



Study exploring issues and possible solutions in relation to the Recast Directive 2009/38/EC on European Works Council

Final Report

Written by ICF SA, in association with Risk & Policy Analysis Ltd (RPA) and Istituto per la ricerca sociale (IRS)

January 2024



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Directorate C — Working Conditions and Social Dialogue

Unit EMPL.C.1 — Labour Law

Contact: Unit EMPL/C1 – Labour Law

E-mail: EMPL-C1-UNIT@ec.europa.eu

*European Commission
B-1049 Brussels*

Study exploring issues and possible solutions in relation to the Recast Directive 2009/38/EC on European Works Council

Final Report

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Manuscript completed in December 2023

This document should not be considered as representative of the European Commission's official position.

Luxembourg: Publications Office of the European Union, 2024

© European Union, 2024

Reuse is authorised provided the source is acknowledged and the original meaning or message of the document is not distorted. The European Commission shall not be liable for any consequence stemming from the reuse. The reuse policy of European Commission documents is implemented by Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39).

PDF ISBN 978-92-68-09978-0 doi:10.2767/09826 KE-09-23-599-EN-N

Table of Contents

1	Introduction	1
2	Methodology	2
3	Policy background and legal context	4
3.1	Political and legal context	4
3.2	EWCs in practice	10
4	Issues explored through evidence gathering	20
4.1	Main issue explored: effectiveness of transnational information and consultation of employees	20
4.2	Summary of evidence regarding specific issues	25
5	Results of stakeholder consultation activities	73
5.1	Targeted survey results	73
5.2	Stakeholder interviews.....	122
5.3	Evidence-gathering workshops.....	157
	Annex 1: Methodological approach.....	171

1 Introduction

The objective of this study is to support the Commission in the preparation of an Impact Assessment (IA) to explore the issues and possible solutions concerning the Recast Directive 2009/38/EC on European Works Councils (EWCs).

This report is structured as follows:

- Chapter 2 presents the study's methodological approach.
- Chapter 3 presents the policy context and legal framework surrounding EWCs.
- Chapter 4 presents the summary of evidence-gathering results regarding specific issues.
- Chapter 5 presents the results of the stakeholder consultations activities.
- Annex 1 provides a detailed methodological description of the data collection and data mapping activities carried out.

2 Methodology

This chapter provides an overview of the tasks carried out as part of this study, as well as a brief description of the methodologies applied.

Data gathering and analysis

As a first step, secondary sources were identified and reviewed for relevance. As a result, 58 literature sources were identified, 36 of which were categorised as highly appropriate to the study. Out of the 58 identified sources, 52 were reviewed in full. The remaining 6 sources were not available for review. The full list of publications reviewed is included in Annex 1 to this report. Each of the 45 literature sources was then analysed against a set of quality criteria.

It is important to note that the sources reviewed predominantly represent employees' perspectives and therefore fell short of providing the perspectives of all stakeholder groups or interested parties, raising the risk of selection bias (e.g., the 2018 ETUI survey). Efforts were made by the study team to ensure a balanced representation of the perspectives of employee and management representatives, particularly in the stakeholder consultation strategy. The measures taken by the study team in this regard are described in section A.1.4 of Annex 1 on the methodological approach.

Case-law analysis

Case law concerning EWCs was analysed as part of the evidence-gathering task. Some of the identified cases are referred to mainly in Chapter 4 which presents the evidence gathered on EWC-related issues identified for assessment.

Stakeholder consultations

The following table provides an overview of the stakeholder consultations carried out, by activity and type of stakeholders involved. The results of these stakeholder consultations are described in Chapter 5 of this report.

Table 1. Overview of stakeholder consultations

Activity	Stakeholder category	Type and number of stakeholders consulted	Sampling / selection / dissemination method
Semi-structured Interviews	Multinational companies (MNCs) with an established EWC*	12 management board representatives 12 EWC employee representatives	Random selection of MNCs with an EWC from ETUI EWC database
	National authorities (i.e., ministries or ministerial agencies)	Representatives of national authorities in 10 Member States (BE, CZ, DE, ES, FI, FR, IE, NL, PL, SE)	Member States selected based on: <ul style="list-style-type: none"> • high number of EWCs headquartered in them • geographical balance
	Experts	18 legal experts, professionals in advisory services and academic experts	Contacts from previous research. Identification of relevant contacts with the assistance of DG EMPL C1, C3.
	EU social partners	7 European Trade Union Federations (ETUFs) and European employers' associations	Self-selection – identification of relevant contacts with the assistance of DG EMPL C1, C3
	National social partners	11 national social partners – employers' associations and trade unions	

Online targeted survey	Management representatives	233 respondents: 53 management representatives 180 employee representatives	Disseminated via BusinessEurope and ETUC's (as well as ETUFs) preferred dissemination instruments, as well as via the EWC-Academy and IR Share newsletters.
	Employee representatives		
Evidence-gathering workshops	Management representatives	27 participants from 18 companies with an EWC	Selection to achieve a balanced geographical representation, a balanced representation of EWC types and accommodate various experiences.
	Employee representatives	21 participants from 18 EWCs	

* Unless specified otherwise, the term 'EWC' in this report refers to pre-Directive voluntary information and consultation (I&C) bodies established before the 1994 EWC Directive and EWCs established under the 1994 and 2009 Directives.

Assessment of potential issues against the evidence-gathered

The process of selecting topics for assessment commenced with discussions with DG EMPL to identify specific aspects for consideration within each topic and determine the sources for evidence collection, as per Tool #11 of the Better Regulation Guidelines. Initially, the topics outlined in the study's terms of reference were considered, and additional issues highlighted by the European Parliament Resolution of February 2023¹ were incorporated into the analysis. These topics were then assessed based on the secondary and primary evidence collected.

The data and information collected from various activities (desk research, case-law analysis, stakeholder interviews, survey, validation workshop) underwent **triangulation and verification**. This process involved comparing and cross-referencing data and information from different sources to ensure the validity of the findings, by confirming results obtained from different sources.

¹ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

3 Policy background and legal context

This chapter presents the political and legal context of the European Works Council Directive at EU level, contextualising the legislative framework within political developments and other legal provisions applicable to multinational companies (section 3.1). The main features of established EWCs, their role and practical functioning are also presented in this chapter (section 3.2).

3.1 Political and legal context

The history of the European Works Councils (EWCs) can be traced back to the 1980s, when discussion on establishing mechanisms for information and consultation between social partners at European level began². In 1983, the need for a form of **transnational information and consultation of employee's representatives** led to the first practical examples of works councils at the European level³. With the Single European Act (1987) and the further advancements towards the Single European Market, discussions on the need for cross-border employee representation intensified. Indeed, decisions of a transnational nature (such as cross-border mergers, take-overs, and joint ventures), could not be addressed by employee representatives at the national level alone, and the national legal frameworks were seen as not suitable to ensure the right to information and consultation of employees when such transnational issues occur. In some companies, real transnational works councils were set up, while in others, foreign employee representatives were invited to join national works council meetings where they could exchange information and align their positions vis-à-vis management⁴. However, it was not until 1994 that the EU adopted its first legal framework for **European Works Councils**, namely **Council Directive 94/45/EC**⁵. However, Directive 94/45/EC had several shortcomings: it created a high level of legal uncertainty which hindered the full implementation of its legal provisions, and it only resulted in a low number of new EWCs being established. In 2008, the Commission proposed to Council and Parliament to recast the 1994 Directive⁶ to tackle these limitations. **Directive 2009/38/EC** on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees is a recast of Directive 94/45/EC⁷. Commonly referred to as the 'EWC Recast Directive', it was adopted on 6 May 2009, entered into force on 5 June 2009; and was applied across the EU as of 6 June 2011 through national transposition measures⁸. The

² European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

³ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

⁴ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives', p. 10. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

⁵ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

⁶ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

⁷ The Commission opted for a recast in 2008 which opened a more specific legislative procedure limiting the number of amendments (EU institutions cannot add additional ones to the proposal text - Interinstitutional Agreement of 28 November 20018 and Rule 80(a) of the European Parliaments' rules of procedures) and reduces the legislative time frame.

⁸ OJ L 122 16.5.2009, p. 28

main objective behind the Recast Directive was to overcome the limitations of the 1994 Directive by:

- strengthening the effectiveness of employees' right to information and consultation on transnational issues;
- increasing the number of new EWCs, while also ensuring the continuous functioning of previously existing agreements;
- ensuring better alignment between the EWCs and other EU legislative instruments on information and consultation rights of employees);
- providing legal clarity on the application of the Directive.

The EWC Recast Directive was amended on one occasion to remove the exemption of seafarers (Article 1(7))⁹.

EWCs are bodies representing European employees within transnational or multinational companies (also known as Union-scale undertakings¹⁰), with the purpose of informing and consulting employees on transnational matters¹¹. The introduction of European Works Councils was particularly relevant in the context of establishing a European single market, as a growing number of firms expanded their operations across borders within the EU and the EEA. Indeed, EWCs create a link between employees from various Member States within the same company or group, fostering an effective platform for dialogue and representation within these entities.

The Recast Directive introduced the right to establish an EWC (or another procedure for informing and consulting employees) in:

- Union-scale undertakings (referred to as Community-scale undertakings in Directive 2009/38/EC) with more than 1,000 employees within the Member States and with at least 150 employees in each of at least two Member States, and
- Union-scale groups of undertakings with at least 1,000 employees within the Member States, comprising 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.

The establishment of an EWC is to be initiated either by a request made by at least 100 employees or their representatives from two countries or following an initiative by the employer. A special negotiating body (SNB) is established composed of employee representatives elected or appointed in proportion to the number of employees in each Member State. It negotiates with central management, with a view to reaching an agreement on the composition, competences and functioning of a EWC (this process leads to the creation of so-called Article 6 EWCs)¹². In accordance with the principle of subsidiarity, Member States are free to determine the method to be used for the election or appointment of employee' representative to act as members of the EWC committee¹³. An agreement is signed between management and the employee representatives of the different countries to set the rules regarding the composition and the functioning of each

⁹ Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers (Text with EEA relevance); OJ L 263, 8.10.2015, p. 1–5. The changes are effective since October 2017.

¹⁰ Cf. the term 'Community-scale undertaking' as a defined in Directive 2009/38/EC.

¹¹ As for Article 1 of Recast Directive 2009/38/EC.

¹² Article 5 of Directive 2009/38/EC

¹³ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

EWC. In the absence of an agreement being reached within a given time limit (or upon the decision of both negotiating parties), subsidiary requirements are to apply¹⁴.

In 2018, the European Commission published an **evaluation of the implementation of Directive 2009/38/EC (Recast)**¹⁵. The main sources of information and data that fed into this evaluation included the 2016 ICF evaluation study on the implementation of Directive 2009/38/EC,¹⁶ expert group meetings, various studies on EWCs, as well as other documentation from projects which received grant support from the European Commission.

The 2018 evaluation revealed that most Member States had properly transposed the Recast Directive into national legislation, sometimes including even more detailed provisions, going beyond the Directive's minimum requirements. The main conclusions of the evaluation on the effectiveness of the Recast Directive are the following:

- The Recast Directive provided an impetus for the **establishment of around 20 EWCs per year**, primarily in companies headquartered in France, Sweden, and the US, with a higher prevalence in smaller companies (with more than 5,000 workers) compared to the 1994 Directive.
- Approximately **half of the eligible companies have yet to establish an EWC**, due to various reasons such as lack of awareness of legal requirements and changing company structures.
- The **concept of transnationality**, although better defined in the Recast Directive, has proven challenging to interpret in practice.
- While the Recast Directive has improved the **quality and scope of information** provided to workers, there are concerns about the effectiveness of the consultation right, as EWC members have limited direct influence on decision-making processes during restructuring.
- **EWCs are seen as valuable instruments by employers**, facilitating better understanding among members, explaining decisions, and generating constructive discussions and proposals.
- **Enforcement of EWC rights varies across Member States**, with alternative dispute settlement mechanisms in place in half of them. However, dedicated means for EWCs to enforce their rights are lacking, and dissuasive and proportionate sanctions are insufficient in many Member States.

Many of these findings form the basis for identifying issues subject to the assessment in this study (see Chapter 4). As a follow-up to the evaluation, the European Commission proposed to prepare in collaboration with the EU social partners a guidance document that would include good practices concerning the functioning of EWCs and raise further awareness about the rules in place. The Commission did not see a need to change the rules in place at the time. On the other hand, there was significant debate on EWCs among stakeholders. While **trade unions called for a revision of the Recast Directive**, **employers' associations opposed its revision and favoured awareness-raising**

¹⁴ Article 6 of Directive 2009/38/EC

¹⁵ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁶ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

activities and the sharing of good practices to highlight the added value of the EWCs¹⁷. Similarly, **discussions concerning sanctions** also saw trade unions advocating new minimum requirements on sanctions (including a right to a temporary suspension of a company decision) to make them effective and dissuasive, while employers' associations called on the Commission to take action against Member States when national implementing laws did not provide for sufficiently dissuasive or proportionate sanctions¹⁸.

Also in 2018, the **European Economic and Social Committee** (EESC) issued an opinion on the:

- Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law
- Proposal for a Directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions¹⁹.

In its opinion, the EESC welcomed the Commission's proposals on company law and cross-border restructuring, aiming to protect the interests of stakeholders while emphasising the need to balance the objectives of the Single Market with social protection. With reference to the EWCs, it called for an enhancement of the involvement of the EWCs in the transformations of large-scale companies. Subsequently, in **2020 the Workers' Group Secretariat** of the **EESC**²⁰ asked for a report to review gaps in the current EU legal framework aiming to highlight opportunities to strengthen workers' information, consultation, and participation rights. The study produced for the EESC (by wmp consult, Wilke Maack GmbH and KU Leuven university) also pointed out some **weaknesses in the current EWC legal framework**. While highlighting that the EWC Recast Directive is recognised as the most important legislative framework for transnational worker representation, few EWCs play a strong role in co-shaping transnational company decisions. Even more than a decade after the adoption of the Recast Directive, the study points out that for a vast majority of EWCs, the **quality and effectiveness of information and consultation** on transnational company restructuring has **not improved**, nor has the number of EWCs increased significantly over time.

Over the years, the **EU has adopted various directives containing specific provisions on the information and consultation rights of employees**. The **right to information and consultation**, as well as the **right to collective bargaining and action** are laid down in the **EU Charter of Fundamental Rights of 2000** (Articles 27 and 28, respectively). The Treaty on the Functioning of the European Union also promotes **social dialogue** between management and labour (Article 151) and recognises the **role of social partners** (Article 152). EU rules implementing and safeguarding the right to information and consultation include:

- Council Directive 98/59/EC on collective redundancies - which provides for information and consultation rights of workers at the national level in case of

¹⁷ See for example: BusinessEurope (2017). 'European Works Councils - Comments on the functioning of the recast directive'. Available here: <https://www.besneurope.eu/publications/european-works-councils-comments-functioning-recast-directive>

¹⁸ European Parliament (2019). 'European Works Councils. Briefing – European Added Value Assessment'. Available here: [EPRS_BRI\(2021\)654215_EN.pdf](https://www.eprs.bri(2021)654215_en.pdf)

¹⁹ European Economic and Social Committee (2018). 'Opinion of the European Economic and Social Committee on (a) Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (COM(2018) 239 final — 2018/0113 (COD)) and on (b) Proposal for a Directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (COM(2018) 241 final — 2018/0114 (COD)) (2019/C 62/04)'. Available here: [CELEX:52018AE1917](https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-818-en-n.pdf)

²⁰ WMP (2020). 'An EU legal framework on safeguarding and strengthening workers' information, consultation and participation, report commissioned for the European Economic and Social Committee'. Available here: <https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-818-en-n.pdf>

collective redundancies. The rules under that Directive and Directive 2009/38/EC are applied simultaneously in cases of transnational restructuring. This means that the multinational company has obligations to inform and consult with national employees' representatives, as well as to inform and consult the EWCs in case of transnational restructuring;

- Council Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses – which provides for information and consultation rights of employees in cases of transfer of undertakings at the national level. The framework is applied simultaneously if considered a transnational issue for consultation of the EWC;
- Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community – which sets out minimum requirements for information and consultation of employees at national level, contributing to foster social dialogue at national level allowing issues to be addressed at the most relevant level, and
- Directive 2001/86/EC supplementing the Statute for a European company with regard the involvement of employees, it provides for the establishment of representative bodies for information and consultation on transnational issues in European Companies (SEs);
- Directive (EU) 2017/1132 relating to certain aspects of company law; i.e. in particular provisions on employees' participation rights as well as on information and consultation of employees in case of cross-border conversions, mergers and divisions (introduced by Directive (EU) 2019/2121, which amended Directive (EU) 2017/1132;
- Directive (EU) 2019/1023 on preventive restructuring frameworks – specifically also including access of worker representatives at national level to early warning systems.

All these tools provide for national-level information and consultation during restructuring. In combination with EWCs, they ensure that information and consultation rights are not limited by national borders. Moreover, in 2017, the proclamation of the **European Pillar of Social Rights** (EPSR) was a major political action to strengthen the social dimension of the EU. Principle 8 of the EPSR states that 'workers or their representatives have the right to be informed and consulted in good time on matters relevant to them'²¹.

The **most recent initiative** was adopted by the European Commission in February 2022, consisting of a proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (**CSDD Directive**), tackling the insufficient use of corporate sustainability management practices by EU companies²². This initiative aims to set out cross-sectoral requirements for large companies to identify and address their adverse environmental and human rights - including labour rights - impacts, including in their global value chains. It complements other EU instruments in this area such as sectoral or product-specific due diligence rules and sustainability reporting requirements under the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464) and the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088). The Directive, once adopted, will set

²¹ European Commission (2017). 'The European Pillar of Social Rights in 20 principles'. Available here: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

²² Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final, p. 3.

out specific obligations for companies regarding the information and consultation of different stakeholders, including employees.

As Directive 2009/38/EC focuses on setting minimum requirements of a procedural nature for the establishment and operation of EWCs, without limitations as to the content of the transnational matters within its scope, it provides a flexible framework allowing EWCs to promote employee representation on various transnational issues. Therefore, practical synergies can occur in the future between Directive 2009/38/EC and any EU policy field that stands to benefit from the involvement of EWCs, particularly in the context of the twin transitions. For example, in connection with the Commission's proposal for a CSDD Directive, EWCs could be informed and consulted on the due diligence policy and due diligence actions of multinational corporations. EWCs' opinions on transnational matters relating to corporate due diligence can potentially help central management to identify and mitigate adverse impacts on workers' rights, other human rights and the environment. Furthermore, EWCs can play an important role in disseminating information about sustainability due diligence matters amongst the employees they represent and can submit complaints using the complaints procedures under the proposed CSDD Directive.

Another non-regulatory measure concerning the conduct of multinational companies in cases of restructuring is the EU Quality Framework for Anticipation of Change and Restructuring (QFR) adopted in 2013 aiming to contribute to provide more sustainable employment opportunities and to maintain employment levels in the EU. The QFR complements the above mentioned comprehensive legal framework for regulating the way in which social dialogue within companies and groups of companies should address, amongst other issues, anticipation of change and restructuring events²³.

In **2019, the European Parliament** announced it would draw up an own initiative resolution on the EWC Recast Directive and asked the Employment and Social Committee (EESC) to prepare a report. In 2021, **the European Parliament called on the Commission to explore actions to strengthen the European Works Councils' rights to information and consultation**.²⁴ Specifically, it called on the Commission to ensure that EWCs' opinions are taken into account in company decisions and are delivered before consultation is completed at the respective level and before the governing bodies come to a decision. The European Parliament also called on the Commission to strengthen enforcement mechanisms. This resolution has been largely backed by European trade unions²⁵. On **2 February 2023**²⁶ the European Parliament adopted a resolution which calls on the European Commission to carry out a revision of Directive 2009/38/EC. While emphasising the importance of workers' rights to information and consultation, it also stresses the need to strengthen EWCs' ability to exercise these rights, with activities such as awareness raising, knowledge exchange, and support for EWC training. The Resolution also expresses concerns about the insufficient resources for the operations of EWCs their lack of access to justice and shortcomings regarding effective, dissuasive and proportionate sanctions for non-compliance, calling for the clarification of

²³ Communication, EU Quality Framework for anticipation of change and restructuring, COM/2013/0882 final

²⁴ European Parliament (2021). 'Report on democracy at work: a European framework for employees' participation rights and the revision of the EWCs Directive'. Available here: [REPORT on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive | A9-0331/2021 | European Parliament \(europa.eu\)](#)

²⁵ See for example: ETUC (2019). 'MEPs and unions call for EU action on democracy at work'. Available here: <https://www.etuc.org/en/pressrelease/meps-and-unions-call-eu-action-democracy-work>; as well as ETUC. 'European Works Councils'. Available here: <https://www.etuc.org/en/democracy-thematic/european-works-councils>

²⁶ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

EWCs' objectives, improving gender balance in EWC representation, and exploring the inclusion of additional contract types in the scope of the Directive.

On **1 March 2023**, the Commission welcomed the Parliament's Resolution, and confirmed its commitment to follow up with a legislative proposal pending a consultation with EU social partners as per Article 154 TFEU. The first phase consultation was launched on **11 April 2023**, and concluded on **25 May 2023**. All the responding trade union organisations argued in favour of a legally binding revision of the Directive, while most employers' associations felt it was unnecessary. After considering the views expressed by the social partners, the Commission concluded there was a need for EU action and launched the second phase consultation on the content of said action. The second phase was launched on **26 July 2023** and ended on **4 October 2023**, but the outcomes were not received in time to be included in the present report.

Finally, it is worth noting that in the context of the digital and green transitions (see section 4.2.2), the EESC issued two separate opinions – one on the digital transition and one on the green transition. Both opinions highlight the importance of strengthening EWCs' operations to support these transitions. More specifically, in its exploratory opinion (2020) on 'Industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society'²⁷, the EESC highlighted the key role of managers and employers in driving structural change. Among other things, the EESC recognised the role of EWCs in balancing interests and exploring solutions in the digital transition, emphasising the need for worker involvement and collective agreements. In its opinion 'No Green Deal without a Social Deal' (2020), the EESC also stressed the importance of maintaining a focus on societal issues while driving the necessary change for the green transition and highlighted the key role of good corporate governance. In this context, it emphasised that a strong social dialogue, also within the EWCs, is crucial for an open and participatory corporate governance approach and for improving the quality of decision-making in companies. However, it also called for a revision of the EWC Directive to better align with current realities and future needs. This includes ensuring adequate resources and competences for EWCs, and improving enforcement measures for non-compliance, also regarding gender equality.

3.2 EWCs in practice

Unless specified otherwise, the term 'EWC' in this report refers to pre-Directive voluntary information and consultation (I&C) bodies established before the 1994 EWC Directive and EWCs established under the 1994 and 2009 Directives.

3.2.1 Demographics and evolution of EWCs

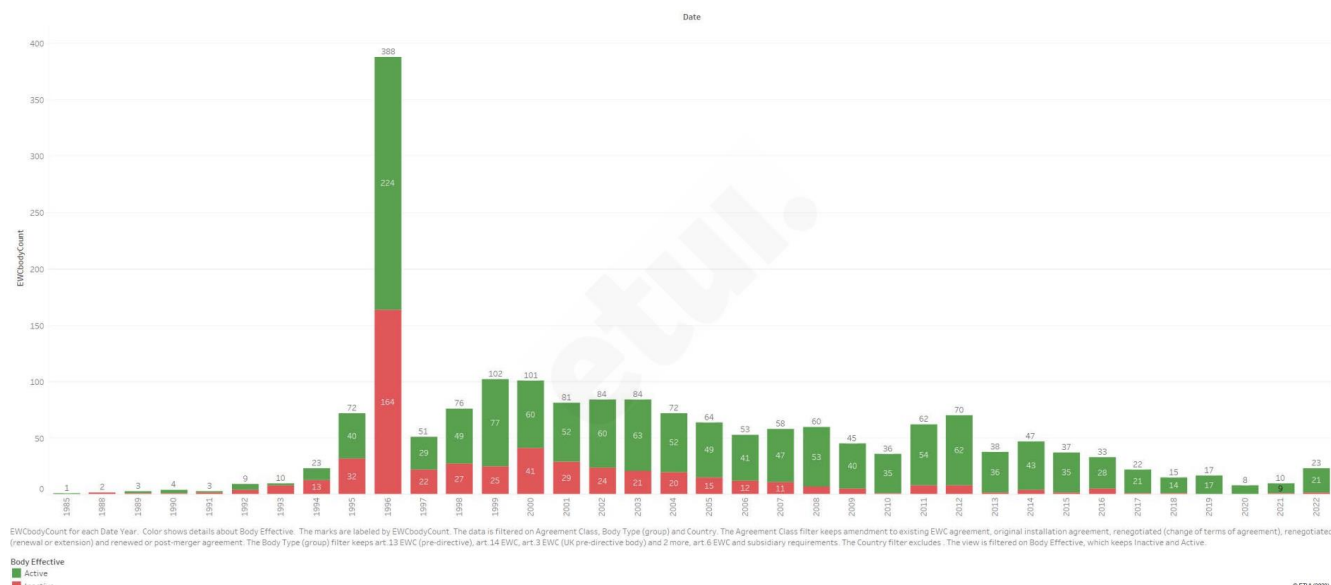
European Works Councils (EWCs) are bodies representing the European employees of a company. Through them, workers are informed and consulted by management on the progress of the business and any significant decision at European level that could affect their employment or working conditions. To this end, EWCs bring together central management and employee representatives across the EU to discuss matters such as a company's performance, prospects, and employment, restructuring and human resources policies.

The descriptive statistics on the growth of EWCs over the years, on their geographical and sectorial distribution, as well as on the characteristics of the companies in which they are established all fall under the term '**demographics**' of EWCs. Most of the papers and

²⁷ EESC (2020). 'Industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society (exploratory opinion requested by the Parliament) [INT/913-EESC-2020-03642]'. Available here: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52020AE3642>

reports studying EWCs use the ETUI's EWC Database²⁸ as their primary source for data on demographics. Figure 1 shows the total number of EWCs established each year from 1985 to 2022. The portion in green indicates the EWCs that are still in activity as of 2023, while the portion in red shows those that are known to be inactive.

Figure 1. Trend in the establishment of EWCs



Source: EWC Database (ETUI)

Köhler and co-authors (2015)²⁹ identify four phases (Figure 2) in the dynamics of EWCs creation, strictly linked to the underlying legal framework which in turn has shaped the incentives of both management and employees. After the first, mostly French-based, phase of proto-EWCs starting in 1983-1985, **the implementation of the first European Works Council Directive 94/45/EC led to a significant increase in active EWCs.** In this second phase, between 1994 and 1996, a clear window of opportunity opened for undertakings to establish 'voluntary agreements' on information and consultation outside the scope of EU law framework, and around 490 so-called 'Article 13 EWCs' were created. Indeed, Article 13 of Directive 94/45/EC provided for the possibility for 'voluntary' EWCs before the Directive's entry into application. Undertakings with these voluntary agreements remained exempted from the Directive's rules, as long as the agreements covered the entire workforce and provided for the transnational information and consultation of employees.³⁰ Between 1997 and 2008, an average of 52 EWCs were set up per year, **marking a clear decline of the establishment of EWCs.**³¹ The new binding rules of this third phase had closed the window of opportunity to remain exempted from EU rules, and the initiative for EWC creation shifted towards employees.

One of the aims of the 2009 Recast Directive was to increase the number of EWCs. To this end, measures were included to promote the rate of establishment of EWCs, such as Article 4(4), which provides an obligation on management to provide information on the

²⁸ European Trade Union Institute (2023). 'EWC Database'. Available here: <https://www.ewcdb.eu/>

²⁹ Köhler, H., Gonzalez Begega S., Aranea M. (2015). 'Three Decades of European Works Councils. A Quantitative Evaluation'. Available here: <https://www.researchgate.net/publication/300000000>

³⁰ De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making'. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

³¹ De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making'. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

size of the workforce, initiating a fourth phase that goes until today. Nevertheless, the 2018 European Commission's evaluation concluded that **the Recast Directive did not stop the declining trend in the creation of EWCs³²**.

Figure 2. Establishment of EWCs 1983-2014. Legal framework and periods.

	I Real voluntarism	II Politically reinforced voluntarism	III Regulated voluntarism	IV Revised Voluntarism
Years	1983 ^a (10/1985 ^b) to 1994	1994–1996	1996–2009	since 2009
Legal basis	Voluntary agreements in the absence of a legal framework	Article 13 of Directive 94/45/EC	Article 6 of Directive 94/45/EC	Recast Directive 2009/38/EC
Nature of new EWCs	Proto-EWCs in companies based autonomy	EWCs voluntarily established, often management- initiative	slow growth of number of EWCs; initiative turned from managers to employees	EWCs established under the revisited directive

^a First informal meetings of worker representation at EU-level (Saint-Gobain).

^b Signature of the first agreement on the creation of a proto-EWC (Thomson Grand Public).

Source: Köhler *et al.* (2015)

Nevertheless, the Recast Directive has triggered, in a number of cases, the **renegotiation of existing EWC agreements³³**. Data from the 2018 ETUI's survey of EWC representatives³⁴ reports that 30.5% of the respondents with an EWC under Article 6 or under subsidiary requirements and 53.8% of those covered by the existing exemptions indicated having undergone a renegotiation in the previous three years.

The overview of types and number of EWCs and/or transnational information and consultation bodies in Union-scale undertakings as of June 2023 is presented in Table 2 on the following page.

Table 2. Main types of EWCs or other information and consultation procedures

Article 6 EWCs: 616 (62%) according to ETUI's EWC database – EWCs fully covered by the Recast Directive 2009/38/EC and subject to its obligations. Agreements of those EWCs were concluded under the 1994 Directive (with the exception of 'Article 14 EWCs') or under the recast Directive.

Article 13 EWCs ('voluntary' or 'pre-directive agreements'): 323 (32%) – voluntary information and consultation bodies created by agreements concluded before 22 September 1996 (i.e., before the transposition deadline of Directive 94/45/EC); undertakings with the pre-Directive agreements are exempted from the scope of the recast Directive and can keep these agreements as they were, without having to implement the Recast Directive.

³² European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

³³ ETUC (2016). 'European Works Councils Assessments and Requirements Report'. Available here: [europeanworks_councils_ces_01.pdf \(etuc.org\)](https://www.etui.org/publications/guides/can-anybody-hear-us)

³⁴ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

Article 14 EWCs: 28 (3%) – EWCs created or revised during the transposition period (from June 2009 to June 2011) from Directive 94/45/EC to the recast Directive; undertakings with these agreements are exempted from the scope of the recast Directive; these agreements as they were, without having to implement the Recast Directive.

Subsidiary requirements EWCs: 20 (2%) – EWCs functioning on basis of Annex I of the Recast Directive, where the special negotiating body and the central management did not conclude an EWC agreement (Article 7(1) of the Recast Directive).

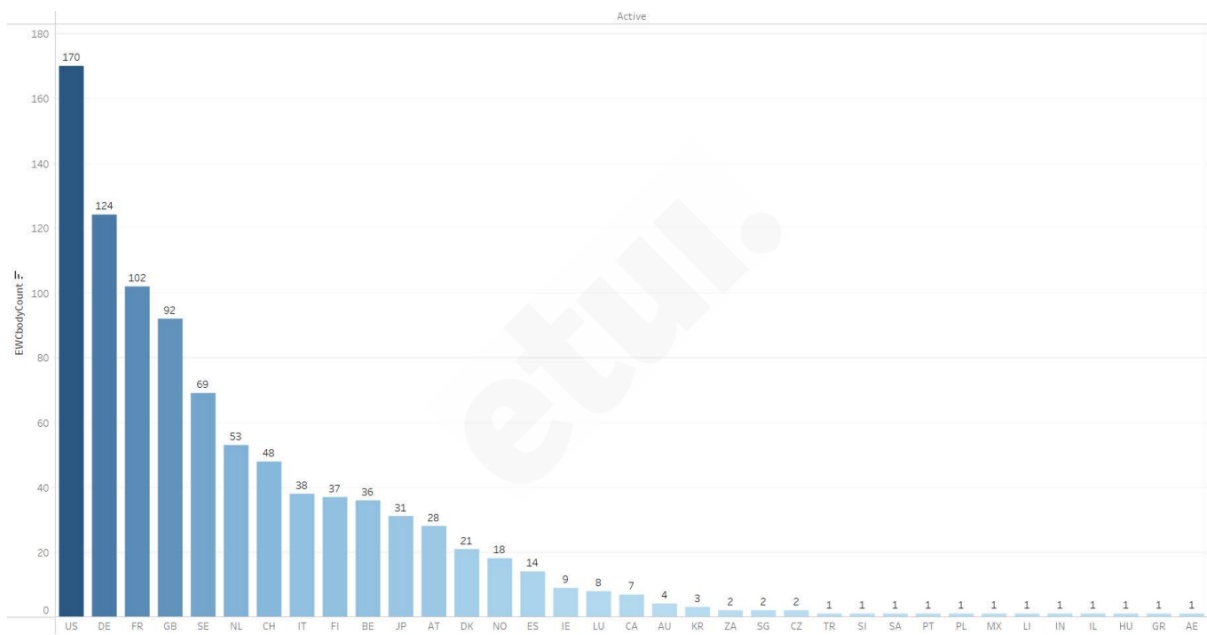
Information and consultation procedure bodies (ICPs) – 9 (less than 1%) – procedures for information and consultation on transnational matters established by the central management and the special negotiating body under Article 6(3) of the Recast Directive.

5 (less than 0.5%) transnational information and consultation bodies whose type has not been specified in the ETUI database.

The largest number of companies with EWCs or voluntary agreements have their **headquarters** located in the United States, Germany, France, the United Kingdom, Sweden, the Netherlands, Switzerland, Italy, Finland, and Belgium. This can be explained by **the size of these countries' economies**, but also by the **influence of their respective industrial relations systems**. Overall, 545 (54%) of companies with EWCs have their headquarters in the EU. The United States, the United Kingdom, Switzerland, Japan and Norway are the main non-EU countries where companies with an EWC are headquartered. Figure 3 provides an overview of EWCs currently active by country of headquarters, and Figure 4 substantiates these results with sample data from the targeted survey.

Furthermore, given that EWCs are established within multinational companies active in at least two Member States and beyond, **this triggers the question of which legislation these EWCs have to follow**. Overall, **EWCs are usually established according to the rules of the headquarter country**. However, this is not always the case. If the **headquarters of a company are established in a non-EEA country**, the EWCs have to make a decision on the national law that will be applicable. Figure 6 provides an overview of currently active EWCs per governing legislation (according to the ETUI database), and Figure 5 supports these results with sample data from the targeted survey (no distinction is made by the type of agreement / EWC). Companies with EWCs that have chosen UK law as the applicable law are mostly in the process of renegotiating. Although at the time of writing no reliable data mapping the situation following Brexit were available, the targeted survey results and interviews with stakeholders indicate that Ireland has become a Member State where former UK EWCs were often relocated as a result of Brexit. Section 4.2.2.5 provides more details about Brexit and its impact on EWCs.

Figure 3. Headquarters of companies with an EWC (ETUI)



Source: EWC database (ETUI)³⁵

Figure 4. Headquarters of companies with an EWC (ICF targeted survey)

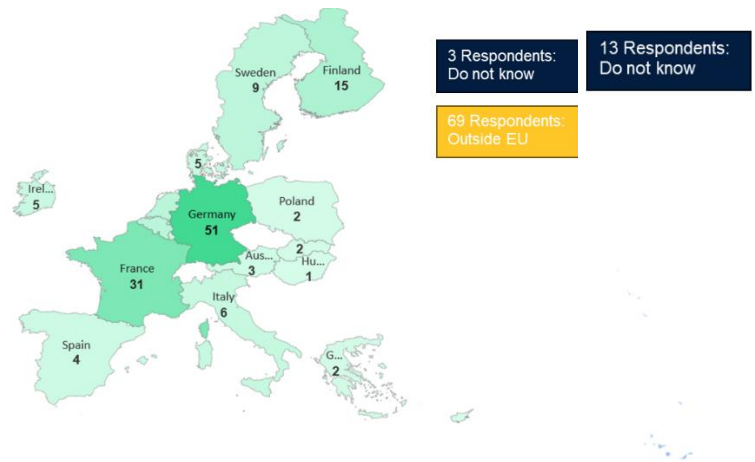
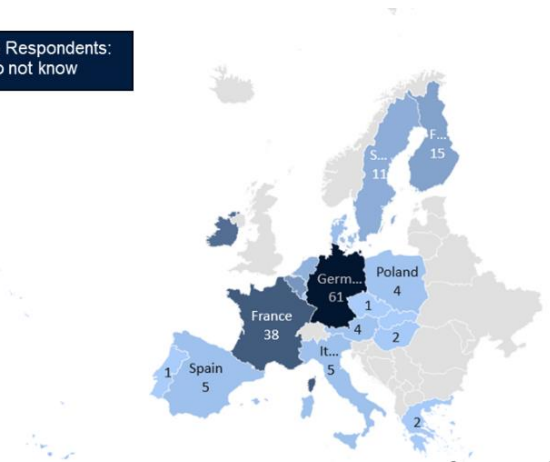


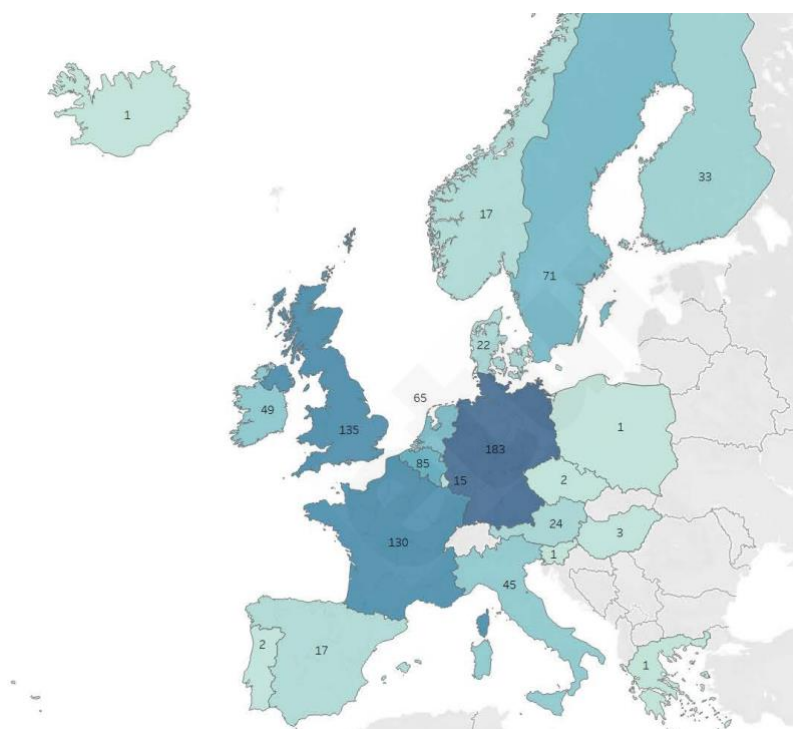
Figure 5. Governing legislation of the EWCs (ICF targeted survey)



Source: ICF targeted survey

³⁵ European Trade Union Institute (2023). 'EWC Database'. Available here: <https://www.ewcdb.eu/>

Figure 6. Governing legislation of the EWCs (ETUI)



Source: EWC database (ETUI)³⁶

If companies are **headquartered in an EU Member State**, the negotiating parties are entitled to agree to establish their EWC according to the national rules of another EU Member State. The 2015 ETUI report revealed that only 6% of EWCs with their headquarters in Europe do not choose the law of their headquarter country as the applicable law; when this is the case, they generally choose Irish or French law³⁷.

Concerning the **sectors** in which EWCs are active, most of them operate in the following sectors: manufacturing; distributive trade sector; information and communication services; electricity, gas, steam and air conditioning supply; transportation and storage services; professional, scientific and technical activities. Figure 7 shows the distribution of active EWCs by sector of activity, based on the sample of respondents to the targeted survey³⁸. Overall, **EWCs are not equally spread across all sectors**. According to the ETUI (2015)³⁹, the main reason for the variation in number of EWCs between sectors is their differing characteristics, namely:

- **Company size:** for a multinational to be covered by the EWC Directive, it needs to have over 1,000 employees in total and at least 150 employees in two EU Member States respectively. Therefore, very large multinationals in the metal, construction, or chemicals industry tend to have EWCs in place. Most EWCs are established in multinational companies with more than 5,000 employees. In a sample of eligible

³⁶ European Trade Union Institute (2023). 'EWC Database'. Available here: <https://www.ewcdb.eu/>. This graph does not present distribution of EWCs post-Brexit (such data was not available at the time of the writing of this report).

³⁷ De Spiegelaere S.; Jadodzinski R. (ETUI) (2015). 'European Works Councils and SE Works Councils in 2015. Facts & Figures'. Available here: [F&F_Report_EN_WEB.pdf \(etui.org\)](https://www.etui.org/F&F_Report_EN_WEB.pdf)

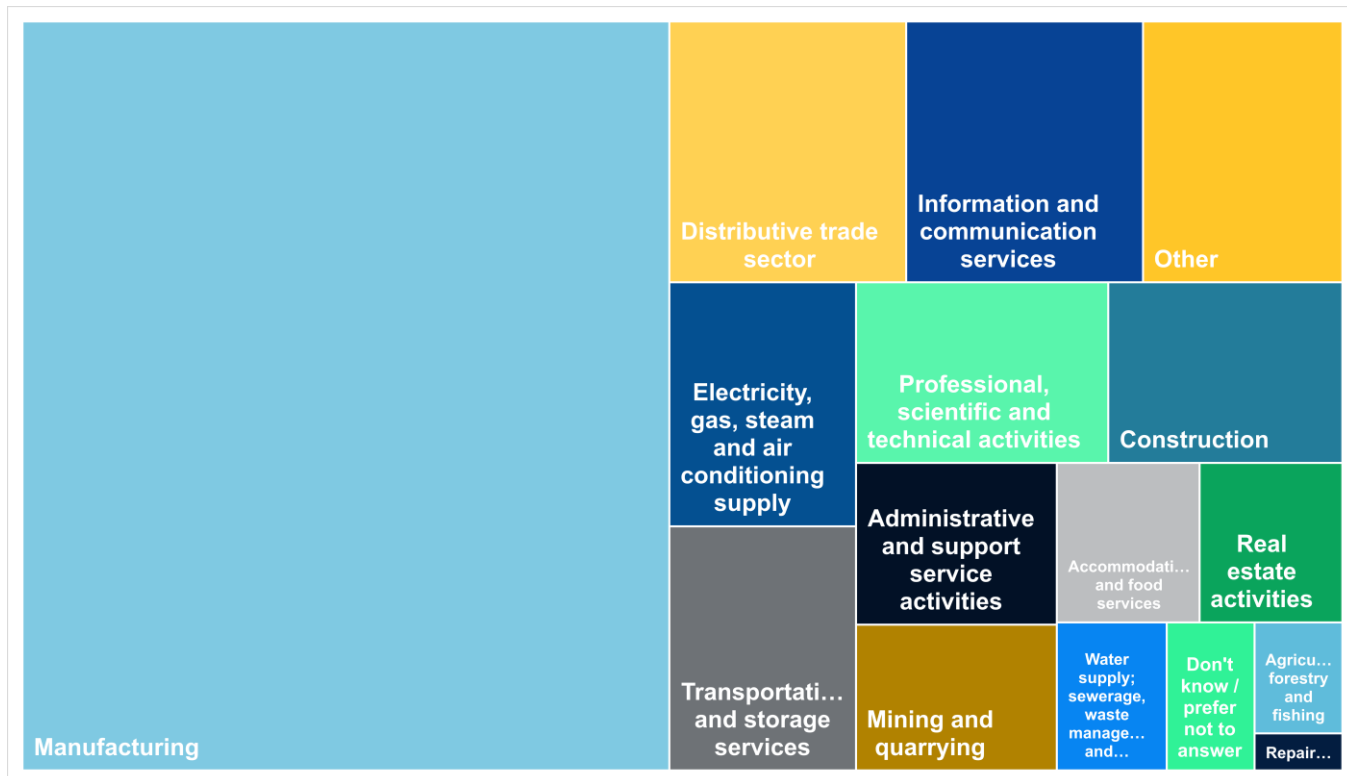
³⁸ ICF Targeted Survey (2023). Q10, 233 respondents.

³⁹ De Spiegelaere S.; Jadodzinski R. (ETUI) (2015). 'European Works Councils and SE Works Councils in 2015. Facts & Figures'. Available here: [F&F_Report_EN_WEB.pdf \(etui.org\)](https://www.etui.org/F&F_Report_EN_WEB.pdf)

companies analysed by Eurofound⁴⁰, more than two-thirds of those with more than 10,000 employees in the EU have established an EWC, while this share falls to one-third among companies with fewer than 5,000 employees.

- Companies that operate on sites with a **high concentration of employees**, such as in big factories or production facilities, facilitate worker organisation, hence the creation of EWCs.
- Companies in sectors characterised by a high level of cross-border activity with **their workforce is spread across different countries** (e.g., construction, transport) tend to establish EWCs.

Figure 7. EWCs per sector of economic activity



Source: elaboration of ICF targeted survey results

Figure 8 provides an analysis of the distribution of surveyed EWCs among the countries of company's headquarters and their sector of activity. This distribution is broadly similar to the concentration of large-scale multinationals in the EU/EEA by economic activity as recorded by the EuroGroups Register⁴¹.

⁴⁰ Kerckhofs P. (2015). 'European Works Council developments before, during and after the crisis'. Available here: [European Works Council developments before, during and after the \(europa.eu\)](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_in_large-scale_multinational_enterprise_groups)

⁴¹ Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_in_large-scale_multinational_enterprise_groups

Figure 8. Heat map: country of company's HQ vs. sector

Company headquarters	AT	BE	DE	DK	EL	ES	FI	FR	HU	IE	IT	LU	NL	PL	SE	SK	Non-EU
Accommodation and food services			1				2	1							1		1
Administrative and support service activities			3			1									2		4
Agriculture, forestry and fishing													1		1		1
Construction	1		2			1		4			1				1		3
Distributive trade sector	1		4				2	2					2		3		5
Electricity, gas, steam and air conditioning supply			1					3	1					1	1		7
Information and communication services	1		3				1	2					1		3		7
Manufacturing		8	41	4	2	2	9	14		4	3	4	6	1	5	1	45
Mining and quarrying		1	1										1	1			5
Professional, scientific and technical activities			3	1				1							1		7
Real estate activities		1	2				1	2							1		
Repair of computers and personal and household goods															1		
Transportation and storage services			1				2	4		1					2		4
Water supply; sewerage, waste management and remediation activities				2			1								1		1
Other	1	1	2					5			2					1	4

Source: elaboration of ICF targeted survey results

The typical profile of a company with an EWC is a large-scale multinational company (MNC) with more than 10,000 employees, operating across the metal and chemical industries or various service industries, commonly headquartered in Germany, the US, France, or the United Kingdom, and highly internationalised.

A thorny issue regarding the evolution of EWCs across Member States and over the years is how the number of companies with an EWC compares to the overall **number of MNCs falling under the scope of the Directive**. This hypothetical indicator has been called the 'coverage rate' or 'compliance rate', although the latter might not be appropriate since the Directive does not establish obligations on companies to create an EWC once they reach the Directive's thresholds. However, as argued in a recent report from ETUI⁴², the difficulty in this counting exercise lies in the uncertainty attributable to the lengthy and complicated process of corporate restructuring, as well as to the EU's enlargement to more countries. In the same report, the authors compile several estimates attempted over the years⁴³, culminating to an estimated 'coverage rate' of 44.2% reported by the European Commission 2018 Evaluation.

To inform the present report, Eurostat⁴⁴ provided estimates of the population of MNCs in the EU/EEA that would be eligible for the establishment of an EWC, as well as the respective number of employees that would be affected. As of 2021, 3,676 eligible companies were counted in the EU/EEA, corresponding to a total of more than 29.6 million employees. In the years where these indicators were measured, the number of

⁴² De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making'. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

⁴³ 34 % in December 1996; 32.8 % in December 1998; 34.3 % in October 2006; 35 % in June 2005; 36 % in 2008; 44.2% in 2018.

⁴⁴ Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_in_large-scale_multinational_enterprise_groups

eligible companies grew by 3.92% on a yearly basis, while the number of eligible employees grew by 3.42% on a yearly basis. Taking this as the constant growth rate delivers an estimate for 2023 of 3,970 eligible MNCs for a total of 31.7 million employees. Eurostat also provides figures on the number of multinational companies headquartered in the EU and EFTA by country. A comparison with Figure 4 does possibly reveal a degree of correlation between the distribution of EWCs and the location of multinational companies, but this should be treated with caution given the relatively small number of respondents in ICF's targeted survey compared to the total number of MNCs⁴⁵.

3.2.2 The role of EWCs in industrial relations

Almost all EWCs are explicitly competent to receive information and be consulted about transnational issues, and the majority of these EWCs can also **provide comments and opinions** on the issues at stake. The 2015 ETUI study revealed that only a few EWCs have competences that go beyond these roles, such as initiating projects or reaching consensus with management.

Due to globalisation and changes in the organisation of undertakings, decisions with a transnational character (such as cross-border mergers, take-overs, joint ventures) cannot be addressed by employee representatives at the national level alone. Indeed, undertakings and groups of undertakings operating in two or more Member States **should inform and consult the representatives of their employees who are affected by their decisions**. Yet, procedures to inform and consult employees in national legislation are **not always suitable to the transnational structure** of these entities. Therefore, EWCs are needed to **avoid unequal treatment of employees** affected by decisions of a transnational nature, in order to guarantee workers' information and consultation on transnational issues. Indeed, there is evidence of the **added value of EWCs in strengthening social dialogue, social peace and an understanding of company strategy and culture**, appreciated both by employer and employee representatives.⁴⁶

In addition, the 2016 KU Leuven study revealed that, among other things, **EWCs also assist management in a variety of ways**, e.g., by reducing or eliminating conflict through communication (namely top-down cascading of information from management via the EWC), by encouraging support for management policy initiatives among local representatives, by explaining managerial practices, thereby ensuring an accurate understanding within EWCs of management positions. The study also showed that **during company restructuring**, EWCs further facilitate employment transfers between sites located in different EU Member States, and act as a substitute in the absence of local expertise or worker representative institutions. Moreover, 70% of the interviewees consulted during study reported that the **EWC was useful as a means to promote corporate identity**.

Furthermore, EWCs have an important integration function in terms of **bringing together the employees of different Member States** since their representatives speak different languages, have different working cultures and industrial relations traditions⁴⁷

Finally, the **systematic information and consultation of workers yields greater economic benefits**. This includes reducing employee turnover rates, subsequently

⁴⁵ Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Structure_of_multinational_enterprise_groups_in_the_EU#Multinational_enterprise_groups_operating_in_the_EU_and_EFTA_countries

⁴⁶ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

⁴⁷ European Parliament (2019). 'European Works Councils. Briefing – European Added Value Assessment'. Available here: [EPRS_BRI\(2021\)654215_EN.pdf](https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils)

alleviating pressure on social welfare systems and associated costs, while also enhancing employability.

During the economic crisis of 2009-2010, well-developed industrial relations systems, particularly in EU Member States where workers and their representatives have relatively strong consultation and information rights based on laws and collective agreements, helped to mitigate the impact of the recession on employment.⁴⁸ Similarly, during the COVID-19 pandemic, EU Member States with well-developed industrial relations systems, working arrangements and short-time work schemes performed better than the EU average (2.6% decrease in employment in the second quarter of 2020) and fewer workers (0 - 2%) lost their jobs in the EU overall, suggesting the Covid-19 pandemic has had less severe impacts on EU-based companies than the 2009-2010 economic crisis⁴⁹. Dealing well with a crisis creates positive effects both for employees and companies. A demographic analysis of EWCs indicates their prevalence in countries with robust industrial relations systems. Evidence also shows that transnational dialogue as fostered within EWCs established in countries with strong social partnership approaches helps mitigate local and national issues in those countries where social dialogue lacks a 'social partnership' approach and where industrial relations are less prominent⁵⁰. Indeed, evidence shows that the consultation of workers has a substantial impact on job security and quality during restructuring processes⁵¹. A 2016 Eurofound study confirmed that reconstructing measures were difficult to implement without employees' or trade unions' support in companies with 'trusting' forms of social dialogue, where consultation was carried out at an early stage.⁵² The same study also highlights that win-win situations are then created by having positive impacts for companies and employee representation.

⁴⁸ Welz C. et al. (Eurofound) (2014). 'Impact of the crisis on industrial relations and working conditions in Europe'. Available here: <https://www.eurofound.europa.eu/en/publications/2014/impact-crisis-industrial-relations-and-working-conditions-europe>

⁴⁹ European Parliament (2019). 'European Works Councils. Briefing – European Added Value Assessment'. Available here: [EPRS_BRI\(2021\)654215_EN.pdf](https://www.eurofound.europa.eu/en/publications/2019/european-works-councils-briefing)

⁵⁰ Eurofound (2020), Social dialogue and HR practices in European global companies, Publications Office of the European Union, Luxembourg, p. 32

⁵¹ European Parliament (2019). 'European Works Councils. Briefing – European Added Value Assessment'. Available here: [EPRS_BRI\(2021\)654215_EN.pdf](https://www.eurofound.europa.eu/en/publications/2019/european-works-councils-briefing)

⁵² Demetriades, S. et al. (Eurofound) (2016). 'Win-win arrangements: innovative measures through social dialogue at company level'. Available here: <https://www.eurofound.europa.eu/fr/node/22288>

4 Issues explored through evidence gathering

This chapter presents the results of the evidence collected on the issues selected for analysis in view of supporting the problem definition of the potential policy initiative.

The issues subjected to evidence gathering have been identified based on the 2018 Commission evaluation, the 2023 Resolution of the European Parliament and its proposed changes to the EWC Directive, exchanges between the study team and the European Commission, and the stakeholder consultations.

The gathering of evidence was centred on the general issue of the **effectiveness of the framework for information and consultation of employees at transnational level**.

On a more detailed level, issues were grouped into four main areas relating to: the scope and coverage of the Directive 2009/38/EC, the setting-up of EWCs, the operation and resources of EWCs, and the enforcement of EWCs rights.

In addition, **external factors** are included and described, i.e. events and developments that can happen at any rate and could be relevant when considering possible policy interventions.

The following sections present a detailed description of the issues explored.

The sources of evidence have intrinsic **limitations**, which are summarised in this chapter (see Table 3) and described in greater detail in the methodological approach in Annex 1.

4.1 Main issue explored: effectiveness of transnational information and consultation of employees

The basic subject matter of the evidence gathering exercise is the **effectiveness of information and consultation of employees at the transnational level**. The aim is to confirm the existence and scale of all related issues, and of relevant external factors (see section 4.2). Evidence was gathered on possible obstacles to the effectiveness of EWC's information and consultation (I&C) activities, and possible issues linked to the limited scope of the Directive and the establishment of new EWCs.

The issue of effectiveness of the I&C framework was posited as the central topic of evidence-gathering because effectiveness deficiencies can pose a risk to the achievement of the objectives set by the Recast Directive and undermine the purpose of EWCs themselves. The Recast Directive explicitly mentions in its recitals⁵³ the need to ensure the effectiveness of the arrangements for informing and consulting employees on transnational matters and makes this one of its main objectives. The effectiveness of transnational I&C is a crucial element for both employees and management in the context of industrial relations because it can influence worker satisfaction, enhance the quality of companies' strategic decisions as well as employees' 'buy-in' and trust in those decisions, and contribute to the stability of working conditions in the undertakings themselves.

The European Commission's 2018 evaluation⁵⁴ concluded that the Recast Directive has had a limited impact on the establishment and renegotiation of EWCs, estimating that around half of eligible companies have not yet established an EWC for various reasons, including lack of awareness and changing company structures. In the light of new data

⁵³ Recitals 7 and 14.

⁵⁴ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

provided by Eurostat⁵⁵, this appears to be an underestimation. Indeed, the new figures imply a ratio of companies currently with an EWC to eligible companies of ca 25% (see also section 3.2.1).⁵⁶ The coverage rate of workers employed in eligible companies is nevertheless higher than 50 % as larger multinational companies⁵⁷ have set up an EWC or an information and consultation procedure (see Annex 1).

Even though the Recast Directive has improved the quality and scope of information provided to employees, the evaluation also found that the practical interpretation of the concept of transnationality remains a challenge and that there are concerns about the effectiveness of the right to consultation, particularly in cases of restructuring. According to the evaluation, despite these challenges, the EWCs are seen as beneficial by employers, fostering common understanding and facilitating proactive discussions.

Studies⁵⁸ carried out by employee representative organisations stress that for information and consultation activities to be effective, they must be meaningful to both employees and employers, taking into account factors such as timing, financial resources, external support, use of confidentiality clauses and other provisions in the agreements themselves. However, the meaningfulness of activities relating to the information and consultation of employees seems to vary depending on the type of issue raised, as highlighted by the results of surveys among EWC members (see Figure 10). In fact, the results from the 2018 ETUI survey indicate that although a large variety of issues were raised in EWCs, the share of respondents stating that information and consultation proved 'useful' is below 50% for all topics, except 'closures and cutbacks'.⁵⁹ Overall, there seem to be mixed views among employee representatives on the effectiveness of EWCs as a platform for information and consultation of employees. Indeed, **while 77.1% of the responding employee representatives deemed the information received during the ordinary meetings 'effective' or 'very effective', only 49.5% did for consultation.** These figures refer to I&C occurring during the ordinary (plenary) meetings, so it leaves out I&C taking place during extraordinary meetings, which are often requested in cases of restructuring. In cases of restructuring, ineffective information and consultation processes may have especially negative impacts on employees, potentially leading to conflicts with central management and impacting the stability of labour markets in the EU. The same survey from ETUI reports that **the share of EWC members that reported having received detailed and complete information related to a restructuring event is 47.4%.** Overall, the review of the literature sources currently available yields similar results.

Similarly, the targeted ICF survey⁶⁰ asked employee representatives to provide their opinions on the usefulness of their EWC over several dimensions. The results show the employee representatives deemed their EWC useful on all the considered dimensions, especially as a means to improve the management's openness and adaptation to change (see Figure 9).

⁵⁵ Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_in_large-scale_multinational_enterprise_groups

⁵⁶ Some multinationals may have more than one EWC. In general, however, the assumption that a company has only one EWC is a good approximation.

⁵⁷ Average number of EU-based employees per company with an EWC has been estimated at 16,612 (see Annex 1).

⁵⁸ De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making'. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

⁵⁹ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives', p. 38. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

⁶⁰ ICF (2023). 'EWC targeted survey'. Q11, 177 employee representative and 50 management respondents.

Table 3. Limitations of available sources based on stakeholders' views

The views of stakeholders are an important source of information on the practical functioning of EWCs, as well as for defining and measuring the extent of problems that may affect them. Therefore, as in previous studies, this study relies heavily on primary and secondary data on the views and experiences of employee representatives, managers, social partners, and experts. However, there are some caveats to this data which need to be addressed.

The aforementioned survey carried out in 2018 by ETUI targeted exclusively employee representatives and does not present the views of employers. Also in other cases, **imbalances in survey samples** often result in a skewed representation of opinions, where the views of employees or their representatives are more strongly represented than those of management representatives. This discrepancy may arise from a higher number of individual responses from employee representatives relative to those of management, and their greater inclination to voice concerns to drive policy change. In contrast, managers may be less motivated to participate in such surveys because they perceive limited benefits from policy changes. This imbalance exacerbates the pronounced **polarisation of employees' and management's perspectives** on several EWC-related issues. To address this imbalance, the study presents, when possible, the views of employees and management separately, thus ensuring a more comprehensive and balanced understanding of the issues.

Selection bias could also be a problem, as mentioned earlier. Stakeholders with strong opinions or vested interests may be more likely to participate. As such, survey results may not accurately reflect the wider range of views within stakeholder groups or the true state of affairs. This is linked to the problem of **small sample sizes** which, with a few notable exceptions, has been a feature of several consultations on EWCs in the past. Triangulation of data sources is therefore essential to ensure the validity and reliability of the results.

Misplaced expectations about the purpose of the EWC Directive can lead to misleading results, as respondents may apply very different criteria for effectiveness. From the point of view of employee representatives, effectiveness may often be measured by the extent to which the consultation process has had a significant influence on the outcome of a transnational matter. However, such a judgment criterion would be more appropriate for measuring the effectiveness of a co-determination instrument. By contrast, the Recast Directive is procedural in nature, aiming to create a well-functioning framework for I&C without requiring negotiation or even co-determination on company decisions. In line with the nature of the Directive, the definition of consultation requires the establishment of a dialogue and an exchange of views, but without prejudice to the responsibilities of management and their ability to take decisions effectively. For this reason, this study refrains from relying on stakeholders' interpretations of the 'usefulness' or 'effectiveness' of I&C on transnational issues as objective indicators of the functioning of EWCs, even though these are relevant measures of stakeholders' perceptions and experiences.

Table 4. Effectiveness of I&C in EWCs (employees' perspective)

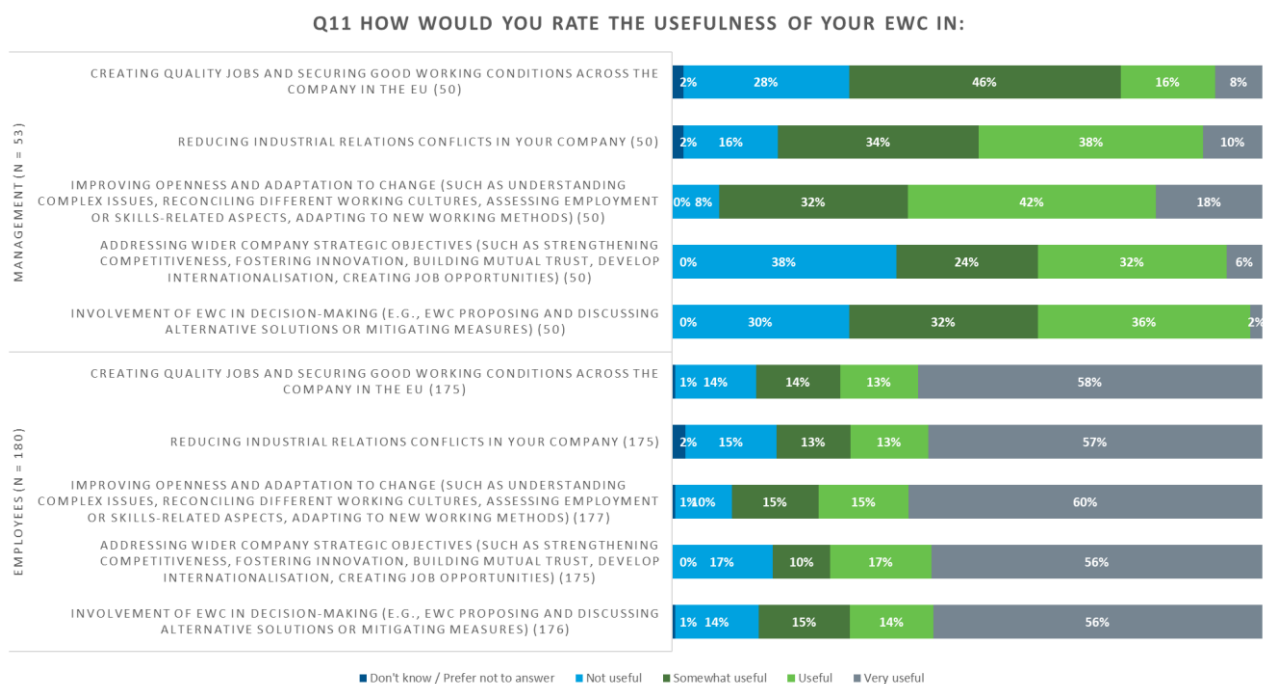
Effectiveness (ordinary meetings)	As a source of information (%)	As a means of consultation (%)
Very effective	24.6 (361)	11.9 (173)
Effective	52.5 (770)	37.6 (546)
Neither effective nor ineffective	17.9 (262)	29.1 (422)

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Effectiveness (ordinary meetings)	As a source of information (%)	As a means of consultation (%)
Ineffective	2.9 (42)	15.3 (222)
Very ineffective	2.2 (32)	6.1 (88)

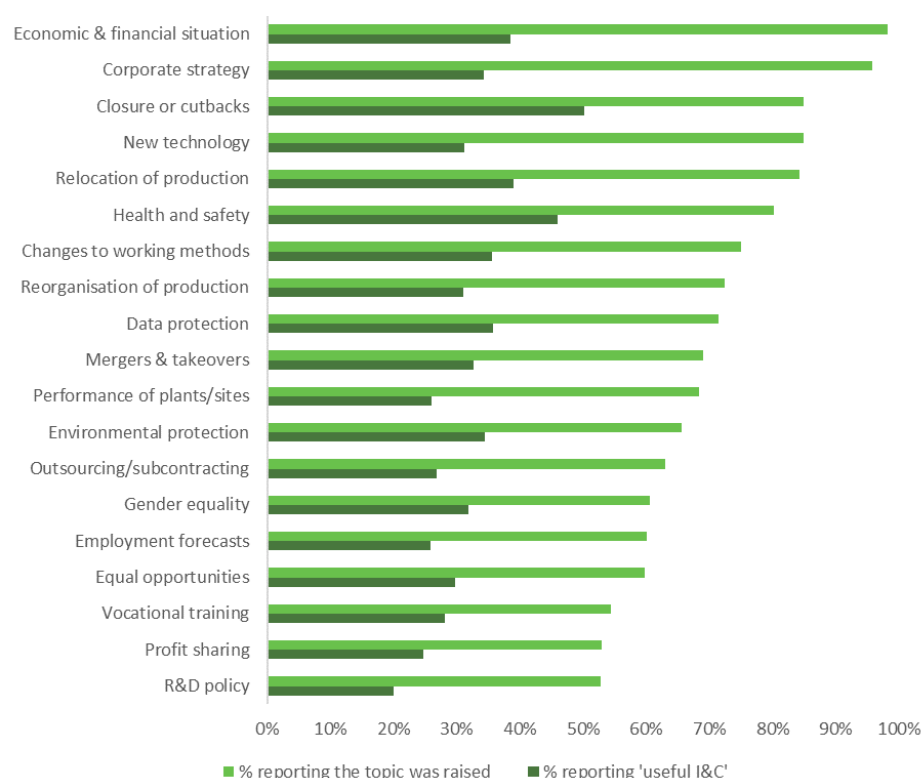
Source: ICF elaboration of survey data from ETUI (2019).

