels. This appears to be

a factor at **Schiever**. According to the French Confederation of Management-General Confederation of Executives trade union representative, social dialogue is rather poor in the company. The weakness of the social dialogue and limited interest of management are therefore seen as the main reasons for the absence of an EWC. The situation seems similar at **LDC**, where, according to the French Democratic Confederation of Labour representative, social dialogue is essentially limited to the minimum legal requirement. Social dialogue is presented as very formal and experienced by management, according to the trade unionist, as a constraint. At **Veepee**, although the group operates in 'start-up' mode, with direct communication from top management to employees, very few hierarchical levels and a lot of autonomy left to employees, **Veepee's** management is not opposed to more formalised social dialogue. The management is not reluctant to set up an employee representative body within the group.

Lack of awareness among employee representatives

A lack of awareness and basic knowledge about EWCs and their functioning and the governing regulations is a factor common to the three case studies to some extent. At **Veepee**, the trade unionist interviewed was uncertain of the legislation and as a result was not able to counter the company's argument that it was not necessary to establish such a body because there were no employee representatives in Spain. There was also a lack of clarity about the required employee size thresholds in different countries. At **Schiever**, while some trade union representatives are aware of the EWC legislation, this was not considered to be the case among all representatives of different trade unions, making it more difficult to mobilise support for a request to establish an EWC. At **LDC**, an initial request to set up an EWC was made in 2015. It was sent by letter, signed by EFFAT. A second request was sent in the spring of 2021.

Lack of data to determine if criteria relevant to the establishment of a European works council are met

Another important issue is the lack of data about the size of the company across the EU and above all information about the existence of information and consultation bodies or employee representatives in different countries. At **Veepee**, information on the number of employees in Europe is available in the non-financial information report, both for 2018 and 2020, although in the latter report the data are presented in a more complex way. At **Schiever**, the exact number of employees working in Poland is not easy to find (as there is no public information on the company's website), but a press article reported that it was about 1,700 by the end of 2015. As the group has increased its implementation, the number in 2021 is expected to be higher. There is no doubt that the **Schiever** group is covered by the scope of the directive. At **LDC**, it is also difficult for employee representatives to have a broader picture of the workforce employed in the EU and of the existence of employee representatives and/or information and consultation bodies in different countries. Such data does not have to be provided to the French works council (Social and Economic Committee) by the employer according to French law, which makes accessing information difficult. To the knowledge of the representative interviewed, there is no contact between the two French unions and any staff representatives in the other three European countries where the group operates, with language and other communication barriers making coordination difficult.

Impact of company structure and sector of activity

The case studies also emphasise a number of additional factors that are of relevance to the non-establishment of EWCs, albeit less significant.

Company structure

At **Schiever**, the company structure, which divides the workforce into five autonomous groups, each carrying out different activities, is viewed as making it more difficult for employee representatives to have a broader picture of the group. Generating an overall feeling of belonging in the group does not appear to be a priority, and the company has also tried to avoid the creation of a group works council in France to cover the whole French workforce. At **LDC**, as the group is very decentralised, the feeling of belonging to the group for employees is likely to be low. Employees are mostly attached to their site, or even to the specific brand they work for. The start-up structure of **Veepee**, may also be a factor explaining the lack of interest in collective information and consultation bodies among the employees.

Sector of activity

Although there is no specific evidence that being in the retail sector is an obstacle to setting up an EWC, pressure on costs in a company such as **Schiever** may explain employers' reluctance to add any financial costs associated with the functioning of a transnational information and consultation body, particularly if no specific benefits are perceived from their side. Furthermore, it could also be that in the case of this sector the risk of moving operations to lower-cost countries is more limited and therefore the motivation to engage with employee representatives in other countries may be more limited. A factor related to sector of activity is the qualification level of the workforce. For instance, at **LDC**, employees tend to be low qualified and find it difficult to see themselves in a transnational information and consultation body, with interpreters and representatives of top management. According to the employee representative, 'There is a certain fear of the unknown, of working with non-French speakers and of not having sufficient skills.' In addition, the group's activities are not really transnational, as the group mainly produces for the national market of the country where it has its sites, and there is no transfer of production from one country to the other or plan to delocalise production from France to Poland or Hungary.

Low level of internationalisation

A low level of internationalisation may also explain the more limited employee interest in setting up an EWC. For instance, in the EU the **Schiever** group is present only in France and Poland.

6 – Conclusion

Nearly 30 years after the adoption of Council Directive 94/45/EC, EWCs are still very much in a process of evolution. Although their added value is widely recognised, some key objectives and the assessment of their achievements remain in many ways contested (De Spiegelaere et al, 2022). Research shows that, after the Recast Directive entered into force, there were improvements in some cases in relation to the quality and timing of information provided to EWCs. However, although some EWCs have succeeded in developing clearer processes for information and consultation in transnational restructuring situations, this does not always guarantee timely and meaningful consultation.

The question at the heart of the policy debate at EU level revolves around the issue of whether there is a need to amend the legislation or whether improvements in the operation of EWCs can be driven by experience and learning from effective practice. The evolution of some of the case study EWCs demonstrates that processes can improve over time as trust is built and both workers and employers gain a clearer understanding of the added value of transnational information and consultation. This process of building relationships, creating a joint understanding and developing effective procedures for information and consultation in a sense cannot be legislated and needs to be nurtured continuously so as not to threaten any progress made. However, a foundation in clear legislation is essential for the effective functioning of transnational information and consultation structures.

The case studies carried out as part of this research seek to provide additional evidence to inform the policy debate without making any claims of representativeness, given the limited number of case studies conducted within the scope of the research and the potential bias associated with case studies involving interviews with both employers and employees. To set the case study findings into context, the broader literature on the operation of EWCs was therefore taken into account and the case study findings were set within this knowledge base.

Based on the literature and case studies, a review of the structural and agency factors affecting the operation of EWCs shows that albeit strongly interconnected, structural factors often considered to be detrimental to the effective working of EWCs do not necessarily prevent positive collaboration from developing, particularly in situations where supporting agency factors are in place. As a result, more effective dialogue can be achieved in the context of an open, trust-based and learning environment in which both management and employee representatives have timely access to information from colleagues in other countries, training opportunities and access to expert advice (including from trade union representatives of workers). Establishing clear and agreed operational processes and ensuring regular contact – often in the context of a steering committee or similar body – can support the development of such an environment. At the same time, the evolution and presence of positive agency factors is affected by structural factors such as the implementation of clear legislation.

As highlighted in this paper, better communicating the added value of EWCs and sharing useful approaches to improving the practical operation of EWCs are two ways of potentially enhancing their functioning and encouraging the establishment of additional EWCs.

The study also demonstrates that in cases where some dissatisfaction remains about the effective operation of EWCs, recourse to enforcement proceedings through national legislation remains

relatively rare. Other research linked to the enforcement of EWC legislation indicates that at present EWCs have limited resources to enforce their legal rights. This is the result of several intertwined legal constraints. Prime among these is that fact that EWCs (and special negotiating bodies) only enjoy full legal personality in very few Member States, resulting in a very limited capacity to take legal action. In addition, the sanctions available vary significantly from country to country and trade unions have considered them to be insufficient (Jagodziński, 2014). Furthermore, there may be reluctance on the part of workers to enter a complicated, time-consuming and costly process of legal redress, which can also have a negative impact on established relationships between employee representatives and management at transnational and national levels.

In conclusion, this study has provided some examples of approaches taken by existing EWCs to ensure their effective functioning, which can provide some lessons, as well as emphasising areas where challenges remain with regard to EWCs meeting the ambitions of the drafters of the directive.

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