Figure 9. Q11, Usefulness of your EWC (percentage) – N= 233



Source: ICF EWC Targeted survey (2023)

Figure 10. Share of EWC members who considered there was 'useful information and consultation' on issues that had been raised.



Source: ICF elaboration of survey data from ETUI (2019).

This discrepancy in opinion between management and employee representatives on the effectiveness of information and consultation procedures also stems from studies reporting on the views of management on EWCs: 72% of the company managers interviewed in the 2016 KU Leuven study by Pulignano and Turk⁶¹ reported that, in cases of restructuring, the EWC was informed some time in advance of the implementation of the managerial decision⁶², and only 39% indicated that consultation with the EWC had a marginal (10%) or real (29%) impact on the restructuring decision.

Furthermore, the targeted ICF survey⁶³ reports the opinion of respondents representing management with regards to the usefulness of their EWC on several dimensions. As Figure 9 shows, managers' opinions appeared to be generally positive, but less so than those of employee representatives. There also seem to be notable discrepancies in opinions regarding the various ways in which the EWC has proven useful. Indeed, the vast majority of respondents agreed that the EWC had been useful in improving openness and adaptation to change, or in reducing industrial relations conflicts, while the share of positive views on other dimensions⁶⁴ were lower, especially among management representatives. However, the majority of management representatives still considered the EWCs useful or at least somewhat useful on those aspects.

⁶¹ Pulignano, V., & Turk, J. (2016). 'European Works Councils on the move: Management perspectives on the development of a transnational institution for social dialogue', pp. 45-46. KU Leuven.

⁶² Timing is recognised as a crucial factor in the effectiveness of information and consultation, as it is explained later. One caveat of these estimates, apart from the potential bias, which is also relevant for employees' views, is that they are based on only 56 companies, of which only one had created an EWC after the Recast Directive.

⁶³ ICF (2023). 'EWC targeted survey'. Q11, 177 employee and 50 management respondents.

⁶⁴ Creating quality jobs and securing good working conditions across the company in the EU, addressing wider company strategic objectives, involvement of EWC in decision-making.

4.2 Summary of evidence regarding specific issues

This section describes the detailed evidence on issues selected for further exploration in the framework of this study. The issues were divided into four main categories:

- Scope of the legal framework
- Procedure for setting up EWCs
- Operation and resources of EWCs
- Enforcement

4.2.1.1 Scope of the legal framework

Exemptions of undertakings with legacy agreements

The exemptions to the provisions of the Recast Directive are set out in Article 14(1).

Article 14(1)(a) of the Recast Directive allows pre-existing works council agreements concluded before the 22 September 1996 to continue without implementing the new provisions. Even if renegotiated after 22 September 1996, 'Article 13 agreements'⁶⁵ (also known as pre-directive agreements or voluntary agreements) maintain their status. **Article 14(1)(b)** of the Recast Directive extends the exemption to EWCs established or renegotiated during the transition period from June 2009 to June 2011.

The latest data from ETUI show that there are, as of June 2023, **323 Article 13 (pre-Directive) EWCs⁶⁶ (32% of all EWCs) and 28 Article 14 (2009-2011) EWCs (2.8%)** for a total of 351 exempted agreements.

The 2018 Commission evaluation⁶⁷ reports on several differences between the new EWCs established under the Recast Directive and the older arrangements established under pre-Recast agreements, most of which are pre-Directive 'voluntary' agreements:

- New rule EWCs are smaller on average, with 16 employee representatives compared to 23 in Article 13 EWCs. They are also smaller as measured by turnover.
- Recast EWCs are less internationalised.
- Recast EWCs have more frequent plenary meetings.
- Recast EWCs have fewer employee-only preparatory meetings (77% compared to 96%).
- 36% of Recast EWCs have working groups, compared to 29% in Article 6 and 13 EWCs.

⁶⁵ Article 14(1)(a) of the Recast Directive covers the agreements that have been concluded pursuant to Article 13(1) of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC. With reference to the original Directive, there are often referred to as "Article 13 agreements" and "Article 3 agreements".

⁶⁶ The number of Article 13 EWCs was adjusted to 323 after the latest update of the ETUI's EWC Database in August 2023. However, for the sake of consistency, the distribution before this update is used for the study, as it is a coherent, recent, and relatively accurate snapshot of the current demographics of EWCs.

⁶⁷ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, pp. 22-23. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

The 2016 study supporting this evaluation⁶⁸ reports that while the Recast Directive has incentivised the renegotiation of existing agreements, especially Article 13 'voluntary' agreements, nearly a third of renegotiated agreements have continued to follow the previous rules. Nevertheless, the proportion of these agreements has tended to decline over the years, while Article 6 agreements have increased in relative terms.

The renegotiation of the 'old' agreements appears to relate mainly to the new definitions of 'information', 'consultation' and 'transnationality', the adaptation clause, a right to training and the role and protection of employee representatives. This might indicate that the Recast Directive has, at least to a certain extent, succeeded in introducing these concepts into the legal framework of existing EWCs. Considering access to justice and remedy, the Recast Directive did not impact voluntary agreements that were concluded before or during the application of either the 1994 EWC Directive or the 2009 Recast Directive. It is not clear what rules would apply at national level in case of non-compliance with these agreements.

A 2022 ETUI report⁶⁹ examines the differences in terms of enforcement or on the effectiveness of the consultation framework between the different types of agreements based on data extrapolations from the 2018 ETUI survey. Overall, the findings imply that members of Article 13 EWCs are less likely to start legal proceedings in cases of serious conflict, and more likely than Article 6 EWCs to state that they did not do so because there were no provisions in the (national) law ensuring them access to courts of law (see section 4.2.1.4 on enforcement). Moreover, Article 13 EWCs hold fewer annual meetings and benefit less often from expert support than other EWC types but are also more likely to be informed or consulted before the managerial decision is taken (see section 4.2.1.3 on the consultation framework).

Employee organisations have long argued for ending exemptions to ensure a level playing field for all companies with an EWC and to reduce legal complexity⁷⁰. This request has been upheld by the European Parliament in its Resolution concerning a possible revision of the Recast Directive⁷¹. Article 20 of the Resolution stresses the importance that all EWC agreements are governed by the same rights and obligations, to ensure equality of treatment and legal certainty. Hence, the European Parliament calls for ending the exemptions that apply to voluntary pre-Directive agreements. The Parliament aims for a transition from an exempted agreement to one under the Directive to occur 'without renegotiation'. However, the practical implementation of this process remains unclear at present. The same call was made by trade union organisations in response to the European Commission's first-phase consultation with social partners⁷². For instance, ETUC argued that there is no longer justification for exempting old agreements, and that these agreements are an obstacle to achieving a level playing field and legal clarity. On

⁶⁸ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 76. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

⁶⁹ De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making'. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

⁷⁰ ETUC (2017). 'ETUC Position paper/For a modern EWC Directive in the Digital Era'. Available here: [ETUC Position paper/For a modern EWC Directive in the Digital Era | ETUC](#)

⁷¹ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

⁷² European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

the contrary, 5 of 8 employers' associations consulted considered the exemptions useful and appropriate.

However, there is so far no conclusive evidence that EWCs operating under pre-Directive agreements are less effective as bodies for information and consultation on transnational issues than EWCs operating under the Directive. The aforementioned ETUI reports describe pre-Directive EWCs as less formalised but with a better functioning information and consultation process. Similarly, the results of ICF's targeted survey⁷³ suggest that pre-Directive EWCs perform their functions slightly better than Recast Directive EWCs according to management representatives (i.e., in relation to perceived usefulness and whether respondents had experienced problems with the definition of transnational matters or with the consultation procedure) while employee representatives did not notice any significant differences in performance in this regard. Similar findings also emerged from the evidence-gathering workshops⁷⁴, where both management and employee representatives shared the view that voluntary agreements tend to be effective and efficient overall, as long as both parties make efforts to build good working relationships. In this context, management representatives also expressed concerns about the potential negative effects of imposing more rules on voluntary agreements, especially in cases where social dialogue is well-established. These views were echoed in interviews with the EU-level and national-level employers' associations who believe that well-established agreements tailored to the specificities of each multinational company should be maintained and that a one-size-fits-all approach would be damaging. While these views are not representative of the whole population of EWCs, they constitute important evidence to be considered when pre-Directive and 'new' EWCs are compared for effectiveness.

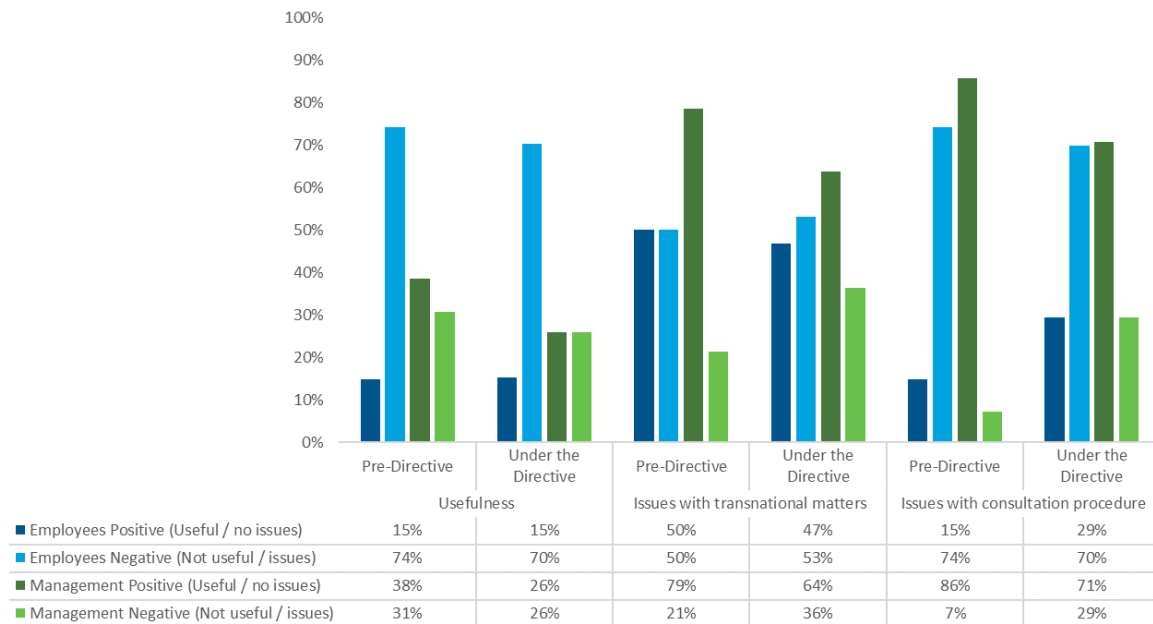
An examination (2023) of the national laws transposing the provisions of the EWC Directives confirms that all the Member States have transposed Article 14 of the Recast Directive. Most national authorities interviewed are unsure about pre-Directive agreements as they do not know how many operate under their respective national legislation or what provisions they contain and are unaware of any problems related to such agreements. The national authorities interviewed in Poland and Spain emphasise that no voluntary agreements apply their respective national provisions. The national authority consulted in the Netherlands is aware of ten such voluntary agreements that are governed by Dutch law. More than half of existing voluntary agreements operate under German, French or Belgian law⁷⁵.

⁷³ ICF (2023). 'EWC targeted survey'. Q11 (n=195), Q14 (n=182), and Q17 (n=233).

⁷⁴ ICF (2023). 'Evidence-gathering workshops'.

⁷⁵ Indeed, the ETUI's EWC Database reports that 58% of pre-Directive (Article 3, Article 13, and Article 14) agreements currently in force operate under French, German or Belgian law. This data still includes 13% of voluntary agreements under UK legislation (no reliable post-Brexit data was available at the time of writing of this report).

Figure 11. Pre-Directive EWCs vs. EWCs under the Directive: performance as an effective tool for transnational information and consultation



Source: ICF EWC Targeted survey. Q11 (n=195), Q14 (n=182), and Q17 (n=233).

Certain forms of dominant influence over business decisions (e.g., franchising)

The Recast Directive covers groups of controlling and controlled undertakings. For the purposes of determining whether undertakings form a group subject to transnational information and consultation requirements, ‘controlling undertaking’ means an undertaking which can exercise a ‘dominant influence’ over another undertaking, e.g., by virtue of ownership, financial participation, or the rules that govern it. The Recast Directive does not regulate specifically whether contractually linked undertakings are covered by the concepts of control and dominant influence, nor did the original Directive 94/45/EC. At the same time, the Recast Directive does not explicitly exclude such undertakings either. As a result, there is currently legal uncertainty as to whether contracts which allow structurally independent undertakings to influence each other's operations and business decisions (such as franchising or management contracts) should be considered under the scope of the Recast Directive.

Currently, the EU legislative framework lacks a definition for franchise agreements and management contracts concerning social dialogue and the information and consultation process. Existing legislation at EU level and in the Member States primarily focuses on protecting intellectual property rights (IPRs) and addressing competition restrictions.

Franchise agreements within the EU legislative framework are governed by the Vertical Block Exemption Regulations, which aim to safeguard IPRs between franchisors and franchisees and prevent unfair competition. However, Regulation 2022/720, the most recent relevant EU legislative act, does not provide a specific definition for franchise agreements. According to the accompanying Guidelines on Vertical Restraints, franchise agreements typically involve the licensing of IPRs related to trademarks or signs, as well as know-how for the distribution of goods or services. Additionally, franchisors often offer commercial or technical assistance throughout the agreement, including procurement services, training, and guidance on real estate and financial planning. These components

are integral to the franchised business model⁷⁶. At the national level, franchising is not regulated by specific legislation in at least five Member States (France, Germany, Hungary, Poland and Spain) and regulated under commercial law⁷⁷, while in Estonia, Italy, the Netherlands and Lithuania⁷⁸ specific legislation exists, although this information might be outdated. An earlier study conducted in 2015⁷⁹ had a broader geographic coverage but faced similar challenges regarding the timeliness of its findings. Research revealed⁸⁰ that Sweden had attempted for more than 30 years to introduce specific legislation regulating franchise agreements including arrangements employee consultation and information⁸¹. So far, the rules adopted in 2006 in Sweden place obligations on the franchisor to give information to the franchisee when negotiating the franchise agreement. The Pronupia case of the CJEU⁸² distinguishes several types of franchise: service franchises, production franchises, and distribution franchises. There is no comprehensive recent study or publication that analyses the extent to which the various franchise types are subject to specific regulations in the Member States. It is not clear from the research whether the different types of franchise agreements impact differently on employee information and consultation rights.

As for **management contracts**, the European Parliament Resolution of February 2023 defines them as agreements where one independent undertaking entrusts the day-to-day operations to another undertaking. The managing undertaking assumes control over the employees of the managed undertaking without owning the business itself. However, there is currently no EU-defined framework for these contracts within EU legislation, and no evidence has been yet identified on the regulation of these types of contracts at the national level. Furthermore, the extent to which such contracts are utilized by EU businesses remains unknown at this stage.

Stakeholders' views on this issue are rather polarised. On the one hand, employers' associations, Member States authorities, and experts generally caution against expanding the scope of the Directive to cover certain forms of dominant influence over business decisions. On the other hand, trade unions and employee representative would see this as a positive development. Several trade union coordinators, e.g., in the private service sector, have emphasised the necessity of revising the EWC Directive to effectively include dependent companies like franchise companies or joint ventures⁸³. These trade union

⁷⁶ Communication from the Commission Guidelines on vertical restraints 2022/C 248/01 (C/2022/4238), par. 85. Available here:

https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.C_.2022.248.01.0001.01.ENG

⁷⁷ Franchising.EU (2021). 'Franchise regulations in the EU (and other European countries)'. Available here: <https://franchising.eu/my-business/30/franchise-regulations-in-the-eu-and-other-european-countries/>

⁷⁸ Abell, M. (2013). 'The Law and Regulation of Franchising in the EU'. Elgar Intellectual Property Law and Practice Series, London, UK; and European Parliament (2016). 'Franchising'. Available here: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578978/IPOL_STU\(2016\)578978_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578978/IPOL_STU(2016)578978_EN.pdf)

⁷⁹ European Parliament (2016). 'Franchising'. Available here: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578978/IPOL_STU\(2016\)578978_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578978/IPOL_STU(2016)578978_EN.pdf)

⁸⁰ Sweden Ministry of Justice (2006). 'Report on the proposal to regulate franchising'. Available here: <https://www.regeringen.se/contentassets/a36140afeef347bfb434ebc29455455b/forstarkt-skydd-for-franchisetagare/>

⁸¹ The first motion to inquire with the government to introduce legislation on franchise agreements and rules for employees dates back to 1987 – Motion 1982/83:2016 – accessed at: https://www.riksdagen.se/sv/dokument-och-lagar/dokument/motion/utredning-om-franchising_g6022016/

⁸² Case 161/84 of 28 January 1986, Pronuptia de Paris GmbH (Frankfurt am Main) and Pronuptia de Paris Irmgard Schillgalis (Hamburg), European Court reports 1986, p. 00353

⁸³ Voss E. (ETUC) (2016). 'European Works Councils Assessments and Requirements. Report to the ETUC'. Available here: https://www.etuc.org/sites/default/files/publication/files/europeanworks_councils_ces_01.pdf

representatives believe that the existing definition of ‘controlling undertakings’⁸⁴ is not precise enough, leading to ambiguity in national implementation and individual EWC agreements regarding the handling of dependent companies. Conflicting views on the issue among management and employee representatives were apparent during the evidence-gathering workshops⁸⁵. Indeed, Article 3 on ‘controlling undertaking’ leaves room for Member States to adapt the scope of that provision to various forms of undertaking structures. A review of the legal transposition of Article 3 in Member States shows that nearly all Member States transposed the provision verbatim (except Estonia, France and Ireland). In Estonia, it appears that a ‘controlling undertaking’ could be defined by contract. In France and Ireland, it seems that joint ventures (50/50 ownership) are also within scope.

Employers were cautious about introducing more rigidity by extending the scope of EWCs to companies with contractual arrangements. From a corporate governance perspective, in franchise agreements, the relationship is based on negotiations between the company and the franchiser and there is not always a formal connection between these companies beyond the business agreements. It would be challenging to ensure that a franchise company follows EWC rules if it is not a part of the same group. While it could be included in the franchise agreement, it entails a separate negotiation between the company and the franchisee. Therefore, extending EWC provisions to contractually linked businesses, such as franchises, goes beyond the scope of corporate governance and may not be feasible or practical.

According to the employers’ associations interviewed, it would be impractical to extend EWC rules to contractually linked businesses, such as franchises, as corporate structures vary considerably according to each company and sector. For example, according to the German employers’ association BDA, the franchise model operates more as a licensing agreement, where a direct connection between two companies is not always present. In terms of the workplace structure or organisation, this lack of connection does not necessarily imply an association between the two companies. Employee representatives, on the other hand, warned that the exclusion of contractually linked business, such as franchisees, would limit adequate representation of large sections of the workforce in those companies. These differences of opinion were also reflected between the employers’ associations and trade unions interviewed on this topic.

In addition, the legal experts and national authorities interviewed on this subject argued that legislating such an extension of scope and enforcing the resulting new rights and obligations would be very challenging due to the complexity and diversity of undertakings linked by contractual arrangements. For example, the German authorities cautioned that German law currently specifies that the national works council is created within the group or ‘company’ (*Konzern*/corporation) linked to company law statutes. This raises questions regarding works councils in other settings, such as franchise arrangements, which fall under different laws. Introducing such arrangements at the EU level may clash with German national law. Additionally, it was argued that the concept of franchising aims to separate the franchiser from franchisee in terms of staff management, making it uncertain whether a strong enough link exists to impact all staff members.

The ETUC stressed in the context of the European Commission-led first round of consultation with social partners the need for a comprehensive definition of the concept ‘controlling undertaking’ – Article 3 of the Directive – so as to include companies operating

⁸⁴ From the Directive 2009/38/EC (Recast), Art 3(1): “For the purposes of this Directive, ‘controlling undertaking’ means an undertaking which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or the rules which govern it.”

⁸⁵ ICF (2023). ‘Evidence-gathering workshops’.

through contract management, franchise systems and 50/50 joint ventures. Employers' associations did not elaborate on this issue.

Overall, the evidence gathered on the issue of enterprises linked by contractual arrangements and not by ownership or incorporation is inconclusive. Ultimately, it is not possible to draw reliable conclusions on the existence or the scale of obstacles to the effectiveness of I&C procedures resulting from enterprises linked by contractual arrangements not being covered by the EWC Directive.

4.2.1.2 Procedure for the setting-up of EWCs

The establishment of SNBs

The Recast Directive sets out the responsibility for the central management to create *the conditions and means necessary for the setting-up of a European Works Council or an information and consultation procedure* (Article 4 para 1). Management can initiate the set up at its own initiative or shall do so after *receiving a written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States* (Article 5. Para. 1). The introduction of an obligation for management to inform the European social partners of the beginning of negotiations under the SNB in the Recast Directive (Article 5. Para. 2 (c)) represents a significant change in comparison with Directive 94/45/EC. Overall, the 2018 evaluation⁸⁶ reports that the provisions concerning the establishment of EWCs were implemented correctly by Member States. Some Member States (Lithuania, Luxembourg) went beyond the Directive, and included a specific time limit for sending information to social partners, but not on the establishment of the SNB itself.

Moreover, **if the central management refuses to enter into negotiations within six months of a written request** from at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States, the Recast Directive states that the **subsidiary requirements apply** (Article 7(1)). Therefore, since the current formulation of the Directive refers to a refusal, it can be misconstrued as providing an opportunity for management to stall the start of the negotiations. At the same time, the absence of proactive steps to start negotiations could arguably be interpreted as a tacit refusal. Under German law, the failure to start negotiations has been accepted by the highest labour court as evidence that management 'refuses' to enter negotiation already under the rules transposing the 1994 EWC Directive⁸⁷ and this was re-confirmed in a case brought forward under the Recast Directive⁸⁸. However, whether other Member States interpret this in the same manner remains unclear. Overall, this is potentially conducive to uncertainty and misinterpretation.

To evaluate the prevalence and extent of this issue, the ICF-targeted survey aimed to gauge the frequency of challenges related to the establishment of SNBs among both management and employee representatives in companies with an EWC. Among the survey respondents, 56% of employee representatives and 4% of management representatives reported having experienced problems in setting up the SNB. Among

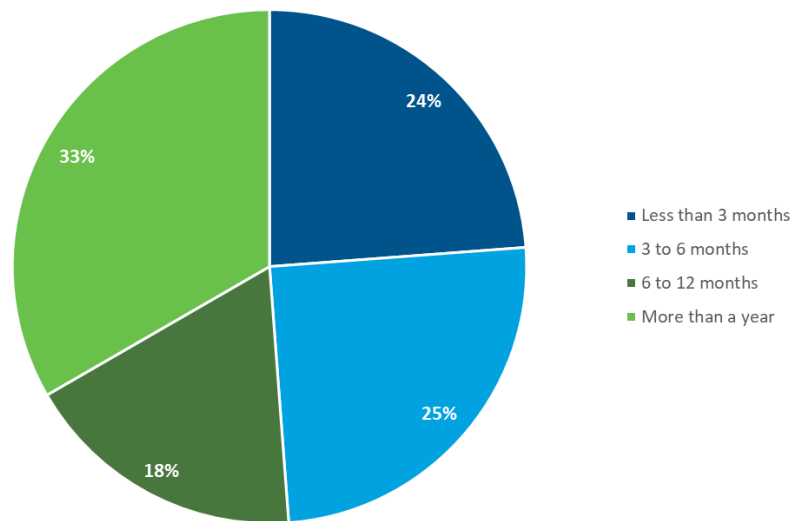
⁸⁶ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 12. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

⁸⁷ BAG judgement of 29.06.2004 - 1 ABR 32/99, accessed at: <https://lexetius.com/2004,2882>

⁸⁸ Arbeitsgericht Berlin, judgment of 15/07/2016 - 26 BV 4223/16: "[t]he refusal to commence negotiations may be explicit. Furthermore, a refusal can also exist if, due to delays on the part of the central management, the constituent meeting of the special negotiating body has not taken place within six months of the application being made or if the information required for the formation of a special negotiating body is persistently refused in accordance with § 5 EBRG."

those, **41% of employee representatives and none of the management representatives reported that the problem was linked to delays in setting up the SNB.** Of the respondents who reported these issues and were able to specify the time taken to establish an SNB, 51% stated that this process took more than six months (see Figure 12). There was no mention of such delays by either party in the evidence-gathering workshops. No specific issues in this regard were highlighted in the stakeholder interviews, with the exception of a few EWC representatives in multinational companies. Overall, there is support across various stakeholder groups for a clear six-month timeframe for setting up the SNB.

Figure 12. Q20, Time between the request to set-up and the actual set-up of SNB (percentage) – N= 84



Source: ICF EWC Targeted survey. Q20, 233 respondents (excludes 149 'don't know/prefer not to answer' responses).

Based on the evidence collected, it is unclear what proportion of SNBs fail to be established within a six-month timeframe. Very few court cases were identified where SNBs claimed that SNB members' rights or procedural rules were not respected⁸⁹.

The current wording of Article 7(1) referring to the refusal of the management to start negotiations is perceived as a problem by workers' representatives and policy makers. Employee representatives have been calling for improvements and clarifications to the rules for negotiations with SNBs, such as a clear timeframe for the first SNB meeting and for the subsequent negotiations, and a clear obligation for central management to establish an EWC under subsidiary requirements when these apply⁹⁰. In response to the European Commission's first-phase consultation⁹¹, ETUC highlighted that management frequently delays the establishment of the SNB and suggested the introduction and enforcement of an obligation to convene a first meeting within six months of the request, failing which subsidiary requirements would automatically apply. On the

⁸⁹ Four legal cases were identified in the research phase: Case Sofidel – RG n. 573/2019, 11.06.20; CAC Unite the Union & Facilicom Services Group EWC/14/2016, 10.01.2017; EWC/15/2017 Mr Gordon Lean & Manpower Group (3), 24.10.17; ECLI:DE:ARBGBE:2016:0715.26BV4223.16.0A, Groupon case, 15.07.16.

⁹⁰ ETUC (2017). 'ETUC Position paper/For a modern EWC Directive in the Digital Era'. Available here: [ETUC Position paper/For a modern EWC Directive in the Digital Era | ETUC](#)

⁹¹ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

contrary, employers' associations believe that the provisions on the setting-up of EWCs are working satisfactorily.

The Resolution of the European Parliament of February 2023⁹² proposes to amend the text of the Recast Directive to clarify that management must take active steps to launch negotiations during a specified period (six month, with a possible extension of another six months) and that subsidiary requirements would apply if it failed to do so.

Duration of negotiations

The Recast Directive provides for the application of **subsidiary agreements if the parties have not been able to reach an agreement after three years from the date of the request**.

According to the 2018 Commission evaluation⁹³, the **duration of negotiations**, from the establishment of the SNB to the conclusion of the agreement, **ranges from two to three years**. Different estimates were made in the 2016 ICF study⁹⁴, which reported that the average number of meetings for negotiating the establishment of EWCs (from 4 to 3 meetings) was lower compared to pre-Recast EWCs, while the **average length of negotiations** had increased (from 13 to 14 months). The 2016 ICF study noted that all these changes were likely due to the smaller size of the companies establishing EWCs in recent years, rather than to legislative changes. There is a degree of uncertainty associated with these estimates and thus it is not possible to determine with a reasonable degree of certainty a definitive value derived from them. Among the respondents to the ICF targeted survey⁹⁵ who acknowledged having faced issues in the setting-up of their EWC (56% of employee and 4% of management representatives), only 8% of the employee representatives and 4% of the management representatives stated that the negotiations were lengthy. When asked about the duration of such negotiations, most respondents did not provide specific information, but 51% of those who did so (48 out of 95 respondents) indicated that this timeframe exceeded 18 months (see Figure 13). In the evidence-gathering workshop, both employee and management representatives mentioned that protracted negotiations can be costly, but while the latter group argued that longer negotiations may be necessary to ensure the quality of the EWC agreement, the former group expressed doubts on this correlation.

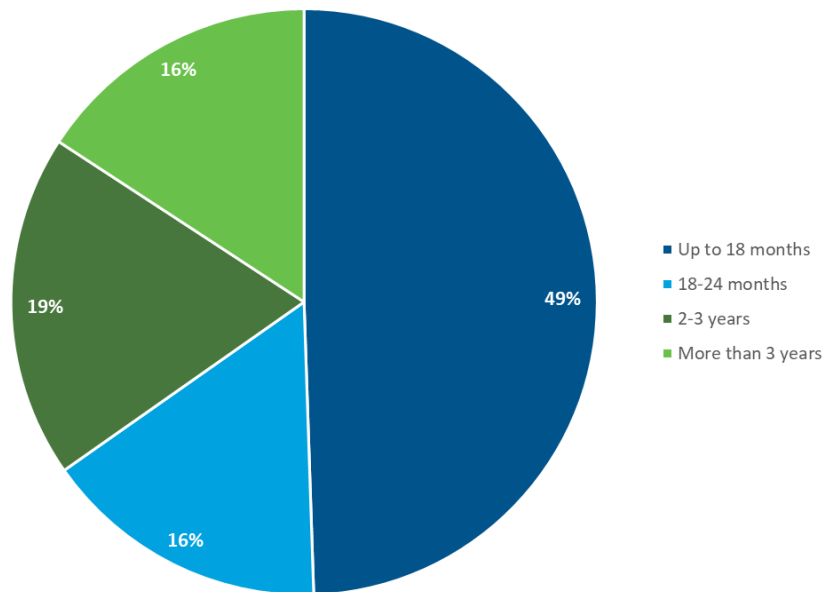
⁹² European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

⁹³ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 22. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

⁹⁴ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 107. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

⁹⁵ ICF (2023). 'EWC targeted survey'. Q19a and Q21, 233 respondents. Both employee representatives and managers.

Figure 13. Q21, Time of negotiations to set up a EWC (percentage) – N= 95



Source: ICF EWC Targeted survey. Q21, 233 respondents (excludes 138 'don't know/prefer not to answer' responses).

The duration of negotiations appears to be broadly in line with the obligations imposed by the Recast Directive. There is no sufficient evidence to conclude that the existing deadline is inadequate.

On this matter, the European Parliament Resolution states that the three-year delay following a request before the application of subsidiary requirements is excessive, is often not used effectively and is disadvantageous for workers⁹⁶. In the Annex to the Resolution, the European Parliament proposes reducing this period to 18 months. In the stakeholder interviews, EWC members expressed concerns in terms having sufficient time for negotiations. The European Commission's first-phase consultation of social partners⁹⁷ revealed divergent views among ETUFs on the possibility of shortening the timeframe for negotiations: CESI supports the 18-month timeframe while ETUC considers the existing three-year deadline reasonable. Reservations were also raised by national trade unions in this respect. Employers' associations argued that the deadline should be flexible to allow for a reasonable negotiation process, which requires time (two to three years on average, according to CEEMET).

National social partners⁹⁸ and EWC members interviewed for this study highlighted that one year (discounting the six-month timeframe for setting up SNBs) would be quite short for negotiating EWC agreements. EWC members highlight that the length of negotiation process depends on whether SNB members know each other and whether the structure of the company is well known. Also, the level of knowledge of transnational information and consultation rights can influence the duration of negotiations. When SNB members

⁹⁶ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

⁹⁷ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

⁹⁸ For trade unions, IE- SIPTU, NL- FNV Formaat, FI – ILRY, FR – CFDT, UK – Unite the Union
For employers' side: SE - Association of Swedish Engineering Industries; FR – Medef, DE- BDA.

are new to the negotiation process, training time is required. The interviewed national employers' associations highlighted that management also needs time to review how processes for transnational information and consultation can be set up. Time is required to enable all parties to negotiate an EWC agreement of good quality that deals with all points specified in Article 6 of the Directive and that is adapted to the specific characteristics of the company for which it is negotiated.

Support and resources for SNBs

The Recast Directive sets out in Article 5(4) and (6) the support and financial resources to which the SNB is entitled. Article 5(4) establishes **the right of the SNB to seek assistance from experts, including representatives from competent recognised Community-level trade unions**, during negotiations. Article 5(6) sets out **the obligation for the central management to cover all the expenses related to the negotiations**, allowing the SNB to fulfil its role effectively. The Directive allows Member States to lay down specific budgetary rules, including limits on the number of experts to be financed by the administration. Moreover, Article 10(4) establishes the right to training without loss of wages to members of the SNB.

The 2018 Commission evaluation⁹⁹ concluded that most Member States have transposed the provisions concerning the rules governing the SNB effectively. Some Member States (Austria, Germany, Hungary, Lithuania) have introduced additional requirements to inform not only European but also national social partners of these rules. In the European Commission's first-phase consultation of social partners, ETUC emphasised the importance of guaranteeing the support of trade unions to SNBs and EWCs, including to their select committees.

The 2016 ICF study provides estimates of the degree of compliance with the rules in this regard via a survey of representatives of Recast and pre-Recast EWCs on the support received from social partners during the negotiation process. The results suggest that SNBs established after the Recast Directive have been more likely to receive support from the competent EU social partners (Table 5). They also highlight that around 30% of SNB members allegedly did not receive such support, as foreseen under the Recast Directive. These estimates are based on small sample sizes,¹⁰⁰ which means they have to be interpreted with caution. In support of this evidence, the ICF targeted survey¹⁰¹ reported that among who had experienced problems in setting up an EWC (56% of employee representatives and 4% of management representatives), employee representatives frequently gave as reasons 'lack of expertise' (42%) and 'lack of EU trade union involvement' (40%). Conversely, none of the management representatives reported these as problems.

⁹⁹ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 12. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁰⁰ 31 representatives from Recast EWCs, 22 representatives from pre-Recast EWCs, 24 management respondents of companies with Recast EWCs.

¹⁰¹ ICF (2023). 'EWC targeted survey'. Q19a, 233 respondents.

Table 5. SNB supported by the competent EU social partners (e.g., trade unions, sectoral employer federations) during the negotiation process

	Recast EWCs (employee representatives) (N=31)	Recast EWCs (employers) (N=24)	Pre-Recast EWCs (employee representatives) (N=22)
Yes	56	64	41
No	32	12	9
Don't know	12	24	50

Source: ICF survey of Recast and pre-Recast EWCs (2016).

None of the national court cases identified has dealt with the coverage of legal costs or insufficient provision of or access to resources of the SNB. As regards the national legal frameworks, only the national transposing provisions in the Netherlands explicitly refer to legal disputes and linked costs are to be borne by management (for EWCs established by law for costs communicated in advance and of reasonable extent¹⁰²). In ten Member States (Austria, Bulgaria, Cyprus, Croatia, Denmark, Greece, Hungary, Lithuania, Luxembourg and Portugal), the national provisions refer to coverage of 'establishment and operational' costs, specifying examples that do not explicitly mention legal disputes. In the remaining Member States, the national implementation measures are similar to the wording of Article 5(6) of the Recast Directive ('so as to enable the special negotiating body to carry out its task in an appropriate manner'), which could be interpreted as covering costs linked to legal disputes.

In the majority of Member States, Article 5(4) third sentence has been similarly transposed as in the Recast Directive, referring to 'advisory capacity'. It is unclear if this would cover legal representation costs. Worker representatives, employers and EWC experts interviewed highlighted that the uncertainty of the outcome of a legal dispute and the costs involved contribute that parties refrain from starting court cases.

There is a substantial lack of data on the coverage of costs and SNB resources during the setting-up process. Unlike EWCs, SNBs do not function on the basis of an agreement concluded with the management. Therefore, no estimate on the coverage of legal costs of SNBs can be provided on the basis of the content of existing EWC agreements.

Concerning resourcing of SNBs in general, 16 Member States (Austria, Belgium, Cyprus, Croatia, Czechia, Estonia, Germany, France, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia) explicitly limited funding of expertise to one expert in accordance with the possibility provided for in Article 5(6) of the Recast Directive. In Ireland, the 'reasonable expenses' cover 'the equivalent cost of one expert per meeting' which seems to delimit further the expenses to be covered by the management. Three Member States (Czechia, Lithuania, Poland) state that costs to be covered by central management shall be 'one expert if not otherwise agreed'.

There was no mention of issues relating to SNB's resourcing or access to expertise by either party in the evidence-gathering workshops. However, in the stakeholder interviews, ETUFs and national trade unions¹⁰³ overall supported provisions guaranteeing availability of resources to SNBs for expert support, in particular trade union involvement, in the context of negotiations on EWC agreements.

¹⁰² European Works Councils Act, Article 20.3, accessed at: <https://wetten.overheid.nl/BWBR0008508/2017-12-16>

¹⁰³ ETUFS: IndustriALL; EFBWW, EFFAT

For national-level trade unions: IE – SIPTU, NL – FNV Formaat, FI – ILRY, FR – CFDT, UK – Unite the Union

Based on the evidence collected, it is also not possible to assess the volume of training activities SNB members benefit from, nor whether any related costs are imposed on them. Only two EWC members interviewed for this study were involved in the SNB phase but with different experiences. In one case, an agreement on training provision was reached rapidly. Conversely, difficult and lengthy exchanges regarding training provision were reported in the other case. EWC experts advising employee representatives highlighted that several instances were known to them regarding disagreements about the type of training to be provided and the costs involved, including a case requiring arbitration. Based on the interviews conducted, it appears controversies and disagreements do not so much arise from the coverage of training costs, but rather from the type of training and the training provider chosen. Likewise, available data do not provide a comprehensive overview of how many external experts or trade union experts are typically invited to assist in the negotiation phase. The stakeholder interviews conducted for this study did not provide a clear overview on this point either. Experts advising employees in EWC matters pointed out that limitations on the number of funded experts could pose an issue due to certain national legislations restricting it to only one expert. While no conclusion on the scale of this potential issue could be reached, it can nevertheless be concluded that the Recast Directive's provisions and the related national transposition measures are not clear about the coverage of costs associated with legal support for SNBs in case of disputes. However, information on legal proceedings in this regard (i.e., steps and costs involved) is scarce.

Gender balance in EWCs and select committees

The Recast Directive specifies in Article 6(2)(b) that **each EWC agreement should determine the composition of the body, considering the need to ensure balanced gender representation**. The reference to gender balance was not present in Directive 94/45/EC. According to the 2018 evaluation¹⁰⁴, while the transposition by Member States was mostly in line with the Recast Directive, Portugal failed to include specific provisions on the composition of the SNB in its national legislation. According to a review by national legal experts¹⁰⁵, all but seven Member States (Cyprus, Germany, Finland, Ireland, the Netherlands, Poland, Slovakia), have included a reference to gender balance in their respective laws regulating EWCs. In six Member States (Austria, Germany, Denmark, Estonia, France, Croatia) gender balance is also promoted in the election of employee representatives of national works councils¹⁰⁶.

The 2016 ICF study¹⁰⁷ shows that there have been improvements in terms of balanced representation overall, but that equal representation remains elusive: according to the survey of employee representatives in Recast EWCs, **60% agreed that their EWC had achieved some level of balanced representation**, whether in terms of geography, gender, or activities, while 40% disagreed. In cases where balanced representation was achieved, it was attributed to election and negotiation procedures that prioritised balanced representation, the willingness of national partners to consider balance in the appointment of representatives, or the implementation of gender quotas. **The main obstacle to**

¹⁰⁴ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 14. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁰⁵ Review of provisions conducted by the European Labour Law Network contracted by the European Commission in 2023. The review is unpublished and was shared with the study team.

¹⁰⁶ A gender balance in elections of national employee representatives is mandatory only in France.

¹⁰⁷ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', pp. 115-117. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

achieving balanced representation was the lack of central EWC control over the selection of representatives in each country. Additionally, companies that historically had a predominant gender in their workforce encountered challenges in achieving gender balance within their EWCs.

The targeted survey conducted by ICF for this study yielded similar results: **overall, only 24 % of the respondents** (55 out of 233) **said that women and men are equally represented in their respective EWC, while 62 %** (145 out of 233) **reported that the share of men surpassed 60% and less than 2 %** (3 respondents) **reported that the share of women exceeded 60%**¹⁰⁸. The percentage of respondents who were part of an EWC with a predominantly male workforce was 17 percentage points higher in EWCs under an Article 6 agreement than in I&C bodies operating under pre-Directive agreements, suggesting that gender balance may be more of an issue in EWCs operating under the Recast Directive. This also may indicate that the requirements under Article 6(2)(b) were not effective to guarantee a balanced composition of EWCs' members, at least with respect to gender.

In the evidence-gathering workshops¹⁰⁹, both employee and management representatives were positive about the goal of achieving gender balance in the EWCs, but recognised the challenges associated with it, particularly in industries with a majority male workforce. Similar views were echoed in interviews with different stakeholder groups, with strong reservations about the introduction of measures such as gender quotas in EWC representation, particularly as this may be detrimental to the nomination of the most suitable representatives based on experience and competence.

The European Parliament Resolution of 2023¹¹⁰ stresses the importance of striving for gender equality in the workplace, also through EWCs, and proposes amendments to the Directive to achieve this. Among them, it proposes the insertion of an article establishing the following objectives to be included in the EWC agreements:

- The underrepresented sex comprises at least 40% of EWC members.
- Members of the underrepresented sex hold at least 40% of select committee positions.

The European Commission's first-phase consultation of social partners¹¹¹ has not yielded substantive evidence on the scale of this issue.

Although there are no studies on this topic that are specific to EWCs, similar arguments for ensuring balanced gender representation in management and trade unions can be made in the context of EWCs. More specifically, it is likely that insufficient representation of women in bodies such as EWCs might contribute to gender-specific issues or consequences not being adequately considered in the corporate decision-making process or that, conversely, information relevant to women employees might not be disseminated effectively among them. For example, Kirton¹¹² suggests that male-dominated trade unions might be less responsive to women's needs. In the European context, Zacchia,

¹⁰⁸ ICF (2023). 'EWC targeted survey'. Q30, 203 respondents. The remaining 13% did not know or preferred not to say.

¹⁰⁹ ICF (2023). 'Evidence-gathering workshops'.

¹¹⁰ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

¹¹¹ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

¹¹² Kirton, G. (2006). 'Alternative or parallel careers for women: The case of trade union participation', *Work, Employment and Society*, 20(1), pp. 47–66; and Kirton, G. (2015), 'Progress towards gender democracy in UK unions 1987 – 2012', *British Journal of Industrial Relations*, 53(3), pp. 484–507.

Corsi and Aloè¹¹³ consistently find a positive and significant relationship between enterprise social dialogue and wages across different model specifications, although after controlling for institutional differences they also find that the returns of enterprise social dialogue are significant only for countries with a gender equality index equal to or above the EU average. Several empirical studies have assessed the 'business case' for gender equality on corporate boards, meaning that gender representation could improve companies' financial performance and possibly other parameters. A meta-analysis conducted by Post and Byron¹¹⁴ concluded that female board representation is positively related to accounting returns but not market performance, while effects vary across countries. Overall, many studies have found a positive relationship between female representation and business performance, as well as company behaviours that are beneficial for stakeholders and for society as a whole¹¹⁵. However, other studies¹¹⁶ have pointed out the shortcomings of attributing a causal interpretation to the relationship found in the aforementioned empirical literature, as it may suffer from endogeneity. Moreover, the 'business case' has also been criticised for promoting gender essentialism, which is said to ultimately reinforce gender stereotypes at the expense of the intrinsic characteristics of individual female directors.¹¹⁷

4.2.1.3 Operation and resources of EWCs

Concept of transnational matters

According to the Recast Directive, the competence of EWCs is limited to transnational matters, for which a definition is provided in Article 1(4) in conjunction with Recital 16 of the Preamble. **This determination of the competence of EWCs in practice is dependent on the interpretation of the concept of transnationality which is somewhat ambiguous** and therefore subject to different interpretations. Article 1(4) defines transnational matters as matters concerning the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States. On the other hand, the Preamble in Recital 16¹¹⁸ seems to express a wider concept, by including matters which are, regardless of the number of Member States involved, of importance to the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States within the concept of 'matters which concern the entire undertaking or group or at least two Member States'. Moreover, Recital 15 explains the rationale for limiting the competence of EWCs to 'transnational matters', i.e., to guarantee 'information and consultation at the relevant level of

¹¹³ Zacchia G., Corsi M., and Aloè E. (2022). 'Effects of Within-company Social Dialogue on Wages: Evidence for Employed Women in the EU', Visualising and Measuring the Role of Industrial Relations in Addressing Gender Equality (VIRAGE), pp. 10-11.

¹¹⁴ Post, C. & Byron, K. (2015). 'Women on boards and firm financial performance: A meta-analysis', Academy of Management Journal 58(5): 1546-1571.

¹¹⁵ European Parliament (2021). 'Women on Boards Policies in Member States and the Effects on Corporate Governance'. Available here: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/700556/IPOL_STU\(2021\)700556_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/700556/IPOL_STU(2021)700556_EN.pdf)

¹¹⁶ See for example, Adams, R. B., Hermalin, B. E. & Weisbach, M. S. (2010), 'The role of boards of directors in corporate governance: A conceptual framework and survey', Journal of Economic Literature 48(1): 58-107.

¹¹⁷ See for example, Hoobler, J. M., Masterson, C. R., Nkomo, S. M. & Michel, Eric J. (2018), 'The business case for women leaders: Meta-analysis, research critique, and path forward', Journal of Management 44(6): 2473-2499.

¹¹⁸ "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"

management and representation' as well as to make competence and scope of action of EWCs distinct from that of national representative bodies.

Furthermore, **the interpretation of the concept of transnationality depends on its definition in individual EWC agreements and on the way in which individual Member States have transposed the Recast Directive.** Therefore, it is worth investigating whether Member States have implemented the less restrictive approach to questions of transnationality, as included in the Preamble (Recital 16), or the approach set out in Article 1(4), which would affect the outcome of litigations before national courts.

The 2016 ICF study¹¹⁹ concludes that **all Member States have correctly implemented the enacting provisions in the Recast Directive.** Moreover, it notes that five Member States (Belgium, Czechia, Finland, Hungary, and Romania) have chosen to incorporate additional criteria to determine what qualifies as a 'transnational' issue, such as the significant impact on workers' interests, the level of management involved in the decision-making process, and the transfer of business between Member States.

According to a 2023 review of national frameworks, five Member States (Czechia, Denmark, Finland, Hungary, Romania) combine elements of Recital 16 into the definition of 'transnational matters' such as 'scope of its potential effects' (e.g., Czechia, Denmark). In Finland, the concept is defined along the lines of Recital 16: 'transnational issues are also issues which, regardless of the number of Member States concerned, are of major consequence for the situation of employees or involve transfers of activities between Member States'. In Belgium and Spain, Recital 16 has been integrated into the (non-binding) legislative comments of each implementing measure.

Evidence collected in the 2016 ICF study and reported in the 2018 Commission evaluation¹²⁰ gives an overview of the implementation of the concept of 'transnational issue' in the EWC agreements. Approximately 30% of the employees' representatives interviewed stated that their EWC *solely* focused on transnational issues, while the remainder indicated that their EWC was *almost solely* focused on transnational matters. The 2018 Commission evaluation deems the latter result surprising, as the scope of EWCs is formally restricted to transnational matters, and it recognises this phenomenon as due to the EWC members' often dual role as national representatives that may cause national concerns to occasionally overshadow transnational matters. Furthermore, it mentions mutual understanding in distinguishing between national and transnational issues, and a balanced representation of countries, as crucial factors for maintaining a sole focus on transnational concerns in EWCs.

The 2016 ICF study¹²¹, along with several surveys sponsored by both employee and employers' associations, illustrates the significance of **problems and disputes related to the definition of transnationality**, which, **although still present, appear to be decreasing over time.** The study reports that 9 of the 37 (24%) interviewed companies sought legal advice on transnationality issues, with an average cost of EUR 15,000. This represents a decrease compared to the findings of a similar survey conducted in 2008.

¹¹⁹ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 32. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹²⁰ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 24. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹²¹ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

Moreover, roughly 30% of EWC representatives surveyed by ETUI¹²² had frequent discussions with management on whether an issue should be considered transnational. Another survey¹²³ revealed that 39% of interviewees observed no changes or reforms in the distinction between local and transnational events following the implementation of the Recast Directive, while 20% reported changes or improvements in this regard. Notably, changes were more prevalent in private sector service companies compared to manufacturing companies, and there was no significant variation based on the company's country of origin. Indeed, **there has been an increasing trend towards the inclusion of transnationality clauses in EWC agreements**, with the probability of such definitions being included rising from 65% to around 85% thanks to the Recast Directive, according to a study by ETUI¹²⁴. This highlights an aspect where the Recast Directive has had a tangible impact. Moreover, according to the 2016 ICF study¹²⁵, 61% of the surveyed respondents reported that the definition in their agreement had been revised and refined for better alignment with the Recast Directive.

In 11 of 15 randomly selected case studies, the definition of transnational matters in EWC agreements was found to be as extensive as – or even more extensive than – that of the Recast Directive.

The stakeholder consultations carried out for this study provide further evidence as to the level of clarity of the definition of transnational matters in practice. Around 70% of respondents to the ICF targeted survey¹²⁶ indicated that their EWC agreement contained such a definition. This share was higher among respondents representing EWCs operating under the 1994 or 2009 Directives than among respondents representing pre-Directive agreement I&C bodies. The respondents who indicated their EWC agreement contains a definition of transnational matters were asked to specify what elements were included in the definition. The results are presented in Figure 14. While it is not surprising that 'matters affecting at least two Member States' was the more frequently mentioned element, differences in response patterns between management and employee representatives regarding the various definitional elements may reveal disparities in interpretation between the two groups. These disparities risk exacerbating misunderstandings and conflicts. Indeed, 43% (78 out of 180) of employee representatives and 28% (15 out of 53) of management representatives said that they had experienced problems related to the definition of transnational issues.

¹²² De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making'. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

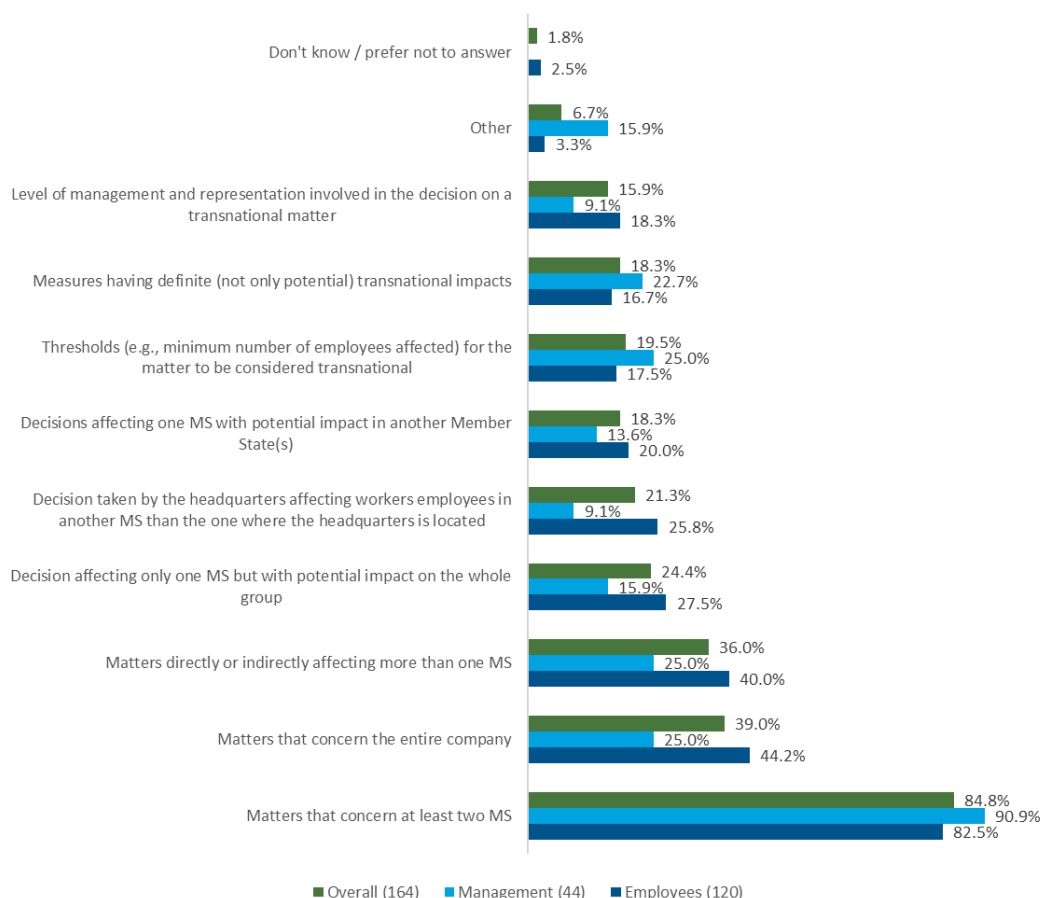
¹²³ Pulignano, V., Turk, J., & Swerts, T. (2016). 'European works councils on the move: Management perspectives on the development of a transnational institution for social dialogue (Working Paper CeSO/CAAE/2016-1)'. Leuven: Centrum voor Sociologisch Onderzoek. Study commissioned by BusinessEurope.

¹²⁴ De Spiegelaere, S. (ETUI) (2016). 'Too little too late? Evaluating the European Works Councils Recast Directive'. p. 62.

¹²⁵ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹²⁶ ICF (2023). 'EWC targeted survey'. Q13, Q13a, Q14, 233 respondents.

Figure 14. Q13a, Elements included in the definition of 'transnational matters', per stakeholder category, (percentage) – N= 164



Source: ICF EWC Targeted survey. Q13a, 164 respondents (120 employees, 44 management).

The interpretation of transnationality appears to be ambiguous in some cases, leading to diverging views between management and employee representatives, with the former considering some issues to be purely national while the latter consider them as transnational¹²⁷. According to an analysis of 11 EWC case studies conducted by Eurofound¹²⁸, a shared understanding of the issues to be addressed transitionally has developed over time in some cases, but there are still instances where EWC representatives perceive management's interpretation of transnationality to be too narrow. For example, the 2018 Commission evaluation¹²⁹ highlights two instances where the definition of 'transnational' issues became the subject of court cases at the national level.

¹²⁷ Indeed, according to the results of Q13a of the targeted survey, the three categories where such divergence is most pronounced are 'Matters that concern the entire company', 'Decision taken by the headquarters affecting workers employees in another MS than the one where the headquarters is located', and 'Matters directly or indirectly affecting more than one MS'.

¹²⁸ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

¹²⁹ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 17. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

In the French case of *Transdev*, the court ruled that the management board had no obligation to consult the EWC regarding a national measure, finding that it was solely of a national nature without any proven potential impact on the European workforce. In a separate case in the UK involving the British Council, the Central Arbitration Council focused on the subject matter of pay policies and concluded that since pay policies are excluded from EU-level regulation, they are not considered as transnational issues for the EWC, thus requiring consultation only at the national level.

Based on evidence available, some EWC agreements define specific thresholds when a matter is considered transnational, particularly regarding cases of restructuring and the number of employees made redundant¹³⁰. One Dutch case considered whether a collective redundancy involving a significant share of the overall workforce of a company (in that case, 20 % of the company's EU-based employees were likely to be made redundant) constituted a transnational matter within the definition of the EWC Directive. The judge considered that this case would plausibly have a cross-border dimension, even if redundancies occurred in one Member State only¹³¹. In a French case, the court came to a similar conclusion concerning a company whereby central management decided to sell a subsidiary headquartered in France (the subsidiary however had its own subsidiaries in eight other Member States). The judge also considered the broader context of the affected workers' sector, including challenging economic conditions that might result in collective redundancies following the transfer¹³². In a UK restructuring case, the court also examined a collective redundancy plan that extended beyond the EEA, where the majority of affected employees were outside the EEA. This plan was deemed a 'transnational matter,' influencing the EU-wide workforce¹³³.

The legal review has revealed that judges consider first the content of the EWC agreement and the practice of the EWC to understand if a matter is to be considered 'transnational' or not. This is due to the autonomy of the parties to agree on the more specific operational and procedural aspects of the EWC adapted to the company's needs and context. Nevertheless, courts consider agreements in the light of the national transposing provisions and the Recast Directive's provisions. In a 2023 appeal case in the UK¹³⁴ (considering and reviewing the situation as before Brexit), judges took into account Recital 16 when interpreting the definition of transnational matters (Article 1(4)) and highlighted that 'transnational matters' are those that produce an effect (potential or actual) in at least two Member States.

Recognising that some ambiguity remains in the definition of 'transnational issues' in the individual EWC agreements, the European Parliament's Resolution¹³⁵ calls for a clarification of the concept in the Recast Directive itself, in particular by amending Article 1(4). This position broadly reflects that of EU-level employee representatives¹³⁶, who have

¹³⁰ EWC/21/2019 Princes Group EWC & Mitsubishi Corporation/Princes Group CAC UK which specified 2 employees per MS; EWC/25/2019 Vesuvius CAC UK which specified 20 employees per MS.

¹³¹ ECLI:NL:RBROT:2018:9722 so called Alcoa case. The redundancies were to occur in Spain and the judge also considered that it was reasonable to expect Alcoa to consider downsizing its Shared Service Center in Hungary because there would less support/facilitation work for its branches in Spain. Moreover, Alcoa itself appeared to assume that there was a cross-border issue, as it had already informed EWC of its intention.

¹³² RG 18/03792, so called SNCF case

¹³³ EWC 13/2015 Emerson EWC / Emerson Electric

¹³⁴ CA 2023 000015 EWCA Civ 883, Court of Appeal, 26 July 2023, *Olsten (UK) Holdings Ltd v. Adecco Group EWC*

¹³⁵ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

¹³⁶ Voss, E. (ETUC) (2016). 'European Works Councils Assessments and Requirements. Report to the ETUC'.

argued that the problem lies with the Recast Directive itself, and not with its inadequate transposition by the Member States.

In the European Commission-led first-phase consultation of social partners¹³⁷, most of the employers' associations consider that the Recast Directive's current scope regarding transnational matters is fit for purpose. One employers' association, ECEG, reported that the concept does not cause any dispute in practice beyond what can normally take place in a corporate setting. On the contrary, among trade unions, ETUC pointed out that there are often disagreements between EWC representatives and central management as to how to define the transnational character of a specific matter in practice. ETUC emphasised that the relevant recitals which clarify the notion of transnational matters are not sufficiently taken into account for determining the transnational nature of an issue under national law. Overall, the trade unions considered that the concept of transnational matters should be broadened.

During the evidence-gathering workshops¹³⁸, both management and EWC representatives reported disagreements over the concept of transnational matters as one of the main causes of problems in the information and consultation process. Both stakeholder groups argued for clearer criteria to define what matters could be 'transnational', but while EWC members supported extending the definition to all matters that have a significant impact on European employees, regardless of the number of Member States involved, management representatives felt it was crucial to strike a balance between clarity and functionality of the information and consultation process. A similar difference of opinion was observed between employers' associations and trade unions in the interviews conducted for this study. While all stakeholder groups broadly support a clarification of the definition of transnationality, only the trade unions support broadening the definition. Employers' associations emphasise the need for clear boundaries to determine when EWC committees should be informed and opinions are requested, so as to ensure legal certainty. They argue that the broad interpretation of 'transnationality', particularly the notion of 'indirect effects', would result in excessive consultations with EWCs, as almost any decision can indirectly impact another country. This would potentially hinder effective decision-making. The burden of proof being placed on management is seen as a complex matter that may not simplify the situation. In France, the employers' association MEDEF holds the view that the existing definition of transnational matters in the Recast Directive is adequate. They advise against broadening this definition, expressing concerns that it might overlap with national-level responsibilities and lead to legal uncertainties.

From the perspective of employee representatives, broadening this definition would ensure greater transparency in information and consultation procedures. In France, the trade union CFDT emphasised the need to include the content of Recital 16 within the articles of the Directive itself, expanding the definition of transnationality to consider all potential impacts regardless of the number of Member States involved. Another interviewed trade union from the Netherlands, SBI Formaat, raised concerns about the lack of clear definitions in the current Directive and the denial of consultation in practice. They also highlighted the 'salami tactic' where similar measures are implemented sequentially in different countries as a way to bypass their transnational nature. According to them, defining 'significant impacts' on jobs remains difficult, and transnational issues encompass not only job losses but also changes in working methods and job quality.

Among the national authorities interviewed, the Swedish and Belgian authorities supported clearer definitions to address differing interpretations of transnationality.

¹³⁷ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

¹³⁸ ICF (2023). 'Evidence-gathering workshops'.

However, the former had reservations about widening the scope of the definition. Polish and Spanish authorities welcomed proposals for management to provide written explanations as to why a matter is not considered transnational, despite potential prolongation of the consultation procedure. On the other hand, French authorities opposed such a proposal, Dutch authorities believed the current definition is sufficient and does not require any changes, and Czech authorities favoured non-binding guidance. Finnish authorities highlighted the vagueness of the term 'indirect effects' in the definition suggested by the European Parliament and emphasised the need for clarity and predictability.

Exchange of views and follow-up to the EWC's opinion

Article 1 of Directive 94/45/EC establishes that employees' rights to information and consultation must be effective. Building on this, Article 2 of the Recast Directive adds a definition of information (Article 2(1)(f)) and consultation (Article 2(1)(g)), particularly regarding the timing and content of information and consultation activities. There is no obligation for management to consider the EWC's opinion during consultation on relevant issues, or to change any related managerial decisions in light of it. In line with Article 1(2), information and consultation shall be carried and implemented in such a way as to ensure their effectiveness and to enable the undertaking to take decisions effectively. Also, when subsidiary requirements apply (Annex I, as per Article 7), the Recast Directive determines that 'the consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express' (point 1(a), 3 subpar), and puts emphasis on the timeliness of information and consultation, but explicitly mentions that these shall not affect the prerogatives of the central management (point 3).

According to the 2018 Commission evaluation¹³⁹, most Member States transposed the Recast Directive's provisions relating to information and consultation requirements appropriately. Some Member States (Germany, Estonia, Czechia, Slovakia, Lithuania) include a broader definition of 'consultation', which entails the right for EWCs to obtain a motivated response from central management to their expressed opinions¹⁴⁰. On the other hand, there is no specific reference to the general principle of effectiveness of information and consultation in four Member States (Finland, France, Luxembourg, the Netherlands). The evaluation¹⁴¹ also reports the key findings from the 2016 ICF study¹⁴². A review of national transposing measures in 2023 revealed that all Member States, apart from Portugal and Latvia, specify in their definition of 'consultation' that management may take into account the EWC's opinion. Hungarian legislation states that management 'will consider' the EWC's opinion.

¹³⁹ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 14. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁴⁰ Jagodzinski R. (ETUI) (2015). 'Variations on a theme? The implementation of the EWC Recast Directive'.

¹⁴¹ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, pp. 14-18, 25-28. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁴² ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

A finding of the 2016 ICF study¹⁴³ was that **75% of agreements closely aligned with the definition of information and consultation as provided for in the Recast Directive** based on interviews with 37 members of Recast EWCs. Those agreements provided additional details on EWCs' information and consultation practices, including the manner and timing of information provision, the treatment of confidential information, and the subjects put to consultation. Some agreements went beyond the requirements of the Recast Directive by specifying the information to be provided or by establishing a timeline for consultation. Some agreements also required consultation with local works councils before the EU-level consultation takes place.

Among the 52 national social partners interviewed for the 2016 ICF study, 40% acknowledged that the Recast Directive had enhanced **legal clarity and certainty** regarding the dissemination of information¹⁴⁴. A third of the social partners reported no significant changes, while the remaining interviewees were unable to evaluate the impact due to their limited experience with the new provisions.

Information was delivered in a timely manner according to 76% of the employee representatives consulted¹⁴⁵. Similarly, 60% of interviewees on the management side did not report any technical difficulties. Nevertheless, the interpretation and specification of timeliness in EWC agreements can lead to interpretation and disputes. While the Recast Directive's provisions had a positive impact on the information process, some shortcomings were identified by employee representatives, including the extensive use of confidentiality clauses, inadequate sanctions for late information provision, limited resources and expert support, and unclear transnational competences of the EWC. Only 23% of EWC representatives (out of a sample of 22) interviewed in the context of the 2016 ICF study indicated that their EWC 'always' received information before decisions were made (whereas 27% indicated this was 'never' the case).

In certain instances, the **consultation** process may still be perceived as merely a formal requirement rather than a meaningful opportunity to obtain and consider the EWC's substantive opinion. Only 5% (out of 22 respondents) agreed that their EWC were 'always' consulted on decisions relevant to them (against 31% 'never')¹⁴⁶. The effectiveness of the consultation hinges on the quality, quantity, and timeliness of the information provided. According to employee representatives, deficiencies in the consultation process are attributable to factors such as a lack of shared understanding or absence of consultation, constrained timelines for consultation, limited access to external expertise, and the extensive use of confidentiality clauses that restrict information sharing with employees and external support from trade union federations. However, respondents on behalf of management considered that consulting EWC members brings benefits, including enhancing understanding, explaining decisions, and generating valuable proposals for action on various topics.

Among the 34 interviewed employee representatives within Recast EWCs, only 35% stated that their EWC was consulted prior to management making a **decision on restructuring**, while **26% indicated their EWC was consulted after a restructuring**

¹⁴³ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', pp. 89-90. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁴⁴ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 34. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁴⁵ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', pp. 92-93. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁴⁶ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 121. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

decision was made. For 38% of the employee representatives involved in the EWC consultation process, this did not result in any modifications to their employer's restructuring plans or decisions; it did in only 21% of the cases¹⁴⁷. However, this is not an indicator of the effectiveness of the consultation process *per se* as the Recast Directive states that I&C under EWCs should occur 'without prejudice to the responsibilities of the management', as previously discussed.

The evidence from the literature largely confirms these results. For example, in a 2018 survey on EWC representatives conducted by ETUI¹⁴⁸, EWCs' ordinary (plenary) meetings were said to be effective as a source of information (77% agree, 5% disagree), but less so as means of consultation (50% agree, 21% disagree). Ordinary (plenary) meetings that take place before decisions or implementation were viewed as more effective. However, according to the EWC representatives surveyed by ETUI, information and consultation through ordinary (plenary) meetings takes place after the decision was finalised in 73% of the cases, and after the decision was implemented in 10% of the cases.

Table 6. Timing and EWC representatives' perception of effectiveness of information and consultation in ordinary (plenary) meetings

Timing of information exchange	Timing of information exchange (%) (N = 1443)	Perceived as effective or very effective by employees' representatives as means of consultation (%) (N = 1443)
Before the decision on the issue was finalised	20.0 (290)	72.4 (210)
After the decision was finalised, but before the implementation	44.2 (638)	42.3 (270)
During the implementation process	19.3 (278)	47.8 (133)
After implementation	9.6 (139)	32.4 (45)
Don't know	6.8 (98)	Not Applicable (56)

Source: ICF elaboration of survey data from ETUI (2019).

Note: The percentage of respondents that deem the information exchange effective or very effective is calculated over the number of responses to the question on the timing of the information exchange.

The perceived effectiveness of ordinary meetings may not be the best indicator to measure the effectiveness of the information and consultation framework, however, especially in cases of restructuring. In those cases, extraordinary meetings are often the main forum for information and consultation. Indeed, in the 2018 ETUI survey, 47% of EWC representatives reported that an extraordinary meeting had been called during the last restructuring event (while 42% did not). This survey also highlights that while 91% of respondents had experienced a restructuring event in the previous three years, only 47% claimed to have received detailed and complete information. Respondents to the ETUI

¹⁴⁷ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', pp. 100-103. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁴⁸ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

survey also claimed that the presence and support of a trade union coordinator and an increased number of annual ordinary meetings improve I&C procedures during these events. When asked about the quality of information provision in cases of restructuring, respondents most frequently indicated that the information was useful but that no consultation procedure followed, with the exception of issues around closure or cutbacks where respondents most frequently indicated that the information and consultation procedures were both useful. The share of respondents who indicated that a specific issue was not raised ranged between 13.5% and 39.3%, depending on the type of issue¹⁴⁹ (see Table 7).

Table 7. Quality of information and consultation procedures, as perceived by EWC representatives, selected topics

	Not raised %	Raised, but useless information %	Useful information but no consultation %	Useful information and consultation %	N
Closure of or cutbacks in plants/workplaces	13.5	9.0	34.1	43.4	1,399
Mergers, takeovers, and company acquisitions	16.3	9.2	46.3	28.2	1,401
Reorganisation of production lines	39.3	7.0	34.8	18.9	1,359
Relocation of production	30.8	8.0	34.5	26.7	1,381

Survey data from ETUI (2019)

The ICF targeted survey¹⁵⁰ asked respondents to indicate the elements in EWC agreements relating to consultation procedures:

- 46% (107 of 233 respondents: 85 employee representatives and 22 management representatives) indicated the 'obligation on management to give a reasoned response to the EWC's opinion'.
- 33% (77 respondents: 62 employee representatives and 15 management representatives) indicated the 'obligation on management to take account of the EWC's opinion'
- 42% (97 respondents: 66 employee representatives and 31 management representatives) indicated 'rules on the timing of consultation' and
- 49% (115 respondents: 83 employee representatives and 32 management representatives) indicated 'rules on a specific number of annual meetings'.

There was no significant difference in the response trends by EWC type, although it appears that the obligation to give a reasoned response was a feature more commonly identified among respondents on behalf of EWC established under the 1994 or 2009 Directive, and that pre-Directive agreements were more likely to lack any provision on consultation.

Employee representatives have expressed dissatisfaction concerning the present information and consultation framework. For example, the União Geral de Trabalhadores (UGT), a major Portuguese trade union has stated that there is a pressing need to

¹⁴⁹ De Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making', p. 85. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

¹⁵⁰ ICF (2023). 'EWC targeted survey'. Q16, 233 respondents.

improve and clarify management's obligation to provide information sufficiently prior to any decision is taken, as the current provision to do this 'in good time' is insufficient.¹⁵¹

A 2016 ETUC report relayed the opinions of EWC coordinators¹⁵² who argued that the EWC Directive is inadequate for handling restructuring, citing the need for improved information and consultation processes, additional resources, and expertise. Proposed enhancements include better implementation of management obligations, sanctions, and the ability to block management's decisions until the EU-level consultation is completed. On the other hand, a 2017 BusinessEurope position paper¹⁵³ stated that the current framework works well with respect to timeliness and meaningfulness of information, as many EWC agreements either provide for specific timeframes for I&C procedures, or the parties to agreements tend to work out the I&C timeframes according to the issue which is being addressed.

The workshops conducted by ICF¹⁵⁴ confirmed two important points. Firstly, a respectful and trusting relationship between management and employees is crucial throughout the information and consultation process. Secondly, there can be different perspectives on what makes consultation 'effective'. Employee representatives often see it as successful if they can influence management's decisions, while managers usually prefer when the consultation procedure does not hinder their decision-making authority, in line with the Directive's definition. Similar differences of opinion between EU-level and national employers' associations¹⁵⁵ on the one hand, and ETUFs and national trade unions¹⁵⁶ on the other were highlighted in the interviews. The employers' side strongly opposed any intervention that could slow down operations or obstruct decision-making. On the employees' side, there was strong support for an obligation on management to engage in consultation to the extent that would adequately fulfil their rights. From the perspective of employees, solid guarantees that sufficient resources will be made available to access expertise in consultation processes were also seen as instrumental for the effectiveness of the consultation framework. Legal experts representing EWCs overall expressed support for provisions guaranteeing a reasoned response by management to the EWCs, along with clearer timelines for doing so, to improve the effectiveness of the consultation procedures.

The importance of timely and meaningful information and consultation across the EU was also stressed by the European Parliament on several occasions¹⁵⁷. In its 2023 Resolution on EWCs¹⁵⁸, the European Parliament expresses concerns about the timing of the

¹⁵¹ WMP (2020). 'An EU legal framework on safeguarding and strengthening workers' information, consultation and participation, report commissioned for the European Economic and Social Committee', p. 74 and p. 116. Available here: <https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-818-en-n.pdf>

¹⁵² Voss E. (ETUC) (2016). 'European Works Councils Assessments and Requirements. Report to the ETUC'. Available here: https://www.etuc.org/sites/default/files/publication/files/europeanworks_councils_ces_01.pdf

¹⁵³ BusinessEurope (2017). 'Comments on the functioning of the EWC Recast Directive'. Available here: <https://www.besneurope.eu/publications/european-works-councils-comments-functioning-recast-directive>

¹⁵⁴ ICF (2023). 'Evidence-gathering workshops'.

¹⁵⁵ EU-level: ECEG, CEEMET, Eurocommerce. National-level: FR – MEDEF, UIMM, SE -Association of Swedish Engineering Industries, DE - BDA

¹⁵⁶ For ETUFs: EFFAT, EFBWW, IndustriALL. For national trade unions: FR – CFDT; NL- FNV Formaat, UK - Unite the Union, FI – ILRY, IE -SIPTU

¹⁵⁷ European Parliament (2021). 'Report on democracy at work: a European framework for employees' participation rights and the revision of the EWCs Directive'. Available here: [REPORT on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive | A9-0331/2021 | European Parliament \(europa.eu\)](https://www.europarl.europa.eu/media/default.do?mediaDataId=54381&mediaDataRef=REPORT+on+democracy+at+work%3A+a+European+framework+for+employees%27+participation+rights+and+the+revision+of+the+European+Works+Council+Directive+|+A9-0331/2021+|+European+Parliament+(europa.eu))

¹⁵⁸ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works

consultation process, the lack of obligations on management to consider EWCs' opinions, and the limited impact of employee input on the relevant managerial decisions. It proposes changing the wording of Article 2(1)(g) from stating that the opinion '*may* be taken into account' by management to '*is to be taken into account*', and to expand on the interpretation of 'reasonable time' and required follow-up by adding the following: 'Consultation shall take place in such a way as to enable employees' representatives to obtain a reasoned response in due time from the central management prior to the adoption of the decision'.

In two legal cases brought forward in Spain (Tenneco and Coca Cola), the interpretation of timing in information and consultation procedures was disputed. The Spanish courts ruled that the procedures should allow for genuine discussion and exploration of potential impacts and alternatives. This interpretation extends beyond the minimum requirements of the Recast Directive, which defines consultation as a dialogue between employee representatives and management to express opinions based on provided information, within a reasonable time¹⁵⁹. Other national court cases were identified where courts stated that management's failure to provide information before making a decision and to convene extraordinary meetings early enough to allow for a meaningful exchange constituted a violation of the EWC's right to information and consultation¹⁶⁰.

The European Parliament Resolution¹⁶¹ proposes adding a requirement for I&C procedures to be initiated in a timeframe that allows the EWCs to undertake meaningful consultation of relevant employee representatives at national and local level, as to deliver its opinion before the end of the consultation procedure at the relevant level. On this aspect, employers' associations have argued that initiating EWC consultations prior to national consultation might result in legal uncertainties concerning varying national regulations regarding the timing, content and procedural aspects of employee involvement. According to employers, the proposed changes to the consultation framework increase the risk of clashes between national and EU level consultation obligations, and may then create tensions between European and national-level representatives.

With regard to the timing of EWC information and consultation processes compared to national employee information and consultation processes, Article 12(2) of the Directive stipulates that the EWC agreement should specifically define arrangements. However, these arrangements must not conflict with the national laws and practices concerning the information and consultation of employees. If agreements do not include such arrangements, Article 12(3) stipulates that Member States must ensure that both the EWC and national employee representation bodies conduct processes for informing and consulting when decisions likely to result in significant changes in work organisation or contractual relations are anticipated. Article 12(4) specifies that the recast Directive shall be without prejudice to the information and consultation procedures referred to in Directive

Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

¹⁵⁹ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 16. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁶⁰ EWC/21/2019 Princes Group EWC & Mitsubishi Corporation/Princes Group – UK; EWC/25/2019 Vesuvius – UK; EWC/22/2019 Verizon (1) – UK, RG 18/03792, so called SNCF case – revised;

¹⁶¹ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

2002/14/EC and to the specific procedures referred to in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

A vast majority of Member States transposed Article 12(3) usually with similar wording, making slight adjustments to match their legal systems. A few Member States (i.e., Austria, Denmark, Sweden, and Slovenia) require an agreement to specify the relation between the EWC and national level consultations, while Bulgaria, Germany, the Netherlands, and Spain provide that I&C procedures with an EWC and national I&C procedures are to take place simultaneously. The legislation in Cyprus, Croatia, Lithuania, and Luxembourg do not mention these aspects. In the Netherlands, a lower court ruled that the national works council and the EWC can be informed at the same time in cases of collective redundancies, at least during the consultation stage at the national level at the latest¹⁶². Similarly, a German court ruled that the EWC can be informed and consulted while consulting with the national works council on redundancies¹⁶³.

In response to the European Commission's first-phase consultation of social partners, ETUC identified the definition of 'consultation' as an issue to address since the current Directive was believed not to guarantee enough legal clarity on essential consultation requirements. By contrast, most employers' associations did not identify any shortcomings in the definition of 'consultation'. For example, BusinessEurope highlighted that numerous EWC agreements either already establish specific timeframes for information and consultation procedures, or the involved parties commonly negotiate these timeframes. ECEG and CEEMET shared the same view, while SGI Europe asserted that it may be justifiable to revise the Directive on this aspect for the sake of better legal clarity.

Support and resources for EWCs

The Recast Directive regulates the support to be given to EWC members in terms of **financial and material resources** (Article 6(2)(f)), and of **training** for EWC members (Article 10(1) and (4)). However, the Directive (Article 6(2)(f)) does not make an explicit reference to the right to assistance by an expert but requires that financial and material resources made available to the EWC are stipulated in the EWC agreement. When subsidiary requirements apply, point 6 of Annex I of the Recast Directive stipulates that central management must provide the financial and material resources to enable EWCs to perform their duties in an appropriate manner. Point 5 of Annex I of the Directive provides that the EWC or the select committee may be assisted by experts of its choice, in so far as necessary to carry out the tasks.

The 2018 Commission evaluation¹⁶⁴ highlighted trade unions' and external experts' involvement, along with the provision of training, as potential cost drivers for EWCs during their operation. Additionally, it noted concerns raised by employee representatives regarding employers' allocation of resources to support the work of EWC members as a potential issue.

Regarding the **budget of EWCs**, the EWC Directive does not mandate Member States to establish an independent EWC budget within national laws. However, it does specify that EWCs must have adequate resources to exercise the rights granted by the Directive (Article 10(1)). More detailed rules can be defined by Member States or individual

¹⁶² C/10/561635 / KG ZA 18-1170, p. 7 4.15

¹⁶³ ECLI:DE:LAGKI:2018:1213.6TABVGA3.18.00 – the court did not further examine whether the opinion of the EWC should have been finalised before reaching national agreements in the context of the national I&C process..

¹⁶⁴ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, p. 15. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

agreements. Some EWC agreements have some general or specific cost-coverage clauses. In case of EWCs operating under subsidiary requirements, the Directive provides that operating expenses of the EWC shall be borne by central management, including the costs of organising meetings (Annex I point 6 of the Directive).

According to a review of national frameworks in 2023, the obligation on the management to cover expenses of experts by EWCs under the subsidiary requirements is limited to one expert only in the vast majority of Member States (21), whereas this obligation is not limited to a given number of experts in six Member States (Bulgaria, Denmark, Malta, Poland, Slovakia, Sweden). In three Member States (Austria, Czechia, Germany), the right to receive assistance from an expert is expressly provided also to those EWCs operating on the basis of an agreement. In Hungary and the Netherlands, implementing measures specify that the funding of EWCs operating on basis of subsidiary requirements extends to assistance from legal experts and covers reasonable legal costs¹⁶⁵. Based on the text of national provisions for EWCs operating on subsidiary requirements, legal costs would likely not be covered in at least four Member States (Austria, Italy, Luxembourg, Slovenia). In all other Member States, legal costs are not specifically mentioned in national law, but they could be considered as 'necessary' costs so that EWCs can perform their duties, which implies that management would have to cover them.

According to a series of EWC case studies conducted in 2022 for Eurofound¹⁶⁶, three out of eleven case study companies (27.3%) provided the EWC an autonomous budget to cover EWC expenses, with reported amounts ranging from EUR 3,000 to EUR 6,000 per year, although there is evidence of one company setting a maximum budget of EUR 18,000 for experts¹⁶⁷. Furthermore 10 of the 11 participating companies reported resorting to external expert support. Moreover, 68% of the 22 Recast EWC members surveyed by the 2016 ICF study¹⁶⁸ report having requested support from an external expert or trade union representative. A 2015 ETUI study revealed **that 74% of EWC agreements provide a general statement of cost coverage** – complemented by some specific mentions of various costs covered – **while the remaining 26% have a limited list of expenses covered**.¹⁶⁹ The study concludes that EWCs that enjoy a certain degree of autonomy in the way they spend their budget will be able to better adapt their operations to changing demands, even though inadequately sized budgets might prevent them from organising sufficient meetings.

Among the respondents to the targeted ICF survey¹⁷⁰, 74.5% of management representatives (39 out of 53) and 42.3% of employee representatives (76 out of 180) indicated that their agreement contains provisions on financial and human resources (note: respondents to this survey did not constitute a representative sample; 16 % of employee representatives reported not to know). Moreover, the proportion of respondents claiming that such provisions were present in their agreements was 62.5% (26 out of 41) in pre-Directive agreements, compared to only 53.1% (85 out of 160) in agreements under

¹⁶⁵ Wet op de Europese ondernemingsraden, EWC Act, Article 20 (2) and (3)

¹⁶⁶ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

¹⁶⁷ Gordo González, L. (2018). 'Collective transnational bargaining: Practical implementation experiences from European works councils in Spain'. Spanish Labour Law and Employment Relations Journal, 7(1-2), 41-55.

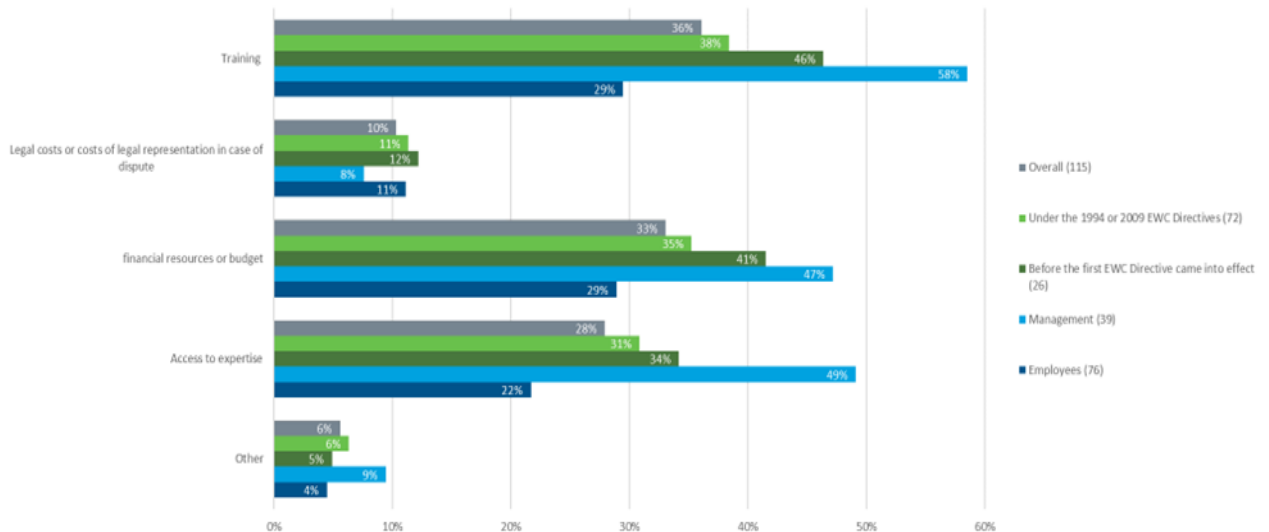
¹⁶⁸ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 113. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁶⁹ De Spiegelaere, S., & Jagodzinski, R. (2015). 'European Works Council and SE Works Councils in 2015: Facts and Figures'.

¹⁷⁰ ICF (2023). 'EWC targeted survey'. Q24, Q24a.

the 1994 or 2009 Directives. Figure 15 indicates the resourcing specifications included in the agreements.

Figure 15. 24a Aspects of financial and human resources covered by the EWC agreements (percentage) – N= 115



ICF EWC Targeted survey. Q24a, 115 respondents.

Assistance by external experts may be particularly relevant in cases of complex restructuring issues. According to the 2018 ETUI's survey, a significant number of EWC representatives (68%) said they had requested support from an external expert or trade union advice. **Overall, 28% of the respondents to the same survey mentioned receiving expert assistance during the most recent restructuring event while 52% said they did not.** However, the survey does not show the share of respondents among the 52% who had requested expert assistance during that particular restructuring event. According to the data in the ETUI EWC Database¹⁷¹ as of June 2023, among EWCs with access to external support on a continuous basis, 68% of EWC had access to one expert, 27% to two, and 5% to three or more¹⁷². Overall, the presence of trade unions, EWC coordinators and employee-appointed experts appears to be positively correlated with improved perceptions of the quality of information and consultation. Indeed, employee representatives in the evidence-gathering workshops¹⁷³ confirmed that they view the involvement of external experts as essential, especially during restructuring events, and that budget constraints hinder their ability to operate effectively on all levels. In this regard, a number of EWCs (scale is not clear) operating under an agreement set out a specific annual budget for external expertise compared to other EWCs that would negotiate the budget for external expertise on a 'needs basis'. Management representatives expressed concerns about incurring unnecessary costs. EWC representatives on the other hand highlighted the limitations of national provisions relating to the coverage of the costs of one expert only. This has proven complicated given the various types of expertise an EWC may need (economic, legal or industrial relations). The interviewed ETUFs and national trade unions¹⁷⁴ as well as legal experts representing EWCs were also broadly in

¹⁷¹ European Trade Union Institute (2023). 'EWC Database'. Available here: <https://www.ewcdb.eu/>

¹⁷² De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

¹⁷³ ICF (2023). 'Evidence-gathering workshops'.

¹⁷⁴ For ETUFs: EFFAT, EFBWW, IndustriALL. For national trade unions: FR – CFDT; NL- FNV Formaat, UK - Unite the Union, FI – ILRY, IE -SIPTU

support of strong guarantees on access to training and expertise, especially during complex restructuring cases.

Concerning access to experts, two national court decisions (Austria, United Kingdom) have so far confirmed that EWCs can choose their experts regardless of whether national trade unions provide expertise free of charge¹⁷⁵.

A 2016 ETUC report¹⁷⁶ emphasised the need for adjustments to assign greater qualification, skill development, and training rights to EWCs as a company obligation. They argue that there is a need for allowing trade union experts to attend all meetings, clarifying the right of EWC members to visit local sites, and providing concrete guidance on regular and extraordinary meetings. These solutions are very similar to those suggested in the European Parliament's Resolution¹⁷⁷, which proposes to introduce a right to training 'free of charge', other than just 'without loss of wages' as per Article 10(4) of the Recast Directive. The existing provision in Article 10(4) falls under the support that companies must guarantee to EWC members for the operation of EWC activities. Given that the Directive does not entitle EWCs to other sources of funding, it can be inferred from this provision that the relevant undertakings are required to cover the costs of such necessary training. Management is responsible for providing access to training, covering costs, and releasing EWC members from work duties. This training can include tailored education courses on law, economics, and languages.

According to the 2018 Commission evaluation¹⁷⁸, some countries (Finland, Hungary, Italy) go beyond the Recast Directive's requirements, covering training content and remuneration rates. Concerning the effectiveness of the provisions relating to training, the 2018 evaluation reports that approximately 66% of employee representatives made use of their training entitlement without any wage deductions. Of those who sought training, a significant majority (80%) of EWC members reported no significant difficulties in obtaining it, while around 20% faced obstacles from local management in securing training opportunities. On average, EWC members who exercised this right received 1-3 days of training per year.

The evaluation report also cited evidence from employee and employer organisations concerning training. The main findings are as follows:

- Two of the 13 European social partners consulted considered the introduction of the right to training without loss of wages as the biggest practical success of the Recast Directive. However, concerns were raised about potential bias in the content of training courses, which are often led by management or trade unions, rather than being independent.

¹⁷⁵ A case in Austria - information taken from 2023, Übernahme der Beratungskosten für Europäischen Betriebsrat durch zentrale Leitung, Aktuelles Recht zum Dienstverhältnis, April 2023, number 6864, p. 14 OLG Wien, 23.02. 2022. 8 RA 49/ 22t; and a case in the UK EWC/21/2019 Princes Group EWC & Mitsubishi Corporation/Princes Group

¹⁷⁶ Voss, E. (ETUC) (2016). 'European Works Councils Assessments and Requirements. Report to the ETUC'.

¹⁷⁷ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

¹⁷⁸ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, pp. 30-31. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

- According to the 2016 KU Leuven study¹⁷⁹, 82% of the interviewees indicated that the new training requirements of the Recast Directive had no impact on the operation of the EWCs, as training already existed in practice. 10% reported implementing changes in line with the new legislation, such as providing training by an expert for all EWC representatives.
- The analysis found that access to training was not affected by sector, country of origin, or company size.
- The inclusion of training provisions in the Recast Directive aimed to enhance the capacity of EWCs by ensuring that representatives possess the necessary skills to actively participate in EWC activities. Both BusinessEurope and ETUC stated that training was not a contentious issue, and the content of training should be determined through agreement between senior management and EWC representatives within each company.¹⁸⁰

The 2018 ETUI survey results indicated that 34% of EWC members had not received any training in the last three years¹⁸¹. Among those who had received training, the average duration was 2.2 days at least once every three years¹⁸². Another 2017 study¹⁸³ concluded that limited access to training and inadequate resources contributes to the failure of EWCs to develop beyond basic forms, and that office holders receive more support and training from trade unions compared to EWC members. These findings present a less favourable scenario compared to those indicated in the 2018 evaluation,

During workshops and interviews carried out for this study, access to training was mentioned as important by EWC members who also argued that training needs to be more specific in quantification, allocation and allowance and not left at the discretion of management. EWC members highlighted specifically the need to be able to choose the type of training. No other issues related to the provision of training were highlighted as particularly problematic.

In the context of the European Commission-led first-phase consultation of social partners¹⁸⁴, all three responding trade union organisations maintained that EWCs are not guaranteed sufficient resources. Conversely, employers' associations disagreed and emphasised the importance of reducing financial strains on companies.

The coverage of **legal costs** was also mentioned by stakeholders as an aspect that would benefit from more legal certainty. As shown in Figure 15, only 8% of managers (4 out of 39) and 11% of employee representatives (20 out of 76) say that their agreement covers legal costs or the cost of legal representation in the event of a dispute. In the interviews, IndustriALL recommended the Dutch legislation as a good practice example, where management is responsible for covering reasonable legal costs and for ensuring support from a legal expert is provided to works councils. The Dutch legislation, in its

¹⁷⁹ Pulignano, V., & Turk, J. (2016). 'European Works Councils on the move: Management perspectives on the development of a transnational institution for social dialogue', p. 85. KU Leuven.

¹⁸⁰ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁸¹ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

¹⁸² Demaître, B., & Guglielmi, G. (2020). 'Training of EWC members in the face of Covid-19: proposals, solutions and issues'. ETUI Education Officer.

¹⁸³ Hann, D., Hauptmeier, M., & Waddington, J. (2017). 'European Works Councils after two decades', European Journal of Industrial Relations, 23(3), 209-224.

¹⁸⁴ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

transposition of Annex I (5), specifies that reasonable costs associated with legal proceedings will be covered if they are presented to management before their initiation. According to IndustriALL, this approach would discourage management from disregarding the rights of the EWC and ensure that proper consultation and consideration take place without conflict. Experts working with EWC representatives also raised the point that resources for legal costs in EWC agreements are inadequately addressed in the Directive, and there is little incentive for management to provide resources for EWCs in case of conflict. They argued that EWCs struggle to finance court cases, and management may refuse to cover the costs of legal experts. There is no common view among management on legal costs. Only four among 22 companies interviewed in 2023 stated that their EWC agreement specifies coverage of legal costs by management.

On this topic, the European Parliament's Resolution¹⁸⁵ also proposes to include an obligation for central management to bear legal costs, the costs of legal representation and subsidiary costs.

Confidentiality obligation and withholding of information

The provisions relating to disclosure of confidential information by management in the process of EWC activities are described in Article 8 of the Recast Directive and have not substantially changed compared to the Directive 94/45/EC. Article 8(1) sets out obligations on SNBs and EWCs members not to reveal any information provided by management in confidence. Article 8(2) requires Member States to ensure in legislation that central management is not obliged to disclose information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them, while leaving the responsibility to the Member States to tailor these rules to their specific national criteria and limits.¹⁸⁶ The provisions of Article 8(1) and (2) of the Recast Directive are overall in line with provisions existing in other information and consultation instruments.¹⁸⁷ These provisions are also consistent with the legal framework of the Trade Secrets Directive¹⁸⁸ and the Market Abuse Regulation¹⁸⁹. To complement Article 8, Article 11(3) foresees provisions for administrative or judicial appeal procedures which the employee representatives may initiate when central management requires confidentiality or does not give information. Therefore, the Recast Directive distinguishes between the obligation for EWC representatives not to disclose information provided by management in confidence to

¹⁸⁵ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

¹⁸⁶ Such as Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees (Article 8) and Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (Article 10). Directive 2002/14 on the General framework for informing and consulting employees in the EC includes in addition a condition of 'legitimate interest' for undertaking to apply obligation of confidentiality.

¹⁸⁷ Such as national works councils, Directive 2002/14 on the General framework for informing and consulting employees in the EC, Article 8 of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, or Article 10 of Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

¹⁸⁸ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Text with EEA relevance). Available here: [EUR-Lex - 32016L0943 - EN - EUR-Lex \(europa.eu\)](#)

¹⁸⁹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance. Available here: [EUR-Lex - 32014R0596 - EN - EUR-Lex \(europa.eu\)](#)

EWC members or other parties (Article 8(1)) and the possibility for management to refrain from disclosing information which it considers to be confidential (Article 8(2)).

The 2018 Commission evaluation¹⁹⁰ mentions confidentiality as among the provisions that were transposed correctly in 75% of the agreements of the 37 EWC representatives interviewed in the context of the 2016 ICF study¹⁹¹. The Commission evaluation mentions that employee representatives reported an extensive use of confidentiality clauses based on Article 8 of the Recast Directive (e.g., stock market rules cited as preventing employers from sharing specific information for companies on the stock market exchanges) highlighting this trend as one of the main shortcomings of the Recast Directive. The 2016 ICF study also reported that employer representatives expressed concerns over the lack of clarity as to what constitutes confidential information. Nevertheless, according to the same survey, the share of employers who claim that EWC operations led to breaches of confidentiality appeared to have fallen by 11 percentage points between 2008 and 2015¹⁹².

Three court cases relating to Article 8(1) were identified in the UK¹⁹³ (prior to Brexit), Spain¹⁹⁴ and France¹⁹⁵, concerning confidentiality breaches by EWC members. In all three cases, a member of the EWC had been excluded or dismissed for sharing information considered as confidential by management. All cases were initiated by the worker representative and aimed to annul decisions made by management. It appears from the outcomes of the various national court cases that management needs to demonstrate a 'legitimate interest' and 'the potential prejudice' should information be shared by the EWC members and not treated as confidential.

The EWC case studies conducted in 2022 by Eurofound¹⁹⁶ summarise the opinions of management representatives on the issues of confidentiality and non-disclosure. The importance of mutual trust between management and the EWC and a learning approach are identified as crucial. Even though information might have circulated among interested employee representatives, it was rarely leaked in a damaging way to rest of the company or in a way that harmed trust, in the 11 case studies examined by Eurofound. Early information and limited confidentiality demands were found to promote trust and co-operative relationships¹⁹⁷. Furthermore, disclosing information can have disproportionately high risk in some industries, such as in financial services. Where information is provided after an announcement for reasons of confidentiality, there is generally sufficient time for

¹⁹⁰ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, pp. 26-27. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

¹⁹¹ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', pp. 91 and 141. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

¹⁹² In 2015, 15% of employers strongly agreed that the EWC I&C process 'led to breaches of confidentiality', against 2% of employee representatives.

¹⁹³ EWC/30/2020 Walgreens Boots Alliance European Works Council

¹⁹⁴ Spanish Supreme Labour Court, 3175/2019, IBM, on 13.10.20

¹⁹⁵ ECLI:FR:CCASS:2022:SO00751, French Cours de Cassation Social affairs chamber (Supreme Court) on 15.06.22

¹⁹⁶ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

¹⁹⁷ Meylemans, L. & De Spiegelaere, S., ETUI (2020). 'EWC Confidential Confidentiality in European Works Councils and how representatives deal with it: case study and survey insights'. Available here: <https://www.etui.org/publications/working-papers/ewc-confidential>

consultation before decisions are finalised¹⁹⁸. As far as non-disclosure is concerned, the 2016 ICF study reports that some EWCs have found solutions to the trade-off between effective consultation and non-disclosure of confidential information¹⁹⁹. BusinessEurope has also supported these conclusions²⁰⁰.

The use of confidentiality clauses by management appears to be more common in liberal market economies and in the Nordic countries²⁰¹. This is likely due to differences in industrial relations traditions affecting the transposition of rules on confidentiality²⁰². When confidentiality issues do arise, they are more likely to occur in larger companies (23% against 12% in small companies) and in companies based in liberal market economies (28% against 15% of companies based in coordinated market economies and 17% in mixed market economies)²⁰³.

The 2018 ETUI study²⁰⁴ reported that 39.4% of EWC members surveyed believe that management 'often' refuses to share information on the grounds of confidentiality, which affected their perception of the effectiveness of consultation in the context of EWCs. The ICF targeted survey²⁰⁵ also reports on the frequency of problems related to confidential information, as perceived by the respondents who experienced issues with the consultation procedure. 49% of employee representatives (and 4% of managers) said that the use of confidentiality effectively limits or prevents meaningful consultation, and 15% of managers (and 3% of employee representatives) believe that consultation involves the risk of disclosure of confidential company information. Such differences emerged in the evidence-gathering workshops²⁰⁶ as well: while both EWC members and management representatives highlighted the importance of striking a balance between confidentiality and the need for open and transparent discussions, some EWC members stressed that the indiscriminate use of confidentiality clauses can severely hinder the effectiveness of information and consultation. The EWC members also mentioned that the negative impact of excessive confidentiality is particularly strong in the case of restructuring. Some mentioned that financial information or any information that could affect share prices is subject to these restrictions, while others regretted that there is no fixed date after which information no longer needs to be kept confidential. Most EWC members in the workshop agreed that a relationship of trust with management, the involvement of trade unions and the existence of appropriate sanctions for non-compliance are crucial elements in ensuring the correct use of confidentiality and non-disclosure clauses. Feedback from

¹⁹⁸ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

¹⁹⁹ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

²⁰⁰ BusinessEurope (2017). 'Comments on the functioning of the EWC Recast Directive'. Available here: <https://www.besneurope.eu/publications/european-works-councils-comments-functioning-recast-directive>

²⁰¹ Pulignano V., Turk J., Swerts T. (KU Leuven) (2016) European works councils on the move: management perspectives on the development of a transnational institution for social dialogue.

²⁰² Lise Meylemans and Stan De Spiegelaere, ETUI (2020) EWC Confidential Confidentiality in European Works Councils and how representatives deal with it: case study and survey insights.

²⁰³ See section 4.2.2.3 for more detail on how different types of economic models may affect the functioning of EWCs.

²⁰⁴ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

²⁰⁵ ICF (2023). 'EWC targeted survey'. Q17a (answers 7 and 8), 126 and 13 respondents.

²⁰⁶ ICF (2023). 'Evidence-gathering workshops'.

interviews with ETUFs and national trade unions²⁰⁷ also highlighted concerns around the abusive use of confidentiality clauses, which restricts the flow of information and limit the representation of workers' interests; they recommended the introduction of clearer criteria for determining confidentiality and of guidelines to challenge its application. From the perspective of EU-level and national-level employers' associations, the correct use of confidentiality often emanates from trust and well-established relations between management and EWC representatives and stricter rules around the use of confidentiality pose a risk to effective information and consultation procedures, not least if the definition of transnationality was to be broadened. The legal experts interviewed overall supported a clarification of the criteria for determining confidentiality (reasons and duration of confidentiality) to facilitate coordination between different levels of employee representation while ensuring adequate safeguards for sensitive information. There was limited appetite for revisiting the Directive's confidentiality rules among national authorities overall, arguing that national legislation has objective criteria for central management to determine how and why information is confidential and that provisions allowing legal challenges by EWCs on confidentiality would be counterproductive. Differences could however be observed in national legislations as to the rigidity of the criteria applied.

Regarding Article 8(2)²⁰⁸, certain Member States opted not to transpose this provision and instead apply the duty of confidentiality to protect information, disclosure of which would seriously harm the undertaking (Austria, Croatia, France, Slovenia, Sweden). Around half of the Member States have transposed Article 8(2) referring to the conditions as set in the Recast Directive: i.e., 'information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them' (Bulgaria, Cyprus, Finland, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia). .

In six Member States (Belgium, Cyprus, Czechia, Germany, Greece, Spain), the employer is not obliged to disclose information classified as confidential or protected under the statutory provisions. The laws of Germany, Greece, Spain, Hungary, Ireland, and Italy refer to specific grounds, such as 'trade secrets', 'financial secrets', etc. In Belgium, an exhaustive list of specific information that can be withheld is established in legislation. In the Netherlands, the provisions state that in order to impose confidentiality, reasonable grounds need to be applied. However, management has the right to withhold all sensitive information. The EWC members can use a court procedure to question management decisions to withhold information. It seems that in most of the Member States issues with regard to confidentiality and management withholding information is linked to arbitration and conciliation procedures. Member States did not implement the option under Article 8(2) second sentence to require prior administrative and judicial authorisation for management to withhold confidential information.

The European Parliament's Resolution²⁰⁹ highlighted differences in the implementation of confidentiality provisions by the Member States²¹⁰, and urged them to specify the conditions under which central management is exempt from sharing potentially harmful

²⁰⁷ For ETUFs: EFFAT, EFBWW, IndustriALL. For national trade unions: FR – CFTD; NL – FNV Formaat; UK – Unite the Union; FI – ILRY; IE – SIPTU

²⁰⁸ Review of provisions conducted by the European Labour Law Network contracted by the European Commission in 2023, the review is unpublished and was shared with the study team.

²⁰⁹ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

²¹⁰ "Underlines that the definition and consequential interpretation of what matters are to be regarded as 'transnational issues' remains vague and subject to interpretation, thus resulting in a fragmented transposition and implementation of Directive 2009/38/EC by the Member States and a resulting fragmented application by undertakings" (European Parliament, 2023).

information. The European Parliament proposes amending paragraphs 1 and 2 of Article 8 to mandate this specification in the Directive itself.

In response to the European Commission's first-phase consultation of social partners²¹¹, the responding trade unions identified as major issues the imposition of confidentiality by management and the refusal to disclose information. ETUC stated that confidentiality limitations are often misused for non-confidential matters, and it hinders EWCs in their work. Employers' associations overall disagree and stress that confidentiality limitations are a basic prerequisite for successful cooperation between management and employee representatives. ECEG stated that practical experience does not indicate any systematic problem in the protection of confidential information given to EWC members. Based on the results of the stakeholder consultations (particularly the evidence-gathering workshops), most of the confidentiality issues stem from national laws on confidentiality obligations applicable to local representatives rather than those applied at transnational level.

4.2.1.4 Enforcement

Remedies for EWC & SNB members and access to justice

As an additional measure to guarantee the enforcement of rules concerning EWCs compared to Directive 98/45/EC, Article 10(1) of the Recast Directive establishes that EWCs should be equipped with the means required to apply the rights arising from this Directive, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.

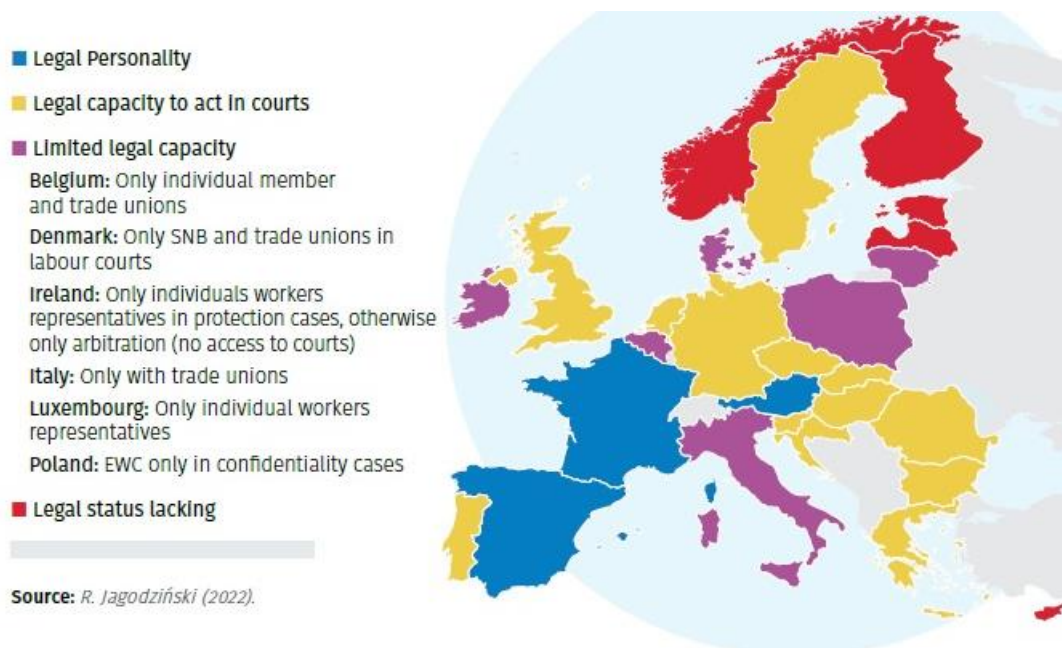
According to the 2018 Commission evaluation²¹², the capacity of EWCs to seek legal redress varies across the EU Member States. While four Member States (Austria, France, Romania and Sweden) have granted EWCs a clear capacity to 'act lawfully and represent employees' interests', in 11 Member States (Czechia, Finland, Germany, Ireland, Latvia, Lithuania, the Netherlands, Poland, Slovakia, Spain and Hungary) EWCs can be party to legal proceedings, which is sufficient for access to justice (broader legal capacity or legal personality of the EWC is not required for access to justice under this measure). In seven Member States (Belgium, Ireland, Estonia, Luxembourg, Slovenia, Slovakia and Italy), EWC members or trade unions can act as parties to legal proceedings relating to EWC matters (which is also considered sufficient for access to justice, as long as EWC members have the capacity to enforce the collective rights of the EWC and not just the individual rights of each member).

The picture is more nuanced according to a recent review for ETUC (2022) and a review by national experts in 2019.

²¹¹ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

²¹² European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, pp. 33-36. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

Figure 16. EWC legal status across the EU



Source: ETUC 2022, *Access to Justice for European Works Councils, A hands-on overview for practitioners*

However, reports on access to justice are sometimes contradictory (expert review conducted in 2019 and the 2022 ETUC report). This makes the current situation uncertain regarding who can access court and how and for what type of issue. In addition, reports have not systematically considered judicial procedures applicable to the different stages of EWCs (or at least it is not clear if there are differences) which are: prior to the start of negotiations, during negotiations, at the start or during the exercise of the EWC and after the expiry of the EWC agreement. Both the pre-negotiation and negotiation stages represent a high degree of uncertainty for employee representatives regarding their access to justice.

Finally, the legal experts interviewed for this study note a lack of clarity as to whether current national provisions apply to EWCs operating on the basis of subsidiary requirements or to EWCs operating on basis of agreements, or to both. EWCs operating on basis of agreements can regulate in their internal general terms and conditions who can legally represent the EWC, how and under what rules. For example, French legal experts pointed out that numerous EWCs in France have management personnel serving as the EWC chair, which often made legal proceedings difficult²¹³.

The cost of legal proceedings also affects capacity to bring a case to court. Most countries rely on the general provisions of Article 10(1) of the Recast Directive. However, no legislation provides a dedicated budget or financial support for court fees in EWC-related litigation. Legal experts suggest that these costs could be covered by the EWC's operating costs in general. This is the case in Germany, where coverage of the general expenses of works councils and EWCs would also include legal costs. As stated above, some EWCs also specify coverage of legal costs in their agreement (this was the case in four of the 12 EWCs interviewed for this study). In the Netherlands, the national legislation specifies that for EWCs under subsidiary requirements, companies need to cover EWCs' reasonable legal costs when they are notified in advance. Based on the review of national provisions,

²¹³ EWC had to vote to take action in court. Court cases also did highlight such issues but granted access to legal proceedings despite absence of such a vote see for ex. French High Court, Nanterre, 14/02861, Court of appeal of Versailles, 21 May 2015, No. 14/08628.

there is indication that legal costs would currently not be covered in at least four Member States (Austria, Italy, Luxembourg, Slovenia).

In 15 Member States, disputes related to the establishment or functioning of EWCs can be resolved through alternative dispute mechanisms such as conciliation, mediation, or arbitration. These mechanisms are not specifically designed for EWCs and are available for any private dispute, except in Italy where a dedicated Conciliation Committee was established to address EWC-related disputes within a fixed timeframe. Therefore, the ability to seek legal redress on behalf of EWC members varies across Europe and often depends on the capacity of degree of unionisation in the company.

Other sources, mostly coming from employee representatives, indicate that in most cases where there is a dispute with management over the functioning of the EWC, EWC members seek out-of-court settlements. In the 2018 ETUI survey of EWC representatives²¹⁴, 15.7% of EWC members say they experienced a serious conflict with management over the functioning of the EWC between 2015 and 2018. In those cases, the parties agreed to a solution by referring to the EWC agreements, legislation and by approaching trade unions rather than by going to court. Court action was taken in 16% of cases of serious conflicts. Some difference can be observed between Article 13 EWCs (i.e., voluntary pre-Directive I&C bodies) and Article 6 EWCs. Members of Article 13 EWCs experienced fewer instances of serious conflict with management than members of Article 6 EWCs: (10% of Article 13 EWCs vs. 17.8% of Art. 6 EWCs). Only 7.1% of Art.13 EWC members who stated having experienced a serious conflict started legal proceedings, compared to 17.5% of Article 6 EWC members. Moreover, while the majority of survey respondents who did not go to court following a serious dispute ascribed this to the low importance of the issue itself (26.5%), to indecisiveness within the EWC (33.8%), or to other reasons, 14.2% among them decided not to go to court because they deemed the possible sanctions too small to be worth the time and resources required, 11.8% because of limited resources (financial means, expertise), and 10.8% because there were no provisions in national law allowing EWCs to go to court. Other ETUI reports indicate that the frequency of disputes regarding the functioning of EWCs is greater if the consultation takes place after the managerial decision is finalised²¹⁵.

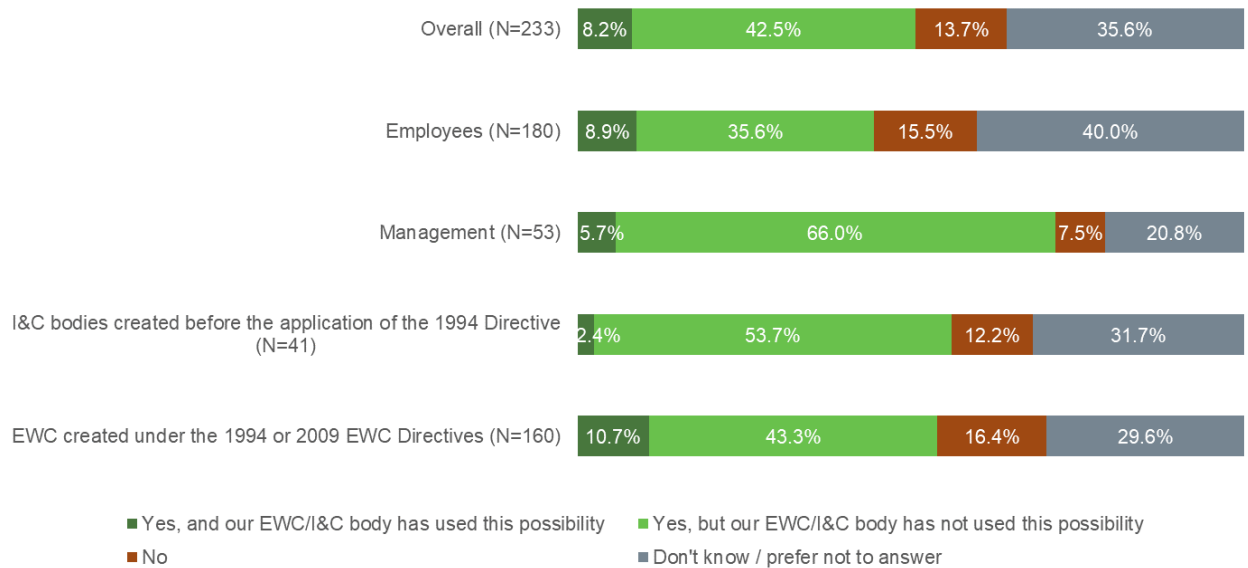
The ICF targeted survey²¹⁶ further explored access to justice and whether it may be inadequate. Figure 17 shows that the percentage of respondents that explicitly highlighted there is no access to a court for the enforcement of EWC rights was small overall (13.7%; 32 out of 233 respondents), although the share of respondents highlighting this was higher among employee representatives (15.5%; 28 out of 180 respondents) than among employer representatives (7.5%; 4 out of 53 respondents). Most of the respondents mentioned having access to the court system, yet they have not utilised it. Many of these respondents stated that the issue at hand was not serious enough to justify pursuing legal action. The other reasons indicated by the responding employee representatives were lengthy judicial proceedings (20.3%), lack of effective remedies (15.6%), uncertain outcomes (25%), no clarity on how to take a matter to court (18.8%), not clear choice of competent court (10.9%), not enough financial resources (14.1%), risk of damaging mutual trust with management (28.1%).

²¹⁴ De Spiegelaere S., Jagodziński R. (2019). 'Can anybody hear us? An overview of the 2018 survey of EWC and SEW representatives'. ETUI. Available here: <https://www.etui.org/publications/guides/can-anybody-hear-us>

²¹⁵ DDe Spiegelaere S., Jagodziński R., Waddington J. (ETUI) (2022). 'European Works Councils. Contested and still in the making', p. 230. Available here: https://www.etui.org/sites/default/files/2022-01/European%20Works%20Councils.%20Contested%20and%20still%20in%20the%20making_2022.pdf

²¹⁶ ICF (2023). 'EWC targeted survey'. Q27 and Q27a, 233 respondents.

Figure 17. Q27, Access to a court to enforce EWC rights (percentage) – N= 233



Source: ICF EWC Targeted survey. Q27, 233 respondents.

In the evidence-gathering workshops, employees indicated that access to justice was much more difficult in some countries than in others and that prohibitive legal costs were a major barrier to taking a case to court. On the other hand, management representatives praised the effectiveness of the current framework and expressed a strong preference for reaching agreements to resolve problems rather than going to court. Differences across the EU Member States in terms of access to justice were highlighted among the interviewed ETUFs, national trade unions²¹⁷ and legal experts. EU-level and national employers' associations taking part in the interviews did not raise any specific issues in relation to this topic, highlighting that disputes remain rare, especially in well-established EWCs.

A 2016 ETUC report on the experiences of EWC coordinators²¹⁸ and a 2017 ETUI policy paper²¹⁹ concluded that EWCs have few instruments with which to enforce a company's compliance with the rules. According to employee representatives²²⁰, EWCs' access to courts may be seriously hindered by the lack of clear rules on their legal status (legal personality, court capacity) defining what EWCs can or cannot do, as well as on the means available to them in such legal proceedings.

The 2023 European Parliament Resolution²²¹ also highlighted the need to ensure effective access to justice for EWCs and SNBs as a fundamental step to guarantee the effectiveness of the Recast Directive and of the EWCs' activities.

²¹⁷ For ETUFs: EFFAT, EFBWW, IndustriALL. For national trade unions: FR – CFDT; NL – FNV Formaat; UK – Unite the Union; FI – ILRY; IE – SIPTU

²¹⁸ Voss E. (ETUC) (2016). 'European Works Councils Assessments and Requirements. Report to the ETUC'. Available here:

https://www.etuc.org/sites/default/files/publication/files/europeanworks_councils_ces_01.pdf

²¹⁹ De Spiegelaere S., ETUI (2017). 'Company restructuring across borders: with or without European Works Councils?', ETUI Policy Brief 1/2017'

²²⁰ Jagodzinski R. (ETUI) (2015) Variations on a theme? The implementation of the EWC Recast Directive.

²²¹ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

In response to the European Commission's first-phase consultation of social partners²²², trade unions argued that there are shortcomings concerning the effective enforcement of information and consultation rights. ETUC and CEC believe that EWCs do not have sufficient access to justice. On the contrary, the responding employers' associations do not attribute shortcomings regarding access to justice to the Directive. Whereas ETUC maintains that the low level of litigation is caused by the lack of means EWCs have to access the courts, BusinessEurope argue that this is simply due to the fact that EWCs function satisfactorily overall.

Penalties / sanctions for non-compliance

The Preamble (Recitals 35 and 36) of the Recast Directive emphasises the significance of Member States imposing effective, dissuasive, and proportionate sanctions in cases of companies' non-compliance with the provisions. This reference was not in the Directive 94/45/EC.

The 2018 Commission evaluation²²³ reviews the provisions adopted by Member States for the enforcement of the Recast Directive. It distinguishes between two models for handling violations of EWC rights:

- countries where a violation of EWC rights is considered an administrative or labour law offence (Austria, Cyprus, Ireland, Italy, Czechia, Spain, Slovakia, Lithuania, Malta, Finland, Portugal, and the United Kingdom);
- countries where a violation of EWC rights is considered a criminal offence (France, Poland, Germany, Cyprus, Greece, Luxembourg and Belgium).

Since most Member States apply financial penalties as sanctions, the 2018 Commission evaluation describes the different levels of penalties. 'In some Member States, depending on the type of violation, the minimum fines can be as low as EUR 23 (Malta) or EUR 30 (Lithuania) *per worker*. The maximum administrative lumpsum fines can be around EUR 15,000 in Germany and EUR 7,500 in France, while in other countries it can theoretically be as high as EUR 100,000 (Slovenia), EUR 115,000 (UK) or EUR 187,515 (Spain)²²⁴. It should be noted that the evaluation did not differentiate between sanction types, although higher pecuniary sanctions are possible under criminal law. The evaluation also mentions that sanctions for violations pertaining to the establishment of the EWC are generally more dissuasive compared to sanctions for violations related to its operation. In some of the aforementioned Member States, no or very few EWCs exist under national law. The 2016 ICF study also presents the same conclusions²²⁵.

Some court cases that resulted in the company facing sanctions stirred controversy. The Deutsche Telekom company case (Germany)²²⁶ is a good example. The EWC asserted that the Court should halt the restructuring measure until proper consultation had been conducted. However, under German law, EWCs do not possess a substantive right to

²²² European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

²²³ European Commission (2018). 'Staff Working Document. Evaluation Accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast)', COM(2018) 292 final, pp. 33-36. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0187>

²²⁴ Ibid. p.35

²²⁵ ICF (2016). 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council', p. 153. Available here: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

²²⁶ Case ECLI:DE:LAGK:2018:1213.6TABVGA3.18.00

injunctive relief. Instead, German law allows for monetary fines in cases of breaches of obligations arising from EWC legislation. In the *Deutsche Telekom* case, the Court ordered that the company pay a fine of EUR 15,000. In this case, the judge emphasised that the fine established by the German legislature is relatively small considering the company's turnover, and it may not serve as an adequate deterrent to prevent businesses from evading information and consultation procedures²²⁷. France, Spain, and Italy have allowed national works councils to obtain injunctive relief measures concerning their rights to information and consultation. In court cases involving management measures perceived as both transnational and national issues, courts in multiple instances in several Member States allowed the EWC of the company to participate in the national court case as a party²²⁸. In Germany, a right to injunctive relief is recognised by the case law of the federal labour court (*Bundesarbeitsgericht*) only in cases where co-determination rights were violated but not on the grounds of a violation of information and consultation rights (including those of national works councils). As mentioned earlier, EWCs do not have co-determination rights. Accordingly, labour courts in Germany²²⁹ held that while the possibility to apply for interim measures is available to EWCs under general procedural rules, EWCs cannot infer a right to injunctive relief by way of analogy, given that the national legislator expressly discarded the possibility of granting such a right with respect to EWCs' information and consultation rights²³⁰.

Regarding alternative dispute resolution (ADR) mechanisms, the CJEU has expressed itself on the basic principles concerning ADR schemes in joint Cases C-317/08 to C-320/08 *Rosalba Alassini and Others*, where ADR was a mandatory step before access to the court. In that case, the CJEU confirmed that all persons falling under the personal scope of the Directive have an interest in judicial protection and should be given legal standing. This principle is to be respected also in the case of obligatory ADR (see paras 52-65 of the judgment). A review of national transposition measures of the EWC Recast Directive indicates that this does not appear to be a problem in the Member States.

Other issues regarding access to justice were identified such as in Ireland²³¹. According to the Irish trade union SIPTU, uncertainty around the national provisions regulating access to justice for disputes related to EWC affairs made enforcement of rights almost impossible²³².

Some of the interviewed EWC representatives explained that it is an issue to understand in practice which enforcement body can be seized and what needs to be done in practice to introduce a case in court. Legal experts and EWC representatives also highlighted the lack of specific expertise and training on EWC-related affairs among judges and lawyers, which contributes to legal uncertainty. Both employer and employee representatives also reported that often legal cases heard in lower courts came to very different legal outcomes. EWCs and central management would see a need for training of legal

²²⁷ Similar in other cases Germany - 9 TaBV 2/15 on 12.10.15 LAGBW, German District Court, Amtsgericht Köln 5 BV 208/11 in 2012; cases Essen labour court Dana judgements January 2020, in all cases the EWC aimed to get injunctive relief, the court concluded that the conditions for granting such relief were not met.

²²⁸ For ex. RG n° 20/06549 France, *Veolia-Suez* case, on 19.11.20 ; *Wartisla* case Italy, N.R.G. 362/2022 on 20.09.22.; *Tenneco* case 2014 (Spain) information accessed via <http://www.ewc-news.com/en012014.htm>, 16.08.2015; and *Coca Cola* case Spanish National Court, Social Chamber, Madrid, Resource no: 79/2014.

²²⁹ For ex. *Landesarbeitsgericht Köln* of 1 August 2018, case no 6 TaBVGa 3/18 (op. cit.); 12.10.2015, *Landesarbeitsgericht Baden-Wuerttemberg* of 12 October 2015, case no 9 TaBV 2/15 (op. cit.).

²³⁰ Cf. also Commission Staff Working Document 'Analytical document accompanying the Consultation document on Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive' (SWD(2023)662 final, p. 47, 56).

²³¹ This was identified due to the open infringement procedure INFR(2022)4021 initiated by the EU Commission against Ireland.

²³² SIPTU explained in the interview that issues had to be submitted to the Ministry of Labour and to the Labour Inspectorate who could then carry out an assessment of the case and potentially defer the case to criminal court.

professionals involved, for setting procedural rules (in case of absence of specific operational rules by the EWC) and for more guidance on competence of courts. During interviews with legal experts and EWC representatives, another limitation regarding access to courts emerged: discerning between collective rights of the EWC and individual rights that can be defended in courts by each EWC member.

In the evidence-gathering workshops conducted for this study²³³, there were diverging opinions between management and employee representatives regarding the appropriateness of current sanctions and penalties. While managers expressed satisfaction with the current level of sanctions and warned of the competitive disadvantage that EU companies would suffer if greater financial sanctions were introduced, employee representatives argued strongly for tougher sanctions as a necessity to ensure management's compliance with EWC agreements. Some employee representatives proposed solutions that went beyond financial sanctions, such as delaying the implementation of management decisions or depriving companies of the right to operate in certain territories (for non-EU headquartered multinationals), or 'comply or explain' approaches that would have an impact on companies' public image. A recurrent observation among the ETUFs, trade unions, and legal experts interviewed for this study was the lack of a level playing field across the Member States regarding enforcement; calls were made for the standardisation of procedures for accessing justice (e.g., designation of a competent court) and of sanctions in case of non-compliance. For EU-level and national-level employers' associations, financial penalties based on company turnover or suspension of companies from public procurement would not only be disproportionate to the gravity of non-compliance cases but also detrimental to employees, potentially leading to reductions in investment and job cuts. Similar views were also echoed among some of the national authorities interviewed. On the matter of remedies, employers' associations hold the view that granting EWCs powers to temporarily suspend management decisions would give them disproportionate authority.

The employee and employer representatives had opposed views on the existing rules and practices around sanctions and remedies. ETUC proposed that in cases where the information and consultation rights of EWCs are violated, the ultimate sanction should be the nullification of management decisions, contingent upon the support of national trade unions representing the employees directly impacted by such decisions²³⁴. On the other hand, BusinessEurope suggested adopting a case-by-case approach when violations arise. Although enforcement regimes may vary among Member States, they asserted that if national implementation laws lack sanctions that are adequately dissuasive or proportionate, the Commission should, on an individual basis, intervene and urge those Member States to amend their legislation²³⁵.

The 2023 European Parliament Resolution²³⁶ proposes the inclusion of an additional provision (Article 11a) requiring Member States to lay down rules imposing financial penalties that are effective, proportionate, and dissuasive. Additionally, it proposes to make the amounts of financial sanctions proportional to the number of affected employees, and the potential exclusion of the undertaking from the entitlement to some or all public benefits, aids, or subsidies, including EU funds, and to public contracts identified

²³³ ICF (2023). 'Evidence-gathering workshops'.

²³⁴ ETUI (2017): Position Paper for a modern European Works Council Directive in the Digital Era

²³⁵ BusinessEurope (2017). 'Comments on the functioning of the EWC Recast Directive'. Available here: <https://www.besneurope.eu/publications/european-works-councils-comments-functioning-recast-directive>

²³⁶ European Parliament (2023). 'Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))'. Available here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.html

by Directive 2014/24/EU on public procurement²³⁷. The additional provisions would also distinguish between unintentional and intentional violations and foresee penalties of up to 2% or 4% of annual turnover respectively in line with Regulation (EU) 2016/679²³⁸. According to labour law expert assessments conducted in 2019,²³⁹ none of the Member States currently impose fines that penalise violations of EWC rights based on a company's turnover.

In two Member States (Hungary and the Netherlands), specific levels of sanctions are not defined in law, although they may be determined by a court or labour inspectorate.

In response to the European Commission's first-phase consultation of social partners²⁴⁰, all the responding trade unions considered that the remedies and sanctions are not sufficiently effective. Employers' associations had the opposite view.

4.2.2 External factors

Several external factors that influence the environment in which EWCs operate have been identified. They are not affected by the policy intervention, but they can limit or increase the positive effects of one or several options. Therefore, when discussing the current and foreseeable state of things concerning EWCs, these factors must also be considered, namely: exogenous shocks and macroeconomic trends, changes in labour, digital and demographic trends, developments in industrial relations, the implementation of the green transition, and the evolution of national legal frameworks.

4.2.2.1 Exogenous shocks and macroeconomic trends

Exogenous economic shocks can be expected to significantly affect the EU economy and business prospects for multinational companies operating in the EU. When such shocks are particularly significant, they may lead to restructuring plans occurring at the EU level, which would qualify as transnational matters of interest to EWCs. For example, the 2008 financial crisis is recognised as having impacted EWCs. One study concludes that while restructuring cases during the Great Recession were challenging for EWCs, they also presented an opportunity to change and clarify information and consultation procedures²⁴¹. Conversely, a separate study stated that the 2008 crisis led to a deterioration of employee representation due to the increased ineffectiveness of EWCs²⁴².

The **COVID-19** pandemic has had a significant impact on EU labour markets, and although there has been a relatively quick recovery in economic performance and employment figures, the disruption of supply chains and general price increases, further aggravated by the **war in Ukraine**, may have longer-lasting effects. These factors can influence European companies and the labour market in two main ways. Firstly, the

²³⁷ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p.65). Available here: [EUR-Lex - 32014L0024 - EN - EUR-Lex \(europa.eu\)](#)

²³⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1). Available here: [EUR-Lex - 32016R0679 - EN - EUR-Lex \(europa.eu\)](#)

²³⁹ Review of provisions conducted by the European Labour Law Network contracted by the European Commission in 2019. The review is unpublished and was shared with the study team.

²⁴⁰ European Commission (2023). 'Commission Staff Working Document, Analytical Document, Accompanying the document "Consultation Document, Second-phase consultation of Social Partners under Article 154 TFEU on a possible revision of the European Works Council Directive (Directive 2009/38/EC)". SWD (2023) 662 final.

²⁴¹ Kerckhofs P. (2015). 'European Works Council developments before, during and after the crisis'. Available here: [European Works Council developments before, during and after the \(europa.eu\)](#)

²⁴² Mählmeyer, V., Rampeltshammer, L., & Hertwig, M. (2017). 'European Works Councils during the financial and economic crisis: Activation, stagnation or disintegration?', *European Journal of Industrial Relations*, 23(3), 225–242.

restrictions imposed during the pandemic in manufacturing countries like China, coupled with the sanctions imposed on Russia, may lead to a partial relocation of supply chains. This shift could result in changes within the EU industrial sector as companies adapt and reorganise their production networks. The geopolitical landscape and economic conditions are driving these potential changes. Secondly, the high inflation resulting from these factors reduces employees' purchasing power, creating tensions between companies facing increasing costs and a workforce that demands higher wages to cope with rising prices. This dynamic can generate issues and disputes with a transnational scope, making the involvement of EWCs on financial and restructuring matters more likely. EWCs may play a role in addressing these challenges and negotiating solutions that consider the interests of both the companies and the employees affected. However, it is important to note that the situation is complex and evolving, and the actual outcomes and trends will depend on various factors such as policy decisions, global economic conditions, and geopolitical developments.

Economic cycles are expected to affect social dialogue, and thus EWCs. During phases of expansions, business and income growth alleviate tensions between employers and employees. Conversely, during contractions, business slowdowns or restructuring increase layoffs, aggravating industrial relations.

The latest economic forecasts for the Euro area²⁴³ and for the EU as a whole²⁴⁴ project that GDP growth should be positive throughout 2023-2024 thanks to 'lower energy prices, abating supply constraints, improved business confidence and a strong labour market'. Concurrently, unemployment rates are expected to remain low due to the lower risk of an economic recession in the near future and to the persistence of labour shortages²⁴⁵.

No **sector-specific trends** were identified at this stage. The adoption of digital technologies and the green transition are likely to be important factors going forward for companies in the manufacturing sector, which hosts the highest number of EWCs, but these developments are also very relevant for the other sectors. The next section addresses the digital and green transitions.

4.2.2.2 Labour trends, digitalisation, and demographic change

The literature reviewed to date has provided no evidence about changes in workforce attitude, career models, and organisational structures that could influence the employment patterns and size of companies that are eligible for an EWC under the Recast Directive.

Evidence on **the effects of digitalisation on the functioning of EWCs** is not conclusive either, as literature on this topic was limited. However, it appears that the recent Covid-19 global pandemic has accelerated the pace of digitalisation. Available literature indicates that online meetings have become more frequent in the wake of the Covid-19 pandemic. Employee organisations recognise the positive aspects of online meetings, but still consider the importance of face-to-face meetings²⁴⁶. During the recent Covid-19 pandemic, the number of meetings in selected companies either remained the same or

²⁴³ European Central Bank (2023). 'ECB staff macroeconomic projections for the euro area, June 2023'.

²⁴⁴ European Commission (2023). 'European Economic Forecast, Spring 2023'; and European Commission (2023). 'Employment and Social Developments in Europe'.

²⁴⁵ European Commission (2023). 'European Economic Forecast, Spring 2023'; and European Commission (2023). 'Employment and Social Developments in Europe'.

²⁴⁶ Bruno Demaître (ETUI Education Officer), interviewed by Gabriele Guglielmi, (Filcams Cgil International Policies Coordinator) (2020). 'Training of EWC members in the face of Covid-19: proposals, solutions and issues'.

increased²⁴⁷. The companies covered in the 2022 Eurofound case studies had mostly shifted to a mixed online and face to face approach to EWC meetings. Additionally, the availability of online training courses for EWCs is reported to have significantly increased. At the time of publication of the Eurofound case studies²⁴⁸, ETUI provided '*EWCs Rules of the Game*', which was produced in both English and French and was to become available in Italian, Spanish and German as well. ETUI online provides further training and courses of interest to EWC members such as '*English for trade unionists*' and '*the EU for trade unionists*.' At the time of publication, ETUI was also preparing a series of webinar style courses. A 2017 ETUC position paper²⁴⁹ called for a strengthening of EWC tools in response to the new societal, technological, and structural challenges emerging from digitalisation. Some EWCs have already taken action to anticipate the broader impacts of digitalisation, such as at Unilever's and Solvay Group's EWCs²⁵⁰. The European Parliament has also argued that timely and meaningful information and consultation will be essential to ensure that new digital technologies are implemented and monitored in a manner that ensures full respect for employees' rights²⁵¹. Finally, it is likely that the increasing use of Artificial Intelligence (AI) technologies will initiate structural changes in the EU labour market. This phenomenon could result in heightened productivity on the one hand, while, on the other, it may lead to job losses in certain occupation types and sectors, exerting on wages and employment stability. These combined pressures are likely to frequently generate transnational issue. However, it is uncertain how long these changes will take to materialise, and there is no evidence of the impact they might have on the functioning of EWCs or on the information and consultation of workers on transnational issues in the near future.

Demographic changes may also shift the priorities addressed by EWCs²⁵². For example, an ageing workforce in some industries (e.g., woodworking and furniture sectors) would increase the need to consider chronic diseases and special needs in the context of information and consultation activities, and the increasing participation of women in some industries where men traditionally make up the majority of the workforce (e.g., construction) would create more incentives to adopt company-wide policies on gender equality.

4.2.2.3 Industrial relations

According to the materials examined, **EWCs have contributed to the development of the European system of labour relations and the Europeanisation of employee relations**. This has occurred on three levels: by encouraging more communication between national industrial relations systems, by fostering the use of 'European features'

²⁴⁷ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

²⁴⁸ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

²⁴⁹ ETUC (2017). 'Position Paper for a modern European Works Council Directive in the Digital Era'.

²⁵⁰ WMP (2020). 'An EU legal framework on safeguarding and strengthening workers' information, consultation and participation, report commissioned for the European Economic and Social Committee'. Available here: <https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-818-en-n.pdf>

²⁵¹ European Parliament (2021). 'Report on democracy at work: a European framework for employees' participation rights and the revision of the EWCs Directive'. Available here: [REPORT on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive | A9-0331/2021 | European Parliament \(europa.eu\)](#)

²⁵² EFBWW (2021). 'EWC guide on demographic change'. Available here: [STIC 4 EN Demographic change EN.pdf](#)

in the national industrial relations systems, and by contributing to the creation of a European level of social dialogue²⁵³.

Another issue worth considering is the existence of significant differences in the cultures and traditions of the Member States in the area of industrial relations. The EU is made up of both coordinated market economies (CMEs) and liberal market economies (LMEs)²⁵⁴. CMEs exhibit a more structured system of industrial relations, along with increased bargaining power for employees at either the industry or national level. Conversely, LMEs tend to have less well organised industrial relations systems, with social dialogue more likely to take place at the company level. The main implication of such traditional and cultural differences for EWCs and 'transnational' industrial relations is that national representatives are appointed in different ways, and their relations with national-level trade unions vary from one EU Member State to the next. National differences in industrial relations means that the functioning of EWCs will potentially vary depending on where they are headquartered, or according to the countries EWC members represent.

Finally, **the well-functioning of EWCs is highly influenced by the nature of the relationship between management and the EWC itself**, as expressed by several management and EWC representatives in the evidence-gathering workshop and in the interviews. Therefore, the ability of these two groups to develop a trust-based and transparent relationship within each individual company will play a crucial role in determining the effectiveness of information and consultation processes. However, predicting the outcome of these relationships is challenging, as this will depend on various factors that are unique to each company.

4.2.2.4 Green transition

In December 2019, the European Commission launched the European Green New Deal: a set of policies to make the EU climate neutral by 2050. In the context of the EU enhanced climate action, renewed attention was applied in framing it as a 'just transition'. This designation signifies the intention to **strike a balance between combating climate change and implementing social adjustments**. It aims to **mitigate the socio-economic and labour impacts anticipated from the green transition**²⁵⁵.

As stressed by the European Economic and Social Committee²⁵⁶, the broad support and active participation of workers and their representatives will be crucial to the success of the green transition. For this reason, and since climate change and most environmental issues are by definition transnational matters, it is likely that EWCs will play an increasingly important role as a social dialogue platform on issues linked to the green transition and environmental and climate adaptation. In that case, increased pressure could be exerted on EWCs, potentially aggravating any pre-existing challenges and potential conflicts between management and employees.

²⁵³ Koutroukis T. (2019). 'Are European Works Councils a vehicle for the Europeanization of employee relations? A study from the standpoint of people management executives'.

²⁵⁴ The literature on this topic has also defined 'mixed market economies' (MMEs) and 'Nordic' model of capitalism. See: Hall, P. A., & Soskice, D. (2001). 'Varieties of Capitalism: The Institutional Foundations of Comparative Advantage'. Available here: <https://doi.org/10.1604/9780199247752>.

²⁵⁵ WMP (2020). 'An EU legal framework on safeguarding and strengthening workers' information, consultation and participation, report commissioned for the European Economic and Social Committee'. Available here: <https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-818-en-n.pdf>

²⁵⁶ WMP (2020). 'An EU legal framework on safeguarding and strengthening workers' information, consultation and participation, report commissioned for the European Economic and Social Committee'. Available here: <https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-818-en-n.pdf>

4.2.2.5 Evolution of legal frameworks

While legislative changes at the national level that could affect the functioning and effectiveness of EWCs could hypothetically address certain identified challenges (e.g., in the area of enforcement and sanctions), the legal framework appears to have been relatively stable since the implementation of the Recast Directive and seems unlikely to change significantly without EU input. The factors most likely to affect both the perception and the practical functioning of EWCs are potential changes in national industrial relations legislations, but the desk research and stakeholder consultations carried out for this study have not revealed that such changes are likely to occur in the near future. One notable recent development at EU level is the adoption by the Council of the European Union of a Recommendation on strengthening social dialogue in the EU²⁵⁷ in June 2023, based on the European Commission's Proposal of January 2023.

Brexit has also had an impact on the legal framework in which EWCs operate. According to Eurofound (2022)²⁵⁸, Brexit has affected EWC membership levels and legislation governing EWC agreements. It has also impacted several economic factors which may affect companies with an EWC. In 2020, the European Commission issued a notice to stakeholders on the UK's withdrawal from the EU and its implications for EU rules on EWCs²⁵⁹ in which it clarified the consequences of Brexit on the Recast Directive's scope of application. These can be summarised as follows:

- Since UK employees no longer count as EU employees, the relevant threshold for applying Directive 2009/38/EC may no longer be met when determining whether a group of companies falls within its scope.
- UK employees are not automatically entitled to representation in an EWC, though they might still enjoy a right to do so when an agreement allowing third country participation is in place.
- If a UK company was previously responsible for a group's EWC, that responsibility had to be transferred to its group's designated representative agent in a Member State. If central management fails to take action, the role of representative agent is automatically transferred to the establishment or group undertaking employing the greatest number of workers in a Member State.
- To ensure that the rights of employees under Directive 2009/38/EC remain enforceable within the EU, the laws governing the EWC (previously based on UK law) are those of the Member State in which the representative agent or management is located. Although it is not necessary to amend agreements referring to UK legislation, the Commission highly recommended amending such agreements by explicitly stipulating the Member State's legislation under which they are governed for the sake of clarity and legal certainty.
- Impacts on the composition of SNBs as UK employees are now excluded from representation.

²⁵⁷ Council of the European Union (2023). 'Proposal for a COUNCIL RECOMMENDATION on strengthening social dialogue in the European Union'. Available here: <https://data.consilium.europa.eu/doc/document/ST-10542-2023-INIT/en/pdf>

²⁵⁸ Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

²⁵⁹ De Spiegelaere, S. Jagodzinski, R. (2020). 'ETUI Policy Brief, Are European Works Councils ready for Brexit? An inside look'.

In 2020, ETUI estimated that around 15% of all EWC agreements would have been immediately affected by Brexit because they were based on UK legislation²⁶⁰. **Indeed, a number of previously UK-based EWCs relocated to Ireland, thus changing jurisdiction**, giving rise to the debate on the effectiveness of dispute resolution procedures in the Irish EWC legislation²⁶¹. Overall, the recent EWC case studies conducted by Eurofound (2022)²⁶² revealed that while Brexit did not affect the functioning of EWCs in some companies (e.g. on renegotiation requirements or changes in applicable law), the impact of Brexit was more significant in other companies, especially those headquartered in the United Kingdom.

²⁶⁰ De Spiegelaere, S. Jagodzinski, R. (2020). 'ETUI Policy Brief, Are European Works Councils ready for Brexit? An inside look'.

²⁶¹ Recently, the European Commission launched an infringement notice against Ireland over the Government's failure to properly transpose the EWC Directive.

²⁶² Turlan, F. et al. (Eurofound). (2022). 'Challenges and solutions: Case studies on European Works Councils'. Available here: <https://www.eurofound.europa.eu/en/publications/2021/challenges-and-solutions-case-studies-european-works-councils>

5 Results of stakeholder consultation activities

This chapter presents the results of the stakeholder consultation activities conducted for this study.

- Targeted survey of management and employee representatives in multinational companies with an EWC (section 5.1).
- Semi-structured interviews with groups of stakeholders, including management and employee representatives in companies with an EWC, European and national social partners, legal and professional experts, and relevant national authorities (section 5.2).
- Evidence-gathering workshops with representatives of multinational companies with an EWC: one workshop with employee representatives, one workshop with management representatives (section 5.3).

5.1 Targeted survey results

As part of the **Study on exploring issues and possible solutions in relation to the Recast Directive 2009/38/EC on European Works Council**, ICF launched a survey to gather the views and experiences of management representatives and employee representatives in multinationals with an EWC. The objective was to help the European Commission to gather evidence on the existence and scale of the problems and the impacts of potential solutions.

5.1.1 Methodology

The survey was launched online on 18 April 2023 and remained open for five weeks, until 26 May 2023 (as recommended for targeted surveys under the Better Regulation Guidelines).

Overall, 233 valid responses to the survey were received: 180 from employee representatives and 53 from management representatives. Duplicates (i.e., more than one management representative or employee representative responding) were removed from the sample (only the response of the most highly ranked representative was kept).

The questionnaire included 32 questions and sub-questions, both closed and open-ended, covering the following areas:

- Respondent characteristics (management or employee representative, EWC type, EWC governing legislation, multinational company's sector of activity etc.);
- Usefulness of the EWC;
- Key concepts in the work of the EWC (transnationality, confidentiality);
- Setting up and running of the EWC;
- Enforcement of EWC rights and obligations;
- Article 14 exemptions;
- Gender balance;
- Need for interpretative guidance;
- Any other points for consideration.

The closed questions underwent a quantitative analysis with the key variables defined as management vs. employee respondents, and type of EWC. The open-ended responses were reviewed for quality and relevance to the questions at hand. In many instances, the open-ended responses were broken down into distinct propositions, reinterpreted and reassembled into a set of common observations or remarks. Lists of bullet points in this report are ordered according to the recurrence of an observation or remark, with the most recurrent ones at the beginning of the lists.

The survey questionnaire was available in English, French and German. It was disseminated via BusinessEurope and ETUC (as well as ETUFs), as well as via the EWC-Academy and IR Share newsletters.

5.1.2 Summary of responses

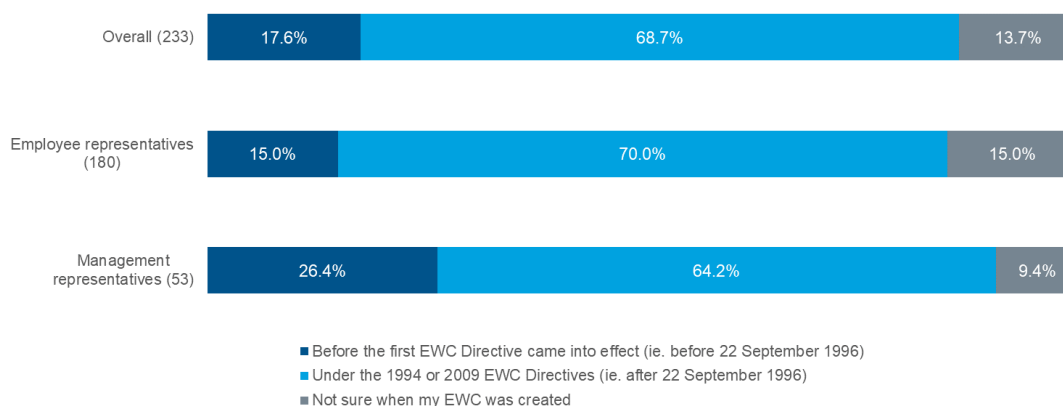
5.1.2.1 About you and your EWC

Figure 18 shows the number of responses received from the two main stakeholder categories: employee representatives (180) and management representatives (53)²⁶³. Within each of the two stakeholder categories, it also gives the percentage of respondents by type of EWC or information and consultation (I&C) body represented, i.e., information and consultation (I&C) bodies created before the first EWC Directive came into effect (before September 1996), and EWCs created under the framework of the EWC Directive (22 September 1996) and the Recast Directive (2009)²⁶⁴.

According to the graph, the majority of respondents represent a company where the EWC was created after 22 September 1996, either under the 1994 Directive or the 2009 Recast Directive (68.7%). A small percentage of the respondents (17.6%) represent companies operating an information and consultation (I&C) body created before the introduction of the first EWC Directive. The remaining respondents (13.7%) could not determine if the company they represent operates an I&C body or an EWC.

The graph also shows that there is a slight discrepancy between the responses of the two stakeholder groups. This is particularly visible among the respondents representing an I&C body created before 22 September 1996. Among employee representatives, 15% of the respondents represented an I&C founded before the first EWC Directive came into effect, compared to 26.4% among management representatives. This discrepancy is less apparent in the case of respondents representing EWCs created under the 1994 Directive or the 2009 Recast Directive – 70% of employee representatives vs 64.2% of management representatives. Within the survey sample, 41 respondents indicated that their I&C body was established before the entry into force of the first EWC Directive, whereas 160 respondents indicated that their EWC was created either under the 1994 Directive or the 2009 Recast Directive, and 32 respondents could not provide an answer in this regard.

Figure 18. Q2a&2b, Period of creation of the EWC or the information and consultation body, per stakeholder group (percentage) – N= 233



²⁶³ N= 233: 180 Employees representatives (77%), 53 Management representatives (33%).

²⁶⁴ Unless specified otherwise, in this chapter, 'EWCs' as a whole refer to pre-Directive voluntary information and consultation (I&C) bodies established before the 1994 EWC Directive and EWCs established under the 1994 and 2009 Directives.

Figure 19 shows the percentage of respondents who have ever renegotiated their EWC agreement. Overall, the majority of respondents have renegotiated their EWC agreement, at least once (51.1% - 119 out of 233). The remaining 32.6% of respondents (76 out of 233) have never renegotiated the agreements and 16.3% (38 out of 233) could not answer or preferred not to answer. Among the respondents, 64.2% of the employee representatives (34 out of 53), and 47.2% of the management representatives (85 out of 180) said that the agreement was renegotiated at least once.

In addition to the above, the figure also shows that 68.3% (28 out of 41) of respondents whose information and consultation body was established before the Directives indicated that their agreement was renegotiated at least once. In the case of respondents whose EWC was founded after the entry into force of the Directives, 52.5% (84 out of 160) renegotiated their agreements at least once.

Figure 19. Q3, Number of respondents whose EWC agreement was ever renegotiated (percentage) – N= 233

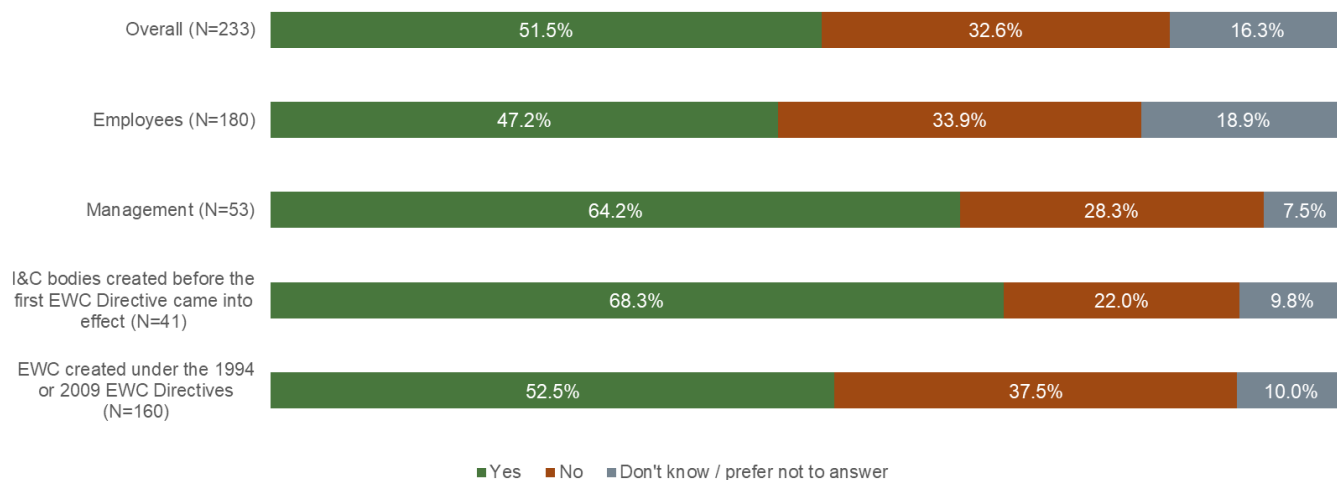


Figure 20 on the following page shows in descending order the governing legislation under which the respondents' EWC is established. Overall, the majority of the respondents' EWCs or I&C bodies operate under either German (26.2% - 61 out of 233), French (16.3% - 38 out of 233) or Irish (13.7% - 32 out of 233) legislation. Similar trends emerge from the disaggregation of responses per stakeholder categories. The majority of employee representatives' EWCs or I&C bodies operate either under German (25.6% - 46 out of 180), French (16.7% - 30 out of 180) or Irish (13.9% - 25 out of 180) legislation. In the case of management representatives' EWCs and I&C bodies, the majority operate either under German (28.3% - 15 out of 53), French (15.1% - 8 out of 53) or Belgian (17% - 9 out of 53) legislation.

Figure 20. Q4, Governing legislation of the respondents' EWC (percentage) – N= 233

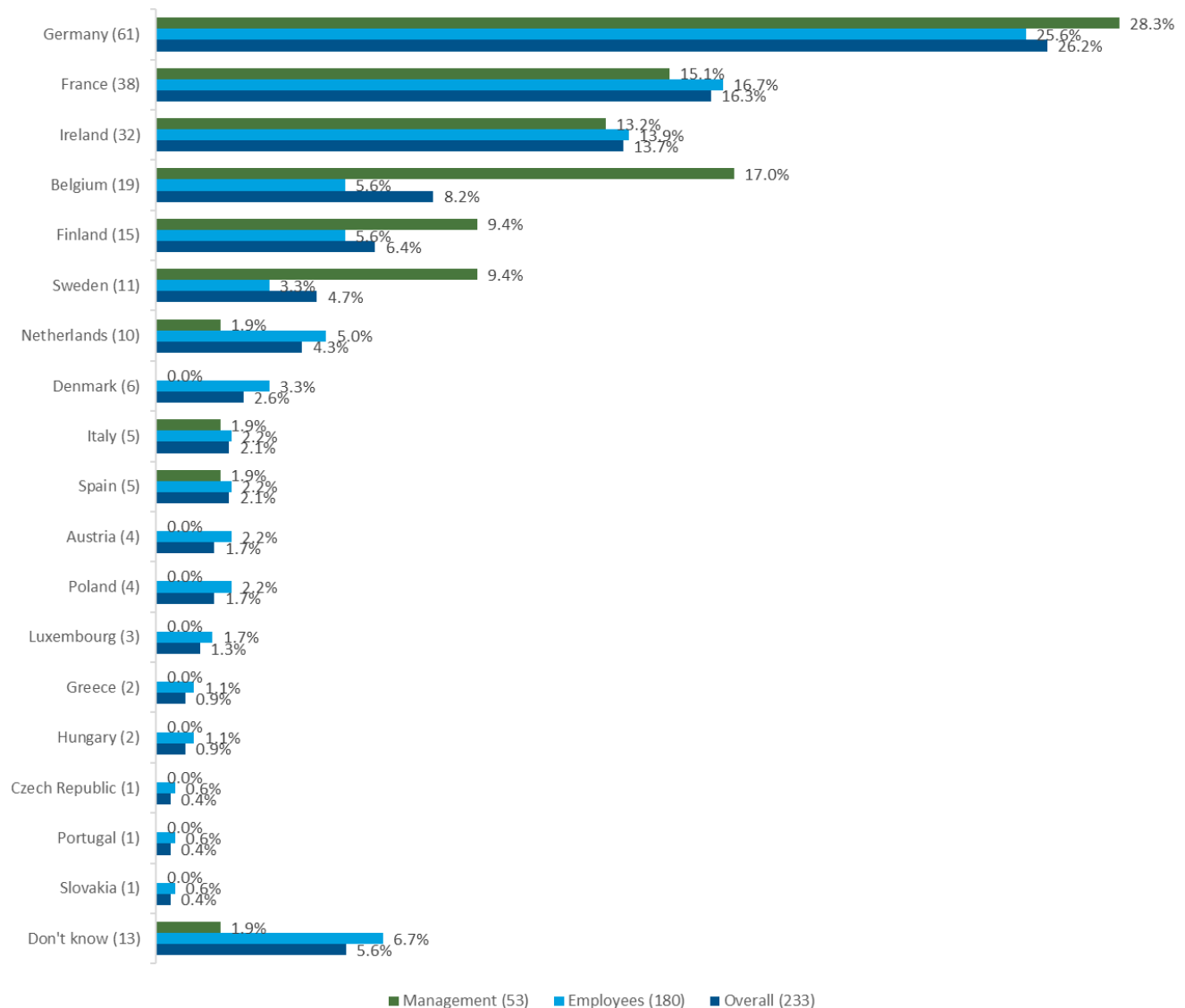
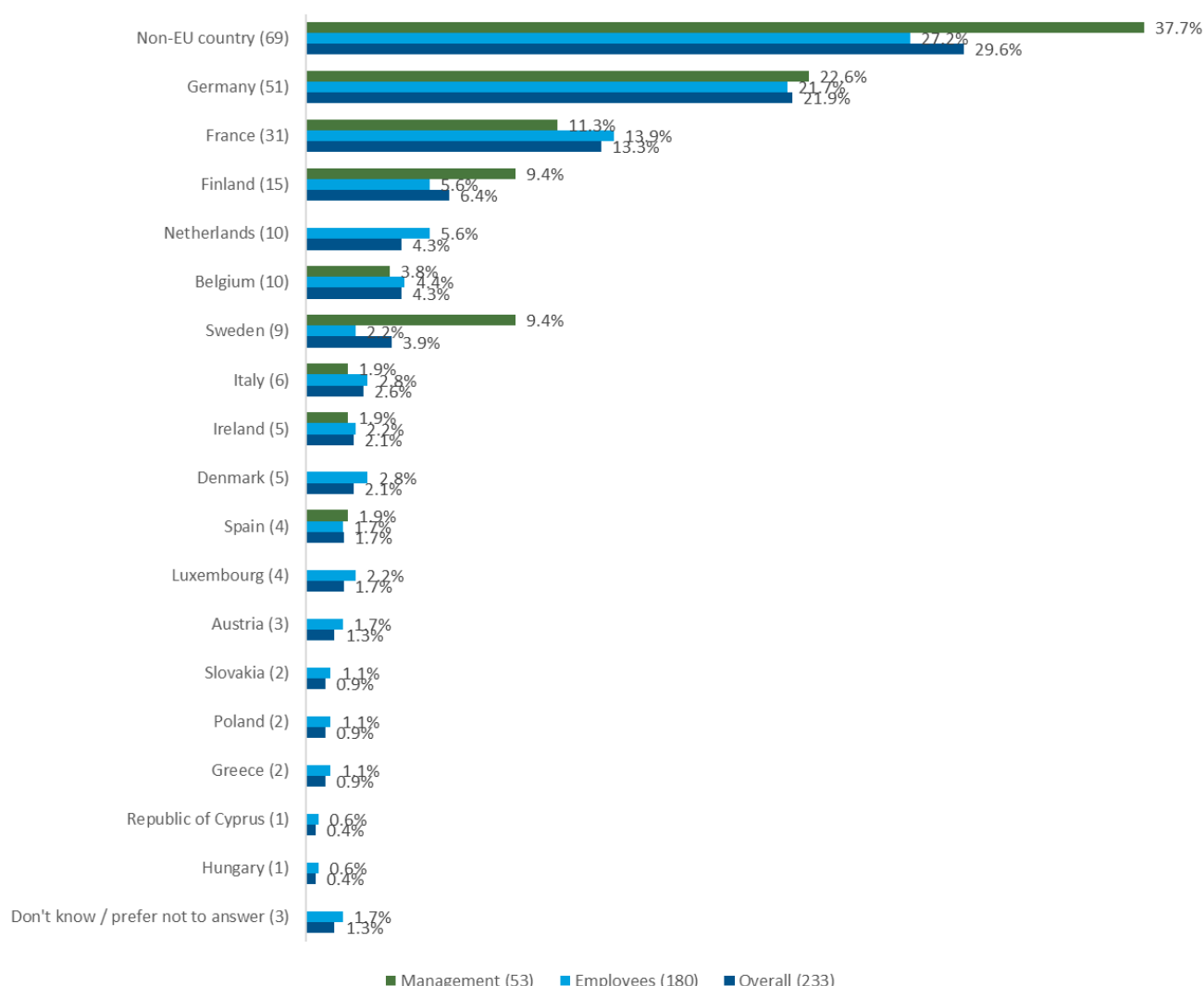


Figure 21 on the following page shows that the headquarters of the respondents' companies are predominantly based either in non-EU countries (29.6% - 69 out of 233) or in Germany (21.9% - 51 out of 233) and France (13.3% - 31 out of 233). There is a similar distribution of answers across the two stakeholder groups. The majority of employee representatives indicated that their company's headquarters are predominantly located either in non-EU countries (27.2% - 49 out of 180), Germany (21.7% - 39 out of 180) or France (13.9% - 25 out of 180). Similarly, the majority of management representatives indicated that their company's headquarters are located either in non-EU countries (37.7% - 20 out of 53), Germany (22.6% - 12 out of 53) or France (11.3% - 6 out of 53).

Figure 21. Q7, Headquarters of respondents' companies (percentage) – N= 233

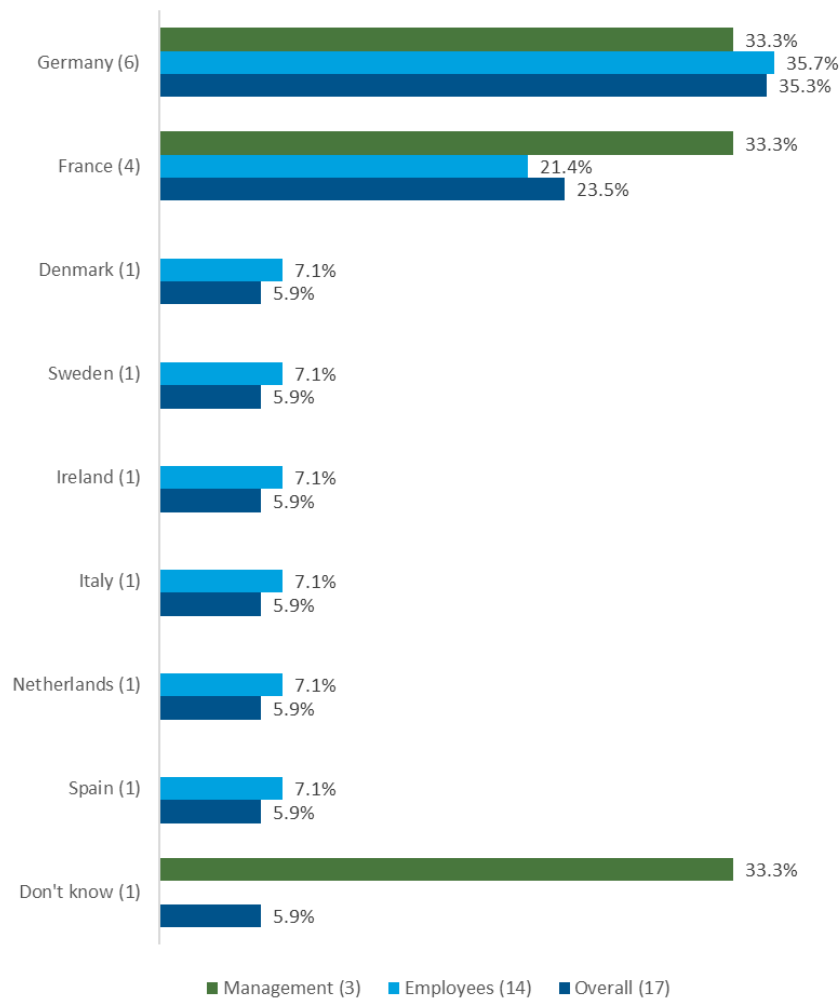


Only 17 of the respondents were able to indicate the Member State in which the representative or agent for their respective EWC or I&C body is located. According to Figure 22, most of the respondents have a representative entity or agent for the EWC or I&C body based either in Germany (35.3%, 6 out of 17) or in France (23.5%, 4 out of 17).

The same trend emerges from the disaggregation of responses per stakeholder categories. Most of the responding employee representatives indicated either Germany (35.7% - 5 out of 14) or France (21.4% - 3 out of 14). Similarly, most of the responding management representatives, indicated either Germany (33.3% - 1 out of 3) and France (33.3% - 1 out of 3).

However, it should be noted that the small number of responses to this question means that the statistical significance of this finding is limited.

Figure 22. Q7a, Member State in which the representative entity/agent for the EWC is located (percentage) – N= 17



The management representatives responding to the survey were asked to estimate their respective company's turnover in 2022. Only 33 of the responding 53 management representatives were able to provide such an estimate.

Figure 23 on the following page presents these estimates, referred to as global turnover. The estimates are segmented into 7 intervals, each increasing by EUR 10 billion. The analysis reveals 13 of the 33 companies for which estimates were provided exhibit a global turnover ranging between EUR 0.9 and EUR 10.9 billion. The subsequent interval (EUR 10.9 billion – EUR 20.9 billion) includes 8 responding companies. Additionally, 4 responding companies reported a global turnover higher than EUR 60.9 billion in 2022. The average global turnover among survey companies is EUR 23.9 billion (exchanged rate-adjusted value; unadjusted value: EUR 24.4 billion), while the median value is EUR 15.9 billion. For the EU turnover, the average value is EUR 13.9 billion, and the median value is EUR 3 billion.

Figure 23. Q8, Global turnover in 2022 (Billion EUR) – N= 33

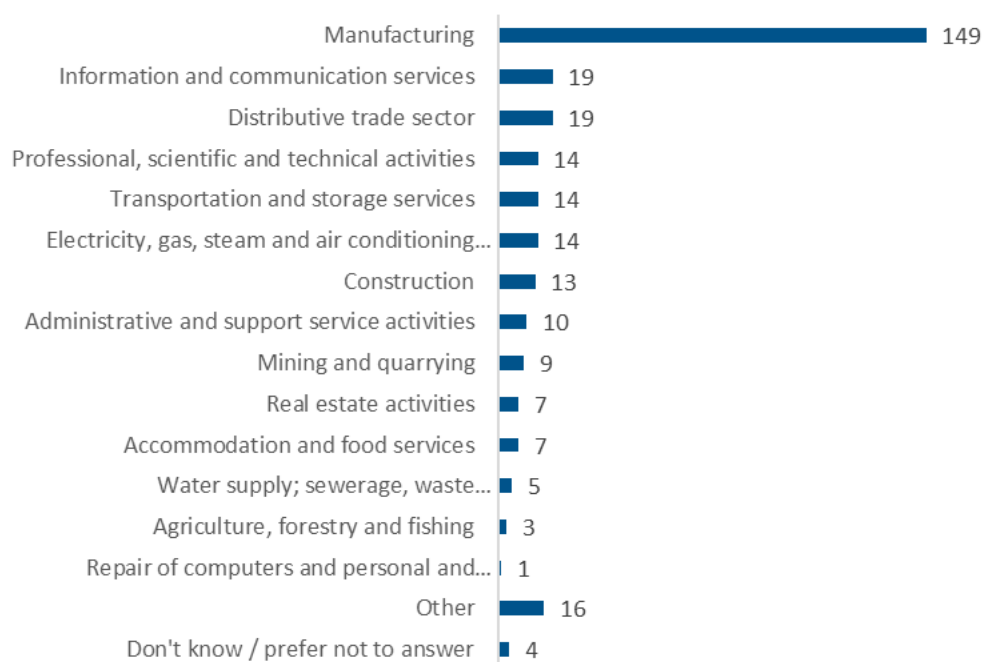


Moreover, management representatives taking part in the survey were also asked how many employees their companies have, but only 29 of the 53 replied (Question 9 in the survey). The responses provided show that the company with the fewest employees has at least 1,500, while the company with the most employees has 279,000. From the estimates provided, the mean value of the number of employees that companies have worldwide is 66,242, while the median value is 43,500 employees. These respondents were also asked how many EU-based employees work in their respective company, but only 24 of the 29 provided an estimate in this regard. These reported numbers of EU-based employees were logically lower than the reported number of global employees. Discounting the five companies for which no estimate of the number of EU-based employees was provided, the company with the fewest EU-based employees has around 500 while the company with the highest number of EU-based employees is 230,330. Regarding EU-based employees, the mean value is 34,321 and the median 13,000.

The survey then went on to ask all the respondents in which sectors their respective company operates. According to Figure 24, 63.9% of the survey respondents indicated that their company operates in the manufacturing sector (149 out of 233)²⁶⁵, followed by 8.2% of the respondents respectively indicating that their respective company is active in information and communication services (19 out of 233) and in the distributive trade sector (19 out of 233). In addition, 16 respondents (7%) indicated that their respective company operates in 'Other' sectors such as human health, financial and insurance activities, entertainment.

²⁶⁵ Multiple-choice question

Figure 24. Q10, Sectors in which respondents' companies operate (number) – N= 233, multiple answers possible



5.1.2.2 Usefulness of your EWC

Stakeholders were asked how they would rate the usefulness of their EWC according to certain statements or parameters. The first parameter regarded the involvement of the EWC in the decision-making. Figure 25 on the following page shows that there is a significant discrepancy in the distribution of responses across the two stakeholder categories. Indeed, the majority of the employee representatives (55.7% - 98 out of 176) replied that their EWC was very useful for involvement in decision-making, whereas a very low number of management representatives (2% - 1 out of 50) held the same view. The majority of management representatives rated the usefulness of their EWC with respect to involvement of EWCs in decision-making as useful (36% - 18 out of 50).

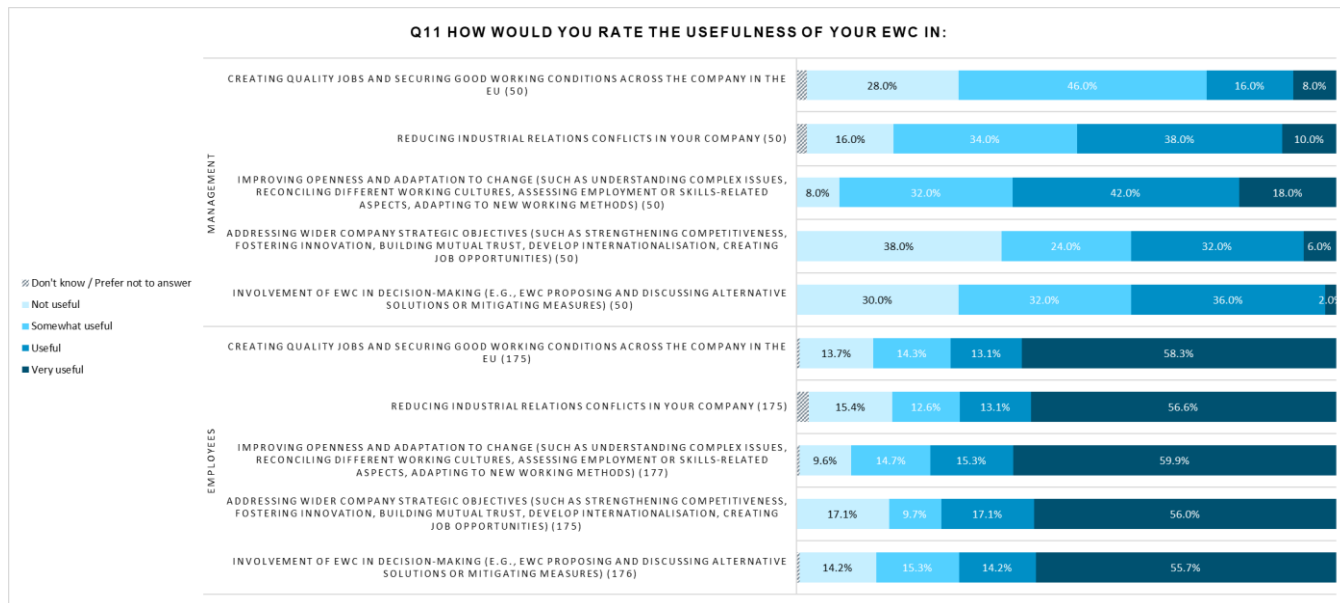
The second parameter related to the usefulness of the EWC in addressing wider company strategic objectives, such as strengthening competitiveness, fostering innovation, etc. Once again, a significant discrepancy in the distribution of responses across the two stakeholder categories was observable. The majority of employee representatives (56% - 97 out of 175) replied that EWCs are very useful in this regard, whereas only a very low percentage of management representatives (6% - 3 out of 50) replied the same. Management representatives most frequently indicated that EWCs are not useful in addressing wider company strategic objectives (38% - 19 out of 50).

The third parameter referred to the usefulness of the EWC in improving openness and adaptation to change. Significant differences in the distribution of the answers across the two stakeholder categories were again observable – the majority of employee representatives (59.9% - 106 out of 177) replied that EWCs are very useful in this regard, whereas a minority of the management representatives (18% - 9 out of 50) replied the same. Otherwise, management representatives most frequently replied that EWCs as just useful – as opposed to very useful – in improving openness and adaptation to change (42% - 21 out of 50).

The fourth parameter investigated the usefulness of the EWC in reducing industrial relations conflicts within the respondents' companies, and the fifth parameter related to the usefulness of EWCs in creating quality jobs and securing good working conditions

within companies across the EU. In relation to the fourth parameter, the majority of employee representatives indicated that EWCs are very useful (56.6% - 99 out of 175), whereas management representatives most frequently replied EWCs are just useful (38% - 19 out of 50). In relation to the fifth parameter, the majority of employee representatives replied that EWCs are very useful (58.3% - 102 out of 175), whereas management representatives most frequently replied that EWCs are somewhat useful (46% - 23 out of 50).

Figure 25. Q11, Usefulness of the EWC against 5 parameters per stakeholder category (percentage) – N= 233



Respondents were given the possibility to comment on their answers. The section below summarises the comments provided by some of the respondents.

Summary of answers from Management: Information and consultation bodies before the first EWC Directive came into effect (i.e., before 22 September 1996) – 4 answers received: two relate to first bullet point below.

- EWC is an association of people who come from a wide variety of cultures and are nominated differently based on national law. In addition, there are significant language problems due to a lack of foreign language skills.
- Normally the input to management is not useful. The delegates often drive personal agendas more than representing a wider perspective.
- The value of consultation is in country where the delegates of the local negotiation bodies are more involved and have knowledge of the questions that are raised.

Summary of answers from Management: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 10 answers received: around two-thirds report good communication with and feedback from the EWC (first two bullet points)

- Some companies report good feedback coming from EWC in complex transnational projects. EWCs act as positive 'first filters' before proposals go to local works councils ensures smoother implementation. The parties achieve a mutual benefit considering their different perspectives, conducive to developing a socially responsible approach in developing the business.

- Good communication between EWC and management with constructive exchanges. However, representatives are only a small amount of the total number of employees in the company.
- Some other companies report that contributions from EWCs do not contribute decisively to improvements in the company, do not bring any particular value.
- The EWC is primarily trying to secure their own seats, do not share their EWC experience within the company in any meaningful way and it is only at local level that discussions and good constructive dialogue is ongoing. There can also be conflicts with local works councils that act completely autonomously.

Summary of answers from Employees: Information and consultation bodies before the first EWC Directive came into effect (i.e., before 22 September 1996) – 9 answers received: less than a third report positive cooperation, the majority report communication and cooperation issues.

Positives:

- Decisions and cooperations are very important in the understanding of construction based on dialogue and good practices.

Negatives:

- The company blocks any possibility to conduct fair and honest social dialogue in EWC.
- There is no consultation within the EWC and between the EWC and management, The EWC is merely informally notified about matters that were published in the news two months prior. Additionally, when addressing further questions about these issues, the management's responses are inadequate.
- EWC could be very useful for involvement in decision-making or addressing wider company strategic objectives, but the integrity and leadership crisis constitute a serious obstacle, which requires looking into enforcement and sanctions.

Summary of answers from Employees: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 38 answers received: just under half reporting positives in terms of usefulness in critical dialogue, criticisms mainly concern the lack of consultation, or its timeliness or lack of balance in national representation.

Positives:

- The EWC is playing one of the key and critical roles for above conditions and have great support of the employees across our organization.
- All employee-related issues are discussed regularly, on a monthly basis. This is all very useful, especially in connection with the current challenges, such as decarbonisation, digitisation, and the global shifting of tasks within the corporate group, which also require increased coordination and work via the EWC.
- The EWC is an important (and the only) cross-border advocacy body. However, it needs more rights.

Negatives:

- Consultation as defined within the Directive appears to remain optional and decisions are taken before the EWC is even informed and there is never any feedback on EWC expressed opinion. The EWC has no real leverage, so the company can regularly violate the agreement because the sanctions are not a deterrent.

- Little information and consultation on corporate developments. Issues of timeliness of information and consultation. In addition, management often do the consultations with the local unions/works councils at the same time.
- One EWC with a company headquartered in the United States and operating under Irish law only gets involved at the lowest level of what is absolutely necessary.
- One national trade union dominates the EWC in one company, which means other national trade union members are not equally consulted unlike what is stipulated in the EWC agreement. Mistrust between national members of an EWC.
- Too much confusion in the individual countries. No uniform structure recognizable, which is partly due to those delegated to the EWC.
- Some of the significant problems of EWCs include: approval of costs (meetings, interpreting services, translation services, e.g. of minutes or documents, technical equipment, etc.); timely and comprehensive information; information on processes involving at least two countries.
- Covid has made the I&C process even more sluggish in two different EWCs.

The respondents were asked if they could provide examples of where the EWC information and consultation process secured a meaningful collective involvement at transnational level or resulted in other positive impacts. The section below analyses and summarises the answers provided by some of the survey respondents.

Summary of answers from Management: Information and consultation bodies before the first EWC Directive came into effect (i.e., before 22 September 1996) – 10 answers received: most recurrent observation below; otherwise, just under half reporting impacts)

No. The company only works in a consultative manner with the European representatives, not as a negotiating body.

Main positives:

- Helpful in the acquisition of new businesses.
- Involvement of EWC is found more useful in global processes (e.g. employee engagement survey) and tools (e.g. IT systems)

Negatives:

- Some respondents could have left the question blank, but they confirmed no meaningful impact of the EWC.

Summary of answers from Management: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 20 answers received: mixed opinions, but specific examples provided of the impacts on companies of EWC I&C.

Main positive:

- Just over half of the companies have reported that EWCs are useful in business internationalisation and in giving company an understanding of national social dialogue culture in the context of newly acquired businesses.

Specific examples

- A proactive consultation of the EWC supported the spin-off of the mainframe business from the parent company, resulting in a seamless transition of a third of the parent company's employees to the new company.
- Creation of a strong corporate identity when two companies in the chemical industry merged in 2015.

- A multinational company's manufacturing plant located in Spain was shut down in 2023 due to low-capacity utilisation as a result of the economic crisis in Southern Europe and approximately 50 employees then moved to various other plants in the headquarter country of the multinational company via a restructuring plan. The EWC provided decisive impetus in this regard.
- Acquisition of a corporate group of more than 45,000 employees worldwide (28,000 in Europe) where the EWC made helpful contributions in getting in touch with acquired company representatives and integrating the acquired business into their new corporate culture.
- During last year energy and inflation crisis, it helped the local representatives to understand the situation in the other EU countries. It helped them understanding that their situation is not by definition worse compared to other EU countries.

Negatives:

- Just under half of the companies confirmed in writing no meaningful impact of the EWC without specifying the reasons why.

Summary of answers from Employees: Information and consultation bodies Before the first EWC Directive came into effect (i.e., before 22 September 1996) – 18 answers received: main observations below in order of recurrence.

- Helpful in acquisition of new businesses.
- The EWC can achieve certain minimum standards on working conditions when it comes to downsizing and restructuring.
- European charter on teleworking. Return to work after the pandemic and discussion around new hybrid ways of working.
- When the company code of business ethics was revised

Summary of answers from Employees: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 70 answers received.

Main positives (most common remarks among up two-thirds of respondents):

- On site closures: reviewed where production was best to be moved to mitigate employee reductions. Collective redundancies: able to argue reductions. Negotiating working conditions and redundancy plans on divestiture.
- Occupational safety and health protection issues (esp. Covid-19), including home office or remote working.
- Bringing together and integrating people after company acquisitions.
- Europe-wide employee satisfaction survey and action plans and participation in corporate guidelines and other standards around working conditions.

Specific examples:

- Numerous restructurings are the reason for many consultations in the last years. More specifically, a major merger (between two telecommunications companies) was discussed in detail in the EWC.
- In the process of a merger between two large business areas (Energy and Oil & Gas), the EWC was deemed to have been informed properly, had several meetings on Teams with management taking into account some of the EWCs' suggestions and concerns.
- With the introduction of EASA Flight Time Limitations, the company in question accepted some EWC proposals to mitigate the impact of the new regulations on

working time. In one instance of Base Closure, the EWC was able to ensure relocation was offered outside the state where the closed base was.

- Outsourcing of the logistics area: Statements and questions from the EWC contributed to the fact that another provider was chosen or that a service provider was not commissioned.

Negatives:

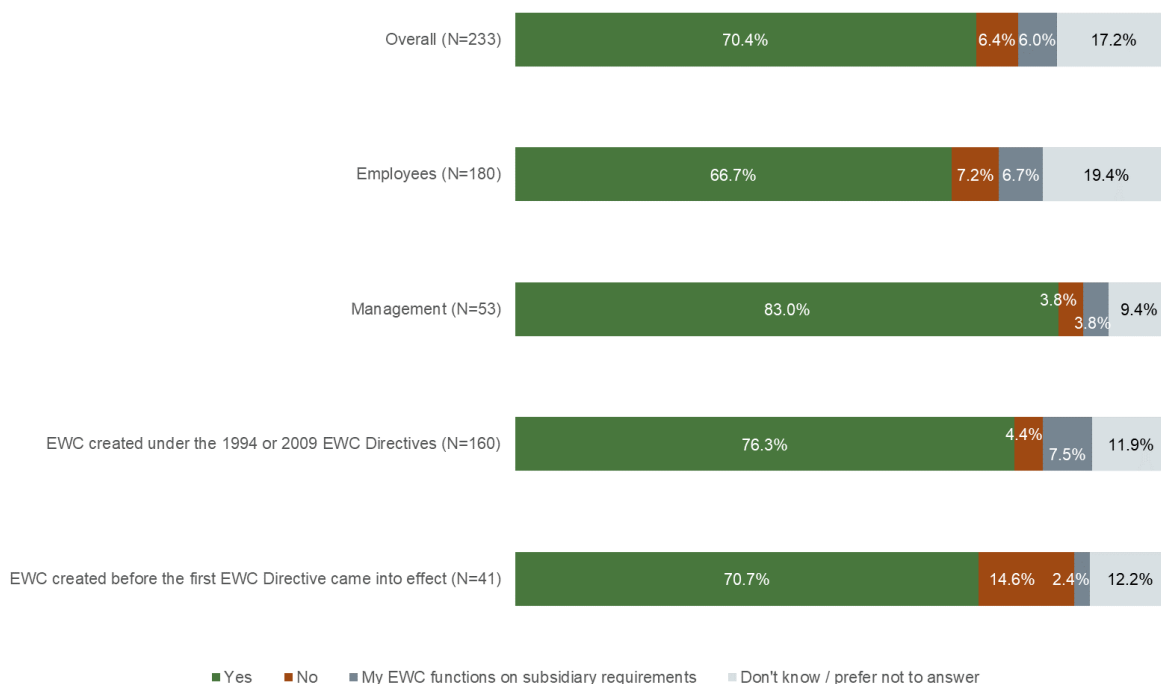
- Around a quarter of the companies confirmed in writing no meaningful impact of the EWC without specifying the reasons why.

5.1.2.3 Key concepts in the work of your EWC

Concept: Transnational matters

The survey asked the stakeholders if their EWC agreement includes a definition of transnational matters to define the scope of the EWC's activities. Figure 26 shows that the vast majority of respondents (70.4% - 164 out of 233) confirmed this, with some differences in the distribution of the answers across the two stakeholder groups. Indeed 83% (44 out of 53) of management representatives confirmed that their EWC agreement included a definition of transnational matters compared to 66.7% (120 out of 180) of employee representatives. Regardless of the EWC type (pre-Directive I&C bodies, and EWCs established under the 1994 Directive or 2009 Recast Directive), the vast majority of respondents confirmed that their respective agreement contains a definition of transnational matters.

Figure 26. Q13, Definition of transnational matters included in the EWC agreements (percentage) – N= 233



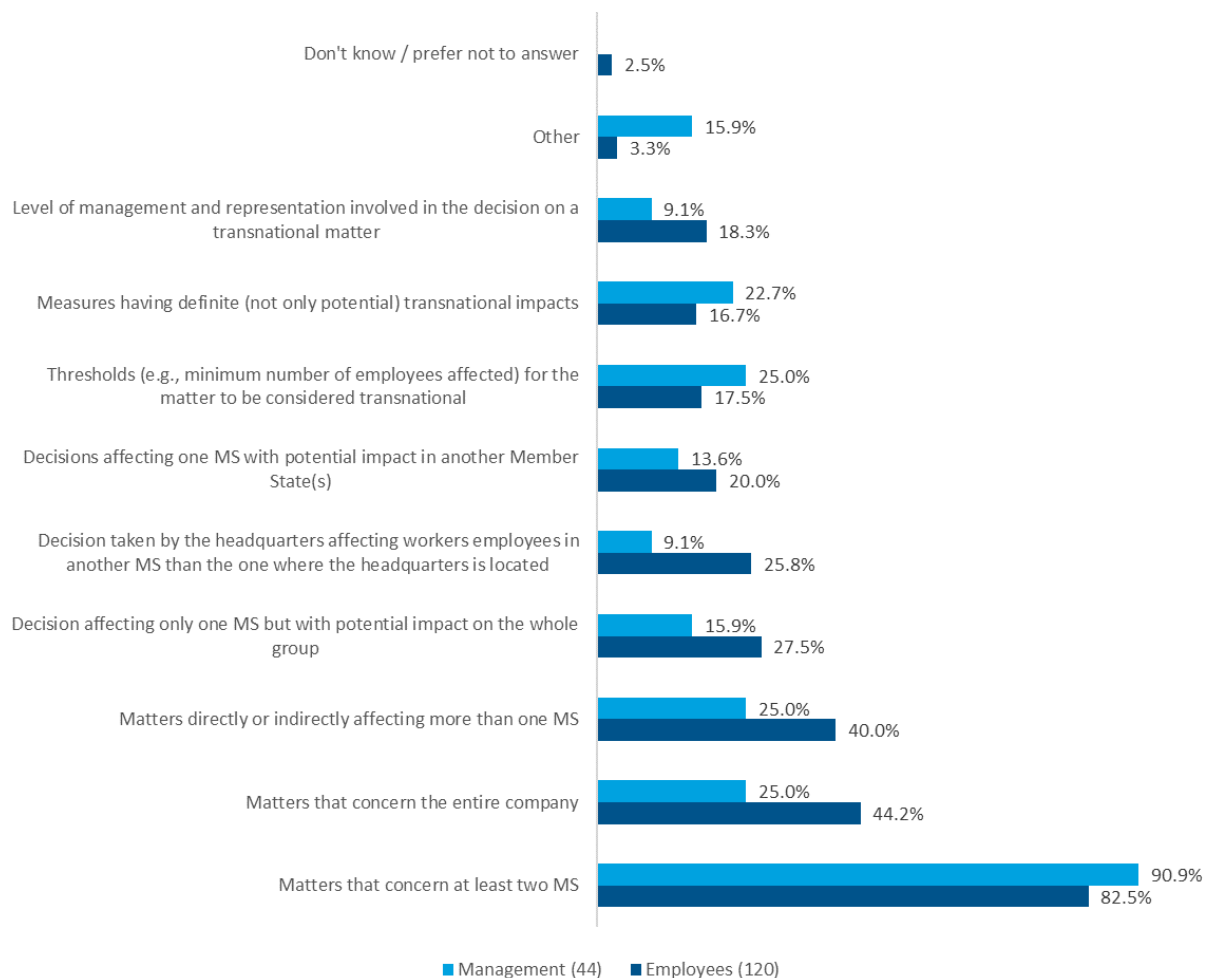
The 164 respondents who confirmed that their agreement includes a definition of transnational matters were then asked what about the main elements included in that definition. Respondents had the possibility to select multiple answers.

Figure 27 shows that the vast majority of respondents (84.8% - 139 out of 164) indicated that the definition of transnational matters in their respective agreement includes 'matters that concern at least two Member States'. To a lesser extent, respondents indicated that

the definition in their respective agreement includes 'matters that concern the entire company' (39% - 64 out of 164) and 'matters directly or indirectly affecting more than one Member State' (36% - 59 out of 164).

Regarding the distribution of the answers across the stakeholder groups, the graph shows that a significant majority of management representatives (90.9% - 40 out of 44) and of employee representatives (82.5% - 99 out of 120) indicated that their the definition of transnational matters in their respective agreement includes 'matters that concern at least two Member States'. However, the graph shows significant discrepancies between the responses of management representatives and employee representatives regarding the inclusion of 'Matters that concern the entire company' and 'Matters directly or indirectly affecting more than one Member State' in the definition of transnational matters in their respective agreement. Whereas 44.2% of employee representatives (53 out of 120) indicated that 'Matters that concern the entire company' is included in the definition of their respective agreement, only 25% of management representatives (11 out of 44) indicated the same. Similarly, whereas 40% of the employee representatives (48 out of 120) indicated that 'Matters directly or indirectly affecting more than one Member State' is included in the definition of their respective agreement, only 25% of management representatives (11 out of 44) indicated the same.

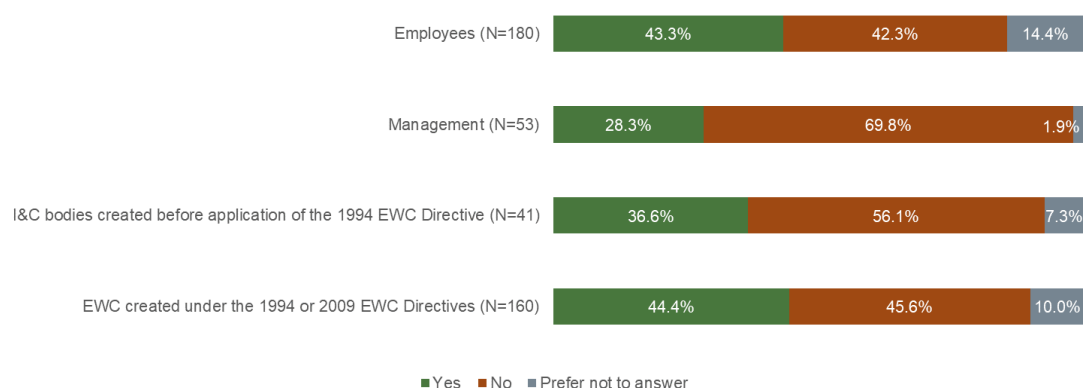
Figure 27. Q13a, Elements included in the definition of 'transnational matters', overall, (percentage) – N= 164



The survey asked if the respondents had experienced problems or issues related to the definition of the concept of transnational matters. Figure 28 shows that the percentage of employee representatives who experienced issues (43.3% - 78 out of 180) is higher than

those who did not (42.2% - 76 out of 180). On the contrary, a large majority of management representatives (69.8% - 37 out of 53) indicated that they did not experience any problems or issues related to the definition of transnational matters. Respondents from EWCs created under the 1994 or 2009 Directive more frequently reported problems relating to the definition of transnationality compared to respondents from information and consultation bodies created before the first Directive came into effect (44.4% vs. 36.6%; 71 respondents out of 160 vs. 15 respondents out of 40).

Figure 28. Q14, Problems/issues related to the definition of the concept of transnational matters (percentage) – N= 233



Stakeholder who mentioned the existence of problems were asked to briefly describe the problems or issues experienced. The bullet points below summarise the analysis of the open answers.

Summary of answers from Management: Information and consultation bodies before the first EWC Directive came into effect (i.e., before 22 September 1996) – 14 answers reported problems, two answers provided explanations (summarised in bullet point below).

- In a global or multinational company, almost every matter is transnational. Where EWCs are looking to raise minor matters (e.g. redundancies concerning 10 employees) as transnational. this is in practice not manageable.

Summary of answers from Management: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 33 answers reported problems, 9 answers provided explanations (summarised in bullet points below from most to least common).

- The EWC expects the UK to remain represented and actually asked as well all EMEA countries to be added 'as they might have an impact on the EU'. That reasoning could then be extended to the entire globe.
- An extension of the scope of transnational matters to indirectly affect a measure in another EU country, as an indefinite legal concept, harbours a high potential for conflict and makes a meaningful differentiation impossible.
- There is a strong divergence in views on the nature of the impact (direct vs indirect). Representatives frequently challenge this point when the company intends to implement an initiative in a single EU country. They request evidence demonstrating that such actions will not indirectly impact any other Member State.
- More clarity would be very much appreciated. Current proposals by the European Parliament go in the opposite direction by using wording such as: 'directly or indirectly', 'potential impact', or 'reasonably expected'. The EU Commission should use precise wording. A good example is the collective redundancies Directive. It

uses a precise wording with a clear threshold and timeline to determine what falls within scope and what is excluded. As it relates to EWCs, the same legislation technique should be taken to ensure clarity to all parties and minimise disputes.

- The legal definition of 'transnational matters' should be more precise or specific. Sentences like Recital 16 in the 2009 Recast Directive ('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') are not helpful. Leaving this open to interpretation can cause friction and increase the likelihood of disputes arising.

Summary of answers from Employees: Information and consultation bodies before the first EWC Directive came into effect (i.e., before 22 September 1996) – 25 answers reported problems, 9 provided explanations (summarised in bullet points below from most to least common).

- Refusal from management to cover issues outside the EU when the head office is based outside the EU.
- The scope of transnational matters is defined in a very general way. So, there are no to challenge the company if they mislead shareholders and the public by falsely suggesting that social dialogue occurs within the company.
- Indirect effects are difficult to define and to prove. The limit of 150 employees for posting to the EWC harbours the risk that smaller companies will not be heard enough.

Summary of answers from Employees: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 108 answers reported problems, 41 provided explanations (summarised in bullet points below from most to least common).

- There is often disagreement with management as to the transnational nature of issues, especially when it comes to whether the decisions affect employees 'directly' or 'indirectly'.
- Lack of recognition from management that decisions in one country can directly affect employees in another country.
- Management in separate business areas make changes that they consider minor and does not give any information to the EWC.
- Management defines what is transnational and of importance and does not give the EWC the correct information. Information might be given to Unions/Works councils in the Member States instead of going through the EWC first.
- The view from management on 'impact' and 'potential impact' on more than one Member State is sometimes different to the view of the EWC.

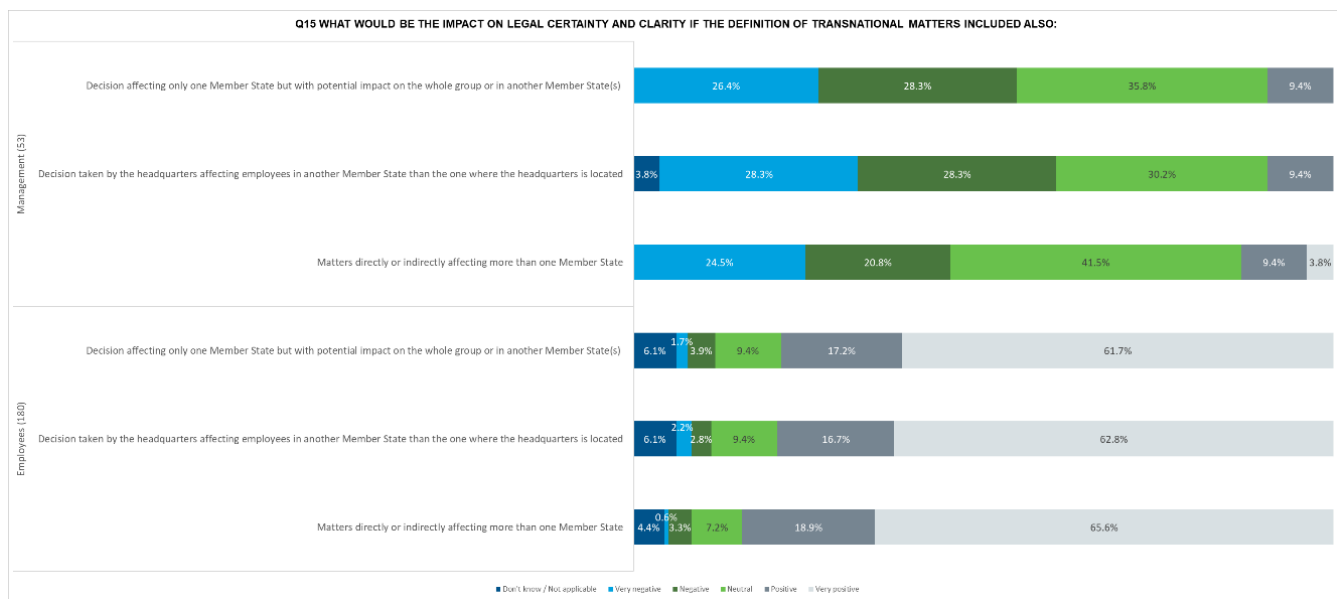
The survey asked stakeholders what the impact would be of including in the definition of transnational matters the following:

- 'Matters directly or indirectly affecting more than one Member State' (Option 1),
- 'Decision taken by the headquarters affecting employees in another Member State than the one where the headquarters is located' (Option 2), and
- 'Decision affecting only one Member State but with potential impact on the whole group or in another Member State(s)' (Option 3).

Respondents were asked to assess the impact of each of these options against a set of parameters.

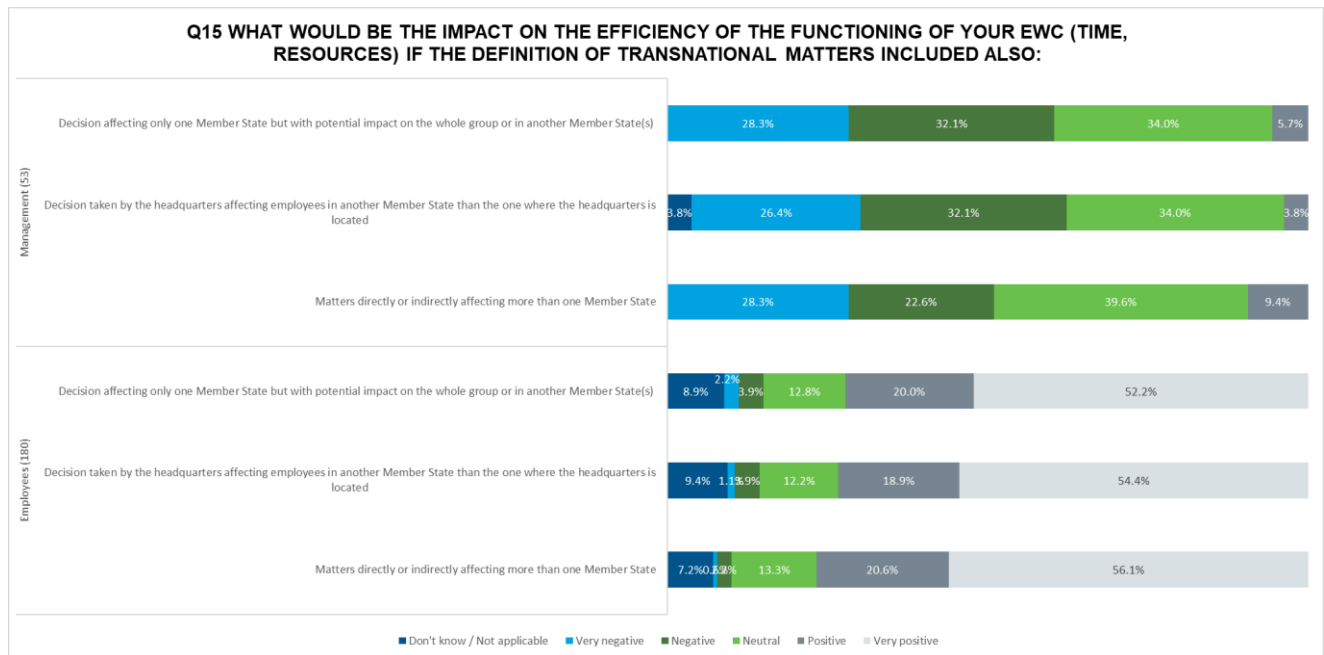
The first parameter relates to legal certainty and clarity. Figure 29 shows that there are important discrepancies between the answers provided by employee representatives and those provided by management representatives on this first parameter. Indeed, according to the majority of employee representatives, the impact of each of the three options on legal certainty and clarity would be very positive (Option 1: 65.6% - 118 out of 180; Option 2: 62.8% - 113 out of 180; Option 3: 61.7% - 111 out of 180), whereas the impact of each of these options on legal certainty and clarity would be neutral according to the majority of management representatives (Option 1: 41.5% - 22 out of 53; Option 2: 30.2% - 16 out of 53; Option 3: 28.3% - 19 out of 53).

Figure 29. Q15, Impact on legal certainty and clarity (percentage) – N= 233



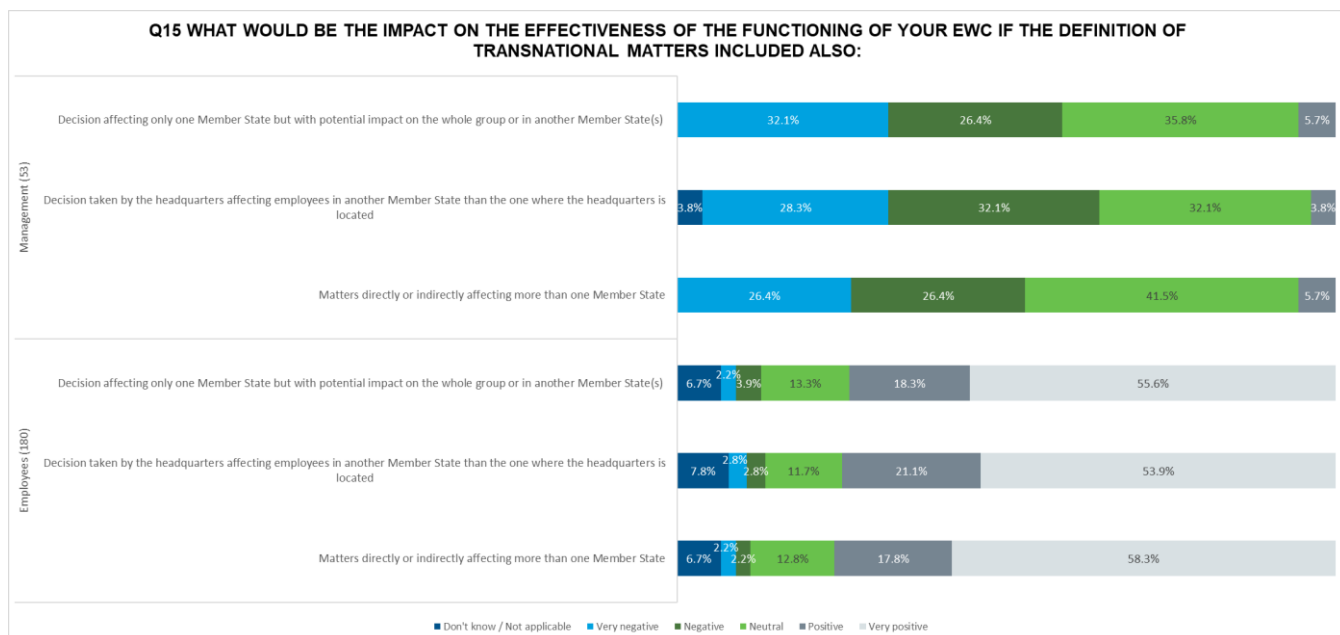
The second parameter against which the impacts of including each of the three proposed options into the definition of transnational matters relates to the efficiency of the functioning of the EWC. According to Figure 30, , the majority of employee representatives replied that the impacts would be very positive (Option 1: 56.1% - 101 out of 180; Option 2: 54.4% - 98 out of 190; Option 3: 52.2% - 94 out of 180), whereas management representatives most frequently replied that they would be neutral (Option 1: 39.6% - 21 out of 52; Option 2: 34% - 18 out of 53; Option 3: 34% - 18 out of 53).

Figure 30. Q15, Impact on the efficiency of the functioning of the EWC (percentage) – N= 233



The third parameter relates to the effectiveness of the functioning of the EWC. As with the first two parameters, employee representatives predominantly indicated that including each of the three proposed options in the definition of transnational matters would be very positive (Option 1: 58.3% - 105 out of 180; Option 2: 53.9% - 97 out of 180; Option 3: 55.6% - 100 out of 180), whereas management representatives most frequently replied that the impacts would be neutral (Option 1: 41.5% - 22 out of 53; Option 2: 32.1% - 17 out of 53; Option 3: 35.8% - 19 out of 53).

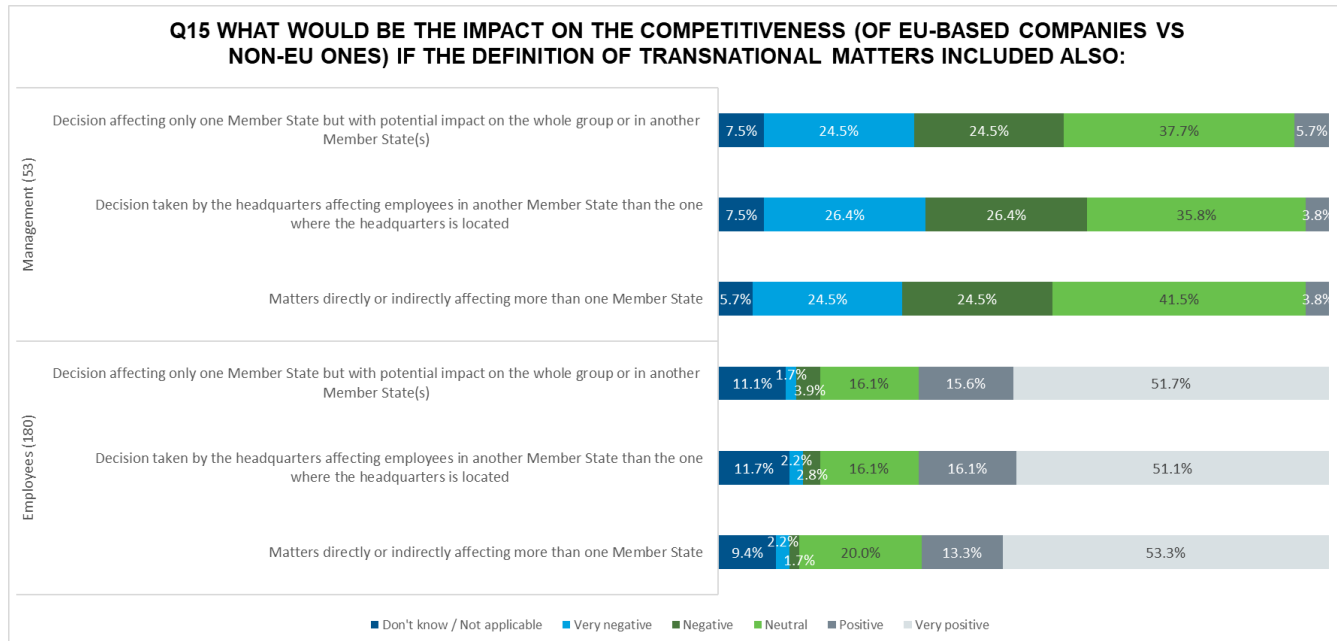
Figure 31. Q15, Impact on the effectiveness of the functioning of the EWC (percentage) – N= 233



Finally, the fourth parameter relates to the competitiveness of EU companies vis-à-vis non-EU ones. Similar discrepancies in this regard could be observed between the two stakeholder categories: the majority of employee representatives indicated that including

each of the three proposed options into the definition of transnational matters would be very positive (Option 1: 53.3% - 96 out of 180; Option 2: 51.1% - 92 out of 180; Option 3: 51.7% - 93 out of 180), whereas management representatives most frequently replied that the impacts would be neutral (Option 1: 41.5% - 22 out of 53; Option 2: 35.8% - 19 out of 53; Option 3: 37.7% - 20 out of 53).

Figure 32. Q15, Impact on competitiveness of EU companies vis-à-vis non-EU ones (percentage) – N= 233



Stakeholders were given the possibility to explain their answer. Below, is a summary of the main answers.

Summary of answers from management – 27 answers received: first two bullet points relate to most the recurrent observations among over half of the responses. Remaining bullet points relate to recurrent observations as to the remit of the EWC and those of national works councils.

- Transnational definition already exhaustive. There is a level of trust achieved and a social dialogue established. Information is given and matters are consulted effectively in our organisation. There is no reason to provide a legal definition by change of directive.
- Legal concepts that are too vague, indetermined and open to interpretation should be avoided, such as 'decisions INDIRECTLY affecting workers' and 'POTENTIAL impact on the whole group'.
- All decisions at HQ will directly or indirectly impact one or more countries outside of the HQ country. Not all these decisions however have significant impacts, and it would therefore be unrealistic to involve EWC for all those matters.
- Information and consultation towards EWC must be on a reasonable level otherwise it is not practical possible to be compliant. Clearer thresholds must be set in order to define Transnational matter.
- An EWC cannot by an appeal body for national works council matters. If decisions only affecting one Member State, come into an EWC scope, there is a high risk of inefficiency due to overlap with national works councils.

- Broadening the understanding of 'transnational' to matters which not only directly but also indirectly concern the Union-scale undertaking or which disregard the number of member states where employees are directly affected, would lead to the EWC being consulted on matters which can be adequately addressed by national or local consultative bodies. Trespassing beyond the EWC's remit would be damaging to well-functioning national information and consultation processes. It would also encourage individual EWC members to raise local issues which are not necessarily relevant for other EWC members.

Summary of answers from employee representatives – 29 answers received: over two-thirds welcoming an amended definition for the sake of legal clarity; observations below interpreted in order of recurrence.

- The amended definitions would clarify the scope of the EWC, allow better engagement and avoid time consuming arguments and potential disputes over whether a matter is transnational in scope or not.
- A new definition would definitely create more legal certainty and close some loopholes. At the same time, depending on the definition, the workload for the EWC could increase significantly.
- More specific definitions would be welcome for the sake of clarity of application.
- By broadening the concept of transnational, it will become clearer to management that they need to better involve worker representatives in strategic changes to a multinational company in order to make a better assessment instead of just discussing matters within management.
- It is not possible to consider that the closure of a branch in one or two countries will not affect at all workers in the branches of other countries, so the definition of transnational matters should relate to issues affecting company workers as a whole.

Concept: Consultation

The survey asked respondents to indicate the main elements included in the consultation procedures of their respective EWC agreement. According to the answers provided:

- 41.6% of the respondents (97 out of 233) indicated that consultation procedures as set out in their respective agreement include indications on the timing of consultations;
- 49.4% (115 out of 233) indicated that the agreements require a specific number of meetings per year;
- 33% (77 out of 233) indicated that there are obligations on management to take the EWC's opinion into account;
- 45.9% (107 out of 233) indicated that there are obligations on management to provide a reasoned response;
- A small share of respondents (13.3% -31 out of 233) indicated that there are no rules on consultation in their respective agreement.

Regarding the distribution of answers across the two stakeholder categories:

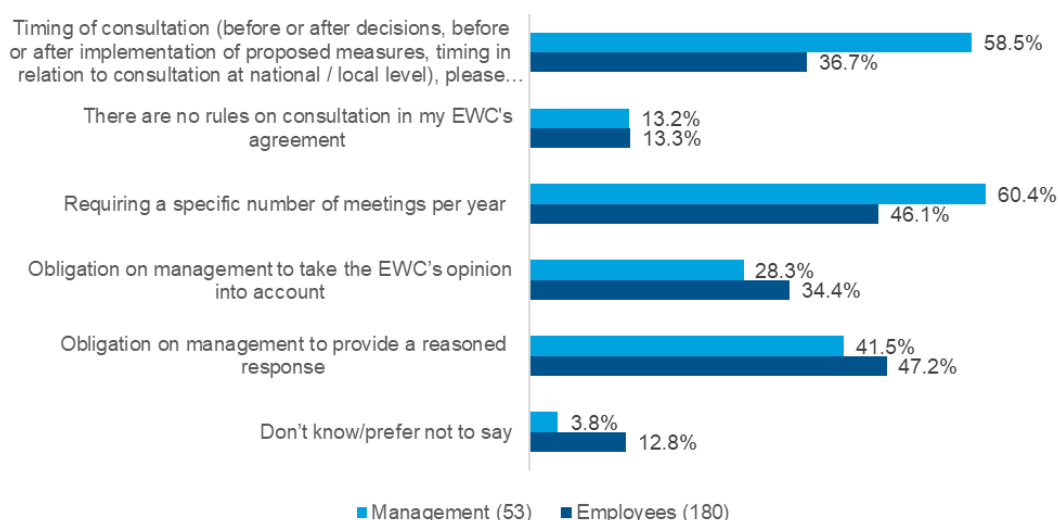
- 36.7% of employee representatives (66 out of 180) indicated that the consultation procedures as defined in their respective agreement include indications on the timing of the consultation compared to 58.5% of management representatives (31 out of 53);
- 46.1% of employee representatives (83 out of 180) indicated that the EWC agreement require a specific number of consultations per year compared to 60.4% of management representatives (32 out of 53);

- 34.5% of employee representatives indicated that their respective agreement foresees obligations on management to take the EWC's opinion into account compared to only 28.3% of management representatives (15 out of 53).

Similar shares of respondents within the two stakeholder groups (47.2% among employee representatives, 85 out of 180; 41.5% among management representatives, 22 out of 53) indicated that their respective agreement contains obligations on management to provide a reasoned response.

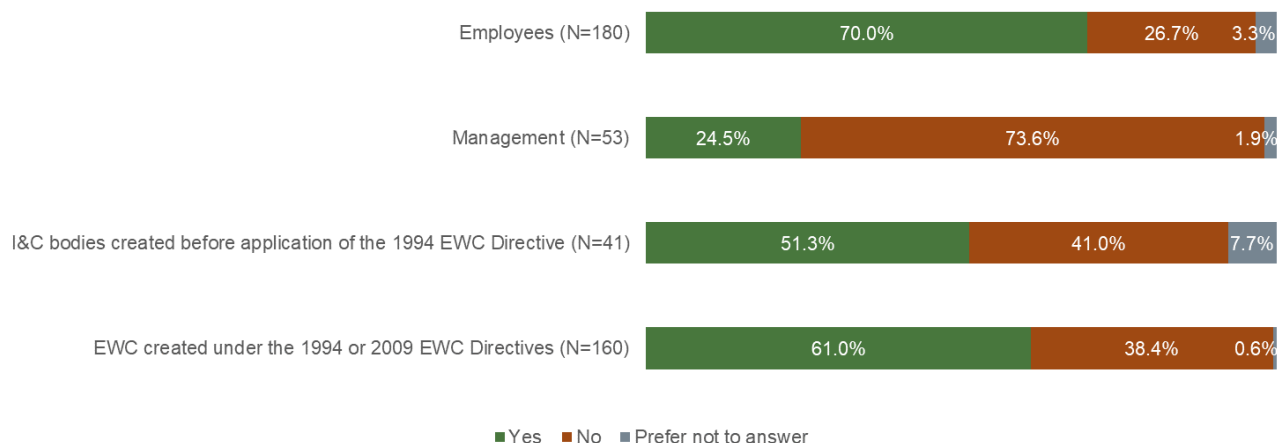
Finally, 13.3% of employee representatives (24 out of 180) and 13.2% of management representatives (7 out of 53) reported that their agreement has no rules on consultation.

Figure 33. Q16, Main elements included in consultation procedures in the EWC's agreements (percentage) – N= 233



The survey then went on to asked to respondents if they had experienced problems or issues related to the consultation procedure in their respective EWC or information and consultation body. Figure 34 shows significant discrepancies between management representatives and employee representatives in this regard. Indeed, whereas 70% of employee representatives (126 out of 180) indicated having experienced problems with the consultation procedure, 73.6% of management representatives (39 out of 53) indicated having never experienced any problems with the consultation procedure.

Figure 34. Q17, Problems or issues experienced related to the consultation procedure (percentage) – N= 233



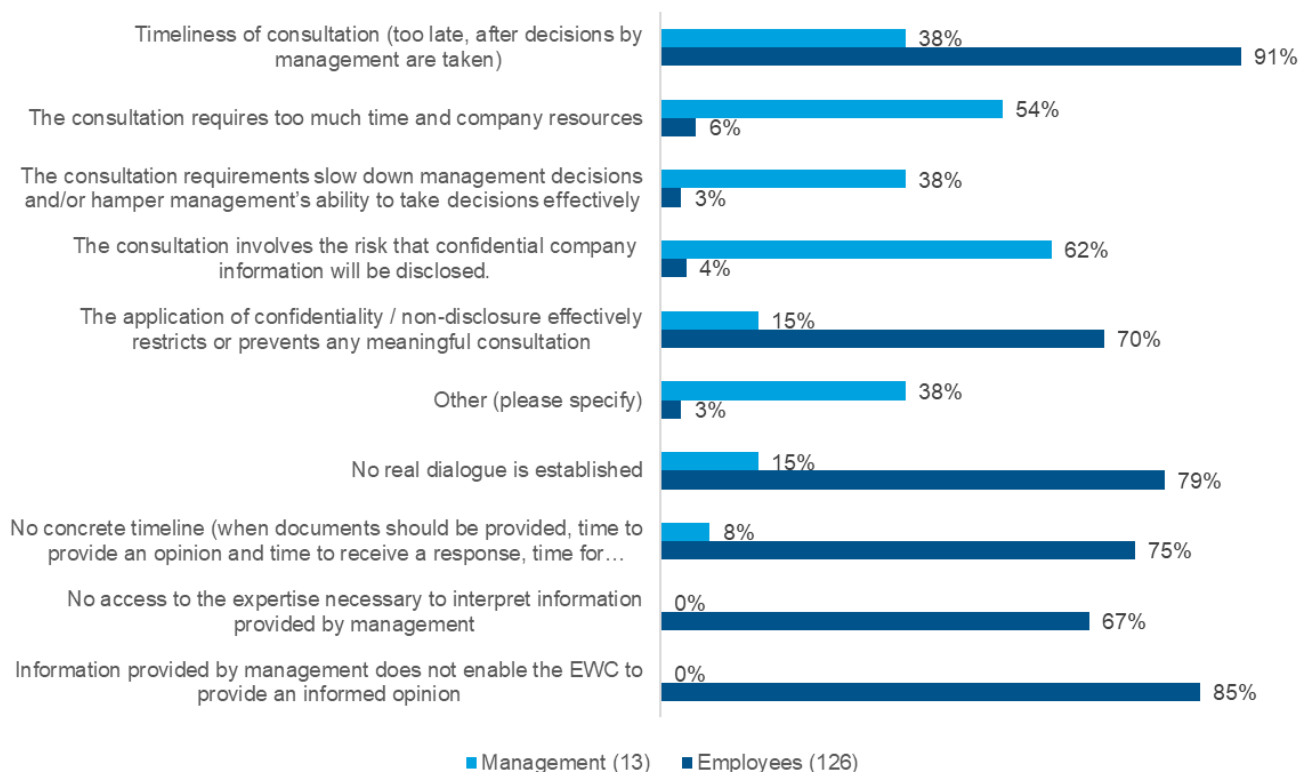
The 139 respondents who indicated having already experienced problems related to the consultation procedure (126 employee representatives, 13 management representatives) were asked what types of problem they have encountered. The problems that were least frequently mentioned were that:

- the consultation requirements could slow down management decisions and/or hamper management's ability to take decisions effectively (3% of employee representatives (4 out of 126); 38% management representatives (5 out of 13))
- the consultation procedure could raise the risk that confidential company information would be disclosed (4% employee representatives (5 out of 126); 62% management representatives (8 out of 13)).

The most frequently indicated problem among employee representatives relates to the timeliness of the consultation (91% of employee representatives; 115 out of 126). By comparison, only 38% of management representatives (5 out of 13) indicated this as a problem they have experienced. Another problem raised by a vast majority of employee representatives relates to the fact that information provided by management does not enable the EWC to provide an informed opinion (85%; 107 out of 126). By comparison, none of the responding management representatives indicated having ever experienced such a problem.

Lastly, 73% of employee representatives (100 out of 126) view as a problem the fact that no real dialogue is established as a result of the consultation procedure compared to only 15% of management representatives (2 out of 13).

Figure 35. Q17a, Type of problems or issues experienced related to the consultation procedure (percentage) – N= 139



In relation to consultation procedures, the survey asked what the impact would be of laying down in the Directive, in addition to the existing requirements, the following obligations:

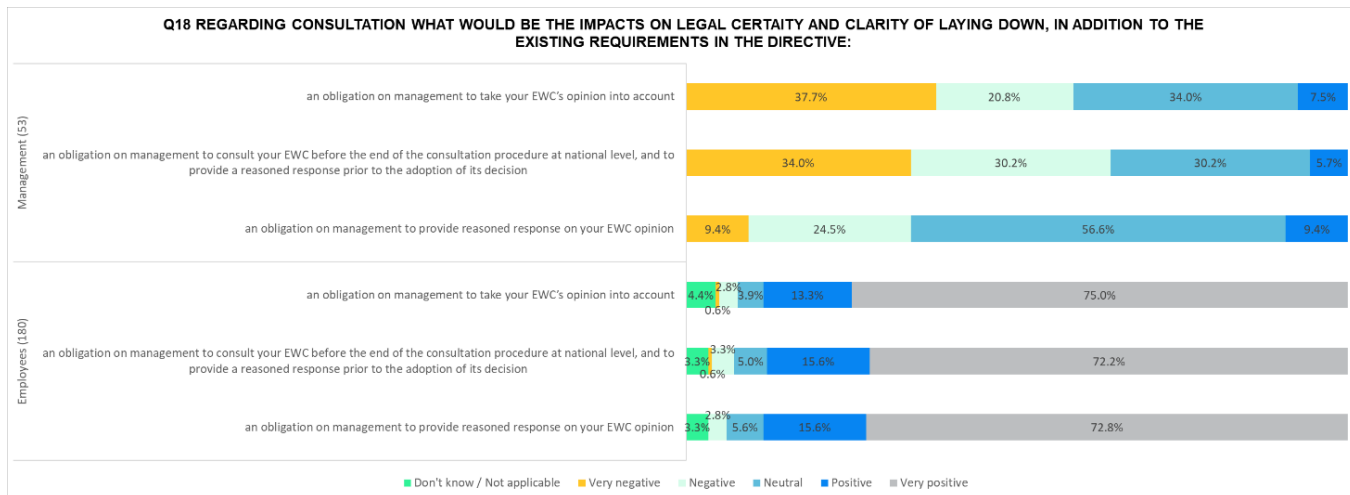
- 'An obligation on management to provide reasoned response on their EWC's opinion' (Option 1).

- 'An obligation on management to consult their EWC before the end of the consultation procedure at national level, and to provide a reasoned response prior to the adoption of its decision' (Option 2).
- 'An obligation on management to take your EWC's opinion into account' (Option 3).

Respondents were asked to assess the impact of the above options against a set of proposed parameters.

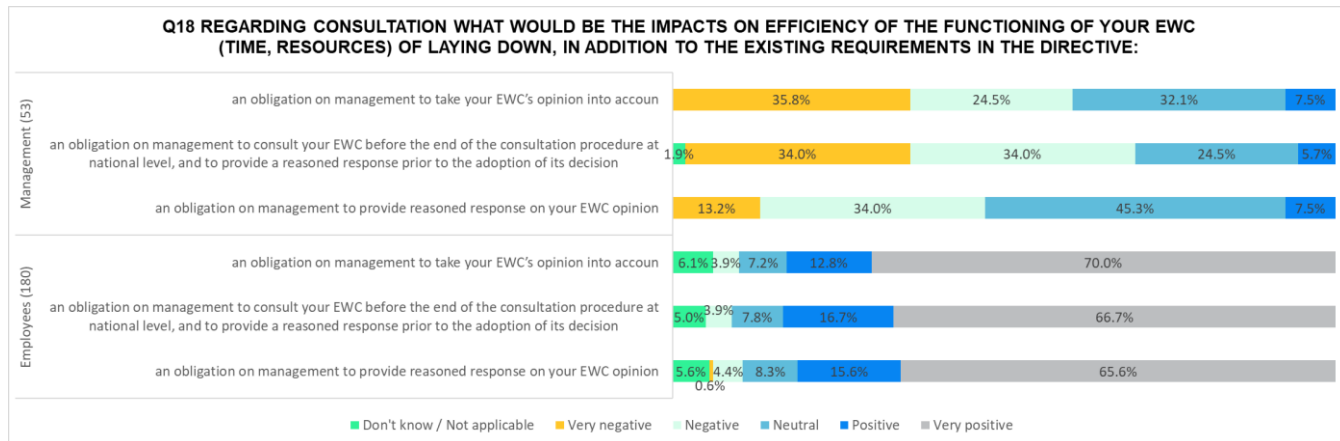
Regarding the first parameter which looks at the impact of the proposed obligations on legal certainty and clarity, Figure 36 shows significant discrepancies can be observed between the responses provided by employee representatives and those provided by management representatives. The majority of employee representatives replied that such obligations would have a positive impact on legal certainty and clarity (Option 1: 72.8% - 131 out of 180; Option 2: 72.2% - 130 out of 180; Option 3: 75% - 135 out of 180), whereas management representatives most frequently replied the obligations' impact would be neutral (Option 1: 56.6% - 30 out of 53; Option 2: 30.2% - 16 out of 53; Option 3: 34% - 18 out of 53).

Figure 36. Q18, Impact on legal certainty and clarity (percentage) – N= 233



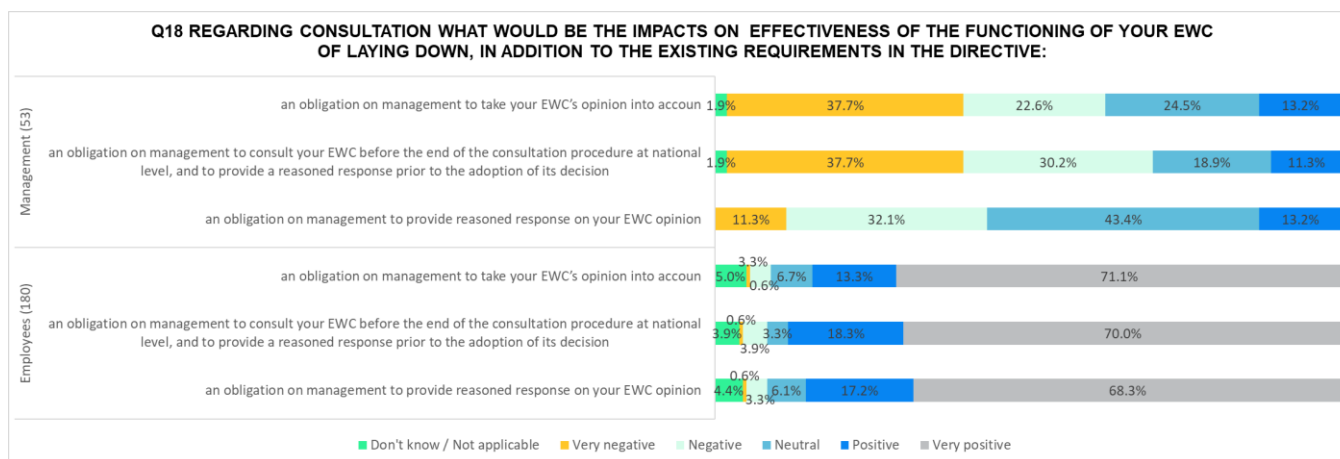
The second parameter against which respondents were asked to assess the impact of the proposed obligations relates to the efficiency of the functioning of the EWC. As in the previous figure, Figure 37 shows similar discrepancies between the responses provided by employee representatives and management representatives: management representatives most frequently responded that the impact of introducing an obligation on management to provide a reasoned response to an EWC's opinion and an obligation on management to take the EWC's opinion into account would both be neutral on the efficiency of functioning of EWCs (Option 1: 45.3% - 24 out of 53; Option 3: 32.1% - 17 out of 53) and that introducing an obligation on management to consult the EWC before the end of the national consultation procedure would have a negative impact on the efficiency of the functioning of EWCs (Option 2: 34% - 18 out of 53). By comparison, the majority of employee representatives replied that the impact of introducing all three obligations would be very positive on the efficiency of the functioning of EWCs (Option 1: 65.6% - 118 out of 180; Option 2: 66.7% - 120 out of 180; Option 3: 70% - 126 out of 180).

Figure 37. Q18, Impact on efficiency of the functioning of the EWC (percentage) – N= 233



The third parameter relates to the effectiveness of the functioning of the EWC. Once again, employee representatives predominantly answered that the impact of introducing all three obligations would all be positive on the effectiveness of the functioning of EWCs (Option 1: 68.3% - 123 out of 180; Option 2: 70% - 126 out of 180; Option 3: 71.1% - 128 out of 180). By comparison, management representatives most frequently answered that the impact of introducing an obligation on management to provide a reasoned response to an EWC's opinion and an obligation on management to take the EWC's opinion into account would both be neutral on the effectiveness of the functioning of EWCs (Option 1: 43.4% - 23 out of 53; Option 3: 24.5% - 13 out of 53) and that introducing an obligation on management to consult the EWC before the end of the national consultation procedure would have a negative impact on the effectiveness of the functioning of EWCs (Option 2: 30.2% - 16 out of 53).

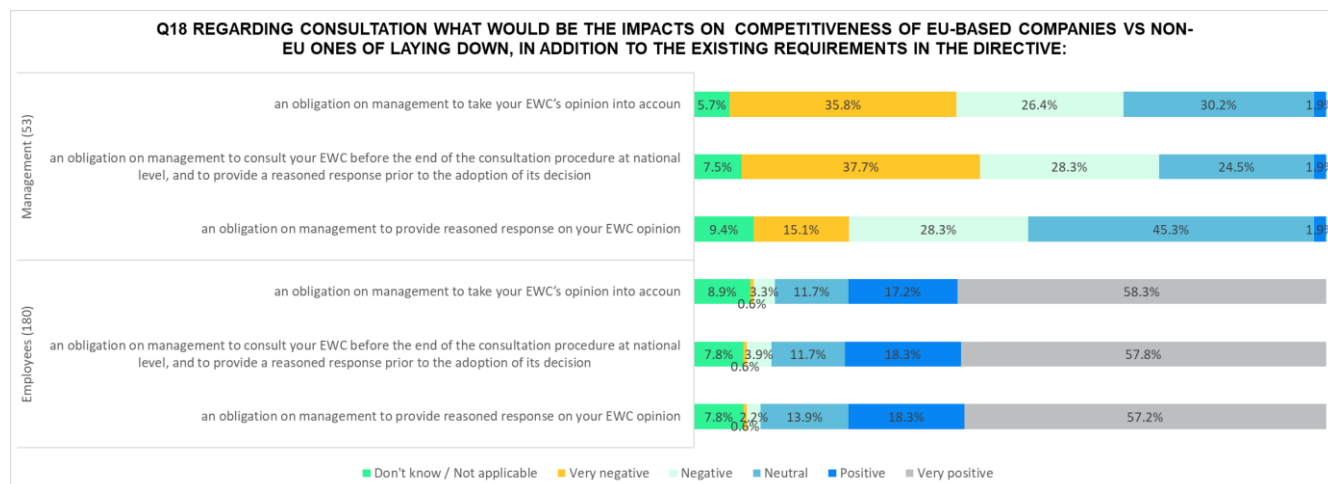
Figure 38. Q18, Impact on the effectiveness of the functioning of the EWC (percentage) – N= 233



Finally, the fourth parameter against which respondents were asked to assess the impacts of the proposed three obligations relates to the competitiveness of EU companies vis-à-vis non-EU ones. As for most of the other categories, the same discrepancies in the responses provided by the two stakeholder groups were observable. The majority of employee representatives replied that the introduction of all three obligations would have a positive impact on the competitiveness of EU companies vis-à-vis non-EU ones (Option 1: 57.2% - 103 out of 180; Option 2: 57.8% - 104 out of 180; Option 3: 58.3% - 105 out of 180). By comparison, management representatives most frequently replied that the impact of introducing an obligation on management to provide a reasoned response to an EWC's

opinion and an obligation on management to take the EWC's opinion into account would both be neutral on the competitiveness of EU companies vis-à-vis non-EU ones (Option 1: 45.3% - 24 out of 53; Option 3: 30.2% - 16 out of 53) and that introducing an obligation on management to consult the EWC before the end of the national consultation procedure would have a negative impact on the competitiveness of EU companies vis-à-vis non-EU ones (Option 2: 28.3% - 15 out of 53).

Figure 39. Q18, Impact on competitiveness of EU companies vis-à-vis non-EU ones (percentage) – N= 233



Respondents were given the opportunity to provide explanations to support their answer. These are summarised below.

Summary of answers from management representatives – 20 answers received: summarised into the most recurrent observations (first two bullet points representing over two-thirds of observations).

- An expansion in scope – especially requirement for management to provide a 'reasoned response' to the EWC prior to a decision – risks slowing down or even paralysing the company without adding any value. Consequently, this poses a risk to the job security of staff members.
- EWCs are consultation bodies, not negotiating bodies. Their objective differs from the information and consultation processes at national or local levels, which seek to reach agreements among employees. Expanding their scope in such a way would make EWCs a negotiating body rather than just a consultation body; this scope expansion almost equates to EWCs having co-determination rights which runs counter to the original aim of the EWC.
- An EWC consultation is always conducted in parallel to local consultations. Nevertheless, the local consultations are much more effective and national/local works councils often don't want to empower the EWC in this matter. National/Local legislations are sufficient and local works councils can judge better on own topics, are fully aware of their rights and are using them well. There is no reason to change the consultation rights for EWC matters.
- For global rather than just European corporations, expanding the Directive's scope would create a responsibility to monitor every country in Europe about their local processes, which is very cumbersome and time-consuming and will eventually harm the effectiveness of a company.
- Unless very carefully defined to ensure objective standards, codifying these potentially subjective obligations would prove to be an area of discord and potential

litigation (terms such as ‘reasoned’ and ‘taking into account’ remain unclearly defined)

Summary of answers from employee representatives – 20 answers received: most relevant answers retained and presented in order of recurrence.

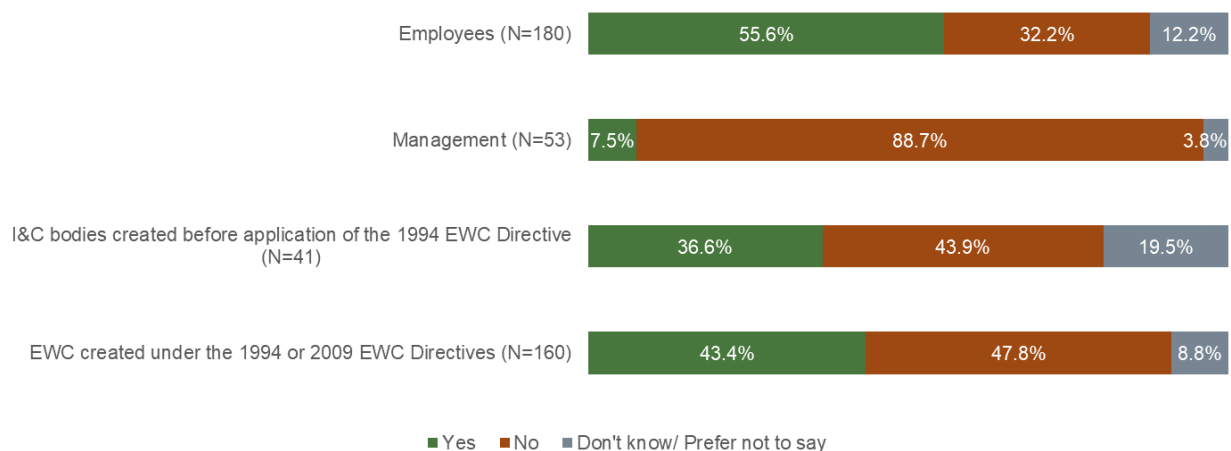
- The reasoned response obligation is the most important and gives meaning to the work of EWCs. Such an obligation upon management to provide a reasoned response also creates legal certainty in the information and consultation process.
- As the statistics show, an investment in employee participation leads to better decisions and employee engagement. These factors are key for businesses to grow. Social dialogue is an investment, but with high potential for sustainable returns over time. As such, the EWC must be perceived as a genuine co-determination body; if the rights of the EWC are not strengthened, then the EWC will simply remain a cost-generating necessary evil. Of course, this cannot be in the interests of co-determination.
- Given limited resource planning, the requirements relating to consultation could actually be challenging for the EWC.
- National level discussions are used as an excuse to delay consulting the EWC even when the subject is clearly significant and transnational.

5.1.2.4 Setting up the EWC

Stakeholders were asked if they have ever experienced problems or issues relating to the procedure for setting up an EWC. The majority of respondents representing employees indicated having experienced problems (55.6% - 100 out of 180) against only 3.8% of the responding management representatives (2 out of 53). Conversely, the majority of management representatives indicated not having experienced problems (88.7% - 47 out of 53) compared to only 32.2% of employee representatives (58 out of 180).

Respondents on behalf of EWCs created under the 1994 or 2009 Directives more frequently reported problems in setting up their respective EWC compared to respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive (43.4% vs. 36.6%; 69 respondents out of 160 vs. 15 respondents out of 41).

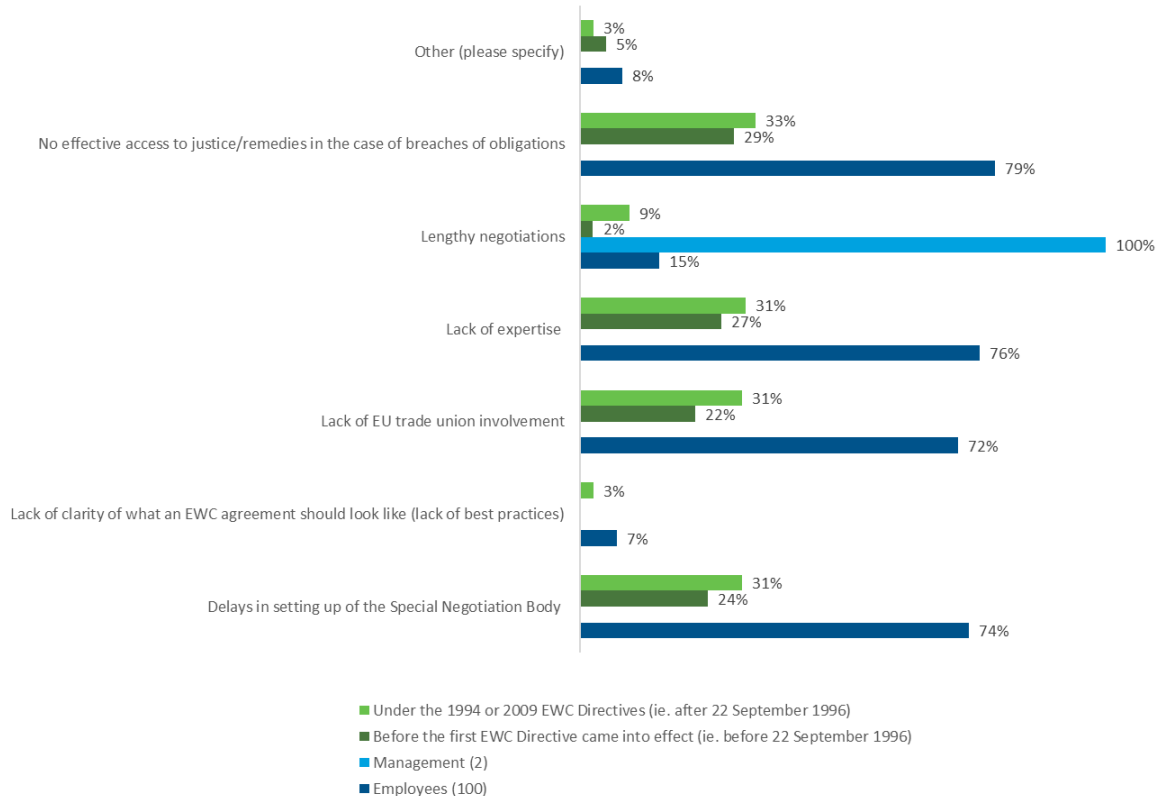
Figure 40. Q19, Problems or issues reported relating to the procedure of setting up a EWC (percentage) – N= 233



The stakeholders who indicated having experienced problems related to the procedure for setting up a EWC (102) were asked to indicate the types of problem they have faced. These were 100 employee representatives and only 2 management representatives. The

lack of effective access to justice or remedies in case of a breach of obligation by management was reported by 79 of the 100 EWC/employee representatives during the EWC setup phase. Similar proportions of EWC/employee representatives also mentioned lack of expertise (76 out of 100), delays in the setting up of the SNB (74 out of 100) and lack of EU trade unions involvement (72 out of 100). The only problem mentioned by the two responding management representatives was the length of the negotiations for setting up the EWC.

Figure 41. Q19a, Main issues experienced in the procedure of setting up a EWC (percentage) – N= 102



Drawing from their experience, respondents were asked to estimate the duration between the initial request to establish a Special Negotiating Body (SNB) and the actual formation of the SNB. The majority of respondents (63.9% -149 out of 233) either indicated that they didn't know or that they preferred not to answer. Among the remaining respondents who provided an estimate of the duration between the initial request to establish an SNB and the actual formation of the SNB:

- 12% (28 out of 233) replied that the process took more than a year;
- 9% (21 out of 233) replied between three and six months;
- 8.6% (20 out of 233) replied less than three months;
- 6.4% (15 out of 233) replied six and twelve months.

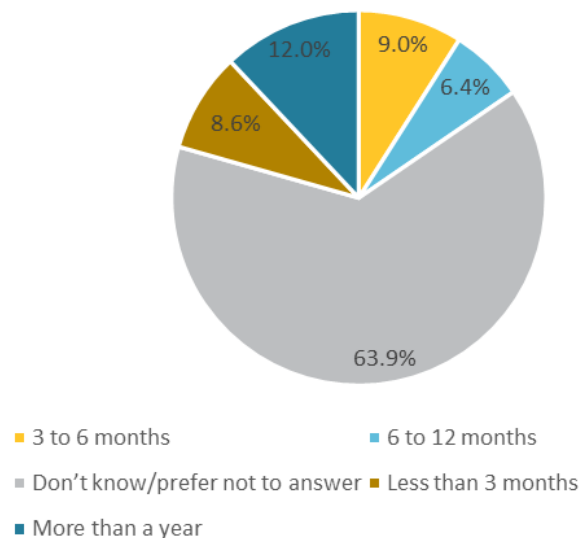
Looking at the distribution of responses among employee representatives:

- the majority (60.6% - 109 out of 180) either indicated that they didn't know or that they preferred not to answer;
- 13.3% (24 out of 180) replied that the process took more than a year;
- 10% (18 out of 180) replied between three and six months;
- 8.9% (16 out of 180) replied less than 3 months;
- 7.2% (13 out of 180) replied between six and twelve months.

Looking at the distribution of responses among management representatives:

- a significant majority (75.5% - 40 out of 53) indicated that they didn't know or that they preferred not to answer;
- 7.5% (4 out of 53) replied that the process took more than a year;
- 7.5% (4 out of 53) replied that it took less than three months;
- 5.7% (3 out of 53) replied between three and six months; and
- 3.8% (2 out of 53) between six and twelve months.

Figure 42. Q20, Time between the request to set-up and the actual set-up of SNB
(percentage) – N= 233



Drawing from their own experience, respondents were then asked how long negotiations lasted from the time of the request to set up a EWC until the signature of the agreement. The majority of respondents (59.2% - 138 out of 233) indicated that they didn't know how long such negotiations lasted. A sizeable share of the respondents (20.2% - 47 out of 233) indicated that the negotiations took up to 18 months, while 7.7% of the respondents (18 out of 233) replied that the negotiations took two to three years, 6.4% (15 out of 233) replied that the negotiations took 18 to 24 months, and a further 6.4% (15 out of 233) replied that the negotiations took more than three years.

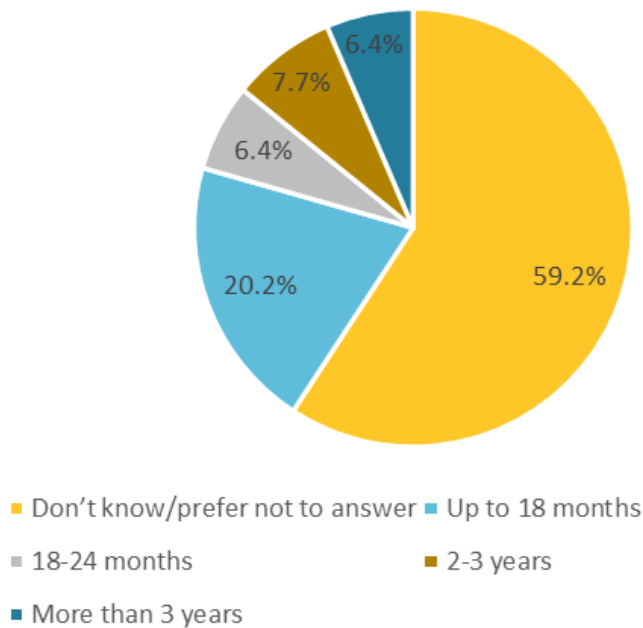
Looking at the distribution of responses among employee representatives:

- the majority (56.1% - 101 out of 180) replied that they didn't know how long such negotiations lasted or that they preferred not to answer;
- 22.2% (40 out of 180) replied that the negotiations took up to 18 months;
- 7.8% (14 out of 180) replied that they took more than three years;
- 7.2% (13 out of 180) replied that they took two to three years;
- 6.7% (12 out of 180) replied that they took 18 to 24 months.

Looking at the distribution of responses among management representatives:

- the majority (69.8% - 37 out of 53) replied that they didn't know how long such negotiations lasted or that they preferred not to answer;
- 13.2% (7 out of 53) replied that they took up to 18 months;
- 9.4% (5 out of 53) replied that they took two to three years;
- 5.7% (3 out of 53) replied that they took 18 to 24 months;
- 1.9% (1 out of 53) replied that they took more than three years.

Figure 43. Q21, Time of negotiations to set up a EWC (percentage) – N= 233

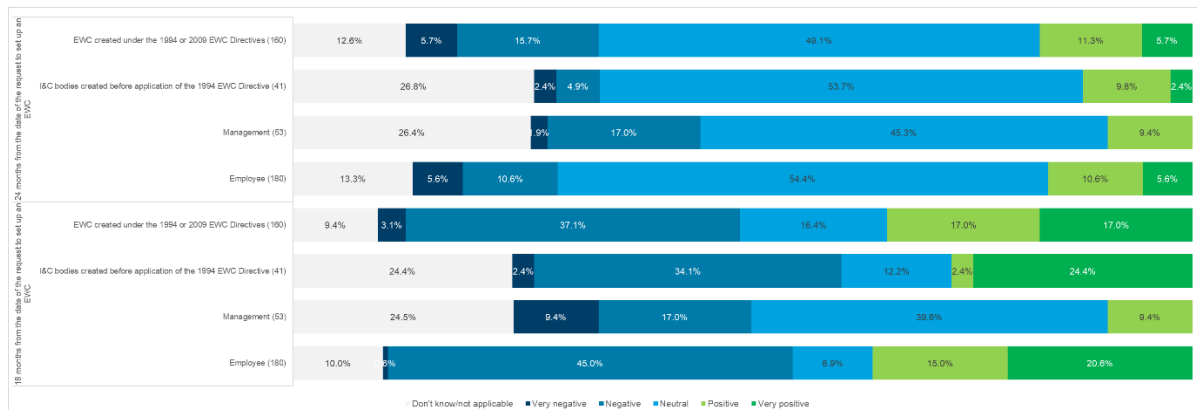


Stakeholders were asked to assess the potential impact of shortening the deadline for concluding an EWC agreement (Figure 44). The survey aimed specifically to investigate the impact of shortening the deadline for concluding an EWC agreement on the efficiency (time, funding) and effectiveness (conflicts, quality of agreements, conclusion of agreements) of the setup phase and negotiations.

Overall, respondents most frequently indicated that shortening the deadline for concluding an EWC agreement to 18 months from the date of the request to set up the EWC would have a negative impact in terms of efficiency (38.6% - 91 out of 233). Employee representatives most frequently believed that the impact of shortening the deadline to 18 months would be negative (45% - 81 out of 180) whereas management representatives most frequently replied that the impact would be neutral (39.6% - 21 out of 53).

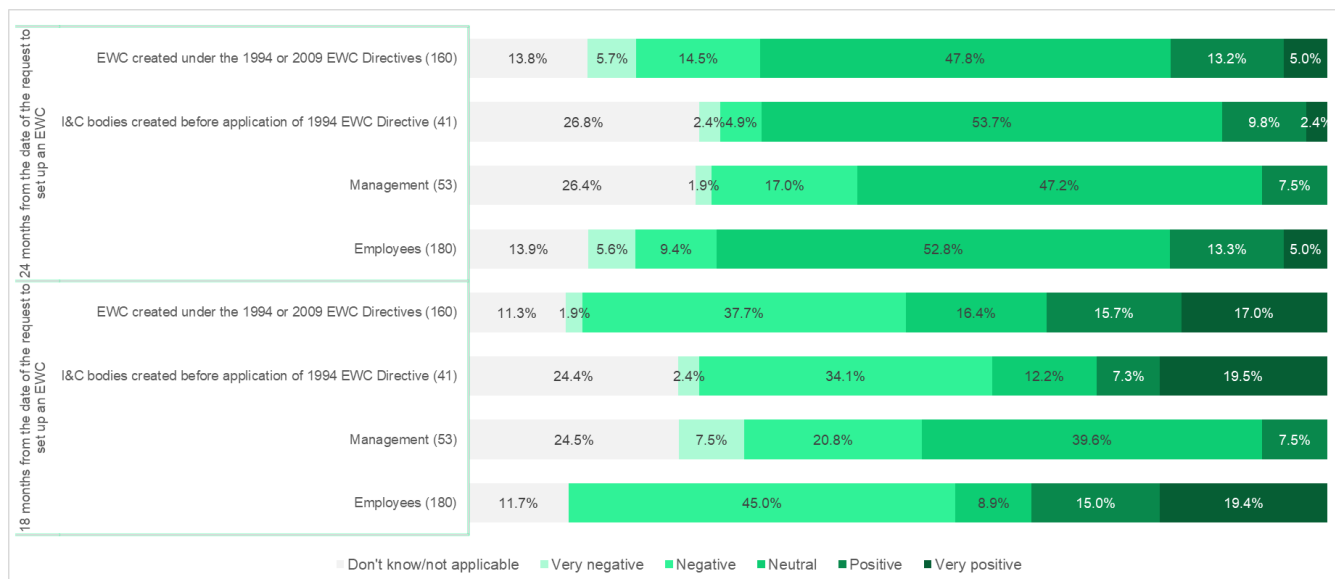
Overall, respondents most frequently indicated that shortening the deadline for concluding an EWC agreement to 24 months from the date of the request to set up the EWC would have a neutral impact in terms of efficiency (52.4% - 122 out of 233). Among the two main stakeholder groups: 54.4% of employee representatives (98 out of 180) indicated a neutral impact on efficiency compared to 45.3% of management representatives (24 out of 53).

Figure 44. Q22, Impact of shortening the deadline for concluding a EWC agreement, efficiency (percentage) – N= 233



The respondents' assessment of the potential impact of shortening the deadline for concluding an EWC agreement on the effectiveness of the setup phase and negotiations are overall in line with their assessment in relation to efficiency. Indeed, respondents overall (39.5% - 92 out of 233) most frequently indicated that the impact of shortening the deadline for concluding an EWC agreement to 18 months would be negative on the effectiveness of the setup phase and negotiations. Similarly, employee representatives most frequently indicated that the impact would be negative (45% - 81 out of 180) whereas management representatives most frequently believed it would be neutral (39.6% - 21 out of 53). Overall, the majority of respondents (51.5% - 120 out of 233) believe that if the deadline for concluding an EWC agreement would be shortened to 24 months, the impact on the effectiveness of the setup phase and negotiations would be neutral. The majority of employee representatives (52.8% - 95 out of 180) and nearly half of the management representatives (47.2% - 25 out of 53) also confirmed that shortening the deadline for concluding an EWC agreement to 24 months would have neutral impact on the effectiveness of the setup phase and negotiations.

Figure 45. Q22, Impact of shortening the deadline for concluding a EWC agreement, effectiveness (percentage) – N= 233



Stakeholders were able to make comments supporting their answer. These are summarised below.

Summary of answers from management representatives – 11 answers received; mixed views.

- For companies that navigate a complex landscape of labour relations in Europe, 18 months can be a challenging timeframe to agree on all EWC provisions and impact the quality of the final wording.
- Given the length of time of negotiations to the signature of the EWC agreement, asking for a timeline of a year or a little more to come up with a negotiated agreement is unrealistic. It also puts undue pressure on the employer side to agree to demands made by the employee side/trade unions.
- Most of the time, the SNB is poorly trained (by a provider of their choice) and not organised or unable to negotiate effectively. This is why the process takes so long.
- Current timelines give enough time for the appropriate setting up of the SNB and for conducting the negotiations. However, similar outcomes could be achieved in a shorter timeline.

Summary of answers from employee representatives – 52 answers received; rather unanimous views; summary of the most recurrent.

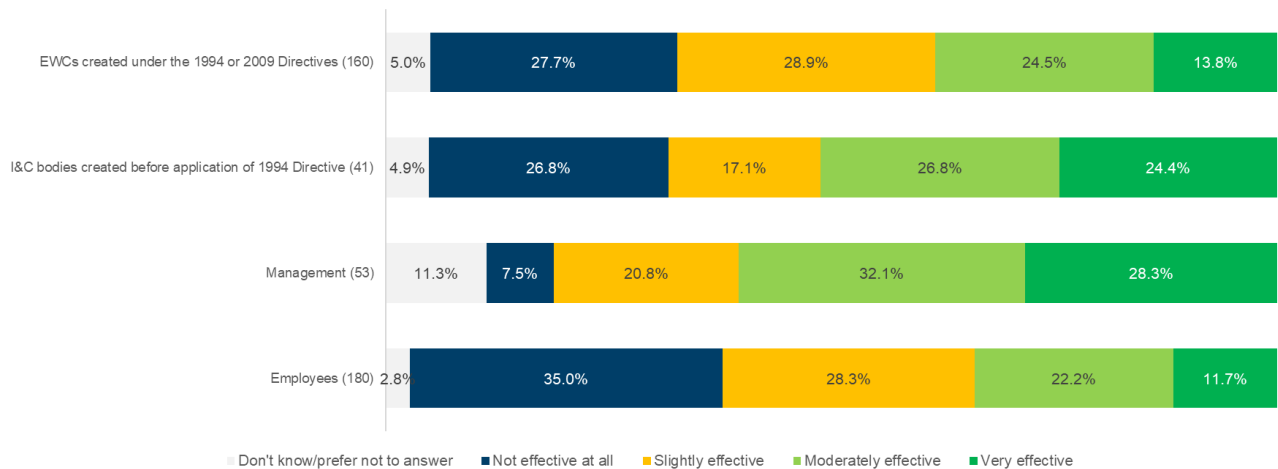
- A stricter deadline for the first meeting of the SNB is more important than the total length of time needed for the conclusion of the EWC agreement. There should be a clear deadline for convening the first meeting of the SNB.
- The length of negotiations depends on the experience and seniority of the worker representatives and management. There is a balance to strike between having a shorter timeframe but leaving the parties enough time to negotiate.
- 18 months is a lot of time. Sufficient to set up an EWC if there is a will on the company side.

5.1.2.5 Running an EWC

The survey asked respondents to assess the effectiveness of the existing rules for the EWC members to inform employee representatives (or employees they represent) at the national level about the information and consultation procedure in their EWC.

As commonly observed, there is a discrepancy between the responses provided by employee representatives and those provided by management representatives (Figure 46 on the following page). EWC employee representatives most frequently indicated that the existing rules for informing employees are either not effective at all (35% - 63 out of 180) or only moderately effective (28.3% - 51 out of 180). By contrast, management representatives indicated that these existing rules are either moderately effective (32.1% - 17 out of 53) or very effective (28.3% - 15 out of 53).

Figure 46. Q23, Effectiveness of the existing rules on informing employees about information and consultation procedures in the EWC (percentage) – N= 233



The respondents were able to provide supporting explanations along with their answers.

Summary of answers from management representatives – 11 answers received: observations in order of recurrence.

- Most EWC delegates have a stronger link with their national union mandate and either don't engage with the EWC or bring national matters into it.
- The lack of clarity on how national representatives treat confidential information at EU level is a subject of debate as national laws on confidentiality obligations applicable to local representatives are not the same in all EU countries.
- In passing information to national employee representatives, ensuring confidentiality is critical not only for a trustful relationship within the EWC, but also to avoid compromising the business. Providing too much leeway to the EWC members to pass on information to national or local work councils increases the risk of damaging leakage of confidential information. Information could also be taken out of context by non EWC members, leading to false information/rumours.
- Means could be better defined and the challenge of reporting back in country where there are no employees' representative bodies remain.
- The inconsistency among EWC members stems from varying national election phases. In addition, there are problems with the level of experience of some of them.

Summary of answers from employee representatives – 33 answers received: observations in order of recurrence.

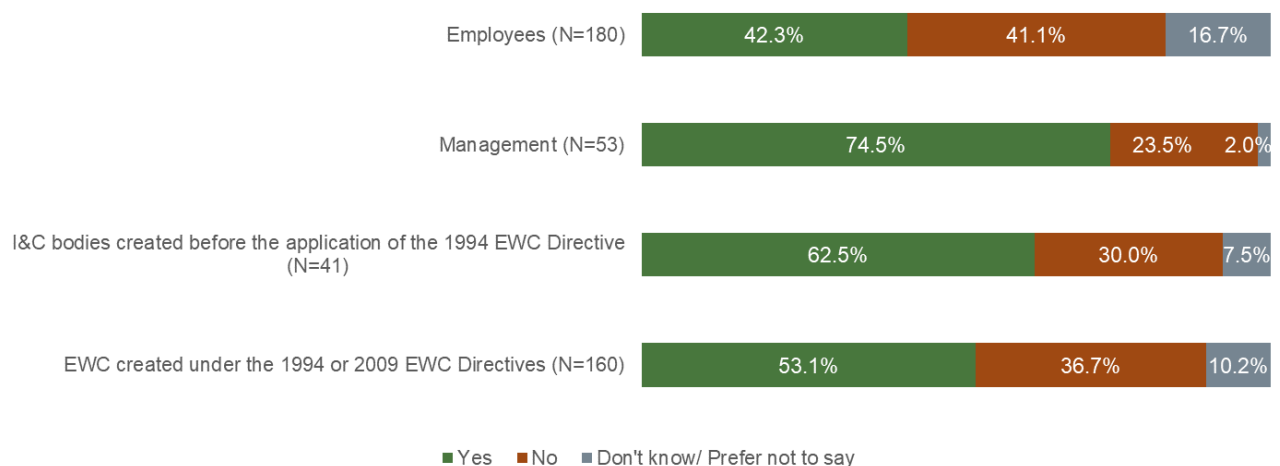
- There is a lack of communication channels allowing the EWC to directly inform all employees based in the EU. The extent to which information gets through to employees in different countries depends on the national structures: especially, on the number of employees in each country and the extent of the presence of national unions/works Councils.
- A stronger EU Directive whereby the communication of information emanates directly from the EWC would make matters easier, instead of giving this obligation to each representative.
- Signing non-disclosure agreements and the confidentiality clause hampers communication significantly.
- There are too many competing rules around confidentiality on the one hand and the obligation to inform on the other.

5.1.2.6 EWC resources

Respondents were asked if their respective EWC agreement contains provisions on financial and human resources. Just under half of the respondents overall (49.8% - 115 out of 233) replied that they do, although the share of stakeholders indicating that their agreements do not contain any such provisions was still high (34.8% - 81 out of 233). Once again, the response trends between the two stakeholder groups are significantly different. Indeed, the vast majority of management representatives (74.5% - 39 out of 53) indicated that their agreements contain provisions on financial and human resources. Conversely, slightly more employee representatives indicated that their agreements contain provisions on resources (42.3% - 76 out of 180) than those who indicated that they do not contain such provisions (41.1% - 74 out of 180 respondents).

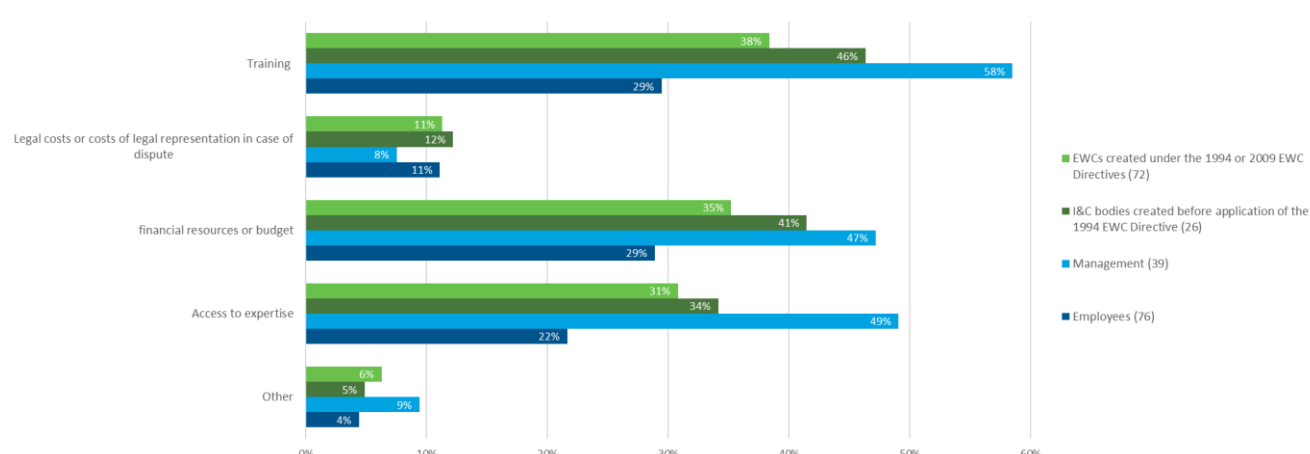
Respondents on behalf of EWCs created under the 1994 or 2009 Directives less frequently reported that their respective agreement contains provisions on financial and human resources compared to respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive (53.1% vs. 62.5%; 96 respondents out of 160 vs. 26 respondents out of 41).

Figure 47. Q24, EWC agreements which contain provisions on financial and human resources (percentage) – N= 233



The 115 respondents who said that their agreements contain provisions on financial and human resources were asked to provide further details on the types of financial and human resource covered, as shown in the chart below.

Figure 48. Q24a, Aspects of financial and human resources covered by the EWC agreements (percentage) – N= 115

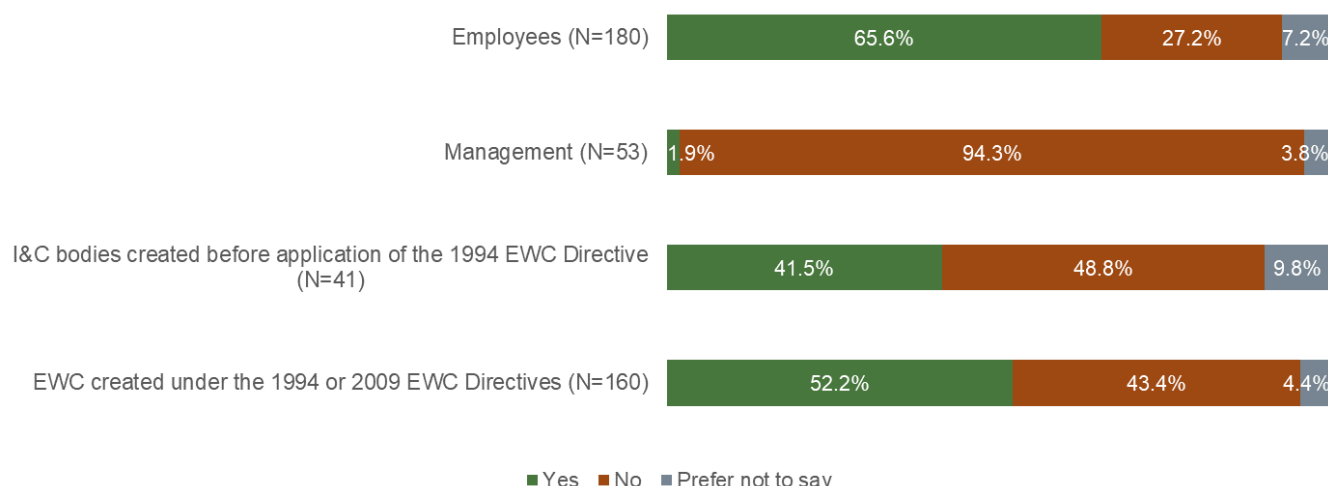


5.1.2.7 Enforcing EWC rights and obligations

The survey asked respondents if they have ever experienced problems/issues relating to the enforcement of EWC rights and obligations provided by the existing rules. It was mostly employee representatives who reported problems (65.6% - 118 out of 180), whereas only 1.9% of management representatives (1 out of 53) reported problems.

Respondents on behalf of EWCs created under the 1994 or 2009 Directives more frequently reported problems with the enforcement of rights and obligations compared to respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive (52.2% vs. 41.5%; 94 respondents out of 160 vs. 17 respondents out of 41).

Figure 49. Q25, Problems reported with the enforcement of EWC rights and obligations (percentage) – N= 233



Respondents were given the possibility to explain the problems encountered.

One answer from a management representative

- The language skills of EWC members are low.

Summary of answers from employee representatives – 30 answers received: over two-thirds relating to lack of consultation and timeliness of consultation.

- Mainly problems with distinction between information and consultation ending up in violation of EWC consultation rights.
- Information obligations and their deadlines were not met (different interpretation, abusive use of confidentiality).
- Lack of financial resources to have access to justice and legal processes or steps are not sufficiently well defined.
- Issues around the notion of ‘means required’ to ensure that SNB members are afforded a reasonable statutory time allocation to perform their duties within the role. Facilities within the workplace should be better specified too so that SNB members can perform their duties. Training needs to be more specific in quantification, allocation and allowance and not left at the discretion of management.
- European trade union federation declined to intervene when the integrity issue was reported, possibly due to a conflict of interest, as the EWC vice-chair was also the general secretary within the same trade union federation.

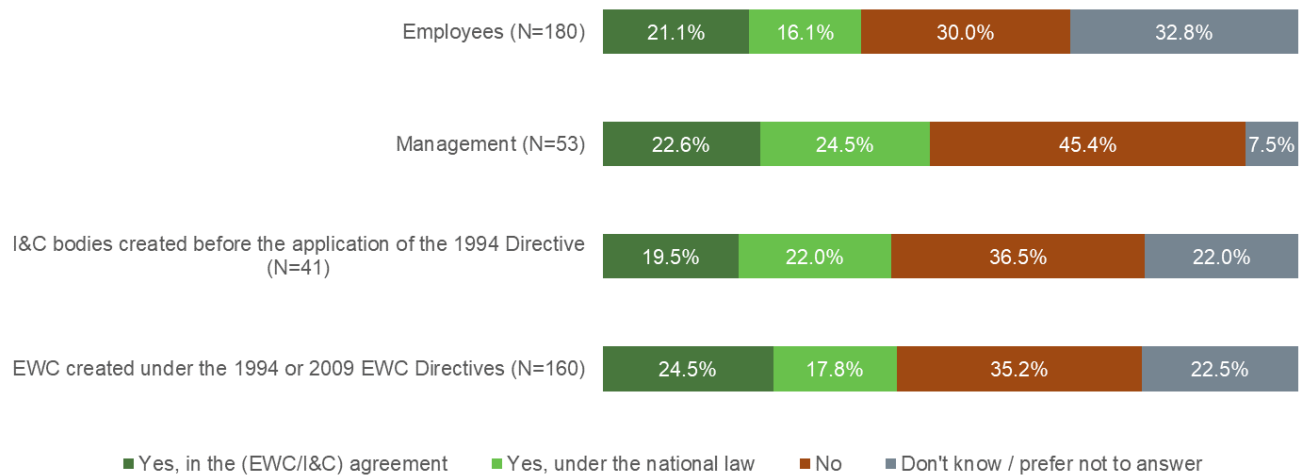
Stakeholders were then asked if there are any conciliation procedures to solve conflicts relating to their respective EWC or national legislation governing it. The answers provided revealed a mixed picture (Figure 50 on the following page).

Employee representatives most frequently indicated that they didn’t know or preferred not to answer whether such procedures exist to solve conflicts relating to their respective EWC (32.8% - 59 out of 180). However, 30% of them (54 out of 180) indicated that there are no conciliation procedures alternative to dispute resolution procedures, while 21.1% (38 out of 180) reported that these are foreseen in their respective EWC agreement, and 16.1% (29 out of 180) reported that they are foreseen under the national law governing their respective EWC (or I&C body).

The responding management representatives most frequently indicated (45.4% - 24 out of 53) that there are no such conciliation procedures with regard to their respective EWC (or I&C body), 24.5% (13 out of 53) reported that such procedures are foreseen under the national law governing their respective EWC (or I&C body), and 22.6% (12 out of 53) indicated that that these procedures are foreseen in their respective agreement.

Respondents on behalf of EWCs created under the 1994 or 2009 Directives more frequently reported that their respective agreement foresee conciliation or alternative dispute resolution procedures compared to respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive (24.5% vs. 19.5%; 44 respondents out of 160 vs. 8 respondents out of 41).

Figure 50. Q26, Presence of conciliation procedures to solve conflicts (percentage) – N=233



The respondents were able to provide supporting explanations along with their answers.

Summary of answers from management representatives – 9 answers received:

- Conciliation is envisaged in case of disputes on interpretations or implementation of the agreement. In case a dispute arises out of or in connection with the provisions and/or operation of the EWC agreement, the parties shall use reasonable endeavours to seek to resolve such dispute in good faith through constructive discussions. In case such dispute remains unresolved, a face-to-face meeting shall be held between Central Management and the Committee before either party may seek to instigate any form of legal proceedings.
- The joint commission of the EWC can be called upon as a clearing house if a clarification cannot be brought about at the local level.
- Depending on the country and legislation, there may be formal conciliation processes removing the need for a conciliation provision in the EWC agreement, e.g. an EWC agreement does not include conciliation but refers to Swedish law in this respect, the Swedish Co-Determination in the Workplace Act.

Summary of answers from employee representatives – 27 answers received: most recurrent observation is that this depends greatly on the national legal regime of the agreement:

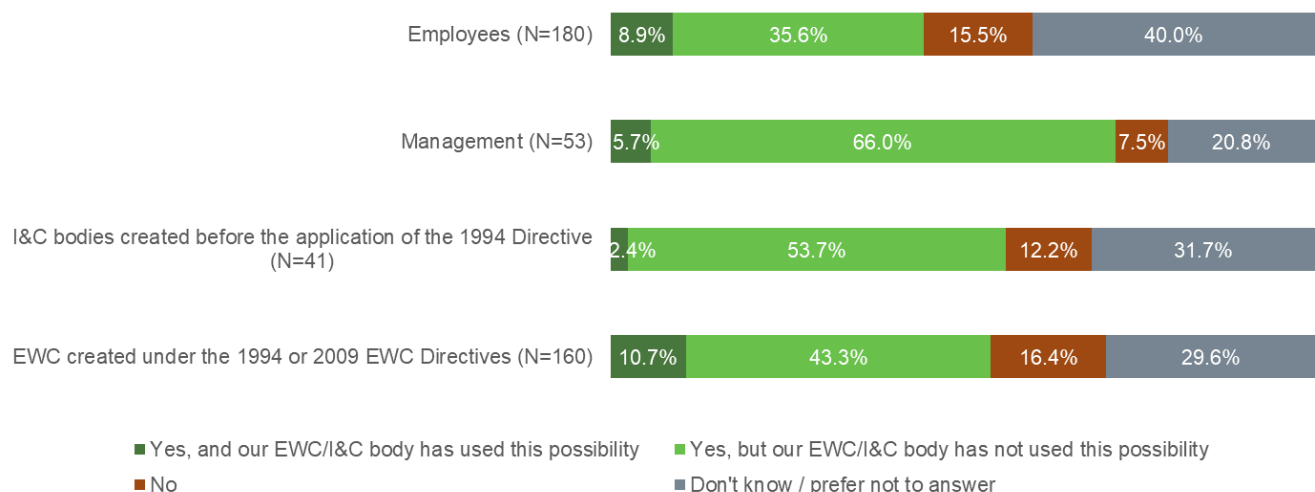
- Conciliation depends on the national legal regime of the EWC agreement: for instance, conciliation provided for under Irish law. Some laws provide for the appointment of a mediator. Overall, the laws vary too much, depending on country, very problematic and slow jurisdiction.
- The procedure in Finland is linked to the Cooperation Ombudsman who shall provide his view about a dispute. He may file a case in the court - but this has never happened so far. The finish conciliation procedure is too slow, not sufficiently objective and inefficient.
- Dispute resolution. If a dispute remains unresolved face to face meetings are held between central management and select committee before either party may seek to instigate any form of legal proceedings.
- Some agreements include provisions on arbitration or have a dispute resolution procedure based on national legislation.

In addition to the above, respondents were asked if the members of their respective EWC (or I&C body) have access to a court to enforce their rights. Overall, the majority of respondents (42.5% - 99 out of 233) said that the members of their respective EWC (or I&C body) have access to justice but that they have never used the possibility, 8.2% of the respondents (19 out of 233) reported that they have access to justice and that they have already used the possibility, whereas 13.7% of the respondents (32 out of 233) said that they do not have access to justice.

Employee representatives more frequently reported that they have access to justice but that their respective EWC (or I&C body) has never used the possibility (35.6% - 64 out of 180). The majority of management representatives (66% - 35 out of 53) indicated that the members of their respective EWC (or I&C body) have access to a court to enforce their right but that that such a possibility has never been used.

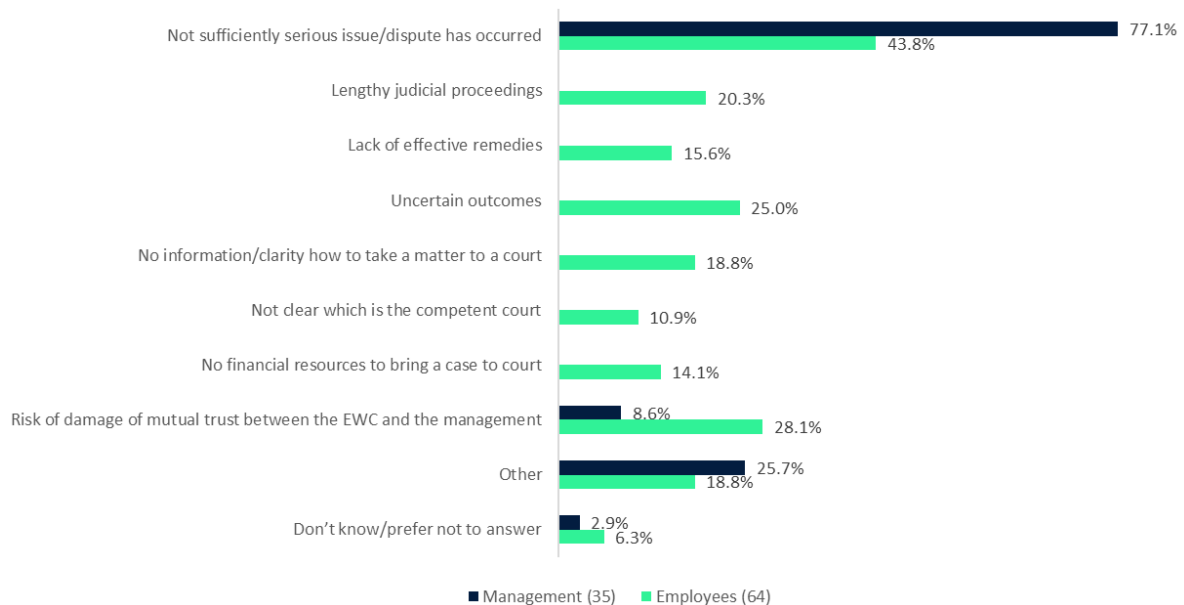
Interestingly, respondents on behalf of EWCs created under the 1994 or 2009 Directives reported much more frequently that they have already used the possibility of accessing justice to enforce EWC rights compared to respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive (10.7% vs. 2.4%; 19 respondents out of 160 vs. 1 respondent out of 41).

Figure 51. Q27, Access to a court to enforce EWC rights (percentage) – N= 233



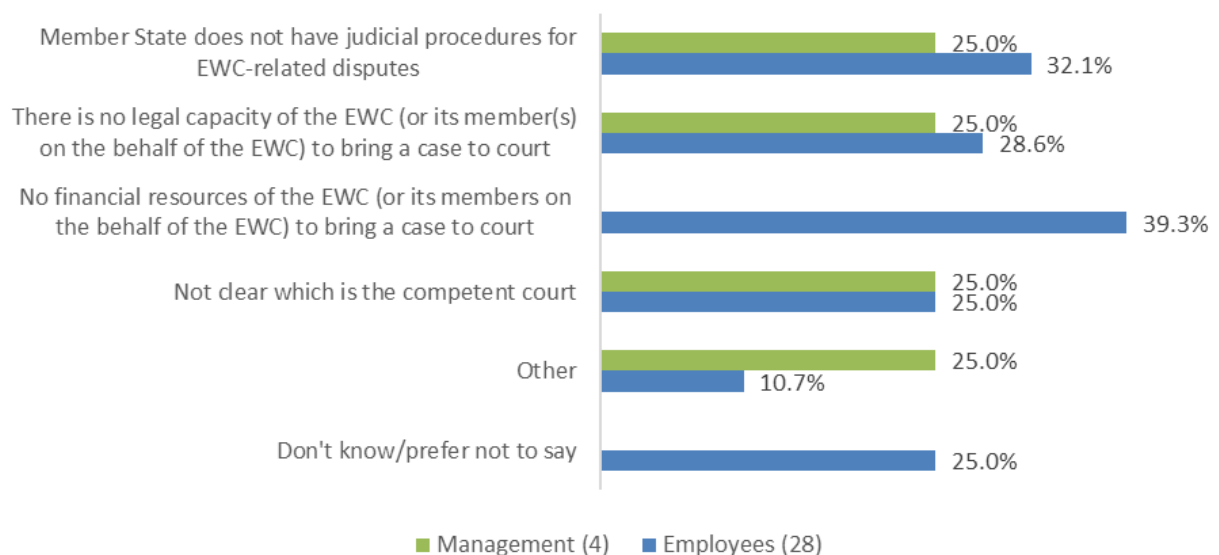
The respondents (99) who replied that the members of their respective EWC (or I&C body) have access to a court to enforce EWC rights but have never used this possibility were asked to specify the reasons why. The majority of respondents (55.6% - 55 out of 99) indicated that this was due to the fact that the issue at hand was not sufficiently serious (Figure 52 on the following page). This was the reason most frequently mentioned by management representatives (77.1% - 27 out of 35) and by employee representatives (43.8% - 28 out of 64). Only a small share of respondents mentioned other reasons. For instance, 21.2% (21 out of 99) of the respondents overall (28.1% of employee representatives (18 out of 64), 8.6% of management representatives (3 out of 35)) indicated as a possible reason the risk of damage of the mutual trust between the EWC and management.

Figure 52. Q27a, Reasons for not using the possibility of enforcing EWC rights in court (percentage), multiple answers possible – N= 99



Among the 32 respondents who reported that they do not have access to a court to enforce their EWC rights 34.4% (11 out of 32) replied that this is due to the lack of financial resources to bring a case to court, and 31.3% (10 out of 32) replied that the Member State where they are based does not have a judicial procedure for EWC disputes. Additionally, 28.1% of the respondents (9 out of 32) mentioned that there is no legal capacity within the EWC to bring a case to court. It should be noted that only 4 respondents among management representatives reported the reasons behind their respective EWC's lack of access to justice.

Figure 53. 27b, Reasons for not having access to court (percentage), multiple answers possible – N= 32

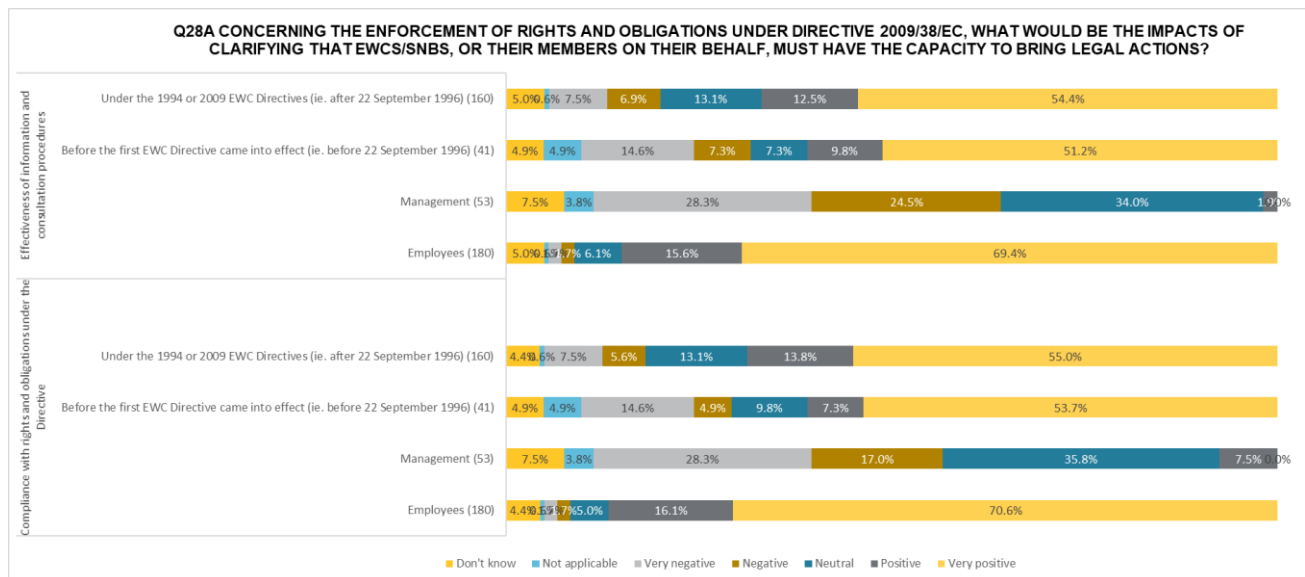


Concerning the enforcement of rights and obligations, the survey asked respondents to assess the impact of the possibility of introducing a provision clarifying that EWC/SNBs or their members must have the capacity to bring legal actions in relation to compliance with rights and obligations under the Directive and the effectiveness of information and consultation procedures.

Concerning the impact of such a provision on compliance with EWC rights and obligations under the Directive, none of the management representative replied that it would have a very positive impact in terms of compliance with EWC rights and obligations under the Directive, and only 7.5% among them (4 out of 53) replied that it would simply have a positive impact in this regard. The majority of management representatives replied that the impact of such a provision would be neutral (35.8% - 19 out of 53). Conversely, 70.6% of employee representatives (127 out of 180) replied that the impact of such a provision on compliance with EWC rights and obligations under the Directive would very positive and a further 16.1% (29 out of 180) indicated that the impact would simply be positive in this regard.

Similar response trends are observable in relation to the impact on the effectiveness of information and consultation procedures of the possibility to introduce a provision clarifying that EWC/SNBs or their members must have the capacity to bring legal actions. No management representative replied that such a provision would have a very positive impact in this regard except one (out of 53 - 1.9%). Conversely, 69.4% of employee representatives (125 out of 180) replied that such a provision would have a very positive impact on the effectiveness of information and consultation procedures.

Figure 54. Q28a, Impact of clarifying that EWC/SNBs must have the capacity to bring legal actions (percentage) – N= 233

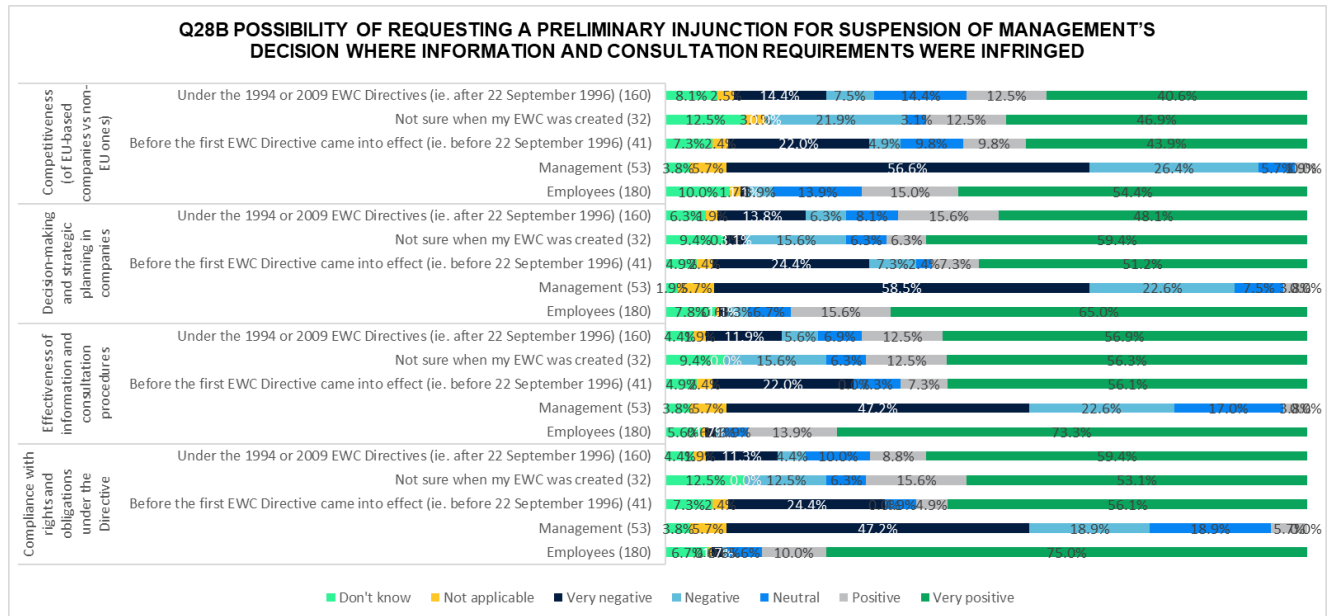


The survey asked respondents whether the addition of a possible set of new rights and obligations would be positive or negative.

Regarding the introduction of the 'Possibility of requesting a preliminary injunction for suspension of management's decision where information and consultation requirements were infringed' (Figure 55 on the following page), management representatives most frequently indicated that this would have a very negative impact on compliance with rights and obligations under the Directive (47.2% - 25 out of 53) whereas 75% (135 out of 180) of employee representatives believed the impact of such a provision would be very positive in this regard. Concerning the impact on the effectiveness of information and consultation procedures, the response trends between the two groups showed the same significant differences. Indeed, the majority of employee representatives (73.3% - 132 out of 180) indicated that the measure would have a very positive impact whereas management representatives most frequently indicated that it would have a very negative impact (47.2% - 25 out of 53). Regarding the impact of the measure on decision-making and strategic planning in companies, the majority of employee representatives (65% - 117 out of 180) replied that it would be very positive, whereas the majority of management

representatives (58.5% - 31 out of 53) replied that it would be very negative. Finally, on the impact on competitiveness of EU-based companies vis-a-vis non-EU ones, none of the management representative indicated that the impact would be very positive, the majority of them believing that the impact would be very negative (56.6% 30 out of 53).

Figure 55. Q28b, Impacts of new rights and obligations – possibility of requesting a preliminary injunction for suspension of management decisions (percentage) – N= 233



The second possible novelty concerned sanctions linked to company's turnover: up to 4 % of global annual turnover of company/group (Figure 56 on the following page).

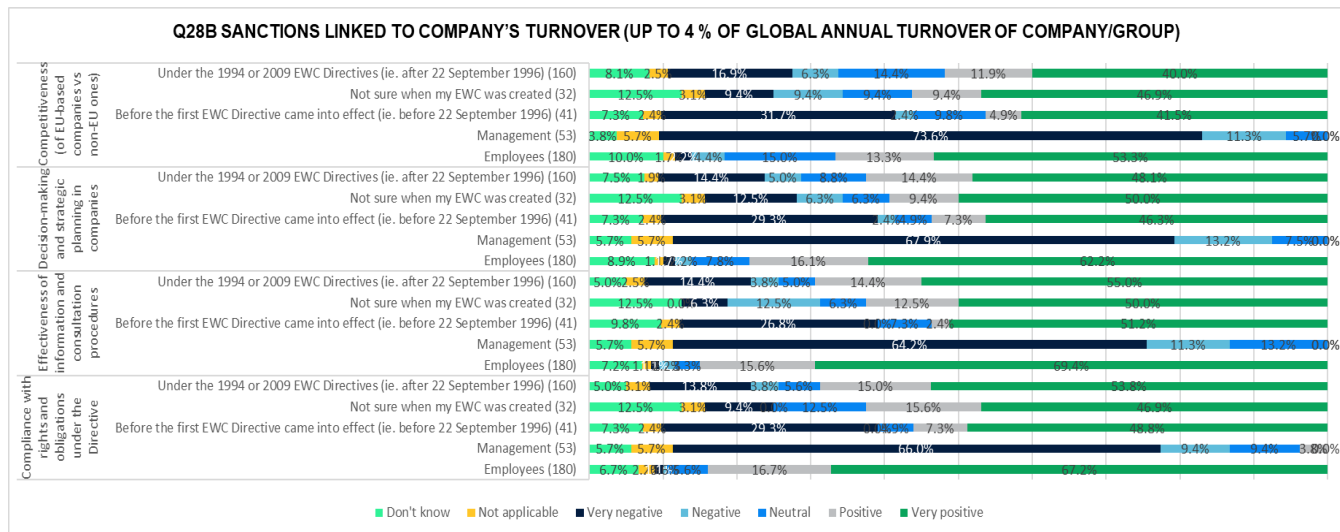
The majority of employee representatives (67.2% - 121 out of 180) replied that the impact would be very positive, whereas the majority of management representatives (66% - 35 out of 53) replied that it would be very negative.

Similar percentages were observed in relation to the expected impacts of introducing such sanctions on the effectiveness of information and consultation procedures.

The majority of employee representatives (69.4% - 125 out of 180) replied that the impact would be very positive, whereas the majority of management representatives (64.2% - 34 out of 53) replied that it would be very negative. In relation to the impact of such sanctions on decision making and strategic planning in companies, the majority of employee representatives replied that it would be very positive (62.2% - 112 out of 180) whereas the majority of management representatives replied that it would be very negative (67.9% - 36 out of 53).

Finally, concerning the impact of such sanctions on competitiveness of EU-based companies, the majority of employee representatives (53.3% - 96 out of 180) replied that it would be very positive, whereas the majority of management representatives (73.6% - 39 out of 53) replied that it would be very negative.

Figure 56. Q28b, Impact of new rights and obligations – sanctions linked to company turnover (percentage) – N = 233



The third proposed novelty concerned the possibility of sanctioning companies in breach of their obligations under the Directive by excluding them from public benefits, aid or subsidies, for a period of up to three years, and from participating in public contracts (Figure 57 on the following page).

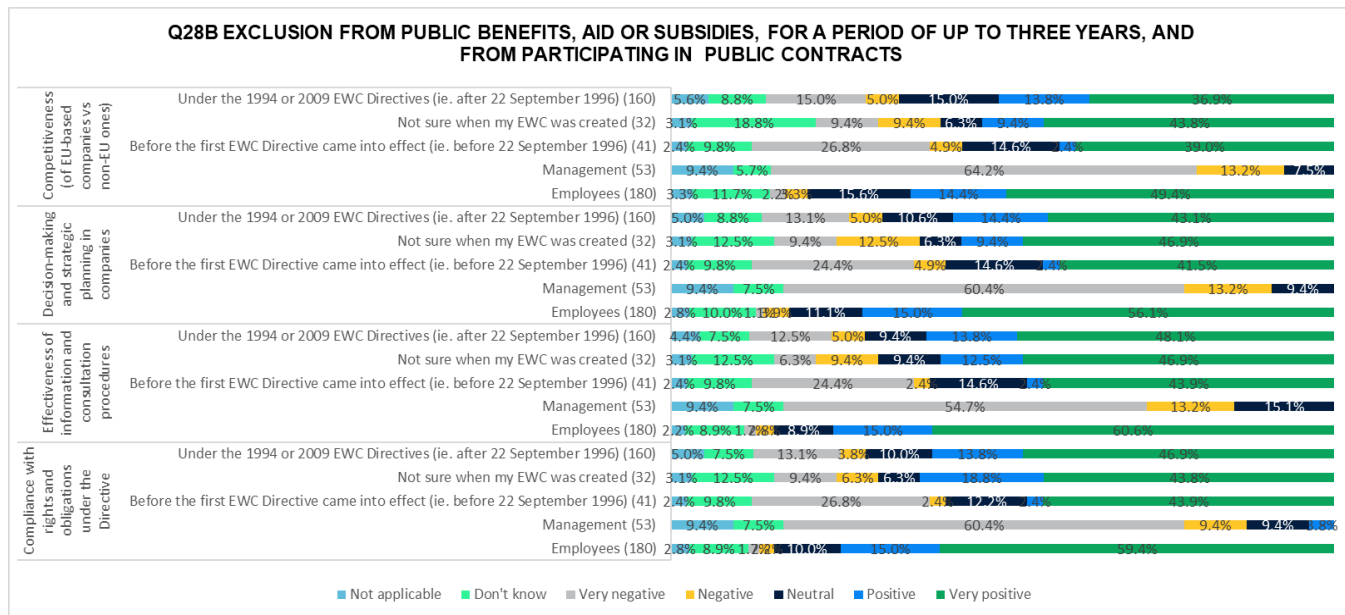
Significant discrepancies between the views of employee representatives and of management representatives were also observable in this respect. Regarding compliance with rights and obligations under the Directive, the majority of employee representatives (59.4% - 107 out of 180) believed that the impact of these proposed sanctions would be very positive, whereas the majority of management representatives (60.4% - 32 out of 53) believed it would be very negative.

Concerning the effectiveness of the information and consultation procedures, the majority of employee representatives (60.6% - 109 out of 180) replied that the impact of these proposed sanctions would be very positive, whereas the majority of management representatives (54.7% - 29 out of 53) replied that it would be very negative.

Regarding decision-making and strategic planning in companies, the majority of employee representatives (56.1% - 101 out of 180) replied that the impact of these proposed sanctions would be very positive, whereas the majority of management representatives (60.4% - 32 out of 53) replied that it would be very negative.

Finally, regarding the competitiveness of EU-based companies vis-a-vis non-EU based ones, no management representatives indicated that the impact of these proposed sanctions would be very positive with the majority believing that it would in fact be very negative (64.2% - 34 out of 53). Conversely, the majority of employee representatives (49.4% - 89 out of 180) believed that the impact of such sanctions would be very positive.

Figure 57. Q28b, Impact of new rights and obligations (percentage) – exclusion from public benefits, aid or subsidies – N= 233



Some of the stakeholders provided explanations to support their answers.

Summary of answers from management representatives – 21 answers received: unanimous against introduction of new sanctions.

- Stricter sanctions to ensure enforcement would be anti-competitive (particularly financial penalties) which would backfire on the employment of staff, forcing cuts etc.
- Revising or adding new rules for enforcement of rights and obligations would have adversary effect on both an effective and constructive social dialogue.
- Draconian proposals that are contrary to the purpose and intent of the EWC Directive and the goodness the current transparency and dialogue provide.
- Sanctions with fines and penalties will result in more uncertainty for multinational companies to operate within the EU than before and will turn away investment into Europe.
- The changes described would lead to a strictly legally oriented process design. Any voluntary information would have to be discontinued. The relationship of trust would be severely strained.
- Without undermining situation of real breach, most of the disputes we are facing comes from a divergence of interpretation (i.e., definition of transnational, significance of the impact on EU workforce, nature of the impact (potential, indirect), level of information to assess a proposal), and not from an intention to not comply with the Directive.
- Building injunctions into the Directive would, in practice, give EWCs negotiating leverage to demand agreements with management in all I&C processes. Allowing EWC members to request a preliminary injunction suspending management's decision, where they believe there was an infringement of the directive, would lead to long delays in implementation of crucial business decisions. It would also upset the delicate balance of power between the EWC and management, transform the EWC beyond the original intentions of the directive, and create legal uncertainty and negative economic impacts. Local works councils can initiate judicial reviews,

and rightly so, because the measures will have an impact locally. Elevating these rights to a European level runs counter to the entire system and leads to open legal questions.

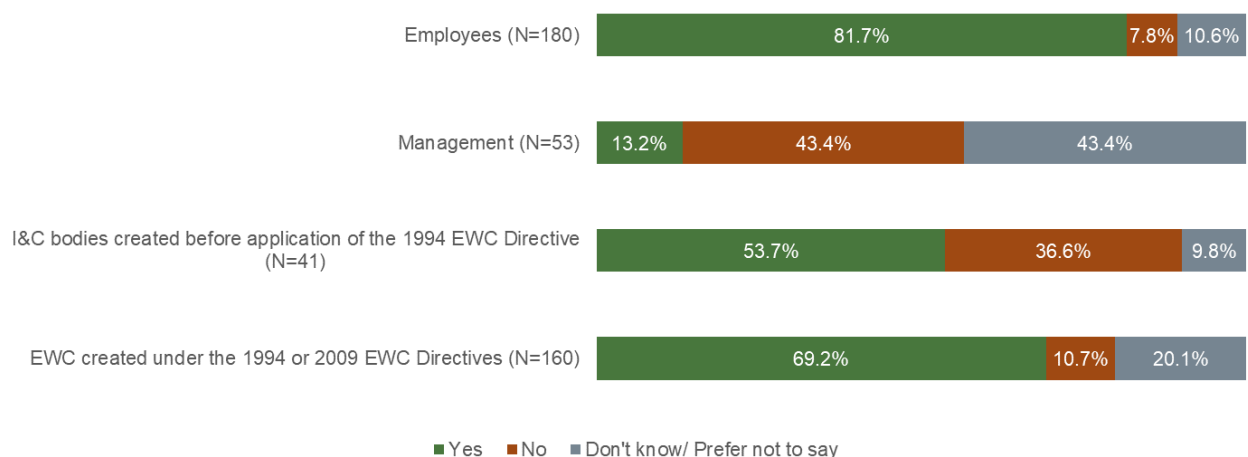
Summary of answers from employee representatives – 19 answers received: mixed views.

- The risk of facing stricter sanctions would stimulate good communication between workers and management. More of an equal footing between management and the EWC, more leverage for the EWC
- It would be pointless to sanction a company in ways that may lead to job losses, this rather defeats the purpose of any such new sanctions. For instance, If the company cannot get public contracts, this would harm the business and put jobs at risk.
- When management knows what the risks they run and what the possibilities are to force them to have the EWC agreement properly executed, they will certainly be more accommodating to seriously discuss changes and future plans with the EWC and do so in a timelier manner.

5.1.2.8 Exemptions

Currently, companies with agreements signed before the first EWC Directive entered into force are exempted from EU rules on EWCs as those provided for under Recast Directive 2009/38/EC. Stakeholders were asked if they were in favour of ending such exemptions. There is a clear discrepancy in the distribution of responses between employee representatives and management representatives. Most of the responding management representatives either don't know (43.4% - 23 out of 53) or are not in favour of ending these exemptions (43.4% - 23 out of 53). Conversely, employee representatives are overwhelmingly in favour of ending these exemptions (81.7% - 147 out of 180).

Figure 58. Q29, Respondents in favour of ending exemptions from EU rules on EWC (percentage) – N= 233



Some of the respondents provided explanations to support their answers.

Summary of answers from Management: Information and consultation bodies before the first EWC Directive came into effect (i.e., before 22 September 1996) – 9 answers received:

- Agreements in place for a long time have proved to work very well in practice (relationships and processes), there is therefore no reason to remove exemptions.

- Renegotiating a new agreement based on the new rules would entail considerable additional effort and costs without resulting in any greater benefit for the company or EWC – it's a solution looking for problem.

Summary of answers from Management: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 8 answers received:

- A negotiated EWC agreement should only change when the company and EWC representatives agree to renegotiate it, rather than being forced into doing it.
- Making uniform rules regarding EWC applying to all European companies above given threshold of employees can be good. EWCs should have equal rights for reasons of competitiveness.

Summary of answers from Employees: Information and consultation bodies Before the first EWC Directive came into effect (i.e., before 22 September 1996) – 14 answers received:

- Each EWC should benefit from the rights and improved definitions of the improved Directive. Trust in European legislation is undermined if different rules apply due to the date of signature of the EWC agreement. However, it is important that the contract does not require renegotiation. The provisions most favourable to employees should apply *ex officio*.
- Just from an equal footing perspective: removing exemptions and having a uniform legal framework would ensure all EWCs would be able to function in the same way.

Summary of answers from Employees: EWCs Under the 1994 or 2009 EWC Directives (i.e., after 22 September 1996) – 58 answers received: observations listed in order of recurrence.

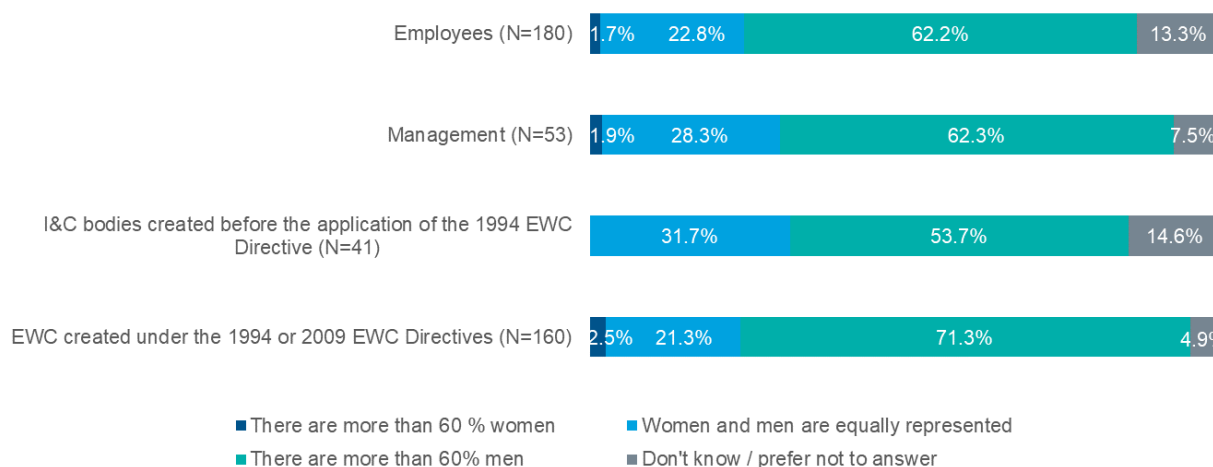
- Equal treatment for all EWCs with a uniform legal framework: only one set of rules regardless of the date of agreement. There is no point maintaining exemptions where the only aim for management is to maintain diminished rights for EWCs.
- The issue is that these agreements can't be enforced. If, in the opinion of the EWC, they work then there is no reason they can't remain in place but if there is doubt the EWC should be allowed to renegotiate under the currently directive. This should apply any time the directive is significantly changed.

5.1.2.9 Gender balance

Survey respondents were asked to estimate the share of men and women represented in their respective EWC (or I&C body). Among both employee representatives and management representatives, 62.2% of employee representatives (112 out of 180) and 62.3% of management representatives (33 out of 53) indicated that more than 60% of representatives in their EWC are men, and only a very small number of respondents (only 2 employee representatives and 1 management representative) indicated that there more than 60% of representatives in their EWC are women. However, management representatives indicated slightly more frequently than employee representatives that men and women are equally represented (27.5% vs. 22.2%; 15 respondents out of 53 vs. 40 respondents out of 180).

Interestingly, respondents on behalf of EWCs created under the 1994 or 2009 Directives indicated much more frequently indicated that there are more than 60% of men represented in their respective EWC compared to respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive (73% vs. 53.8%; 117 respondents out of 160 vs. 22 respondents out of 41).

Figure 59. Q30, Gender balance in EWC (percentage) – N= 233



Respondents provided explanations supporting their answers, as summarised below.

Summary of answers from management representatives – 16 answers received: all relate to either national nomination systems or the gender composition of the sectors concerned.

- This depends on national nomination systems and is not dependent on company management. In some EU countries there are more women acting as representatives.
- The company is in the IT and Communication sector and most of the employees are men.
- In sectors such as manufacturing, construction, and IT, companies employ more men than women. The gender composition of the EWC is rather proportionate to the share of men in these company.
- Only possible if there is appetite among local women employee representatives to take additional responsibility at EU level.

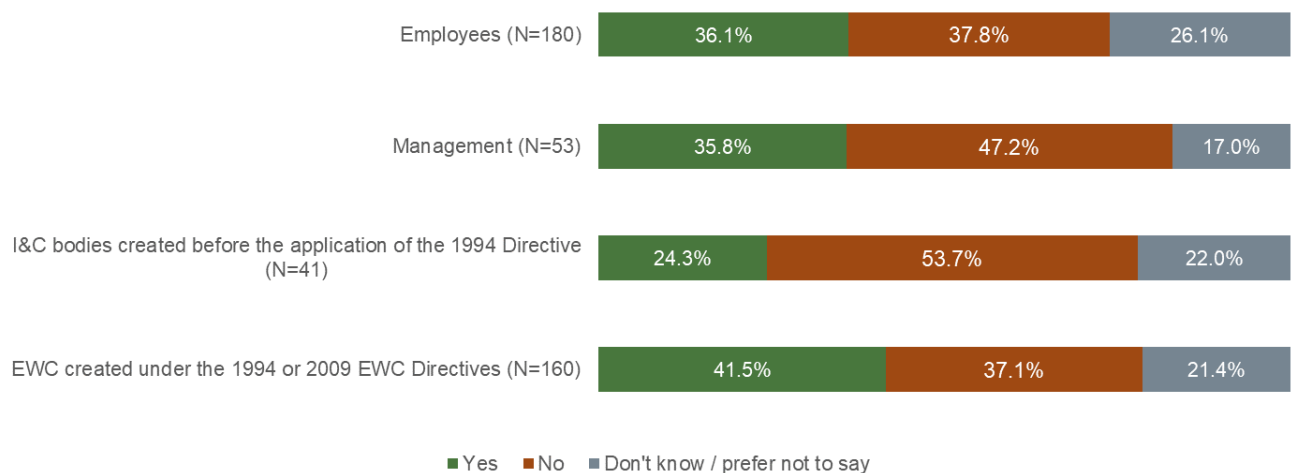
Summary of answers from employee representatives – 44 answers received: recurrent observations made similar as those of management.

- The composition of the EWC reflects the composition of the company's workforce, and it should stay that way. In some sectors it's under 25% of female employees.
- Nominations should only be made on the basis of competence and qualification.
- This depends on national systems of nomination. So, gender quotas are not helpful.
- There are currently not enough women who want to get involved in the works council or EWC.
- It is difficult to get EWC members. Some countries have no candidates at all. It would be nice already if the EWC or any local Workers Council were made more attractive to participate in.
- Some EWCs already have more women on select committees than men, they are overrepresented already.

Stakeholders were additionally asked if they were in favour of amending the EWC Directive to require that EWC and their select committee are represented by at least 40%

men and women each. Overall, respondents were more frequently against than in favour of this possible amendment. Management representatives were more frequently not in favour of such an amendment (47.2% - 25 out of 53) compared to employee representatives (37.8% - 65 out of 180). Interestingly, just over half of the respondents on behalf of I&C bodies created before the entry into force of the first EWC Directive were not in favour of this possible amendment (53.7%; 22 out of 41 respondents) compared to only 37.1% of respondents on behalf of EWCs created after the 1994 or 2009 Directives (59 out of 160 respondents).

Figure 60. Q31, Respondents in favour of amending EWC Directive on gender representation (percentage) – N= 233



Among the explanations provided by respondents to the questions, the following emerged:

Summary of answers from management representatives – 19 answers received: most common views listed below.

- It is not possible to realistically achieve gender balanced representation in sectors where the vast majority of employees are men. Such measures and quotas in the Directive would be too coercive and run counter to the reality of the sector.
- Select committees are chosen by their peers based who they think will best represent them. Injecting such a mandate would risk undermining these free and fair decisions.
- It is hard to get EWC delegates already and would be even harder with gender requirements.
- This shall be a recommendation but not a regulation. It could be seen as positive discrimination.
- Such obligations to ensure gender balanced representation at management levels already exist on the employer side and should remain company-driven rather than feature as a rule in the Directive. It would be fair to mirror such obligation with employee representative bodies. Employers, employees and Social Partners should all be aligned and establish similar rules at all levels.

Summary of answers from employee representatives – 51 answers received: most common views listed below.

- The issue of quota is sensitive subject, and it is important to be careful with positive discrimination, especially because the nominated representatives could then be unsuitable or not sufficiently qualified. Employees nominate representatives based

on the experience of the candidates only. Placing gender above wisdom, experience or other valuable skills creates false picture and distorts decision-making.

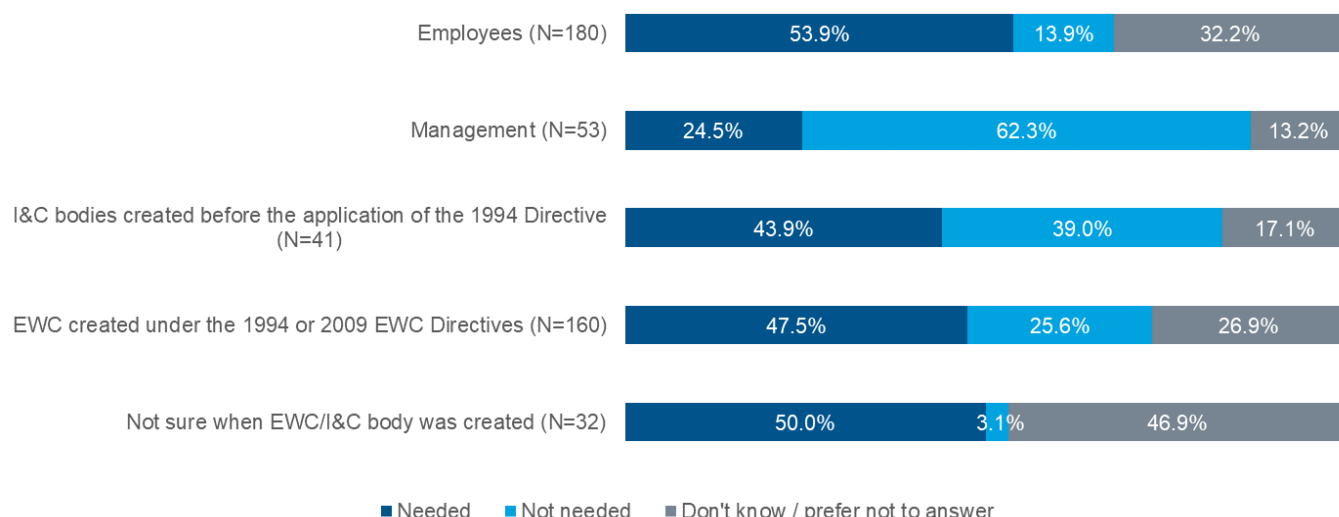
- This cannot be implemented because it would have to interfere with the delegation of the individual countries. In theory, union delegations are mainly composed of men. So, imposing such a quota is not realistic.
- Difficult when there's only one national representative on the EWC in sectors where most employees are men.
- Representation should correspond to the will of the represented employees and not artificial or arbitrary quotas.

5.1.2.10 Need for interpretative guidance

Finally, the survey asked respondents if there is a need for the European Commission to issue non-legally binding interpretative guidance on the establishment and operation of the EWC. The majority of employee representatives (53.9% - 97 out of 180) confirmed the need for such guidance to be issued by the European Commission, whereas the majority of management representatives (62.3% - 33 out of 53) believed such guidance is not needed.

For this survey question, the views of the 32 respondents who were unsure as to when or under which EU regulatory framework their EWC or I&C body was created are worth considering. Indeed, 50% among them (16 out of 32 respondents) believed that interpretative guidance from the European Commission is needed compared to 39% of respondents representing an I&C body created before the entry into force of the first EWC Directive (16 out of 41 respondents) and only 25.6% of respondents representing EWCs created under the 1994 or 2009 Directives (41 out of 160 respondents).

Figure 61. Q32, Respondents' views on the need for interpretative guidance by the European Commission on establishment and operation of the EWC (percentage) – N= 233



When asked to explain their answers in writing, respondents shared the following:

Summary of answers from management representatives – 13 answers received: mixed views overall; support from the majority but with around a third warning against interpretative guidance being seen as binding by EWCs and employee representatives.

- While the EWC works well already, some interpretative guidelines would give more clarity and further improve functioning and learn from best practice without the need to renegotiate the EWC agreement.
- The risk is that the guidance is stricter than what was agreed with the EWC already, and that delegates see this guidance as binding, which may interfere with already well-functioning processes and lead to more unfavourable EWC agreements for the company in the future.
- Having an interpretative guidance by the European Commission could be the most appropriate way forward. Current legal framework has proven to be effective, though there are areas that could be clarified. A new Directive will not guarantee that social dialogue at the European level is improved. EWCs are bodies for consultation and dialogue. It should all be about cooperation and not fostering confrontational behaviours.

Summary of Answers from employee representatives – 44 answers received: support from over three-quarters of respondents.

- Interpretative guidelines would give clarity on the intent of the legislation, but not legally binding guidelines would result in no change regarding correct implementation of rules by the companies. These interpretative guidelines will just be ignored by management.
- Guidelines with good practice could be used as basis for the renegotiation of EWC agreements, especially regarding time allocations, meetings and resources.
- The more information the better, even in the form of interpretative guidelines. It would at least give management some clearer direction and better understanding to engage on matters.
- If these interpretation guidelines are largely unambiguous from a legal point of view, many disputes could be more easily avoided.
- Interpretative guidance is not enough and won't result in the Commission reminding the Member States of their responsibility in the enforcement of EU law, especially by training people in legal professions accordingly.
- Caveat: legally non-binding interpretation guidelines could lead to even more legal uncertainty.

5.1.2.11 Any other points

Respondents were given the possibility to elaborate on any further elements that the survey questionnaire may have overlooked. The main points have been summarised below.

Summary of answers from management representatives – 13 answers received: points listed in order of the most relevant and recurrent.

- Consider what is ultimately good both for a company and its employees. EWCs should be fora for dialogue, not confrontation. Some of the provisions in the Directive could be more precisely defined, but such precision should be metric based. Just adding additional new content may create ambiguity and greater

uncertainty which would undermine EU competitiveness. This should be avoided in a globalised world.

- The proposed binding rules would penalise companies that have already well-functioning EWCs and would hurt the competitiveness of European companies more widely. It is better to leave the social partners within companies to find balanced solutions based on negotiations.
- Giving more rights to the EWCs would mean stripping national councils of some of their rights. It is of crucial importance not to mix EWC and national level consultation/decision-making processes and seriously increase legal uncertainty by doing so.
- Representation from Central and Eastern countries (Romania, Lithuania, Slovenia in our case) in EWCs is more challenging than with Western European countries.

Summary of answers from employee representatives – 44 answers received: points listed in order of the most relevant and recurrent.

- The fact that the implementation of EU directives is so much weaker in some EU countries than in others makes it too easy for non-European companies to circumvent them (resorting to 'forum shopping'). This ultimately harms the European economy and distorts competition in favour of non-European companies. Omission of European countries not inside the EU/EEA is a false restraint. It leaves a loophole which means that management can circumvent I&C requirements around transnational issues.
- There is no effective right of co-determination. EWCs not always taken seriously and resources often lacking.
- Tightening the legislation would improve the competitive position of groups with a weaker discussion culture. For the decent groups, the tightening would not bring any changes.
- On EWC resourcing, a requirement for the publication of an annual financial report, for example, could be useful in order to frame the use of the allocated funds, while respecting confidentiality to avoid revealing the subjects of expertise to the managers of the group. Very important to ensure that all elected representatives are giving paid training, so they understand what the EWC is and what a beneficial tool it is.
- The proposals lack a better description of the use of experts in different fields, which would provide a basis for the necessary discussion within the EWC agreement.
- The participation right of the expert selected by the EWC should not be limited solely to union representatives. Ideally, the chosen expert should have the opportunity to attend meetings independently, and if required, along with a union representative. Additionally, establishing enforceable additional meetings and improving communication channels would also be beneficial.
- It is very important for proposals to ensure proper enforcement of EWC rights, also looking into pressures from management on nominations etc.

5.2 Stakeholder interviews

5.2.1 Overview of the stakeholder interviews conducted

Semi-structured stakeholder interviews complemented the desk research and existing evidence by gathering hands-on views and experiences on the functioning of EWCs based on the main problem areas identified for the assessment. The table below provides an overview of the targets selected for the interviews, as well as the sampling method.

Table 8. Semi-structured interviews: targeted stakeholders and sampling methods used

Stakeholder category	Type and number of stakeholders targeted	Sampling / selection method	Interviews completed
Multinational companies (MNCs) with an established EWC*	15 management board representatives	Random selection of MNCs with an EWC (per type of EWC) from ETUI EWC database, took out all those that have been consulted in recent previous studies and those that had on-going cases in court. The aim was to reach out to those hard to reach.	12 EWC type: 7 Recast EWCs, 3 Article 13 EWCs**, 2 Voluntary agreements on information and consultation
	15 EWC employee representatives		12 EWC law (MNC HQ, if different): 5 DE law (1 US HQ), 3 FR law, 1 BE law (US HQ), 1 IE law (CH HQ), 1 NL law (US HQ), 1 SE law
EU and national social partners	12 European Trade Union Federations (ETUFs) and European employers' associations	Self-selection – identification of relevant contacts with the assistance of DG EMPL	7 Employers' assoc.: Ceemet, ECEG, EuroCommerce ETUFs: EFBWW, EFFAT, IndustriAll UNI Europa
	8 national social partners – employers' associations and trade unions		11 Employers' assoc.: BDA (DE), Confederation of Finnish industries (FI), MEDEF (FR), UIMM (FR), ENEL (IT), Association of Swedish Engineering Industries (SE) Trade unions: CFDT (FR), SIPTU (IE), FNV Formaat (NL), ILRY (FI), Unite the Union (UK)
Experts	20 legal experts or professionals in advisory services, including academic experts	Contacts from previous research. Identification of relevant contacts with the assistance of DG EMPL	8 legal experts working with management representatives
			8 legal experts working with EWC employee representatives
			2 academic experts
National authorities (i.e., ministries or ministerial agencies)	Representatives of national authorities in 11 Member States	Member States selected based on: <ul style="list-style-type: none"> high number of EWCs headquartered in them geographical balance 	10 BE, CZ, DE, ES, FI, FR, IE, NL, PL, SE

*Unless specified otherwise, in this section, 'EWCs' refer to pre-Directive voluntary information and consultation (I&C) bodies established before the 1994 EWC Directive and EWCs established under the 1994 and 2009 Directives.

** Recast Directive EWCs: EWCs established under Recast Directive 2009/38/EC; Article 13 EWCs: EWCs established under Directive 94/45/EC.

The verbatim records of the interviews were summarised according to their relevance to the questions at hand; in many cases, they were reassembled together into a set of common observations and views.

5.2.2 Summary of findings

5.2.2.1 Multinational companies with an established EWC

Scope of application – ending of exemptions under Article 14

EWC representatives:

- Unanimous support for abolishing Article 14 exemptions, with the option to renegotiate or review existing agreements to comply with new rules within two years of their implementation.
- Support for the possibility of applying subsidiary requirements if the negotiating parties fail to reach an agreement after two years, ensuring the continuity of the EWC. However, it is noted that if negotiations do not yield any solutions, further issues may arise, such as delay of the first EWC meeting after the end of negotiations in the absence of a provisions on when the first meeting should be held.
- Some EWCs raised specific concerns: e.g., if termination occurs without a replacement, there may be a period without an EWC; management might attempt to impede progress on renegotiations in order to reduce costs.

Management representatives:

- Overall, management representatives viewed ending Article 14 exemptions, accompanied by a two-year timeframe for renegotiating the agreement or applying subsidiary requirements in case of failure, as unnecessary. They argued that agreements are often reviewed anyway by both parties and in line with corporate developments.
- A recurrent view is that ending Article 14 exemptions would mean rigid renegotiation procedures; it is important that both parties can renegotiate agreements of their own accord in flexible manner when the time is deemed right to do so.

Setting up of an SNB and EWC

Timeframes and resources

EWC representatives:

- Some interviewees raised concerns about the implications of strict timeframes, i.e., establishing an SNB within six months and concluding an EWC agreement within 18 months. There are doubts as to whether management can react quickly enough and whether employee representatives can allocate sufficient time for negotiations. A need for flexibility was highlighted taking also into account that the timeframe of negotiations depends strongly on the size of the undertaking, in particular the number of countries represented, and to what extent employee representatives know each other and are familiar with the EWC legislation.
- Despite such concerns, generally well-functioning EWCs tended to agree that 18 months should be a maximum for negotiations. One EWC argued that the timeframe could be even shorter for smaller multinationals: for instance, a 12-month duration would be reasonable, as there is no need to extend the negotiation over 18 months and, of course, no need to have a three-year timeframe.
- EWCs interviewed highlighted the importance of access to training for SNBs and the need for support from experts and trade unions to enhance negotiation outcomes. It was argued by some EWC representatives that the lack of legal training prior to the beginning of negotiations puts the SNB at a disadvantage as management has access to its own legal department. In addition, employee

representatives highlighted that the type of training required should be a choice left to the SNB members. Only the budget for training should be subject to agreement with management.

- Management typically opposes the inclusion of external experts in SNB negotiations on behalf of employees, as noted by EWCs. This is perceived as resulting in an imbalance in negotiations, with management having legal representation while employees do not.

Management representatives:

- Depending on their experience, management representatives have different views of negotiation timeframes. Some viewed the current timeframes as appropriate; others argued that it should be possible to conclude an agreement within 12 months, also because extended negotiations mean higher costs to management.
- Some management representatives see quality as more important than speed. Important to take time for all parties to have a common understanding of what a forum such as the EWC is meant to achieve, i.e., to facilitate dialogue, improve understanding of international challenges in a competitive global environment and global company strategy – this echoed by around half of management who dwelt on this point.
- In companies which have never set up a SNB, having a period of 18 months to conclude negotiations seems to be very demanding, given the complexity of negotiations aimed at setting up a European Works Council. There could be a gradation according to the size of the company: for example, for a company established in 3 countries, 18 months might be appropriate, for more than 10 countries, it could be 24 months, and so on.
- From the variety of experiences shared by the management representatives, companies with long-standing EWCs tend to navigate renegotiations of agreements more smoothly, aligning updates with regulatory changes. However, less experienced companies, particularly smaller or newly established ones, may benefit from adopting best practices observed in the approaches of companies with long-standing EWCs. Sharing these practices could assist SNBs in establishing effective processes, especially in situations where there might be a lack of understanding on how to handle specific scenarios.

Gender balance

EWC representatives:

- Gender balance is supported in principle and many EWCs pay attention already to achieve gender balanced EWCs. Yet, there were warnings about the practicality of gender quotas given national nomination systems and the limited number of representatives some countries have.
- EWC membership should aim to be representative of the gender composition of a company's workforce.
- A quota system would be a hindrance to ensuring meaningful social dialogue.

Management representatives:

- Several companies have reported having few female workers in their sector of activity (e.g., less than 25%). While these companies strive to improve gender balance in the workforce, implementing a legal quota for gender balance in EWC representation would not be appropriate. Instead, quotas should reflect the gender composition of the workforce in individual companies.

- A common observation is that national nomination systems vary widely. Introducing a gender balance quota could potentially disrupt these systems and established procedures.

Consultation framework

Definition of transnational matters

EWC representatives:

- EWCs overall welcomed a revision to the definition of transnational matters, but expressed different views as to how it should be revised. Some EWCs were in favour of more specific wording and examples to clarify the definition of transnationality while some others pointed out that further clarifications of the definition with concrete examples risk narrowing down EWCs scope of action. EWCs' views also varied regarding a too broad definition of transnationality which risks again resulting in issues of interpretation. Some proposed to adapt the definition to the specific company context as some companies work with a central international management approach while others have a more local management approach.
- EWCs also noted that most frequently decisions of restructuring (job losses) were discussed rather than jobs creation. However, the latter may also have impacts on the production dynamics and working conditions of employees in other countries.
- Discrepancy in interpretation between the management board and the EWC regarding transnational matters were mentioned and thus the introduction of a provision requiring management to justify when matters are not considered transnational was considered highly relevant by most EWCs.
- One EWC pointed out that training for EWCs on transnationality may be necessary to avoid differences in interpretation and enable effective advocacy by union officials on behalf of their members.

Management representatives:

- Management representatives unanimously believed that there is no need to revise and broaden the definition of transnationality and provide various reasons for this.
- Broadening the definition could lead to increased interference of EWC with the national information and consultation procedures. Additionally, it may raise the likelihood of having to include EWC in discussions that management deems confidential.
- Broadening the definition risks centralising problems that could be resolved more effectively at a smaller scale or locally.
- There are inherent difficulties in further specifying a definition that would reconcile different perspectives on what constitutes transnational matters. There would therefore be less room for manoeuvre in establishing a successful social dialogue.

Procedural and material arrangements

EWC representatives:

- EWCs all pointed out that there is room to improve the effectiveness of information and consultation procedures. One EWC mentioned that the current practice consists of two hours of information sharing by management once a year but without discussion. Another EWC echoed this view, explaining that while information provision is satisfactory, no consultation then follows.
- Overall, EWCs strongly supported the option that consultation should take place prior to a decision being taken by management and the option of requiring management to provide a reasoned response to EWCs opinions following

consultation. The latter was seen as crucial for achieving a high level of transparency and fostering a desirable corporate culture based on trust and collaboration between management and the EWC. Yet, some EWCs also considered that this has practical implications as it requires a higher time involvement of EWC steering committee members.

- The option of requiring management to take into account the EWCs' opinions was perceived as a positive step which could improve the quality of the exchange with management, as well as enhance the EWCs' work. Yet, the concept of 'taking into account' was perceived as unclear and if not further clarified could lead to unintended outcomes. Several interviewees confirmed that, in practice, a dialogue exists, and EWCs' opinions are taken into account, albeit perhaps in a less formalised manner. Others highlighted that EWCs lack of effective means to ensure that management complies with EWCs' information and consultation rights under the Directive. Litigation is considered costly and time-consuming, while the penalties for non-compliance are not seen as sufficiently dissuasive.
- The need for timeliness of information was also highlighted, with a request for more frequent meetings, encompassing both ordinary and post-meeting sessions.
- The importance of providing EWCs with training and support from trade unions at the national and European levels was highlighted.
- The right to receive free training and access to paid external expertise was supported overall. Some EWC representatives argued for the right to receive free training and access to paid external expertise, specifically EU trade union experts, to handle sensitive and complex issues. Some interviewees highlighted disagreements between the EWC and management on the choice of free training. For example, one interviewee highlighted that management refused proposals made by the EWC members to obtain free training from external experts to effectively carry out their duties, without providing any explanation. Some interviewees also highlighted lengthy negotiation processes about trainings (costs and type of training). This in turn leads them to consider that an annual training budget for an EWC could be a better option.

Management representatives:

- Management representatives believed that the current procedures enable employee representatives to gain a much broader understanding of a multinational company's strategy in Europe and of the corporate situation in other countries.
- The current procedures foster collaboration between both parties and for the interests of the workforce to be better integrated into decision-making. The collaborative approach to finding solutions is constructive and appreciated by management.
- Most management representatives pointed out that consultations with the EWC prior to a decision being made were already happening in practice. A small number of companies stressed that consultations taking place prior to a decision being made by management risk putting publicly traded European companies at a disadvantage, and do not necessarily lead to more acceptance of management's plans among employee representatives.
- Some companies highlighted that requiring management to provide a reasoned response on EWCs' opinions makes sense and is already happening in practice. However, all fully rejected the requirement for management to take EWCs' opinion into account as this would be tantamount to co-determination whereas the EWC is only meant to have an advisory capacity. The proposed formulation of 'taking the EWC opinion into account' was considered unclear leading to conflictual situations. In addition, the formalised requirement of providing a reply to the EWC's opinion was seen as even further time consuming, leading to a lengthy process.

- Some companies recognised that running costs borne by the employer (training, meetings, interpretation etc.) are quite high but that they are nonetheless acceptable for ensuring that the EWC can perform its duties (e.g., a permanent expert is useful in maintaining social dialogue).
- On training, management representatives overall explained that the company usually accepts training proposals made by the EWCs and covers the associated costs in most cases.
- On access to external expertise management representatives were overall positive about trade union expertise provided. Management representatives were reserved about other types of external expertise. In some cases, it was viewed that the involvement of external expertise created more conflictual situations.
- Some companies have explained that some training courses are already provided free of charge, e.g., when the EWC Select Committee is renewed, and then further training as needed depending on the characteristics of the Select Committee.
- Only half of the management representatives interviewed gave annual running cost figures. These range between EUR 50,000 and EUR 1,000,000 (see Table 9). However, this information gathered on running costs remains approximative and not verifiable through official documentation.

Table 9. Information provided on EWC operational costs

Company/ EWC Nr	Agreement type	Answer on operational costs
1	Recast Directive NL law	On average, the operating cost is between EUR 70,000 and EUR 90,000 a year, including the costs of training, plenary, extraordinary and bureau meetings, as well as an expert report presented at the preparatory meeting (translated into all the languages of the 'group' chapter). The cost takes into account the time spent by the expert for the dedicated presentation. It does not include staff costs or travel and hotel expenses (paid by the local level). In addition, there is a 50,000 EUR budget for expertise annually.
2	Recast Directive DE law	Approximately EUR 50,000
3	Recast Directive SE law	Between EUR 50,000 and EUR 70,000 annually.
4	Recast Directive FR law	The cost for the annual meeting is EUR 70,000 on average. However, this does not take into account the time spent by the HR team. For the years where there was a second meeting due to exceptional circumstances, then the budget can reach EUR 170,000.
5	Voluntary Agreement FR Law	All the costs are covered (expertise, meetings, travel). When discounting remuneration for time spent in meetings, travel and meeting preparation, the annual budget is at least EUR 450,000, barring a crisis situation requiring additional meetings.
6	Art 6 Agreement (Old Directive) FR law	The annual cost varies between EUR 900,000 and EUR 1,000,000. This budget covers all costs except travel expenses, which are borne by the local entities of each member. The biggest item is interpretation and translation, since we have 14 languages when the committee meets in plenary session.
7	Recast Directive DE law	EWC annual running costs come up to EUR 105,000. This includes about EUR 15,000 for electronic voting, about EUR 70,000 for legal advice and EUR 10,000 each for the 2 annual meetings of the SNB.

Confidentiality and non-disclosure

EWC representatives:

- Overall, EWC representatives supported the options proposed for the revision of confidentiality and non-disclosure provisions. Confidentiality is highlighted as an important issue, suggesting the need to require management to justify why certain information is deemed confidential.
- Several EWC representatives mentioned increased difficulties with confidentiality in recent years and emphasised the importance of granting EWCs the means to challenge the use of confidentiality and seek explanations from management for transparency.
- The possibility of restricting companies' ability to apply confidentiality in accordance with national law and objectively defined criteria was broadly supported, even though some interviewees pointed out that such criteria are yet to be objectively defined and acknowledged the variations in national laws concerning confidentiality that EWCs may not be fully aware of.
- Regarding the release of EWC members from confidentiality obligations in relation to national/local employee representatives, the interviewees overall believed that this would improve transparency. It would also create a level playing field as in some Member States works council members can already exchange with local employee representatives. EWC members are usually also members of their national company works councils and the issues discussed in the EWC are similar. It was also suggested by several interviewees that awareness and training should be provided to both EWC members and local committees to make sure such matters are handled appropriately.
- Requiring central management to provide EWC members with information about the duration of confidentiality requirements was seen as improving transparency and helpful in avoiding potential conflicts.

Management representatives:

- Overall, management representatives were not in favour of the proposed options to revise confidentiality and non-disclosure arrangements because they associated them with a potential loss of control over which information gets communicated and to whom. The most recurrent issue raised relates to the risk of information leaks.
- Some companies mentioned that the option relating to the limitation of the possibility for companies to apply confidentiality in accordance with national law and objectively defined criteria is already applied in practice. Others argued that confidentiality is and should remain defined on an individual company's terms under an EWC agreement.
- Most companies pointed out that removing the obligation for EWCs to remain confidential towards national or local works council is not welcomed as it would increase the risk of information leakages and insider trading, especially in publicly traded companies.
- Some management representatives supported the idea that a company should justify the reasons for confidentiality, but it should be up to the company to decide what might actually harm its legitimate interests. It makes sense to require management to specify why and for how long information remains confidential.
- Management representatives unanimously believed that making the non-disclosure of information to the EWC subject to prior administrative or judicial authorisation is a non-sense. More specifically, it would add complexity to the procedures and slow down decision-making.
- Several companies mentioned that revising confidentiality rules is not needed because EWC members already receive information on corporate strategy, and

data on key performance indicators e.g., profit margins and activity rates, which are then discussed with local employee representatives. Access to information often seen as sensitive such as profit margin rates is helpful in justifying management decisions to employee representatives, and it ensures a constructive social dialogue.

Access to justice, sanctions and remedies

EWC representatives:

- Unanimous support for the clarification of requirements on the part of Member States to ensure EWCs and SNBs have access to courts in the Directive would enhance compliance by management.
- More clarity about coverage of legal costs was also unanimously supported by EWC representatives.
- The introduction of financial penalties linked to company turnover is seen by EWC representatives as increasing the pressure on management to comply overall. However, some EWC representatives pointed out that such sanctions could hurt companies economically and have negative repercussions on employees.
- Finally, the proposal of a right to an injunction, allowing the temporary suspension of management decisions until appropriate consultation with the EWC has occurred would enforce closer collaboration between management and the EWC according to many of the EWC representatives interviewed.

Management representatives:

- While the management representatives of companies with an EWC operating under French law noted that their EWCs and SNBs already had access to justice, those from companies with EWCs operating under the laws of other Member States tended to believe that proposed amendments expressly stating that the companies are to cover all legal costs would lead to ambiguities under national frameworks and might lead to increased disputes and court cases, rather than fostering cooperative relationships.
- In the same way, management representatives overall believed that the proposed financial sanctions (e.g., based on company turnover) go against the principle of social dialogue and can potentially create a conflictual atmosphere. The proposed financial sanctions are also seen to be disproportionate concerning the issues at stake. Some interviewees added that it is not in the interest of management boards not to inform and consult with EWCs and therefore saw such sanctions as misguided.
- The proposed financial penalties styled on the GDPR were not well regarded overall. There was the recurrent view that any enforceable financial penalties for non-compliance based on company's global turnover are counterproductive as they would eventually penalise employees too.
- Overall, management representatives are against the introduction of right of injunction to temporarily suspend implementation of management decisions until the information and consultation procedure has appropriately taken place. The common reasons given are that such injunctions would put companies based in Europe at a competitive disadvantage and would run counter to the principles of social dialogue, which would become coercive rather than collaborative, and they would increase the likelihood of legal disputes. Furthermore, the concept of injunction was seen as unclear, as management representatives considered that it was so far not used in many of the EU Member States national legal frameworks. The situation could end up in blockage of decisions due to lengthy court procedures without actually generating more or real dialogue.

5.2.2.2 EU and national social partners

Scope of application

Ending exemptions under Article 14

European employers' associations:

- Exemptions under Article 14 should not be abolished, particularly in the chemical industry where such agreements have a long history.
- These exemptions were introduced for valid reasons and ending them would undermine the established forms of cooperation and the good work done over the last 30 years.
- The existing agreements are seen as tailored and effective for the companies concerned, and a one-size-fits-all approach at the European level is deemed unsuitable. If an agreement is not functioning well, renegotiation is a better solution than removing the exemptions altogether.

National employers' associations:

- A recurrent observation was that longstanding agreements that have been successfully implemented for many years should not be forced to change if both parties involved are satisfied. Ending Article 14 exemptions can therefore be damaging to well-functioning agreements.
- Overall, the preservation of existing structures and respecting the collaboration of established bodies is favoured, and the autonomy of social partners in negotiating agreements should be respected.
- Some interviewees highlighted the voluntary nature of agreements whereby, depending on the content of the agreement, employers and employee representatives can renew agreements of their own accord or simply discontinue it if either party is dissatisfied with its functioning.
- National employers' associations prioritise the autonomy of social partners and argue against external imposition of changes on agreements that have proven effective and adapted to company needs.

ETUFs:

- There is support for ending Article 14 exemptions, seeing them as unnecessary variations that hinder harmonisation in the functioning of EWCs. As a general rule, significant structural changes to a multinational company should warrant the renegotiation of EWC agreements in alignment with the current Recast Directive provisions.
- ETUFs commonly expressed the view that ending Article 14 exemptions would necessitate some renegotiation of existing agreements. They believed that such renegotiations should not pose a challenge for companies accustomed to adjusting and updating agreements. They highlighted however that this should be the choice of the EWCs concerned. Their view is that with or without renegotiation of the agreements, if exemptions were removed, the Directive would become applicable to all agreements in place.
- It is important to integrate the new requirements into existing agreements to ensure compliance and prevent minimalistic interpretations by management. It was highlighted that revision clauses are preferable (to revise only the specific definitions) compared to an option where the entire agreement is renegotiated which could end in disagreement after the defined timeline leading to an end of the existing agreement.
- There is a need to apply the current rights and duties to all existing agreements while considering the workload involved in aligning pre-Directive agreements with

the Directive: renegotiation is not necessary for every aspect, as new elements can be incorporated without reopening the entire agreement.

National trade unions:

- In France, the CFDT strongly advocated ending Article 14 exemptions and including pre-directive agreements within the scope of the 2009 Recast Directive. They highlighted instances where management fails to renegotiate outdated agreements despite significant structural changes, resulting in a lack of alignment with the Recast Directive's provisions.
- Concerns were raised regarding the possibility that voluntary agreements could be discontinued without being replaced by EWC agreements and the loss of employee representation at the European level. Reluctance from management to engage in renegotiation discussions prolongs debates and hinders the resolution of the issue of outdated and unworkable agreements, which will also fail to take account of new trends impacting working conditions, such as digitalisation.
- In the Netherlands, SBI Formaat suggested that the continued use of older agreements in some cases is not solely determined by their age but rather the strength of the relationship and adherence to certain standards, such as the duty of the management to explain what they do or do not consider a transnational matter. They argued against allowing Article 14 exemptions, emphasising the importance of finding solutions to ensure the smooth implementation of the latest version of the directive in all agreements.

Extending the scope of the Directive to contractually linked businesses

European employers' associations:

- In the chemical industry, there are no cases of franchising, so extending the scope to contractually linked businesses is not relevant.
- From a corporate governance perspective, one company cannot directly influence another structurally independent company. This applies to franchise agreements, where the relationship is based on negotiations between the company and the franchiser.
- The interviewees commonly expressed the view that requiring structurally independent companies linked by contract (e.g., franchise agreements) to follow EWC rules is problematic. This is because of the variety of arrangements existing between contractually linked businesses, and their respective degree of independence in terms of governing working conditions and other matters.
- As an example, it would be challenging to ensure that an EWC agreement applying in a parent company would automatically extend to franchise company.
- The interviewees often expressed the concern that extending EWC provisions to contractually linked businesses, such as franchises, may be challenging or impractical from a corporate governance perspective. In addition, it was questioned whether employees actually share a common interest to be represented across Europe via the franchisor.

National employers' associations:

- According to the German employers' association (BDA), the franchise model is more of a licensee model, which does not necessarily mean that there is a connection between several companies linked to the franchisor and not necessarily across borders. From the perspective of the works constitution, this does not necessarily have to entail a connection between franchisee companies and the franchisor.

ETUFs:

- EFFAT strongly supported extending the scope of the Directive to businesses not linked by ownership, such as franchises, emphasising that US-based corporations in fast-food franchises exert significant influence on working conditions, wages, and trade union rights. Ensuring that the Directive covers these companies is seen as crucial.
- There is the problem of companies falling below the EWC threshold due to the franchise model. This results in a lack of responsibility for information and consultation on transnational matters that affect franchised or contract-managed workers. Contract management and franchising in the hotel industry are specifically mentioned as areas where workers information and consultation rights as per EWC rules are denied information and consultation.
- In the construction sector, employment frameworks such as franchising and outsourcing (subcontracting) can have an impact on workers and should be covered by the Directive to ensure their rights are protected.
- IndustriALL and EFFAT also emphasised the need to address Joint Ventures where ownership is shared 50/50 and there is no clear dominant undertaking within the EWC framework. IndustriALL suggested explicitly incorporating joint ventures within the scope of EWC rules, particularly in instances where the creation of such a venture occurs during the merger of two large companies that already have an established EWC. . In such a case, it would be important to ensure that employees within the entire joint venture benefit from the existing EWC agreement in place from day one, especially if only one of the merging companies had an EWC in place. In the case of franchising, they argued that representation at the European level through the EWC of the controlling group would be beneficial for franchise employees.

National trade unions

- In France, the CFDT emphasised the importance of including all subsidiaries and franchises in the scope of the EWC agreement to ensure effective information and consultation processes. They recommended requesting a comprehensive list of all companies linked to the parent multinational company before negotiations begin. However, obtaining this information can be challenging due to the complex structures of fiscal, financial, and economic groups.
- Certain industries, such as hotel chains operating on franchising models, exert a high level of control through their established franchise agreements. However, many countries lack the necessary local or national structures to support the establishment of EWCs in such cases.
- A common observation among some of the trade unions interviewed is the need for a solid foundation at the local and national levels to integrate EWCs effectively into existing consultation frameworks. Including management contracts and franchising in the scope of EWCs alone would not be sufficient without supportive structures at lower levels.
- Trade unions would see a need to include under the scope of EWC rules also covering subcontracting chains when a company exerts important powers over the subcontractor. This can be assimilated to management contracts or franchising. An example to illustrate this was the German automotive industry, where car manufacturers exercise significant control over tightly organised subcontracting chains: efforts made in Germany to organise separate subcontracting entities under a single union representation have been very challenging, raising questions as to the feasibility of fully implementing such a system.

Setting up of an SNB and EWC

Timeframes and resources

European employers' associations:

- The SNBs in the chemical industry should have freedom in choosing their legal advisors, without preselection by the legislator.
- While shortened timeframes could be envisaged in theory, some multinational companies in the hi-tech sector find there is legal uncertainty regarding the possibility of negotiating EWC establishment through virtual meetings. Clarifying the permissibility of virtual negotiations in revisions to the Directive would be good as it would reduce administrative burdens.
- The six-month timeframe for establishing SNBs may not be realistic given the complexities of multinational companies, and the 18-month deadline for reaching EWC agreements should be flexible to allow for a reasonable negotiation process.

National employers' associations:

- The flexibility of negotiation deadlines and the definition of 'reasonable' legal costs for SNBs are important considerations for national employers' associations. Balancing the need for resources with preventing excessive costs and potential abuses is crucial.
- The involvement of an EU-level trade union expert in establishing EWCs raises questions about added value and unnecessary costs among employer representatives overall.
- There is opposition to resorting to legal action in EWC negotiations, as finding negotiated solutions and compromises is seen as more important.
- The proposed changes in relation to the financing of SNBs to resort to legal action are seen as undermining trust and shifting towards increased judicialisation of social relations, which is not conducive to effective social dialogue, in the experience of national employers' associations.
- The process of establishing SNBs can be complex, particularly in finding employee representatives across different countries. Shortening the deadline for concluding EWC agreements to 18 months is seen as unnecessary, as negotiation requires time and consideration.

ETUFs:

- EFFAT highlighted the issue of unclear timelines, delays in establishment, and challenges in obtaining responses from countries. They stressed the need for better clarification of timetables and more efficient processes.
- EFBWW supported the 18-month timeframe for establishing an EWC and emphasised that companies should cover SNB costs. They advocated for trade union involvement to prioritise workers' interests.
- IndustriALL considered the three-year negotiation deadline reasonable but highlighted some concerns about delays in initiating the process, hence the proposal to specify the obligation to set up a first SNB meeting within the 6 months is seen as a key priority. In addition, a need for clarity regarding subsidiary requirements and the first meeting of the EWC under subsidiary requirements in case the negotiations failed was seen as another key amendment. They emphasised the importance of frequent and intense negotiations to ensure that the timeframe is not unnecessarily drawn at length. The three-year period allows for flexibility and gives the possibility to end earlier. They suggested to amend rules in that direction to ensure more frequent meetings during the three-year period after

the constitutive meeting is held within the first 6 months. They also highlighted the necessity for more EWCs despite existing obstacles.

National trade unions

- The CFDT in France emphasised the need for a trade union expert from a European federation, to guarantee the possibility of training new EWC members from the constitutive meeting onwards.
- In the Netherlands, SBI Formaat advocated clear deadlines for organising elections and holding the first committee meeting, as well as support from central management without interference in candidate selection. They stressed the importance of access to justice and the understanding that it is an expectation in Europe that if an employee has a right, they should also have access to justice, even though some managers may find it surprising or insulting to have to pay for legal representation against them.
- Reservations were expressed by nearly all interviewees about excessive pressure to complete the agreement within 18 months, but they broadly supported the provision of resources to cover legal costs for the SNB.

Gender balance

European employers' associations:

- Views were unanimous. While there is support for gender balance in EWC representation, there should not be any legal obligations on employers to ensure a gender balanced EWC. Such a responsibility should lie with employee representatives and trade unions rather than employers.
- However, the practical implications and challenges of implementing such a requirement were questioned, as it would involve replacing candidates to achieve gender balance, and potentially overlooking experience and competence.
- The suggestion was made to have a discussion on this matter with trade unions instead of burdening employers with this responsibility.

National employers' associations:

- The gender balance issue concerns the trade unions only and not so much management, according to most interviewees.
- Overall recognition that gender quotas would be a challenge given the different number of representatives appointed from different Member States.

ETUFs:

- Overall agreement that achieving gender balance in EWCs is challenging, and binding quotas would not be helpful. Instead, guidance and training should be provided on gender equality and measures against gender harassment.
- It was frequently mentioned that there are practical difficulties in achieving gender balance due to variations in national rules for nominating representatives and the need for agreement among different workers' representative bodies.
- Implementing a gender quota is not seen as effective in certain male or female dominated sectors, e.g., the construction sector.
- IndustriALL suggested considering gender representation when creating candidate lists or making nominations but cautioned against strict quotas. They recommended incorporating rules that reflect the gender balance in the overall workforce and pay more attention to gender balance at the nomination stage (if it is an election process), taking into account the national rules. One example given was the Belgian law requiring alternating men and women on candidate lists when both genders are available. They also recommended that equal importance should

be placed on balanced representation of different types of activities in the company in the EWC.

- Concerns were raised about excluding qualified individuals based on gender, especially in industries with predominantly male or female workforces.

National trade unions:

- The CFDT in France acknowledged the importance of gender balance in EWCs and recommended the inclusion of this as an aim in agreements as this would enhance women's access to positions of responsibility and professional development but warned against including gender quotas in the Directive.
- SBI Formaat in the Netherlands expressed scepticism about mandating gender quotas, especially as this would be impractical in certain male or female dominated sectors, questioning the feasibility of enforcement and suggesting making it an intention for everyone instead.

Consultation framework

Definition of transnational matters

European employers' associations:

- Concerns were unanimously expressed regarding amending the definition of transnational matters and the implications of mandatory prior consultation with EWCs. More specifically, the notion of indirect transnationality lacks clarity, leading to uncertainties and potential excessive consultations with EWCs.
- It was highlighted by a majority of interviewees that the combination of indirect transnationality and prior consultation would be problematic, as it could hinder decision-making and delay time-sensitive projects such as mergers and acquisitions (M&A).
- The European Chemical Employers Group (ECEG) warned against an expansion of the definition, as this would increase the frequency of consultation meetings due to a potential increase of matters that could qualify as transnational, and questioned the feasibility and cost of conducting consultations in person with interpreters, which could amount to significant expenses. In addition, an expansion of the definition would mean increased likelihood of EWCs aiming for co-determination, which they in turn argued could lead to delays on time-sensitive projects.
- The European employers' associations criticised the proposed changes by the European Parliament, considering them vague and potentially leading to disputes regarding transnational matters. They urge the European Commission to approach the issue from a practical standpoint rather than being influenced by ideological trade union perspectives.

National employers' associations

- The Confederation of Finnish Industries viewed the notion of indirect effects to be ambiguous and challenging to define, as almost any decision can indirectly impact another country. This lack of clarity raises concerns for employers.
- The BDA in Germany emphasised the need for clear boundaries to determine when EWCs should be informed and consulted, ensuring legal certainty. They argued that the broad interpretation of the transnational concept, particularly the notion of indirect effects, would be legally unclear and possibly result in excessive consultations with EWCs, hindering their effectiveness or making consultation less meaningful. The burden of proof being placed on management is not seen as something that would simplify that situation.

- In France, the MEDEF believed that the current definition of transnational character in the Directive is suitable and highlighted the successful agreements reached by companies such as Renault, Kering, and Korian. They cautioned against expanding the definition, as it could encroach upon national-level responsibilities and create legal uncertainty. They feared the notion of the burden of proof being reversed, with employers having to prove a decision is not transnational, would reduce companies' flexibility to negotiate solutions suitable for their business model.
- The Association of Swedish Engineering Industries emphasised the importance of historical practice and established negotiation practices between management and employees when it comes to defining transnational matters. They cautioned against significantly broadening the scope of the definition, as it may lead to conflicts and excessive information obligations. They expressed the concern that an extensive definition of transnationality may raise the risk of matters of a local nature not being addressed or negotiated at the suitable levels of management and employee representation.
- Overall, national employers' associations highlighted the need for clarity, legal certainty, and a practical approach in defining transnational matters.

ETUFs:

- Unanimous support for a broader definition of transnationality to ensure proper examination of company proposals and highlight the interconnectedness of supply chains. However, broadening the scope was rather perceived as including the current recitals of the Directive into its articles. In fact, this was not so much about broadening the Directive's scope, but rather to add clarity to the current definition.
- There is need for clarity and inclusion of relevant elements, such as the level of management and potential impact. IndustriALL pointed out that the definition of transnationality is a key issue, especially as consultation tends not to take place on actual transnational issues. They highlighted the challenges in proving transnational impact and the misunderstandings surrounding the notion of transnationality. This is especially notable when decisions seemingly affect only one country despite not being made in that specific country—a situation they consider a transnational matter. IndustriALL also highlighted the existence of outdated agreements, as well as the challenges associated with transnational restructuring plans. These plans, often global in nature, can affect only one EU country, posing significant challenges. They also highlighted the so-called 'salami tactic' (where similar decisions are implemented sequentially in different countries), a recurring management technique to prevent a situation from being considered as transnational.
- For most interviewees, the lack of clear definitions and thresholds for transnational impact creates confusion and hampers effective negotiations. There is a need for an updated framework, improved legislation, and better support for EWC members.
- Compliance with the Directive, transparency, and adherence to the framework are overall major concerns for effective negotiations and decision-making within EWCs.

National trade unions:

- In Ireland, the Services, Industrial, Professional and Technical Union (SIPTU) highlighted the challenges of defining 'confidential' and 'transnational' matters. Multinationals often evade responsibility by claiming decisions are not transnational falling only under individual company decisions under individual state jurisdictions. Multinational companies consider that each company in a state has its own business and central management would not dictate national decisions.

- In France, the CFDT emphasised the need to include the content of recital 16 within the directive itself, expanding the definition of transnationality to consider all potential impacts of importance for the European workforce regardless of the number of Member States involved.
- In the Netherlands, SBI Formaat raised concerns about the lack of clear definitions in the current directive and the denial of consultation in practice. They also highlighted the 'salami tactic' where similar measures are implemented sequentially in different countries. They argued that defining 'significant' impacts on jobs proves to be difficult, and transnational issues encompass not only job losses but also changes in working methods and job quality.

Procedural and material arrangements

European employers' associations:

- While timely and efficient consultation processes are important, there is the general view that measures that could slow down operations or obstruct decision-making need to be avoided.
- With the possible obligation for management to give a reasoned response, there is the view overall that could extend the consultation process quite significantly, especially if this response had to be in writing. For the European Chemical Employers Group (ECEG), the term 'reasoned response' may imply that lawyers would possibly need to be involved and this would impact on management's resources and capacity. A written response could slow down further and obstruct the operations within the undertaking.
- The proposed amendments to the consultation framework would not necessarily ensure that the interests of workers in different sectors and countries are adequately represented in the activities of EWCs, particularly in industries with unique or specific working conditions. That is because the current Directive allows for a lot of space for social partners to determine what social partnership would look like at company level.
- EWC consultations starting prior to the end of national consultation would lead to legal uncertainties with regards to different national regulations as pointed out by Ceemet. The proposed changes on the consultation framework increases risk of a clash between national consultation obligations and EU level, and it may then create tensions between EU representatives and those at national level.
- For the European Chemical Employers Group (ECEG), it would be good for the consultation framework to cover digital meetings, and for it to include provisions removing the necessity for translators by introducing an official language like e.g. English or official groups language just to facilitate it.
- Most interviewees highlighted that there would be a potentially negative impact to the consultation process in ending Article 14 exemptions, which could disrupt functioning agreements and necessitate renegotiation.

National employers' associations:

- Concerns were expressed that extending the definition of transnational matters will heighten the involvement of EWCs in the decision-making processes of multinational companies. This could elevate the risks of opposition to management decisions and potentially hindering the functioning of the company. It was also highlighted that EWCs might lack the capacity to engage more frequently in corporate decision-making if the definition of transnational matters were to be broadened.
- Legal uncertainty surrounding the use of digital tools for EWC meetings and negotiations was reported by half of the interviewees, urging clarification on remote vs. in-person activities. The associations stressed the need for effective

communication and fluid information flow, especially considering employees based in different countries. Translation and interpretation requirements for information meetings need to be examined; some companies have been questioning the need for financing translators for multiple languages.

- There are differences between Nordic countries and other European nations when it comes to written procedures, with the Nordic model favouring more informal and open discussions rather than formal written statements. This would complicate the implementation of an obligation on management to provide a 'reasoned response' to the EWC.
- Around half of the employers' associations interviewed argued against the principle of starting EWC consultation before national consultation concludes, asserting that national consultation should take precedence. They highlighted the time sensitivity of corporate decisions and the difficulty of prioritising early consultation before every decision.
- The MEDEF suggested that conducting consultations at both European and national or local levels simultaneously in multinational companies can pose legal risks, and it should be the responsibility of the companies to find appropriate solutions and define frameworks with social partners and unions.
- The nature and powers of the EWC were emphasised, with associations opposing the transformation of the EWC into a co-decision-making body that can block company decisions. National employers' associations cautioned against overregulation, stating that detailed rules may hinder natural and organic negotiation and consultation.
- The national employers' associations frequently asserted that the current directive functions well, with effective agreements already in place, and expressed concerns about the potential implications of turning the EWC into a co-determination body.

ETUFs:

- The improvement of EWC rights and the consultation process was considered critical, particularly in sectors with precarious employment conditions (tourism, retail, catering), as emphasised by EFFAT and Uni Europa.
- There was a consensus among ETUFs that timely and effective consultations at both the European and national levels also require high-quality information, including the economic rationale behind decisions.
- EFFAT emphasised the need for a clearer definition of consultation, proposing that the process should include four steps: information provision, time for assessment and expert support if needed, expression of an opinion by the EWC, and a motivated response from management taking the opinion into account.
- IndustriALL highlighted issues with the timeliness of management responses to EWC questions, with delays of up to 12 months rendering the responses irrelevant. They emphasised the need for improved timelines to ensure timely and relevant answers.
- The importance of management genuinely consulting and engaging with EWCs and workers was frequently highlighted. Effective consultation leads to successful collaboration. ETUFs call for improved relations between EWCs and worker representatives at the national level, emphasising the need for early and meaningful information and consultation at both levels.

National trade unions:

- Requiring management to provide a reasoned response to the EWC's opinion was supported overall. The communication of incomplete information, often in an

untimely manner, and decisions made without proper consultation are seen as detrimental to the EWC's purpose.

- There was also overall support for decisions or restructuring processes to be suspended in the absence of consultation among national trade unions.
- In France, the CFDT emphasised the need for trade union experts funded by multinational companies to assist EWCs in training and support during the consultation process. They highlighted the importance of proper consultation, information sharing, and the establishment of clear rights and timelines for opinions. The CFDT added that there is a need for clarification on when consultation at the European level should begin and whether it should be simultaneous with the national level.
- In the Netherlands, SBI Formaat raised the issue of defining the format and content of meetings, particularly in the context of online meetings. The lack of clarity in the Directive regarding this matter and the focus on face-to-face meetings were mentioned as ongoing challenges in many EWCs.

Confidentiality and non-disclosure

European employers' associations:

- Concerns were frequently expressed regarding the proposed revisions to the notion of confidentiality within the consultation framework: strong and robust confidentiality rules are important.
- There was a consensus that weakening confidentiality rules could hinder information sharing and be counterproductive to effective consultation.
- Current practices, particularly in well-established EWCs, involves sharing more information than required due to long-standing relationships and a clear understanding of what can or cannot be shared.
- Concerns were raised by most interviewees about injunctions and standstill obligations, as they can seriously impede decision-making and undermine projects, such as mergers and acquisitions, where time is crucial.
- The risk of disclosure of confidential business secrets was cited by more than half of the interviewees as a threat to the competitiveness of European companies and the region's status as an innovative business location.
- Employers argued overall that maintaining strict confidentiality provisions is essential to protect competitiveness and foster trust between the parties involved in EWC consultations. They cautioned that limiting the possibility of establishing confidentiality obligations may result in companies being reluctant to share essential information, which is crucial for fruitful discussions within the EWC.

National employers' associations:

- A frequently expressed view was that broadening or changing rules around the confidentiality of information increases the risk of information leakage. The principle is straightforward: the more information shared, the greater the chance of it being inappropriately exposed.
- The concept of an injunction, which would halt the implementation of a decision, was questioned as unnecessary overall. Employers argued that if there is a lack of consultation, alternative penalties or sanctions should be in place instead of completely stopping the process.
- Requiring central management to provide objective criteria for determining confidentiality is reasonable, but opening court cases and waiting for decisions to be made would not be productive.
- Concerns were raised by most interviewees about maintaining confidentiality when expanding the definition of transnational matters, as sharing information with

national works councils may jeopardise the protection of confidential business secrets.

- The MEDEF believed that the current provisions on confidentiality in the Directive are already detailed enough and do not require strengthening or modification. Trust is deemed crucial, and not all members of the EWC need to be involved in confidential matters.

ETUFs:

- Concerns were consistently raised about the abuse of confidentiality clauses to control communication and restrict the flow of information. Such abuses, by limiting information sharing, can significantly hinder the ability of worker representatives to effectively advocate for the interests of workers. There is therefore a need for clarification on what specifically should be considered confidential, who it can be shared with (including within the EWC and with local works councils), and how long the information should remain confidential.
- ETUFs generally agreed that new provisions should aim to end the abuse of confidentiality. There is a need for provisions to clarify the obligation of confidentiality, and explicit justifications for deeming information confidential. This may require that management should not have the sole authority to determine what is confidential.
- The issue of confidentiality is linked to the opportunity for better coordination between the European and the national levels, including allowing EWC representatives to access different sites and meet workers in various countries. This also points to the need for effective engagement with EWCs, as they can provide valuable insights and reasoned responses when confidentiality is not a barrier.
- Proper engagement and transparency are key to productive relationships between management and EWCs. This again stresses the importance of a system that allows sharing of confidential information with local worker representatives and trade union experts under specific conditions to enhance transparency and prevent misuse.

National trade unions:

- Establishing objective criteria to address confidentiality concerns is important. This could be about preventing stock exchange rules from being used as a broad justification for withholding information (e.g., the UK's guidelines on confidentiality clarify that stock exchange rules do not prohibit sharing information with employee representatives).
- Clear rules and guidelines are essential to prevent insider trading, ensuring that EWC members do not trade stocks based on the information they receive.

Access to justice, sanctions and remedies

European employers' associations:

- The possibility of introducing a right to request a preliminary injunction for a temporary suspension of management decisions until the EWC consultation process is completed was seen as unhelpful overall. The reason given was that it would be outside the scope of the EWCs' mandate and would complicate decision-making processes, lengthen timelines, and undermine trust and cooperation within EWCs.
- Employers' associations generally held the view that EWCs having the power to temporarily suspend company decisions would also give employee representatives disproportionate authority.

- Most interviewees highlighted that the proposed sanctions and penalties, particularly the GDPR-style financial sanctions, are unreasonable, disproportionate, and unrealistic.
- The proposed financial penalties for violations of EWC rights were criticised, with arguments stating that imposing penalties of 2% to 4% of global turnover is unreasonable and would discourage foreign investment. Such high penalties are disproportionate and not conducive to building a trustworthy relationship between employers and employees.

National employers' associations:

- The Confederation of Finnish Enterprises expressed concerns about uncertainty regarding representation and legal proceedings for the EWC.
- From a German perspective, the BDA highlighted that the issues raised regarding enforcement and recognition of EWCs do not apply to Germany. They emphasised the effectiveness of the German legal system and suggest focusing on proper implementation rather than legislative changes. Legal disputes concerning EWCs are rare in Germany, and the introduction of a right to request a preliminary injunction is seen as problematic, as it is more applicable to German works councils with a co-determination role. The BDA cautioned against imposing the German practice on other member states with different social partnership cultures.
- The Association of Swedish Engineering Industries noted that there have been few disputes related to the EWC Directive in general. They emphasised the collaborative approach taken by companies, EWCs, and trade unions to find solutions and resolve issues. They opposed the introduction of a right to request a preliminary injunction and penalties based on company turnover are excessive for breaches in the consultation process, as the Directive primarily focuses on employer decision-making rather than co-decision with the EWC.
- Most interviewees find current sanctions as set out in national frameworks proportionate. Concerns were raised about the proposal to implement potential suspension of company decisions and the requirement for European-level negotiations taking place before national negotiations, as they could slow down decision-making processes and pose a legal risk for non-EU investors.

ETUFs:

- The ETUFs overall emphasise the importance of acquiring legal personality for EWCs (and SNBs), with management covering costs associated with EWCs' access to justice.
- The ability to suspend company decisions, request preliminary injunctions, and impose meaningful sanctions were all seen as effective enforcement mechanisms overall.
- There is a need for access to legal expertise in negotiating and maintaining EWC agreements, which goes beyond external advisors and includes trade union experts with knowledge of how to effectively run an EWC.
- On the issue of legal costs in relation to defending rights in court proceedings, EWCs (as well as SNBs) want the guarantee that management covers the necessary legal costs incurred during the process.
- The lack of a level playing field across Member States in terms of access to justice remains a major concern for the ETUFs interviewed. There is variation in legal systems across countries, where access to courts can be free-of-charge in some cases and costly in others.

National trade unions:

- Discrepancies in how national laws align with the rules of the Directive were reported, as well as concerns around the effectiveness of injunctions in labour

courts to resolve EWC-related issues legally. In Ireland, there are significant challenges in utilising industrial relations mechanisms to address worker issues related to EWCs. The lack of enforcement, compliance, and prosecution powers has led to delays and non-compliance cases.

- The CFDT in France highlighted difficulties in accessing justice in several EU Member States and the need for clearer processes. The lack of recognition of the legal personality of EWCs in many Member States further complicates matters.
- Ensuring appropriate access to justice for EWCs and proportionate sanctions across all Member States was deemed necessary by the interviewees to ensure the rights of EWCs are respected and that access to legal recourse is consistent throughout the EU.

5.2.2.3 Legal experts and professional services

This group of stakeholders included legal experts or consultants working with and advising EWC representatives, legal experts or consultants working with and advising management, as well as academic experts. Their respective views were often found to diverge on the identified problem areas, but occasionally converged in some cases. This section aims to summarise the most frequently expressed views.

Scope of application

Ending exemptions under Article 14

- Experts and academics overall acknowledged that while some agreements may need to be adapted to meet the standards of the amended Directive, there are agreements that have developed strong social dialogue practices, and it is understood that parties to such agreements would be reluctant to renegotiate them.
- The request to end exemptions primarily came from experts advising EWC employee representatives. In their view, ending exemptions is important to create a level-playing field in terms of workers' rights to information and consultation, and in terms of access to justice if such rights are not upheld. In other words, information and consultation rights should not depend upon the company that an employee works for. Legal experts on the employer side warned against ending Article 14 exemptions. They often stressed that voluntary agreements are regularly renegotiated and updated, demonstrating advanced social dialogue practices. Their argument was that removing exemptions would serve no purpose as it could upset well-functioning agreements and parties to the agreements may lose some flexibility in renegotiating them. Some pointed out that if exemptions were removed, there could be a risk of management viewing it as an opportunity to dissolve an EWC or information and consultation body.
- Legal experts advising EWC employee representatives held differing views on the transitional period for negotiating agreements that do not align with the Directive in case Article 14 exemptions were removed, ranging from six to twelve months and extending up to three years. However, all agreed that subsidiary requirements should apply if the negotiations failed at the end of the transitional period. Additionally, they highlighted that the Directive should be seen as a minimum starting point from which companies can go further in their agreements. However, they cautioned that if the subsidiary requirements are set too low, it will limit the negotiation power of employee representatives.
- Experts advising EWC representatives emphasised that reluctance on the workers' side to terminate such agreements often stems from the risk of facing a period without an agreement for at least three years (the current time limit for negotiating a new agreement). In addition, they highlighted that this measure would primarily affect companies from outside of the EU that may not be accustomed to working

with works councils in general (e.g. referring to US and Asian companies). Furthermore, some of these experts expressed the belief that without compelling companies to renegotiate agreements, no change would occur, especially in cases where management has established a form of 'manager dominated' EWC. In these scenarios, meetings are not convened, and circumstances are such that workers lack the means to terminate the existing agreement.

Extending the scope of the Directive to contractually linked businesses

- Although the majority of experts, those advising employees and those advising management, acknowledged the rationale behind extending information and consultation rights to employees of franchises or companies contractually linked to multinational corporations, most held the view that the EWC Directive would not be a suitable instrument for covering such entities due to the complexity and diversity inherent in their organisational structures and national legal frameworks regulating such corporations.
- Experts overall found it logical to consider extending the Directive to undertakings linked by contractual arrangements rather than ownership or incorporation because such undertakings are involved in the parent company's operations and, therefore, should have the right to be consulted on their working conditions. However, demonstrating the existence of dominant influence and control over the franchisee or contractually linked business can be challenging and difficult to legislate. Given that proving dominant influence or control involves examining contracts and determining who holds authority, the practical implications and burden of evidence become key considerations.
- Experts advising employers highlighted however that it is not clear why employees in franchise-type undertakings would seek collective representation, given that they work in different independent undertakings.
- Experts working with employee representatives and academic experts nevertheless frequently argued that an arrangement to extend the scope of information and consultation rights would contribute to ensuring the same working conditions for employees in contractually linked businesses. Franchise workers are particularly vulnerable to difficult working conditions, information and consultation would therefore be beneficial in addressing these issues. In addition, research from the 1990s revealed the challenges faced by geographically dispersed employees in establishing a collective identity and representation.

Setting up of an SNB and EWC

Timeframes and resources

- The majority of experts, both among those working with employees and those working with management, viewed the introduction of a six-month deadline for setting up an SNB positively. However, opinions were rather mixed regarding the timeframe for concluding an EWC agreement, some in favour of a maximum of 18 months, some remaining in favour of a maximum of 3 years.
- For some experts, shortening negotiation timeframes would not bring additional efficiency or effectiveness, as the structures and processes for employee representatives differ from those of management. The setup process can vary in complexity, depending on the company's structure across countries (the number of countries involved) and the types of contracts used. In instances with a high number of flexible contracts, estimating the actual number of workers to be represented can be challenging. Therefore, longer negotiation periods are seen as a win-win solution. For other experts, shortening the negotiation period for EWC agreements to 18 months could create pressure on companies that are reluctant to establish an EWC.

- Some legal experts advising employees argued that, during the setting-up process, regular meetings might hold more significance than specific timeframes. They noted that the current provisions of the Directive lack an obligation for regular meetings, such as at least one meeting within the first six months of the setting-up process.
- For experts advising management, a provision guaranteeing the SNB the right to assistance by an EU-level trade union expert and additional experts of their choice would require careful examination, given the potential costs of employing many experts. From their perspective, there is a risk that involvement of external experts in this context could lead to conflictual relations with management and raise the likelihood of legal disputes at the setting-up stage.
- Access to resources and training was highlighted by experts working with employee representatives and by academic experts as crucial for SNBs and EWCs. They pointed out that SNBs should above all have access to legal support and training according to their needs. Nevertheless, some experts noted that certain SNBs do not necessarily include trade union experts. Consequently, ensuring their choice of expertise should not impose trade union expertise upon them.
- On the implications of a possible provision requiring the SNB's resourcing to cover reasonable legal costs as a part of SNB's operations, experts representing management argued that the Directive should provide clear guidelines on the basis for creating and reimbursing such costs, considering options like seeking free legal advice first or incurring objectively necessary costs. Interpretation costs also pose challenges. It was suggested that both negotiating parties should agree on one or two languages to streamline the translation process. In addition, the Directive should provide clear guidance regarding the option to hold meetings digitally, particularly during the setup phase.

Gender balance

- While all the experts acknowledged that gender balance is an important issue, they emphasised that it is very challenging to implement gender balanced representation in EWCs mainly because members are nominated at the national level according to specific national rules and mechanisms.
- Some experts argued that gender balance could be approached differently than through legislation. For instance, EWCs could serve as a forum to discuss gender balance issues, and this could potentially incentivise companies to encourage a gender balanced representation in EWCs.
- Overall, experts agreed that gender disparity extends beyond EWCs to labour and management positions, requiring broader societal solutions. Furthermore, academic experts expressed scepticism regarding the introduction of quotas or thresholds in the Directive to ensure gender balance in EWCs. Their primary argument was that achieving them may be unrealistic in industries where one gender is disproportionately represented in the workforce.
- Experts advising workers also suggested paying attention to divisional representation within a company, such as in the case of typical gender-based divisions of work (female-dominated vs. male-dominated roles). Addressing this issue could therefore contribute to improving gender balance in EWCs.

Consultation framework

Definition of transnational matters

- Experts advising employers did not perceive a necessity to amend the definition as specified under Article 1(4). They found proposals seeking to amend the current definition confusing, leading to uncertainty. Additionally, they did not consider it

necessary to impose a requirement for explaining why a decision was classified as 'transnational'. Their argument was that EWC members often have experience in demonstrating the transnational nature of issues or find it relatively easy to establish mutual understanding with management in practice in this regard. Conversely, experts working with the employee side argued that the proposed changes might result in categorising many or most decisions taken at the EU level as inherently transnational, particularly in cases where management or Human Resource practices have undergone digitalisation and internationalisation. . This could consequently create an excessive workload for steering committee members.

- There was otherwise a consensus that EWC agreements could benefit from specifying which measure types should be considered as transnational. Some experts suggested establishing thresholds regarding the extent to which these measure types should affect the workforce before the EWC can be involved so as to foster a common understanding and prevent conflicts. Experts collaborating with EWC employee representatives advocated for a broader definition encompassing decisions that affect working conditions, such as restructuring plans or production changes, within a specific country, if these decisions are made outside that country's borders. They argued that this expanded scope would be beneficial, even when such decisions do not directly lead to staff reductions. Consequently, they recommended adjustments to reflect these considerations and to stress the importance of EWCs being consulted and involved in addressing transnational issues. However, experts advising management view this as an issue, asserting that the location of the decision-making (whether inside or outside the country) should not be the primary concern. Instead, the focus should be on determining the impact and the extent to which the decision affects solely at the national level or has broader consequences.
- A caution was raised against introducing provisions requiring management to justify why a matter is not transnational by experts advising management that such provisions would create administrative costs or formalise communication processes too extensively, as this could hinder the efficient functioning of EWCs by making the process longer. Experts advising employee representatives considered that such a change could bring clarity and provide evidence of the position expressed by management. However, some of these experts expressed reservations in this regard, cautioning that formalising this process might impede the swift involvement of the EWC, or potentially reduce opportunities for the EWC to be adequately involved in advance of restructuring decisions.

Procedural and material arrangements

- Overall, experts collaborating with EWC employee representatives observed that although the information phase of the I&C process operates relatively well, a perceived weakness lies within the consultation phase. They emphasised the need for greater specificity in the law regarding I&C timelines, as well as the format of exchanges between management and the EWC during the consultation phase.
- Many experts collaborating with either management or EWC employee representatives found the issue of timely consultation to be notably significant. As per the experience of experts collaborating with EWC employee representatives, it appears that EWCs often face challenges in being consulted in a timely manner. This issue arises because management tends to perceive the I&C process merely as an additional communication channel to employees, expecting the EWC to primarily disseminate management decisions without having a meaningful role in the decision-making process. Conversely, experts collaborating with management were of the view that delays regarding timeliness often stem from the EWC prolonging the process by arguing that consultation has not occurred until their opinions can genuinely influence management decisions.

- Experts collaborating with EWC employee representatives supported provisions requiring management to provide reasoned responses to EWC opinions, as this would add an additional step before decision-making and benefit the I&C process altogether. On the other hand, experts collaborating with management argued that EWC opinions are already adequately considered in the consultation process. They contend that implementing such provisions would not contribute value but could instead hinder social dialogue.
- Experts collaborating with management generally supported the idea of parallel information and consultation processes at both the transnational and national levels, aiming for seamless coordination and effective dissemination of information. Some of these experts addressed in greater detail the intricacies of the interaction between national works councils and EWCs (e.g., the Austrian law lacks clarity on whether both bodies need to be consulted simultaneously or if the national consultation must be completed before the European consultation can begin while in practice, the national works council is typically informed first, and negotiations are conducted at the local level). They argued that this lack of clarity can lead to complexities and potential conflicts between the national works councils and EWCs due to differences in their roles and interests. To mitigate these issues, these experts suggested that simultaneous notification to both bodies should be required. This would ensure that both the national works council and EWCs have access to the same information at the same time, promoting transparency and avoiding potential misunderstandings or conflicts.
- Among experts working with EWC employee representatives, opinions were divided regarding the interaction between national works councils and EWCs. While around half of them saw no issues with EWC and national consultations taking place in parallel, the remaining half advocated for clearer rules to ensure EWCs are informed and consulted before national works councils, considering the strategic dimension of corporate decisions in multinational companies. Some of these experts expressed the view that any revisions to the Directive regarding the sequencing of consultations at the national and European levels should avoid giving the impression there is a conflict between the respective roles and interests of EWCs and national works councils.
- Regarding material arrangements, legal experts working with EWC representatives overall support the inclusion of provisions in the Directive to guarantee appropriate resources for training and assistance by experts during the consultation process. They argue that cost of training should be part of the company's budget for EWC activities. The impact of the Recast Directive on the operations of EWCs regarding expert support during meetings is limited, with a majority of respondents reporting no change.
- Experts working with EWC representatives also raised the point that resources for legal costs in EWC agreements is inadequately addressed, and there is little incentive for management to provide resources for EWCs in case of conflict. EWCs can struggle to finance court cases, and management may refuse to cover the costs of legal experts.
- Conversely, legal experts who usually work with management representatives commonly hold the view that provisions on EWC resources in the consultation process would not have any tangible benefits – they may be insensitive to companies' financial situation and increase the likelihood of disputes between employee representatives and management.

Confidentiality and non-disclosure

- Experts collaborating with EWC employee representatives supported the establishment of more objective and specific criteria for determining confidentiality.

In their view, this need arises because central management frequently utilises confidentiality as a means to obstruct the consultation of EWCs and limit transparency in information sharing. They all supported the introduction of clear definitions and provisions for confidentiality in the Directive rather than leaving it to individual companies to determine this in their EWC agreement. Some of these experts noted that companies' internal rules and practices regarding confidentiality often stem from the corporate culture of their originating countries and that, although Member States have all transposed the Recast Directive's confidentiality provisions, their wider legislative frameworks might result in differing interpretations of confidentiality. Consequently, this diversity in interpretations creates a complex legal landscape at the EU level and an uneven playing field in the I&C rights of EWCs.

- Experts working with management representatives generally favoured internal determination of confidentiality rules within companies. They warned against the complexity of legislating on confidentiality rules, such as determining objective criteria for their application. They argued that companies are in the best position to define situations warranting confidentiality and the duration it should apply. In their view, this approach would facilitate a mutual understanding or agreement between the EWC and management regarding confidentiality rules tailored to the specific context of the company.
- The experts overall recognised the challenge of balancing the duty of confidentiality and the duty to inform within the context of EWCs. EWC members often receive confidential information, as many matters discussed involve sensitive topics such as workforce reductions. While individual EWC members are expected to maintain confidentiality, the EWC as an institution has a duty to inform the employees they represent (Article 10(2) of the Directive). This creates a tension between obligation of confidentiality and obligation to inform employee representatives. If the EWC were informed about significant employee dismissals in specific countries, it could become a political issue.
- The experts overall stressed the need to minimise any jeopardising of coordination and articulation between national and European levels of employee representation, allowing for exchange of views and effective coordination across borders.
- Experts working with employee representatives overall supported an exemption from confidentiality obligations for EWC members when they pass information provided in confidence to national or local works councils, as this would facilitate exchange and coordination between different levels of employee representation.
- Only a few experts, among them those advising management and those advising employees, along with academic experts, expressed a view on an option suggesting that management could withhold information which could seriously harm the functioning of the undertaking only with prior administrative or judicial authorisation. They argued that such a provision would be unrealistic or impractical because management would simply not communicate such information.

Access to justice, sanctions and remedies

- Experts generally recognised that a right to access to justice should be timely and free of charge. Some of the experts working with employee representatives suggest amending Article 10(1) to ensure EWC and SNB members have the means and legal capacity to exercise their rights and represent the interests of employees effectively. They also highlighted that the question of legal capacity is a political issue and intrinsically related to the choice of law of the agreement, as the latter would be decisive as to where a case can be taken to court.
- Academic experts, especially, pointed out the difficulties in determining the applicable national jurisdiction for EWC or SNB members who reside in a different

Member State than that of the respective body when filing a case in court. This situation can lead to multiple lawsuits across different countries due to the diverse legal jurisdictions applicable to individual EWC or SNB members based in different countries. Lawsuits initiated by individual EWC members seeking enforcement of their rights may yield varying outcomes based on the national jurisdiction and the specific judicial body handling each case.

- The experts advising employee representatives generally supported the inclusion of effective, proportionate, and dissuasive sanctions into the body of the Directive, as current sanctions are not consistently effective and vary significantly across Member States. Furthermore, they supported the introduction of a right to request a preliminary injunction to suspend the implementation of management decisions until proper EWC consultation has taken place.
- Financial penalties can put pressure on management to comply with the law, but fines that are a fixed percentage of annual turnover were overall seen as counterproductive, as it could lead to excessive fines especially among experts working with management representatives. The latter specifically questioned how courts would establish that I&C obligations by management were not honoured. Academic experts, along with the majority of experts collaborating with management, recommended prioritising the development of arbitration and alternative dispute resolution mechanisms over the implementation of financial penalties. They expressed concerns that the imposition of financial penalties could elevate the risk of legal confrontations and harm social dialogue. Experts advising employee representatives found that financial penalties primarily serve to exert pressure during negotiations rather than resulting in increased court cases. They argued that the current fines applied in Member States seem too low to establish a power balance between employees and management.
- Experts advising employees and experts advising management, as well as academic experts noticed a lack of adequate training for judges and lawyers at the national level regarding EWC rules. This hinders the interpretation of EWC rules in a consistent manner.
- Experts advising management held the opinion that a rise in legal disputes would not necessarily enhance social dialogue in multinational companies but, instead, would pose more challenges in this regard.

5.2.2.4 National authorities

Scope of application

Ending exemptions under Article 14

- The end of the exemptions provided for in Article 14 is necessary in the view of French authorities given the significant disparities existing in the agreements in force, more specifically the inconsistencies among EWCs in relation to information and consultation procedures. They proposed ending the exemptions (Article 14) and allowing sufficient time for companies to revise their agreements in the interest of achieving a level playing field regarding the information and consultation of workers. At the national level, a revision of the legislation would also be expected.
- Article 14 of the Directive is transposed into Spanish law by the first additional provision of Law 10/1997 which provides that the latter will not apply to agreements concluded before 22.9.1996 until they expire unless they are renewed. However, in Spain there are no agreements concluded before that date. Therefore, the view of Spanish authorities is that the amendment of Article 14 will not affect existing agreements operating under Spanish law. Additionally, they considered that it is reasonable to require that existing agreements are renegotiated to be adapted to the new rules provided that the parties are given enough time to do so.

- In Poland's case, the only change would be in the law itself, as there are no Polish EWCs that were set up prior to the current directive.
- There are around 62 EWCs in the Netherlands. Ending the exemptions would only have an impact on 10 agreements in the Netherlands.
- The Irish authorities argued for a cautious approach towards the outright ending of Article 14 exemptions, emphasising the importance of a nuanced understanding of the practical challenges posed by these exemptions and a critical examination of whether existing Article 14 exemption agreements are the genuine cause of specific issues around the information and consultation of workers.

Extending the scope of the Directive to contractually linked businesses

- In practice, extending the scope of the EWC Directive to businesses contractually linked to a multinational company with an EWC (e.g., franchises) may be problematic from the perspective of the Dutch authorities. The EWC Directive allows representatives to meet with decision makers; in franchising agreements, this would be difficult to implement.
- Applying the EWC Directive to companies not linked by ownership or constitution, but by contractual agreements seems legally complicated to implement and verify in practice, according to the French authorities. French legislation does not apply this principle within the framework of the *Comité social et économique (CSE)*²⁶⁶. For the sake of consistency, the final version of the due diligence directive currently under discussion at European level should be taken into account. The draft text as it stands includes relations with suppliers.
- Belgium has a consultation body that includes the employer, ensuring immediate responses to workers' questions. However, there have been increasing restructuring activities in Belgium, prompting national social partners, employers, and unions to recommend that companies provide information on subcontractors and redundancies. Currently, the social dialogue remains within the company, but there are calls to expand its scope to include the companies resulting from the restructuring. This suggests that legislative changes may be introduced in Belgium in the future to enhance social dialogue.
- In Germany, national law currently specifies that the national works council is created within the *Konzern* (in English: corporate group) linked to company law statutes. This raises questions regarding works councils in other contractual settings, such as franchise arrangements, which may not be covered under the Stock Corporation Act (*Aktiengesetz* § 18). Therefore, extending the EWC Directive's scope to contractually linked businesses, including franchises, may clash with German national law and require significant changes. Additionally, the concept of franchising aims to separate the franchiser from franchisee in terms of staff management, making it uncertain whether a strong enough link exists to impact all staff members.
- There are no permanent worker representation structures at the national level in Spain in relation to franchises. Some coordination occurs in subcontracting cases when the works council of the hiring company and contractors share the same establishment. Therefore, extending the scope of the EWC Directive to franchises would raise issues with the practical implementation of worker representation structures.
- From the Polish perspective, extending the scope of the EWC Directive to companies contractually linked to a Union-scale undertaking with an EWC would be a move in the wrong direction. Polish authorities argued that there are already

²⁶⁶ A CSE is an employee representative body within a company. Under French law, CSEs must be established in companies with more than 11 employees.

issues with the current number of EWCs in companies unable to fulfil their role effectively. Instead, the focus should be on improving existing EWCs and addressing why companies that meet the eligibility criteria for the Directive are not establishing EWCs. Therefore, Polish authorities suggested implementing promotional actions to encourage the uptake of the directive among eligible companies.

- From the perspective of Belgian authorities, the idea of extending social dialogue to companies acquired by a corporate group through restructuring would be welcome, and legislative changes which would expand social dialogue to franchises and other contractually linked businesses have already been considered.

Setting up of an SNB and EWC

Timeframes and resources

- The Belgian legal framework provides that trade union experts can be easily appointed to provide all the necessary support in social dialogue. A provision in the EWC Directive explicitly stating the SNB's rights to expert support in the setup phase would not make a practical difference in a Belgian context.
- According to Polish law, the SNB is required to be established within six months from the beginning of negotiations, while the EWC must be established within three years from the commencement of negotiations. Notably, shortening the timeframe for creating the EWC to 18 months would necessitate an amendment to Polish legislation. The Polish transposition of the EWC Directive already covers the costs related to SNB establishment and operation, with central management bearing the expenses. However, Polish authorities cautioned against Directive provisions restricting the appointment of experts to EU-level trade union experts.
- While it is expected that multinational companies with good management-worker relations would be minimally affected by shortened timeframes, these would affect companies with weaker social dialogue more significantly. Therefore, from a Dutch perspective, the feasibility of provisions shortening timeframes would require further discussion with social partners. Additionally, the suggestion to require the management to cover reasonable legal costs incurred by the SNB aligns with existing practices in the Netherlands, but it would necessitate changes to the Dutch European Works Council Act. The proposal for an EU-level trade union expert in the set-up phase conflicts with the current Dutch system, where works councils and trade unions have distinct roles. It should be noted that some companies in the Netherlands have no relationship with trade unions.
- The French authorities held the view that the six-month period for setting up an SNB is appropriate but suggested discussing a reduction in the three-year deadline to conclude an agreement, while also considering the need for flexibility. They favoured shortening deadlines to reopen negotiations in case of failure to reach an agreement the first time to avoid excessive blockages. The two-year standstill period, as per Article 5, para 5 of the Recast Directive, were viewed as too long. The notions of 'reasonable legal costs' and 'frivolous costs' were seen as complex. French legislation favours the notion of 'fields of expertise' to define legal costs which instead refers to elements such as: relevance of the expertise requested, number of organisations requesting the expertise, the existence of previous expert opinions on a similar subject, the duration and cost of the expert support, the quality of the expertise. This notion emphasises the need to assess the usefulness of requested expertise, considering factors such as expertise extent, feasibility, relevance, and expert quality. The French authorities suggested that other costs such as EWC member training and operating costs should be discussed. They

cautioned against establishing a list of specific items for which costs would be covered by management to maintain flexibility.

- German authorities held the view that the six-month deadline for setting up the SNB is useful but noted that a 12-month timeframe for negotiating the EWC agreement may be too short. They welcomed the option to specify in the Directive the coverage of legal costs by management in the setting-up process. The German authorities expressed uncertainty regarding the interpretation of a possible provision that in the set-up phase, as a first option the SNB would be guaranteed the right to assistance by an EU-level trade union expert, arguing that it might effectively restrict the appointment of other experts.
- Spanish authorities viewed the provision guaranteeing assistance by an EU level trade union expert and additional experts of choice as a positive amendment.
- The Irish authorities did not oppose the possibility to shorten the timeframe for negotiating EWC agreements. However, they expressed reservations regarding the introduction of a provision requiring the SNB's resourcing to cover reasonable legal costs. Ireland is an expensive jurisdiction for litigation, which underscores the imperative to refrain from immediately resorting to legal avenues in the negotiation process.

Gender balance

- The Swedish and Irish authorities supported the introduction of gender balance provisions in the Directive, but they acknowledged the practical challenges in achieving gender balance.
- Belgian authorities expressed a preference for initiatives raising awareness and monitoring gender balance rather than imposing quotas. In other words, setting a gender balance threshold is supported, but not through legislation.
- In the context of the CSE (*Comité social et économique*), French law already mandates proportional representation in relation to the gender composition of a company's workforce. French authorities have expressed reservations about applying strict gender quotas in EWC representation that are not based on the gender composition of companies' workforce and favours the approach in use in the CSEs.
- German authorities questioned the enforcement of quotas that do not align with a company's gender composition, as such quotas could otherwise be discriminatory.
- Finnish authorities suggested that a gender quota could lead to misrepresentation in sectors that are chiefly male or female. If a quota is imposed, it should not be a strict quota, instead it should be about setting a goal or target.
- Spanish authorities positively valued the proposed measure for gender equality in EWCs.

Consultation framework

Definition of transnational matters

- From the perspective of Swedish authorities, the definition of transnationality in the Directive should be clarified, but there are reservations about widening its scope.
- Belgian authorities favour clearer definitions, especially regarding transnationality, to avoid different interpretations in the social dialogue practices of companies.
- According to the Polish authorities, the current definition of transnational matters is too general, and therefore proposals that narrow down and provide more specific information on what can be considered transnational are in principle welcome. The Polish authorities acknowledged that requiring management to provide written explanations for why a matter is not considered transnational could prolong the consultation procedure. However, they emphasised the benefits of this provision,

such as fostering a platform of understanding and promoting respect for the other party involved. They believed that providing such information encourages dialogue and ensures that all voices and opinions are heard and respected.

- The Dutch authorities argued that a clearer and wider definition of transnational matters is already present in Recital 16 of the Recast Directive and EWCs may already use this recital in their agreements. Therefore, in practice, turning the recital into an article may not generate significant impacts.
- The French authorities held the view that the current definition of 'transnational matters' is broad enough and provides the necessary flexibility for companies to address various economic, social, and financial matters. However, they proposed redefining the field of information and consultation by drawing inspiration from the definition used in France for the CSE (*Comité social et économique*), which includes aspects of the organisation, management, and general operation of the European company or group, with specific attention to environmental consequences. The French authorities believed that integrating the environmental implications of corporate plans and decisions into the definition would offer more specificity and align with the context of ecological transition. The French authorities considered the provision requiring management to justify when a matter is not transnational unnecessary due to the broadness of the current definition. They argued that such a provision would only be relevant if the new definition were significantly more restrictive, which they did not desire. However, the French authorities acknowledged that if this provision were implemented, it might be a prerequisite for referral to a judge, potentially reducing litigation in this area. Implementing such a provision would require modifications to French national legislation, as it does not currently include this requirement.
- For the German authorities, proposals to widen the coverage of the definition are still in the early stages, and they have not yet assessed in detail how these changes would impact German law. The German authorities suggested that any adaptation to the definition would likely involve gradual changes to the current provisions, with Recital 16 being incorporated into the official text. They acknowledged that the current legal literature already considers Recital 16 when interpreting the transposition of the Directive in national law. The German authorities believed that introducing a provision requiring management to justify in writing when a matter is not considered transnational would be a positive improvement for EWCs. It would help assess the plausibility of management's interpretation and allow worker representatives to better understand and prepare their own assessment of whether an issue is transnational. However, the German authorities suggested that this provision should only be used in cases of disputes between the parties rather than becoming the norm for all exchanges on transnational matters. This approach would prevent it from becoming an administrative burden.
- From the Finnish authorities' perspective, widening the definition of 'transnational matters' with the inclusion of the term 'indirectly' is not clear: if 'indirect effects' were included in the definition of transnational matters, transnationality would be less clear, unpredictable and it would cause controversy and disputes in the labour market. The Directive's definition should only include decisions and plans with direct effects.
- From the Spanish authorities' perspective, proposals to further clarify the concept of transnational matters seem reasonable. A provision requiring management to justify in writing when a matter is not transnational would be an additional guarantee that increases transparency and might help to protect EWC's rights.

Procedural and material arrangements

- The Swedish Co-determination Act already requires employers to engage in negotiations with employee organisations before making significant changes that affect working or employment conditions. The law ensures that trade unions have a real influence on decisions, and failure to comply can lead to legal action. Disputes in Swedish companies are resolved according to Swedish labour law and collective agreements. The Swedish authorities emphasised the importance of the Recast Directive respecting existing national labour laws, while also allowing a reasonable timeframe for consultation and ensuring the EWC can consult with workers at the national and local levels.
- In Belgium, consultation is well-established in national law and companies are familiar with it. The provision for Information and Consultation (I&C) has been in place in collective agreements since the 1990s, and worker representatives can invoke the failure to hold I&C as a means to prevent collective layoffs. Disputes relating to I&C at the national level are therefore not common. Introducing a provision requiring EWCs to be consulted before the end of national-level consultations would have no real impact in the Belgian context.
- Amending the definition of consultation to include a reasoned response from management was seen as a positive move by the Polish authorities, fostering social dialogue. The Polish transposition currently has no limitations on the appointment of EWC experts.
- The Dutch authorities drew attention to the fact that timeliness of consultations is a concern in the Netherlands, with EWCs often experiencing delays. Dutch law transposing the Directive has an extended definition of consultation compared to that of the Directive in that it allows for EWCs to issue an opinion which may be taken into account in corporate decision-making. Introducing a provision in the Directive for management to provide a reasoned response to the EWC's opinion aligns with Dutch Works Council practices. However, granting EWCs the right to consult trade union experts does not align with the Dutch system, where trade unions do not have a specific role as works council experts. The obligation for management to consult with the EWC before the end of national-level consultation requires thorough study due to the diversity of I&C practices across the 27 Member States.
- French law stipulates that consultation should occur prior to the employer's decision, but disputes exist regarding the exact timing and the relationship between national and European levels of consultation. For instance, in a dispute relating to the merger between Suez and GDF, a judicial review (by the *Cour de cassation*) ruled that the opinion of the EWC must be given 'during the process leading to the decision, before the meeting of the board of directors to decide the merger project which is irreversible'. Before 2008, the Court of Appeal of Versailles (May 7, 1997, *Société Renault SA v. CGE and FEM*) had ruled that consultation of the EWC should be prior to the management's decision based on legal texts. Other first instance judgments went in the same direction. Setting deadlines for EWC consultation is seen as important to prevent delays in national negotiations. The absence of a response by management within a fixed period could be considered as a rejection of the EWC's opinion. The principle of consulting the EWC before the end of national-level consultations appears essential so that national-level works councils (CSEs) can have all relevant information before issuing an opinion. Additionally, defining the field of expertise that can be financed and allowing EWCs to appoint their own experts require further consideration.
- The Spanish authorities would be in favour of amendments to the definition of 'consultation' in the Recast Directive that would require management to provide a reasoned response to the opinion of EWC representatives prior to the decision

being implemented or adopted by management. The Spanish authorities did not oppose the right of the EWC to consult experts; it must be noted that national works councils in Spain might also be assisted by experts who must also comply with confidentiality obligations (as regards the obligations of funding, further reflection would be needed).

- From an Irish perspective, any change to the definition of consultation needs to ensure that EWCs remain consultative bodies and do not interfere with management decisions. The Irish authorities did not oppose the proposed measure to require management to justify when a matter is not up for consultation. However, they raised doubts about the usefulness of a requirement for management to engage with the EWC prior to concluding consultations at the national level.

Confidentiality and non-disclosure

- The Swedish authorities emphasised the need for balance and ensuring practicality in implementing confidentiality rules.
- Belgium has existing legislation on confidentiality, with clear provisions to protect company performance. The general principle is that most information should be public, except for specific cases that could harm company performance. Disputes relating to confidentiality or non-disclosure are typically successfully resolved through out-of-court mediation and are therefore rarely escalated to court. The existing system in Belgium, where information is predominantly public, has been effective, and introducing a provision in the Directive to involve the court in determining confidentiality is not deemed necessary.
- The Polish transposition of confidentiality rules in the EWC Directive is considered satisfactory. It establishes that information can be deemed confidential by central management, with the option for the EWC and SNB to challenge central management and seek legal recourse if a dispute arises. The associated legal costs are covered by the employer in such situations. While the option for central management to provide objective criteria for determining confidential matters is viewed positively, the Polish authorities expressed opposition to the inclusion of such objective criteria in the Directive. Regarding exemptions from confidentiality obligations, they argued that the responsibility for releasing information should rest with the local level rather than the EWC. Overall, the Polish authorities opposed the proposed amendments to the EWC Directive on confidentiality and non-disclosure as they would alter the current equilibrium and complicate the protections provided to various bodies under Polish law. In other words, these amendments are seen as unnecessary and would not bring any benefit.
- The Netherlands has well-established rules on confidentiality for EWCs, derived from the Dutch Works Council Act. These rules require management to specify in advance the confidential nature of any information feeding into corporate plans or decisions to be made, provide reasons for confidentiality, specify which elements are confidential and for how long, and identify exemptions from confidentiality. The Dutch transposition goes beyond the requirements of the Directive and has been effective in practice. It is important to note that non-disclosure does not exist in the Netherlands; companies disclose information and then enforce confidentiality within the EWC. Exempting Dutch EWC members from confidentiality obligations when sharing information with national or local works councils is not problematic, as Dutch EWC members are accustomed to upholding confidentiality under Dutch law. However, including such an exemption in the Directive would complicate matters for all EWCs, given the different confidentiality rules across the 27 Member States. It could result in less information being shared overall. Introducing an option in the Directive under which management could withhold information that could seriously harm the functioning of the undertaking only with prior administrative or

judicial authorisation needs further analysis as it may neither be feasible nor realistic, according to Dutch authorities.

- According to French rules on confidentiality, members of the EWC and employee representatives are obligated to maintain professional secrecy in relation to manufacturing processes (conventionally known as trade secrets) and discretion in relation to information designated as confidential by the employer. The obligation of discretion allows for the sharing of information without limitations. In case of a dispute, the judge assesses the confidential nature of the information.
- In German law, the option to allow management to withhold information that could seriously harm the company's functioning only subject to prior administrative or judicial authorisation is not applied. If management claims inability to disclose information, it must be based on objective criteria. Workers have the option to seek legal review of this decision in the labour court.
- While Spanish law already provides a framework for protecting confidentiality in certain areas, there is room for further reflection on the sharing of confidential information among EWC members and workers' representatives. The Spanish authorities recommended striking a balance between transparency and confidentiality, defining objective criteria for determining confidentiality, and establishing effective sanctions and remedies to prevent abuses. The Spanish authorities opposed the requirement for prior administrative or judicial authorisation enabling management to withhold information that could seriously harm the functioning of the undertaking. This is because such a requirement could cause delays and overload the public administration and courts. Instead, they suggested that the objective criteria for determining confidential information should be as clearly defined as possible in the law, as is already the case in Spanish legislation.
- The Irish authorities expressed support for the introduction of a provision requiring management to provide objective criteria to EWCs for determining when and for how long a matter is confidential. However, they raised concerns about exempting from confidentiality obligations EWC members who pass on confidential information to national or local works councils, fearing that such exemptions might discourage companies from sharing information.

Access to justice, sanctions and remedies

- In Sweden, both EWCs and national or local works councils can be legal entities and have the ability to bring disputes to court. The labour court, also known as the dispute court, is responsible for handling EWC disputes in Sweden. Introducing a right to request a preliminary injunction for temporary suspension of management decisions until the EWC has been informed and consulted could potentially hinder timely decision-making by companies and interfere with existing national labour law.
- In Ireland, EWCs have access to justice via the Workplace Relations Commission, described as a user-friendly and straightforward administrative body. Hence, the view of Irish authorities is that disputes should first be taken to a local dispute resolution mechanism and that the legal route should be the last resort. Irish authorities therefore showed opposition to financial sanctions linked to a company's turnover for non-compliance as this could have detrimental effects on the viability of a company.
- In Belgium, courts for employment matters comprise professional judges and social judges. There are three judges, one is a professional president judge, two are social judges. The social judges are each tasked with representing the interests of the company and of workers respectively. EWC court cases in Belgium are uncommon, as such cases are typically brought in the countries where the headquarters are located. Access to courts for employment matters is generally

favourable in Belgium, with well-known courts and a low barrier to access. On non-compliance, criminal sanctions range from EUR 400 to 4,000, while administrative sanctions range from EUR 200 to 2,000, and these amounts are multiplied by the number of workers. The high potential sanctions act as a deterrent for misconduct by social dialogue bodies and companies.

- In Poland, EWCs can bring disputes to commercial and criminal courts, but must engage a labour inspector for the initiation of legal actions. The Polish authorities expressed support for possible amendments to provide EWC and SNB members with legal capacity, but also acknowledged the complexities associated with administrative and judicial procedures. There is a consideration of the impact of fines and the potential negative effects of provisions such as the right to request a preliminary injunction. The possibility to provide EWC and SNB members with the means and legal capacity to apply their rights collectively is considered a positive step, but the amendment to require easily accessible administrative and judicial procedures and timely enforcement would be complex, as the functioning of the judicial system falls outside the scope of the EWC Directive, and it would be difficult to create special procedures for EWCs in this respect. High fines specifically for EWC-related matters would be disproportionate compared to fines in other labour laws.
- In Dutch law, both EWCs and SNBs have the legal capacity to initiate legal proceedings. However, there is no requirement for EWC agreements to include a decision-making procedure. Without a decision-making procedure, it is easier for management to question an EWC's ability to initiate legal proceedings against the company. The subsidiary requirements in Dutch law allow the EWC chairperson (or vice chairperson) to represent the EWC, a provision that also applies in Dutch law for local works councils. Dutch works councils have a history of taking companies to court without obstacles. However, issues may arise if the EWC is composed of both representatives and management, as Dutch law does not foresee this situation. Financial support for legal costs is currently mentioned in some EWC agreements, but not all. Introducing financial penalties in the directive would be problematic and not aligned with Dutch works councils. Dutch Works Councils have the ability for injunctions, with potential fines of up to EUR 20,000 for non-compliance with the injunction. However, EWCs cannot request injunctions under Dutch law.
- French law recognises the legal capacity of EWCs and their ability to bring disputes to court, provided there is a legitimate interest and sufficient financial resources. Disputes regarding the appointment of members to the special negotiating body and representatives to the EWC fall under the jurisdiction of the court as per the French labour code. France has a mediation procedure by a specific negotiating body in France, which is not the case in all Member States; and EWCs in France have the legal personality to take management to court. However, to do so, an EWC must have a justified claim (or legitimate interest) and demonstrate sufficient financial resources to engage in legal proceedings. The revised directive could specify the nature of resources allocated to EWCs, drawing inspiration from those dedicated to French works councils (CSEs). French authorities were not in favour of the option of introducing a right to seek a preliminary injunction for the temporary suspension of management decisions until the information and consultation procedure of an EWC has taken place. However, they expressed a willingness to discuss more objective criteria for sanctions, such as fines calculated based on a percentage of the company's turnover or payroll.
- In German law, the SNB and EWC, along with their members, have legal capacity to take action in court. However, there is a need for clarity regarding the official representation of these bodies collectively. Although this representation can be specified in EWC agreements, the law itself does not provide further specification.

In general, the German authorities were of the view that Member State should find their own solutions on how to formulate the sanctions. Administrative fines of maximum EUR 15,000 can be imposed on companies violating the I&C rights of EWCs (Section 45 EBRG). In other areas of labour law, the highest sanction in German labour law is 500,000 EUR for cases of non-compliance with the minimum wage. The issue with such high sanctions is that EWC agreements are under private law, which means that labour courts cannot be certain that such fines are proportionate in cases of non-compliance.

- In Finland, an ombudsman is responsible for supervising the actions of EWCs and plays a crucial role in access to justice. From the Finnish perspective, implementing a right to request a preliminary injunction for the temporary suspension of management decisions would be challenging, as it could affect third parties and pose legal complications. Sanctions such as excluding companies from subsidies and public procurement are seen as counterproductive and detrimental to employees, as they could result in reduced work opportunities. Such targeted sanctions in this context are considered ineffective.
- In Spain, EWCs face no barriers in accessing labour courts. Spanish authorities expressed support for the inclusion of 'effective, proportionate, and dissuasive penalties for non-compliance' in the Directive, as it aligns with existing sanctions in Spain (Article 9 of Royal Legislative Decree 5/2000).

5.3 Evidence-gathering workshops

5.3.1 Aim and format

The aim of the evidence-gathering workshops was to complement the information generated from the online survey by gathering further (qualitative) evidence.

The workshops gathered representatives from the management and employee side across different multinational companies with an EWC.

The selection of workshop participants aimed to:

- strike a balance between 'problematic' EWCs and well-functioning EWCs
- achieve a balanced representation of different EWC types
- achieve geographical balance

Two workshops were held on 22 June 2023:

- one gathering the EWC representatives of different multinational companies.
- one gathering the management representatives of different multinational companies.

Both workshops had a common agenda, structure and duration:

- Around 15 participants
- 2.5 hours online meeting (Microsoft Teams)
- Agenda items relating to the most important elements from the problem definition and impacts
- Online polls (Slido) to understand participants' experiences relating to the main problem areas

The questions put to the participants in both workshops aimed to better understand their experiences and collect their views on the problem areas identified for the study, namely:

- Problem area 1: workers of certain Union-scale undertakings do not have the same minimum rights regarding the establishment and operation of an EWC
- Problem area 2: Not sufficiently efficient and effective setting up of EWCs.

- Problem area 3: Procedural and material obstacles to the effective information and consultation of EWCs.
- Problem area 4: Shortcomings in enforcing the Directive in terms of effective sanctions and EWCs' access to justice.

The workshop discussions focused on the impacts of the proposed solutions for each of the aforementioned problem areas, such as economic impacts for management and EWCs (especially implementation costs, any investment needed, direct benefits such as better information and better targeted measures accompanying structural changes in companies), as well as their impacts on competitiveness, social dialogue and employee participation.

The workshop for EWC representatives gathered 21 participants representing 18 different EWCs in multinational companies. These included:

- 11 established under Recast Directive 2009/38/EC, 5 established under Directive 94/45/EC, 2 established as voluntary information and consultation (I&C) bodies.
- 4 operating on FR legislation, 3 on BE legislation (1 with CH HQ, 1 with US HQ), 3 on IE legislation (2 with UK HQ, 1 with US HQ), 2 on DE legislation, 3 on NL legislation (1 with UK HQ, 1 with US HQ), 1 on HU legislation, 1 on IT legislation, 1 on LU legislation.

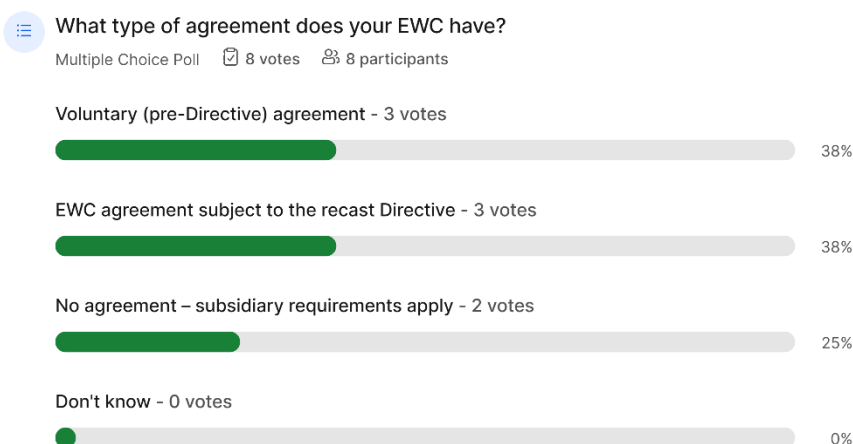
The workshop for management representatives gathered 27 participants, with 18 different multinational companies with an EWC represented. These were comprised of:

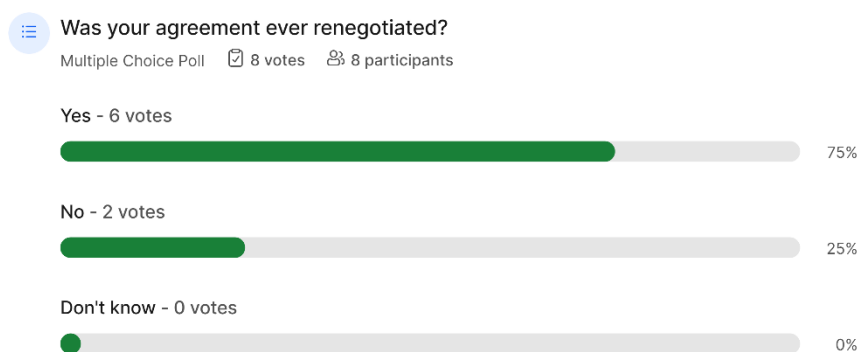
- 11 EWCs established under Recast Directive 2009/38/EC, 4 EWCs established under Directive 94/45/EC, 3 established as voluntary information and consultation (I&C) bodies.
- 4 EWCs operating on DE legislation, 4 on BE legislation (1 with CH HQ, 1 with US HQ), 3 on IT legislation (1 with US HQ), 2 on FR legislation (1 with US HQ), 2 on FI legislation, 1 on ES legislation, 1 on SE legislation, 1 on IE legislation (with UK HQ).

In the following sections, EWC is used as a generic term to also cover pre-Directive voluntary information and consultation (I&C) bodies, unless specified otherwise.

5.3.2 EWC representatives: summary of discussions

5.3.2.1 Problem Area 1: Workers of certain Union-scale undertakings do not have the same minimum rights regarding establishment and operation of an EWC





The experiences of the different EWCs appear to vary significantly depending on the company, the sector, and the country in which they operate. Some EWCs face challenges caused by management's perception of EWCs and their significance, limited information sharing, and difficulties in engaging with subsidiary companies. In some cases, legal action has been pursued but constrained by budget limitations. Renegotiations of agreements have taken place periodically, with varying degrees of success. On the other hand, there are EWCs that have positive relationships with management, effective communication channels, and well-established structures. These EWCs benefit from regular meetings, transparency in their operations, and good information flow. They may have undergone successful renegotiations of agreements or have voluntary agreements in place that provide flexibility. The other main findings were as follows:

Overall functioning of different types of EWCs:

- EWCs operating under voluntary agreements (including pre-Directive I&C bodies) or agreements that go beyond the minimum requirements of the Directive tend to have more flexibility and can address transnational issues effectively.
- A positive and engaged relationship with management greatly enhances the effectiveness of the EWC.
- Regular communication, transparency, and information flow are essential for the EWC to carry out its responsibilities effectively.
- The involvement and support of the CEO play a significant role in the success of the EWC and its ability to influence decision-making processes.

Re-negotiation of EWC agreements:

- The renegotiation of EWC agreements is an opportunity to improve the functioning and effectiveness of the EWC, aligning it with the requirements of the Directive and addressing any shortcomings in the existing agreement.
- The success of renegotiations can vary, with some EWCs facing challenges in achieving satisfactory outcomes due to management resistance or budget constraints.

Impacts of the possibility of ending the exemptions under Article 14:

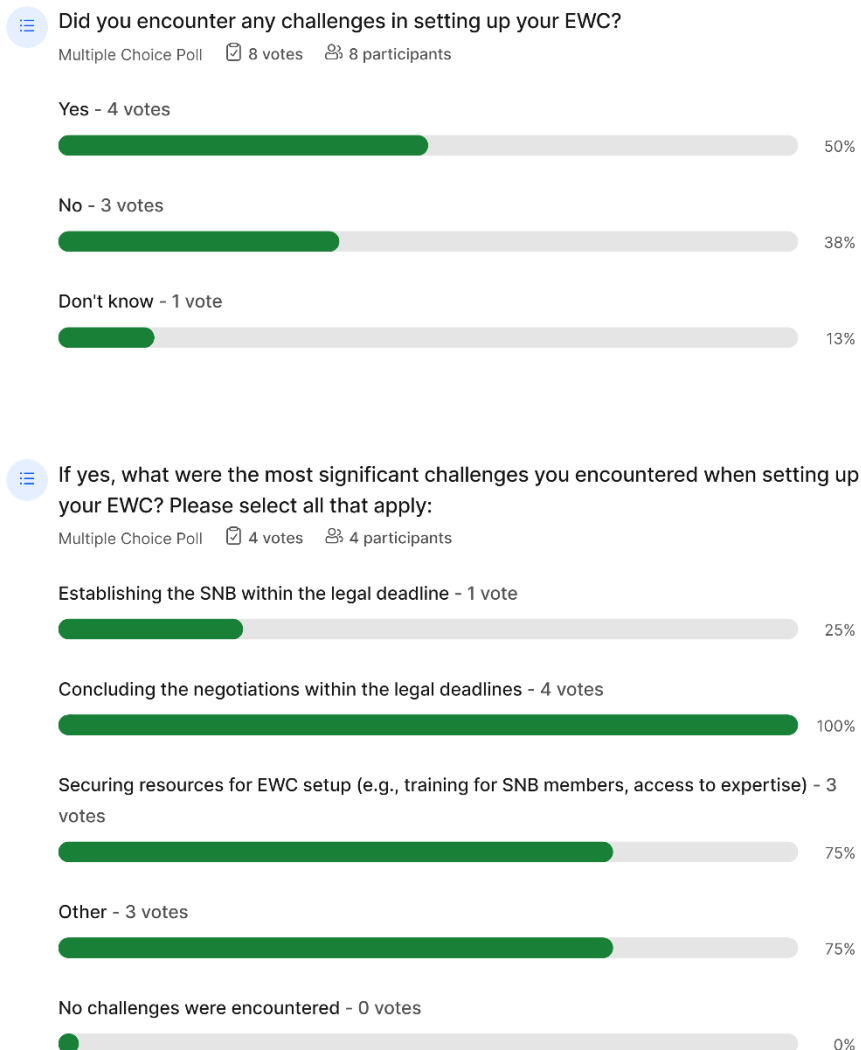
- The participants had no comment on this topic.

Undertakings linked by contractual arrangements and not by ownership or incorporation (e.g., franchising):

- Franchising can pose challenges for EWCs, especially when there are multiple subsidiary companies within the group that management does not allow the EWC to engage with.

- EWCs may face difficulties in ensuring that the expanding workforce within franchised companies is adequately represented and included in the EWC's activities.
- The extent of the challenges related to franchising can vary depending on the management's perspective and the sector or industry in which it operates.

5.3.2.2 Problem Area 2: Not sufficiently effective and efficient setting up of the EWCs



The EWC representatives highlighted the importance of a seamless and efficient establishment of EWCs. Some of them stressed that trade union support and training can significantly enhance the effectiveness of the setup. Possible solutions to lengthy and ineffective establishment processes were discussed, as well as the possibility of enforcing gender-balanced representation within EWCs. The other main findings were as follows:

Timeframe or resources available to the SNB and during the negotiation process:

- It is generally agreed that reaching an agreement within 18 months is crucial, as it indicates the willingness of the company to move forward. If no progress is made within this timeframe, it is unlikely that a better agreement will be achieved even after three years.

- The negotiation process can be time-consuming and costly, especially when physical meetings with large groups of participants are involved.
- Trade unions play a crucial role in the creation and functioning of an EWC, and their involvement and empowerment are essential for its success. Both support and training from trade union can have a positive impact.

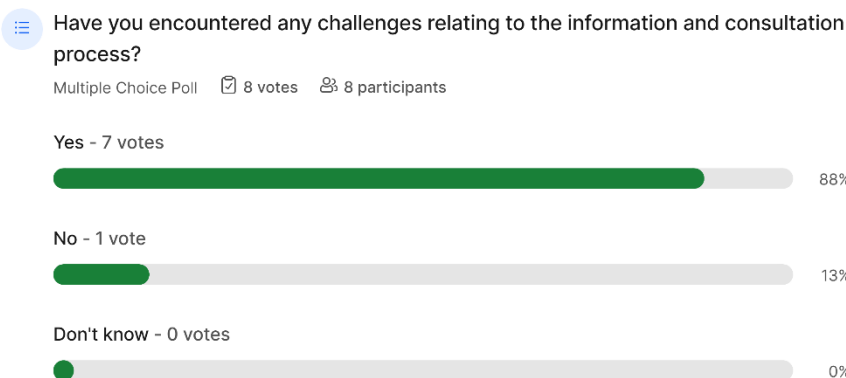
Possible solutions to delays and lengthy creation process:

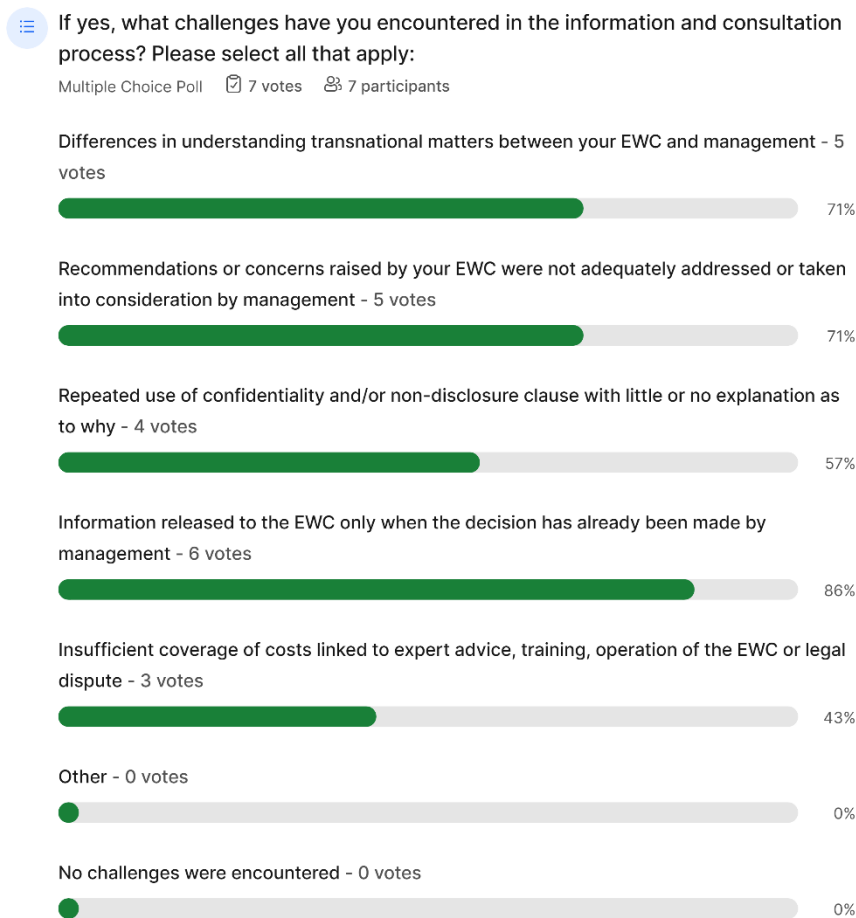
- Alternative sanctions, such as project halts, could be considered to have a more significant impact on non-compliant companies, instead of relying solely on financial penalties.
- Clearer provisions in the new EWC Directive could enforce the will of the company and prevent delays and stalling tactics.

Gender-balanced representation:

- Achieving balanced gender representation in EWCs is seen as a positive goal.
- However, challenges arise in sectors with low percentages of women in the workforce and different systems of selecting EWC representatives in various countries.
- It is important to consider the specific context and challenges of each sector and country when addressing gender representation in EWCs.

5.3.2.3 Problem Area 3: Procedural and material obstacles to the effective information and consultation of EWCs





The participants highlighted several instances where confidentiality, the definition of transnational matters, and insufficient coverage of resources and access to external expertise posed a challenge to the effectiveness of information and consultation activities. Again, the relationship between EWCs and management, and the management's approach to EWCs' information and consultation rights emerged as a key factor in the ability of EWCs to fulfil their mandates. The other main findings were as follows:

Interpretation of the concept of transnational matters:

- There is a need for clear guidelines and criteria to define what constitutes a transnational matter.
- Matters that have a significant impact on European employees, regardless of the number of Member States involved, should be considered transnational.
- The magnitude of potential impact or the transfer of operations between Member States should also be taken into account.

Use of confidentiality or non-disclosure clauses:

- There is a variety of experiences regarding the use of confidentiality or non-disclosure clauses. Some EWCs find them unnecessary and advocate for transparency. Other EWCs acknowledge the importance of confidentiality but seek a balance with the need for information sharing and consultation.
- There should be a clear understanding of what information is confidential, internal, or meant for external dissemination, along with specified end dates for confidentiality.

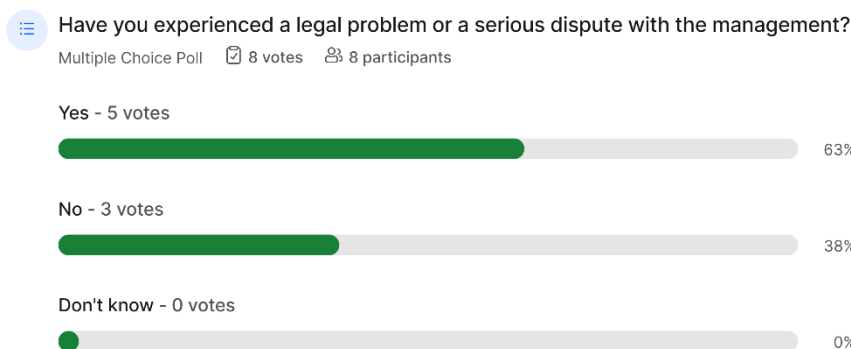
Timeliness of the information and consultation procedure:

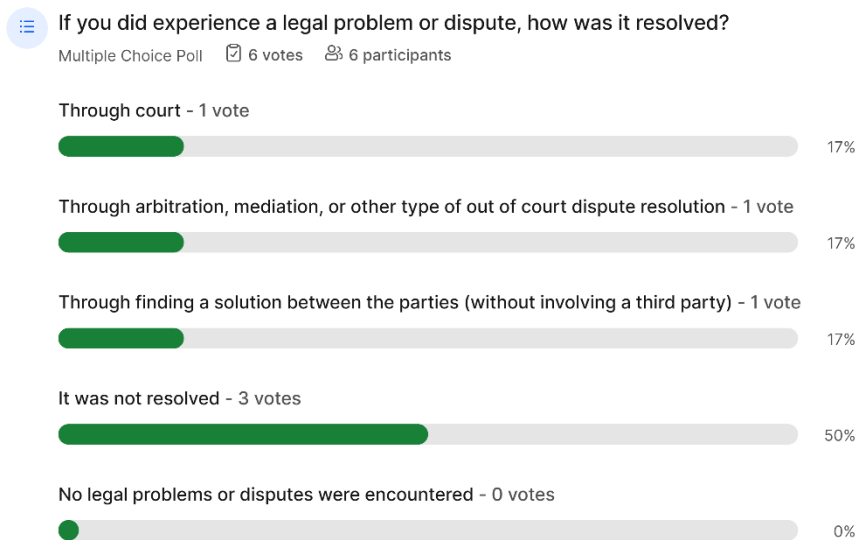
- There is a general consensus that the timing of information and consultation is crucial.
- Decision-making processes should allow sufficient time for EWCs to provide input and opinions before final decisions are made.
- Implementing strict timelines, akin to those in national workers' councils, can ensure that EWCs receive information within a specific timeframe after which the consultation period can begin.

Access to external experts and coverage of resources:

- The involvement of external experts is seen as essential for informed decision-making, especially in cases of restructuring.
- EWC agreements should clearly outline the rights of EWCs to consult experts and lawyers.
- The issue of costs is a challenge for most EWCs, with limited resources and budget constraints hindering their ability to engage effectively. From covering expert fees to organising face-to-face meetings, financial constraints impact the overall effectiveness of the EWCs.

5.3.2.4 Problem Area 4: Shortcomings in enforcing the Directive in terms of effective sanctions and EWCs' access to justice





Access to justice and enforcement were discussed throughout the workshop, indicating an interest in this topic among EWC representatives, also in relation to the other three problem areas. Overall, the discussions emphasised the importance of effective access to justice, including timely access and coverage of legal costs, as well as the need for stricter sanctions and alternative solutions to ensure compliance with EWC agreements.

Transparency, clear guidance, and proactive communication are essential for fostering a productive relationship between EWCs and management boards. The other main findings were as follows:

Access to justice:

- The availability and ease of access to justice vary across different countries, with some participants experiencing more challenges than others.
- Timely access to justice is essential, as delays in obtaining judgments or sanctions can undermine the effectiveness of the EWC.
- Delays in the execution of decisions can be used strategically to buy time, raise important questions, and highlight issues related to access to justice.
- The costs associated with legal action can discourage pursuing litigation and should be considered when evaluating access to justice in reality.
- Participants agree that pursuing legal action should be considered as a measure of last resort.

Sanctions and alternative solutions for enforcement:

- Stricter sanctions should be in place to address violations of EWC agreements, with a focus on ensuring they have a real impact on companies (e.g., financial penalty expressed as % of turnover).
- Financial sanctions alone might not be sufficient for ensuring compliance among multinational companies, and alternative approaches such as delaying the execution of decisions or loss of operating rights in certain territories (for non-EU MNCs) could be considered.
- Publicity and transparency can be effective tools to address non-compliance, with employers required to provide official explanations for failing to comply with agreements or directives ('comply or explain' approach). However, this is recognised as having the potential to negatively affect employees too.

5.3.3 Management representatives: summary of discussions

5.3.3.1 Problem Area 1: Workers of certain Union-scale undertakings do not have the same minimum rights regarding the establishment and operation of an EWC

What type of agreement does your EWC have?

Multiple Choice Poll 25 votes 25 participants

Voluntary (pre-Directive) agreement - 10 votes



40%

EWC agreement subject to the recast Directive - 9 votes



36%

No agreement – subsidiary requirements apply - 6 votes



24%

Don't know - 0 votes



0%

slido

Did your company encounter any challenges during the EWC setup process?

Multiple Choice Poll 25 votes 25 participants

Yes - 4 votes



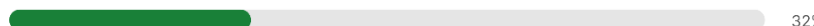
16%

No - 13 votes



52%

Don't know - 8 votes



32%

slido

The participants engaged in a discussion focusing on the establishment and operation of EWCs in Union-scale undertakings. The main rationale was to discuss the proposed policy measures to ensure that all Union-scale undertakings have the same minimum rights and to improve clarity and legal certainty regarding the scope of the Directive. Firstly, perspectives were shared regarding the advantages and drawbacks of **voluntary agreements** (also in relation to pre-Directive I&C bodies), emphasising their flexibility and positive nature. It was stressed that the 2009 Recast Directive gives each EWC the autonomy to establish its own operating agreement, taking into account the heterogeneity and specificities of multinational companies. Success stories highlighted the effectiveness and cost-efficiency of voluntary agreements when based on good faith. Concerns were raised about potential negative consequences of imposing legal obligations with punitive impacts on voluntary agreements. Some participants expressed surprise and reservations about proposals for more rules and structures, fearing their impact on established positive models. The importance of maintaining good

relationships with EWCs and of considering matters on a case-by-case basis was emphasised. Participants with long-standing voluntary agreements expressed satisfaction with their flexible frameworks, emphasising the value of regular meetings, social dialogue, and collaborative working groups.

Caution was expressed against introducing more rigidity and extending the scope of EWCs to **franchising**, citing concerns about bureaucratic burdens. Participants acknowledged the need to revamp certain provisions in the Directive, particularly regarding subsidiarity requirements, transnational issues, legal clarity, and costs borne by companies. Participants questioned why no proposals have been made for EWCs to become mandatory in all Union-scale undertakings considering the goal of ensuring equal rights for the European workforce. Suggestions were made for clarity on transnational issues and for making EWCs mandatory for all Union-scale undertakings. Finally, it was noted that the proposed policy measures seem to impact companies with established EWCs more than those without them.

5.3.3.2 Problem Area 2: Not sufficiently efficient and effective setting up of EWCs

Did your company encounter any challenges during the EWC setup process?

Multiple Choice Poll 25 votes 25 participants

Yes - 4 votes



16%

No - 13 votes



52%

Don't know - 8 votes



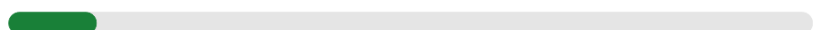
32%

slido

If yes, what were the most significant challenges your company encountered in the process of setting up the EWC? Please select all that apply:

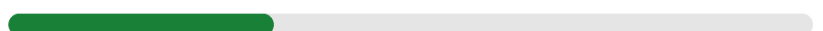
Multiple Choice Poll 9 votes 9 participants

Establishing the SNB within the legal deadline - 1 vote



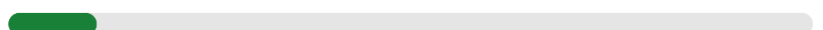
11%

Concluding the negotiations within the legal deadlines - 3 votes



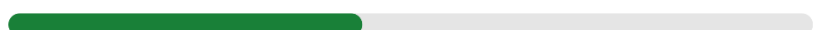
33%

Securing resources for EWC setup (e.g., training for SNB members, access to expertise) - 1 vote



11%

Other - 4 votes



44%

slido

During the workshop, participants engaged in a comprehensive discussion on the efficiency and effectiveness of setting up EWCs. Views were shared regarding the experiences and issues related to the EWC setup process, including timeframes and available resources. The positive and negative impacts of proposed solutions, such as clarifying subsidiary requirements, negotiation deadlines, resourcing of special negotiating bodies (SNBs), and promoting gender representation in EWC membership, were all discussed. Some participants highlighted **lengthy but successful negotiation processes** and expressed concerns about shorter timeframes compromising the quality of agreements. Flexibility in timeframes was emphasised to allow thorough discussions. The challenges of achieving **gender balance** in industries with a majority of male employees were acknowledged, and suggestions were made to avoid specific quotas and focus on a cultural mindset shift e.g., by making certain professions more attractive for women and encouraging the recruitment of women where relevant. The protection of companies with functioning agreements and the imposition of stricter requirements on those without agreements were proposed to maintain competitiveness.

5.3.3.3 Problem Area 3: Procedural and material obstacles to the effective information and consultation of EWCs

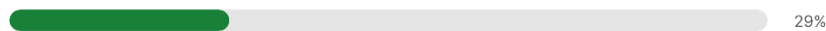
Have you encountered any challenges in the information and consultation process?

Multiple Choice Poll 24 votes 24 participants

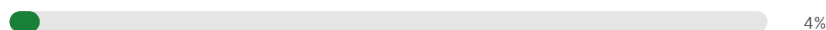
Yes - 16 votes



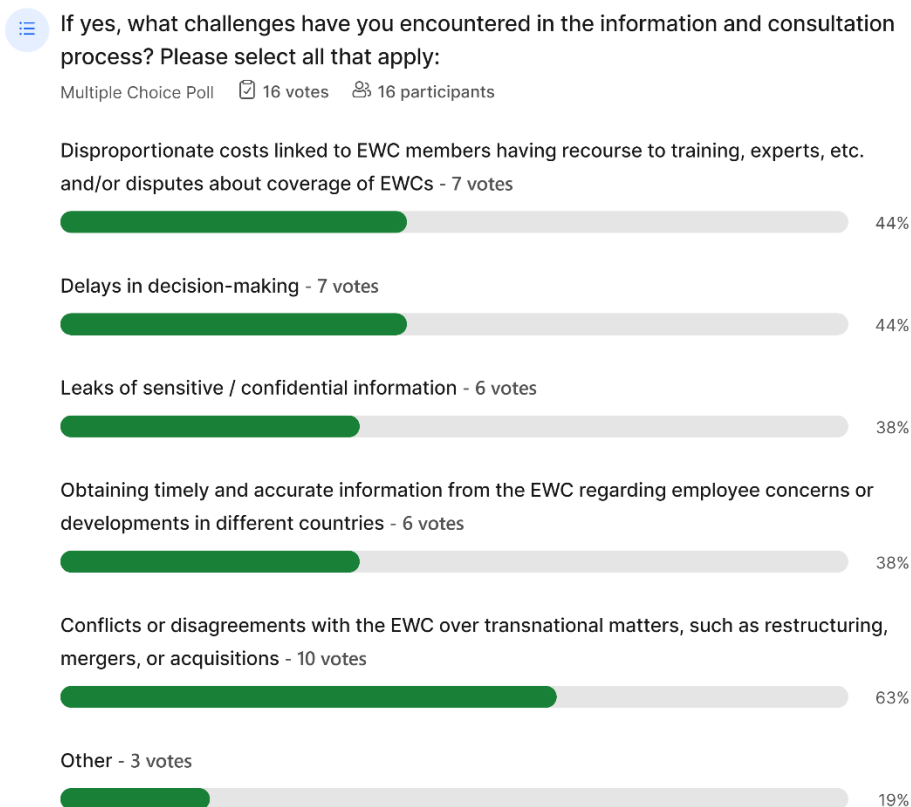
No - 7 votes



Don't know - 1 vote



slido



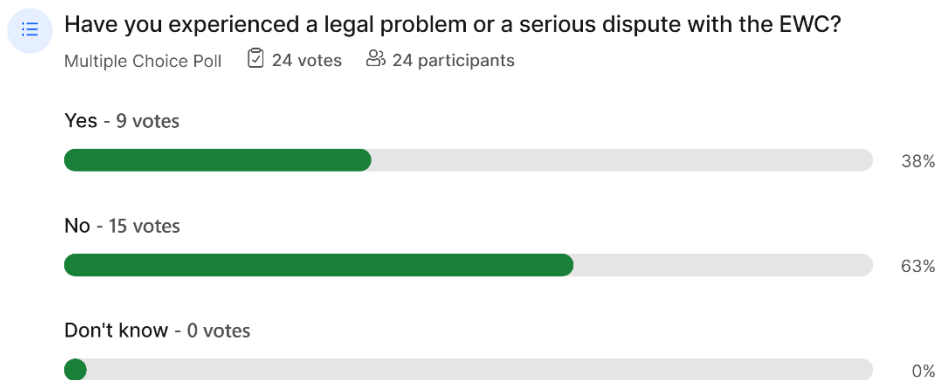
slido

Under this problem area, the interpretation of the concept of transnational matters and the use of confidentiality or non-disclosure clauses in the information process were topics of debate. Participants shared their experiences with EWC agreements and the adaptation of definitions to the company context, highlighting the frequency and justification of **confidentiality clauses**. Proposed solutions to broaden the definition of **transnational matters** and to require management to justify non-transnational matters were discussed, along with the impacts of including provisions obliging reasoned responses from management to EWCs' opinions, limiting the use of confidentiality clauses, and obliging consultations with EWCs before the end of national/local procedures. Striking a balance between improving the transnationality aspect of the Directive and maintaining a functional information and consultation process was deemed crucial. Participants recommended avoiding drawing inspiration from the German co-determination approach and emphasised the need for flexibility and confidentiality in coordinating parallel consultations (at the local/national and European levels). The adaptation of the definition of 'consultation' in EWC agreements was also examined, with considerations about timeliness.

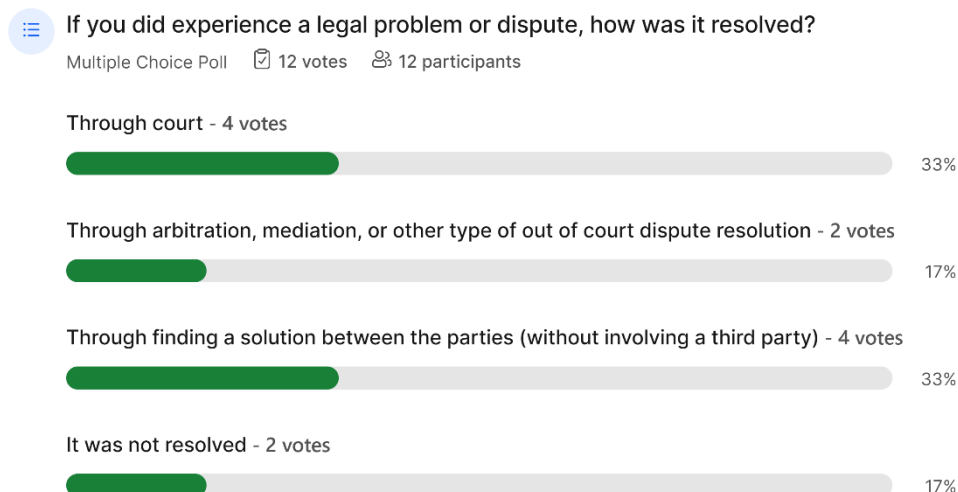
Discussions took place on the inclusion of provisions obliging management to take EWC opinions into account and ensure adequate resources for EWCs, including budgets for expertise and coverage of legal costs. The participants also discussed the other proposed solutions, such as subsidiary requirements for plenary meetings, strengthening participation in extraordinary meetings, clarifying resourcing, and providing a general right to assistance by chosen experts. The participants overall agreed that it was in their interest to provide EWCs with the means necessary to perform their duties and did not see the need to include such requirements in the Directive, especially as they could unnecessarily generate additional costs for management. In a similar vein, the inclusion of

such new requirements was not seen as necessary, especially for companies with long-established and well-functioning EWCs. Concerns were raised about superimposing regulations on **restructuring**, as these could potentially conflict with national or local legislation and create further challenges and negative impacts for multinational companies, i.e., slowing down or constraining corporate decision-making. The importance of finding a balance was emphasised, particularly with regard to coordinating parallel consultations, respecting subsidiarity and local rights, and addressing language barriers and unnecessary costs. The role and value of external experts, including associated costs and concerns about their approach, were also challenged for similar reasons: interference with corporate decision-making and increased likelihood of disputes, including within well-functioning EWCs.

5.3.3.4 Problem Area 4: Shortcomings in enforcing the Directive in terms of effective sanctions and EWCs' access to justice.



slido



slido

Participants discussed the proposed policy measures to ensure the effectiveness of enforcement mechanisms in the Member States. Participants emphasised their

preference for resolving issues by reaching verbal agreements among themselves. They highlighted successful problem resolution through discussion and the fact they had never experienced any significant disputes. Moreover, concerns were raised about the competitive disadvantage European companies would face compared to companies in other parts of the world if stringent obligations and sanctions were imposed regarding compliance with consultation procedures. It was noted that this could discourage cooperation and escalate matters to court. The effectiveness of the current framework was highlighted, with only one court case related to EWC legislation in Belgium in the past 25 years. The participants questioned the 'sudden' proposal of drastic sanctions, such as financial penalties tied to company turnover and the right to an injunction allowing temporary suspension of management decisions. considering the successful functioning of EWCs and the absence of disputes. Finally, they emphasised the role of management in fostering positive effects for companies, while acknowledging the importance of bottom-up processes and active participation of employees.

Annex 1 Methodological approach

A1.1 Sources used

The relevant issues were assessed using multiple sources and triangulating data when possible.

Desk research

Literature review

The literature review identified 58 sources, 36 of which were categorised as highly appropriate to the study. The table below lists all the fully reviewed publications for the purpose of the study.

Table 10. Fully reviewed publications

Source type (stakeholder type)	Year	Author(s)	Title
Public authority	2008	European Commission	Commission Proposal Directive 2009/38/EC on European Works Councils
Public authority	2010	European Commission	Report Group of Experts Implementation of Recast Directive 2009/38/EC on European Works Councils December 2010
Evaluation study	2016	ICF (commissioned by European Commission)	Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council
Public authority	2018	European Commission	Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) {COM(2018) 292 final}
Academic	2018	Laulom S. (commissioned by European Commission, DG EMPL)	Identifying obstacles to European Works Councils' creation and effectiveness – are there lessons to be learnt from some national jurisdictions?
Public authority	2020	The European Economic and Social Committee	An EU legal framework on safeguarding and strengthening workers' information, consultation and participation
Public authority	2021	European Parliament	European works councils (EWCs) European Added Value Assessment. Briefing
Public authority	2021	European Parliament	Report on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive. (2021/2005(INI));

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Source type (stakeholder type)	Year	Author(s)	Title
Public authority	2023	European Parliament	Revision of the European Works Councils Directive European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))
Employee organisations – employee perspective	2009	Hertwig M., Pries L. and Rampeltshammer L. (eds) (ETUI)	European Works Councils in complementary perspectives
Employee organisations – employee perspective	2009	Vitols S. (ETUI)	European Works Councils: an assessment of their social welfare impact
Employee organisations – employee perspective	2009	Hayen R-F.	New version of the EU Works Council Directive - Selected Aspects of their Interpretation and National Implementation in Germany
Employee organisations – employee perspective	2011	M. Stolt and E. Wolters (ETUI)	Worker involvement in the European Company (SE). A handbook for practitioners
Employee organisations – employee perspective	2014	Jagodzinski R., (ETUI)	Implementation of enforcement provisions of the European Works Councils Recast Directive : are sanctions really 'effective, proportionate and dissuasive'?
Employee organisations – employee perspective	2015	De Spiegelaere S. & Jagodzinski R. (ETUI)	European Works Council and SE Works Councils in 2015. Facts and Figures
Employee organisations – employee perspective	2015	Jagodzinski R. (ETUI)	Variations on a theme? The implementation of the EWC Recast Directive
Employee organisations – employee perspective	2016	S. De Spiegelaere (ETUI)	Too little, too late? Evaluating the European Works Councils Recast Directive
Employee organisations – employee perspective	2016	Waddington J., Pulignano V., Turk J., and Swerts T. (ETUI)	Managers, BusinessEurope and the development of European Works Councils
Employee organisations – employee perspective	2016	Voss E. (ETUC)	European Works Councils Assessments and Requirements. Report to the ETUC, Brussels, European Trade Union Confederation.
Employee organisations – employee perspective	2017	ETUC	Position Paper for a modern European Works Council Directive in the Digital Era
Employee organisations – employee perspective	2017	De Spiegelaere S., (ETUI)	Company restructuring across borders: with or without European Works Councils?. ETUI Policy Brief 1/2017.

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Source type (stakeholder type)	Year	Author(s)	Title
Employee organisations – employee perspective	2019	De Spiengelaere S. & Jagodziński R. (ETUI)	Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives
Employee organisations – employee perspective	2020	De Spiegelaere, S. Jagodzinski, R. (ETUI)	Policy Brief, Are European Works Councils ready for Brexit? An inside look, Brussels.
Employee organisations – employee perspective	2020	Meylemans L., De Spiegelaere S. (ETUI)	EWC Confidential. Confidentiality in European Works Councils and how representatives deal with it: case study and survey insights
Employee organisations – employee perspective	2020	Pulignano, V., & Waddington, J	Management, European Works Councils and institutional malleability
Employee organisations – employee perspective	2020	Demaître B. (ETUI Education Officer), interviewed by Guglielmi G., (Filcams Cgil International Policies Coordinator)	Training of EWC members in the face of Covid-19: proposals, solutions and issues
Employee/ organisation – employee perspective	2022	Lafuente S. (ETUI)	The Europeanisation of board level employee representation in France: an emerging role for European Works Councils?
Employee organisations – employee perspective	2022	De Spiengelaere S., Jagodziński S; Waddington J. (ETUI)	European Works Councils: contested and still in the making
Employee organisations – employee perspective	2022	Lafuente S., De Spiegelaere S., Jagodziński R. (ETUI)	Relations between European works councils and board-level employee representatives
Employer organisations - employer perspective	2017	BusinessEurope	Comments on the functioning of the EWC Recast Directive
Employer organisations - employer perspective	2019	Koutroukis T.	Are European Works Councils a vehicle for the Europeanization of employee relations? A study from the standpoint of people management executives
Employer organisations - employer perspective	2018	International Training Centre, BDA, Confindustria, MEDEF, Confederation of Danish Industries	Transnational Company Agreements: Issues, Approaches and Practices A guide for employers' organisations and companies

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Source type (stakeholder type)	Year	Author(s)	Title
Tripartite EU agency	2015	Peter Kerckhofs (Eurofound)	European Works Council developments before, during and after the crisis
Tripartite EU agency	2016	Demetriades, Stavroula; Biletta, Isabella; Fromm, Andrea (Eurofound)	Win-win arrangements: innovative measures through social dialogue at company level
Tripartite EU Agency	2020	Broughton, A., Voss, E., Rodriguez Contreras E. (Eurofound)	Social dialogue and HR practices in European global companies
Tripartite EU agency	2022	Turlan, Frédéric; Teissier, Christophe; Weber, Tina; Kerckhofs, Peter; Rodriguez Contreras, Ricardo (Eurofund)	Challenges and solutions: Case studies on European Works Councils
Academic	2013	Marginson P., Lavelle J., Quintanilla J., Adam D., And Sánchez Mangas R.	Variation in approaches to European works councils in multinational companies, ILR Review, 66(3), Spring
Academic	2014	Mis K.	European Works Councils as Institutions for Transformation and Europeanisation processes of Polish Industrial Relations
Academic	2015	Holm-Detlev Köhler S., Gonzalez B., Mona A.	Three decades of European Works Councils. A quantitative evaluation
Academic	2015	Whittall M., Lücking S., Trinczek R. and Gunkel J.	Closed frontiers. Why German multinationals don't utilise the European works council Directive, Düsseldorf, Hans-Böckler-Stiftung
Academic	2016	Pulignano V., Turk J., Swerts T. (commissioned by BusinessEurope)	European works councils on the move: management perspectives on the development of a transnational institution for social dialogue
Academic	2017	Föhrer, B., & Erne, R.	Training programmes for European works councillors in Germany, in Ireland and at EU level: Transnational trade union action through education?

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Source type (stakeholder type)	Year	Author(s)	Title
Academic	2017	Mählmeyer, V., Rampeltshammer, L., & Hertwig, M.	European Works Councils during the financial and economic crisis: Activation, stagnation or disintegration?
Academic	2017	Whittall M., Martínez Lucio M., Mustchin S., Telljohann V., Rocha Sánchez F.	Workplace trade union engagement with European Works Councils and transnational agreements: The case of Volkswagen Europe
Academic	2017	Hann, D., Hauptmeier, M., & Waddington, J.	European Works Councils after two decades. European Journal of Industrial Relations, 23(3), 209–224
Academic	2017	Pernicka, S., Glassner, V., Dittmar, N., Mrozowicki, A., & Maciejewska, M.	When does solidarity end? Transnational labour cooperation during and after the crisis – the GM/Opel case revisited. Economic and Industrial Democracy, 38(3), 375–399.
Academic	2018	Gordo González L.	Collective transnational bargaining: practical implementation experiences from European works councils in Spain
Academic	2019	Rosenbohm, S., & Haipeter, T.	German board-level employee representation in multinational companies: Patterns of transnational articulation. European Journal of Industrial Relations, 25(3), 219–232.
Academic	2019	Waddington J.	European works councils: the challenge for labour / 1. Industrial Relations Journal, 2011, vol. 42, n° 6. - 508-529
Academic	2021	De Spiegelaere, Stan.	When Are European Works Councils Informed and Consulted, and How Do They Gain Influence? A Quantitative Analysis. Industrial Relations Journal, vol. 52, no. 6, pp. 502–27, doi:10.1111/irj.12350
Academic	2021	Holm-Detlev Köhler S., Gonzalez B., Mona A.	The European Works Council as a management tool to divide and conquer: Corporate whipsawing in the steel sector.
Academic	2022	Triantafyllidou, E.; Koutroukis, T	Human Resource Management, Employee Participation and European Works Councils: The Case of Pharmaceutical Industry in Greece

Case-law analysis

Desk research was carried out to identify relevant national court cases. The ETUI case law database, national case law registers, legal expert referencing cases were used to identify cases. The research uncovered 49 cases for the 2015 – 2022 period. Of these, 36 have been analysed in depth (due to double identification or exclusion of lower instances).

The ICF EWC study from 2016²⁶⁷ included ten relevant national cases for the 2011-2014 period. These cases were also included in the analysis. The court case review supports the assessment of possible problems and provides key information on court decisions concerning EWCs across Member States.

Stakeholder consultations

Online targeted survey

The online targeted survey served to collect the views of employee representatives and management representatives on key issues. The survey was open to all EWCs and to the management representatives of companies with an EWC. The analysis of survey responses also compares views and experiences across different types of EWC (i.e., I&C bodies created before the application of the first EWC Directive, and EWCs created under the 1994 or 2009 Directives). A total of 233 respondents completed the online targeted survey.

Semi-structured interviews

Interviews were conducted with multinational companies (MNCs) with an established EWC (both management and employees' representatives), national authorities, experts and EU and national social partners. Interviews served to complement the information from the desk research and other stakeholder consultations, by gathering first-hand views and experiences on the functioning of EWCs. In total, 70 interviews across all stakeholder groups were conducted. The companies known to have an EWCs were selected randomly using the ETUI EWC agreement database²⁶⁸. The companies were classified first according to the type of EWC agreement and then a sample of companies per type of EWC agreement were randomly selected (using Excel function for this) to approach companies. The sample had always ten company names per type of agreement (if possible). In order to identify interview partners several stakeholders had to be approached to follow the random selection approach. When after several attempts no interview partner was identified the name of the company was replaced. The same was done in case the company declined the request or no reply was received after three weeks. When the random selection approach resulted in the selection of companies that had been already recently involved in EU level studies on EWCs, they were replaced to ensure relying on inputs from companies that have not been heard so far in recent studies.

Evidence-based workshops

Two workshops were held on 22 June 2023: one with EWC representatives and another with management representatives. These workshops were intended to supplement information not gathered from other sources, particularly the online targeted survey.

A1.2 Demographics

The data collection exercise, which made use of the data sources mentioned in section A.**Error! Reference source not found..1**, informed the assumptions on the likely evolution of the demographics of EWCs, as well as of key indicators relevant for the problem definition.

The main assumptions identified for the trends in demographics and incidence of problems are:

²⁶⁷ ICF (2016) Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council, commissioned by the European Commission, accessed at: <https://op.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>

²⁶⁸ <https://www.ewcdb.eu/>

- **Stationarity:** based on the information gathered from the stakeholder consultations and other evidence compiled, it was assumed that the extent and frequency of problems concerning the setting-up and implementation of the EWCs will remain relatively stable over time, hence the team assumed stationarity of these values.
- **Linear growth:** building on the knowledge gathered through the desk research and stakeholder consultations, it emerged that the annual count of active EWCs, excluding terminated/inactive EWCs, is continuously increasing at a relatively constant rate. In order to account for such growth over time, for the variable considered dynamic, an hypothesis of linearity is assumed. External factors are also taken into account where relevant.

Number of EWCs

The extraction of data from the ETUI database²⁶⁹ gave a baseline estimate of the current numbers of EWCs, while the survey results provided an indication of the extent of the presence of EWCs by country. Based on the data available through ETUI database, there are currently **1001 EWCs** (data as of early 2023).

Based on the data provided by ETUI, the number of EWCs active in any given year is the net difference between:

- the annual growth rate of EWCs (based on the 2017-2022 average growth, excluding 2020, as described above and in the table below). and
- the annual rate of EWCs becoming inactive (based on the 2017-2022 average growth, excluding 2020, as described in the table below).

Unless specified otherwise, in this annex, a reference to 'EWCs' includes pre-Directive voluntary information and consultation (I&C) bodies established before the 1994 EWC Directive and EWCs established under the 1994 and 2009 Directives.

Note on external factors

The demographics of EWCs are determined by the countries or Member States in which multinational companies are headquartered or are operating, as well as by national industrial relations traditions. As mentioned in the report, some external factors, such as the effects of the Russian War on Ukraine and other geopolitical turmoil may influence the growth in the number of EWCs and potential EWCs. Yet, a robust trend was impossible to define due to diverging data and lack of conclusive studies. Hence, the growth of EWCs and their potential number is assumed to be linear.

Companies

As of 2021, 3,676 eligible multinational companies (MNCs) for establishing an EWC²⁷⁰ were counted by Eurostat²⁷¹. In the years for which this indicator was measured (i.e., 2019-2021), the number of eligible companies grew by 3.92% on a yearly basis. Taking this as the constant growth rate delivers an estimate for 2023 of 3,970 eligible MNCs.

This figure implies a ratio of companies currently with an EWC to eligible companies of just under 25.21%, as some multinationals may have more than one EWC. In general, however, the assumption that a company has only one EWC is a good approximation.

²⁶⁹ European Trade Union Institute (2023). EWC Database. Retrieved from <https://www.ewcdb.eu/>

²⁷⁰ Companies fulfilling criteria of Article 2(1)(a) of Directive 2009/38.

²⁷¹ Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_in_large-scale_multinational_enterprise_groups

Employees

Two main relevant populations of employees are considered as part of the impact assessment:

- The first comprises the **EU employees working in companies that currently have an EWC**. Based on the assumption of one EWC per company, the basic formula to estimate this population is simply *population of employees = 1001 * average number of employees per undertakings with an EWC*.
- The second encompasses **EU employees that would potentially fall under the scope of the Directive**, as they work for eligible undertakings (i.e., whether or not these undertakings have an EWC at present).

Table 11 summarises the available estimates for these two populations, based on the most recent sources available. The ICF 2016 study²⁷² reported an estimated average of 16,612 (EU/EEA) employees per company with an EWC. The study also noted that the lower value (down from an estimated 29,000 EU employees per company with an EWC in an impact assessment conducted before the Recast Directive²⁷³) was due to smaller companies setting up EWCs after the Recast Directive came into force. This number delivers a total of 13.3 – 20 million EU employees in companies with an EWC. It should be noted that no distinction is made between companies with EWCs and companies with voluntary agreements set up before the first 1994 Directive entered into application.

The targeted survey of companies with EWCs, carried out as part of this study, reports an average of 34,321 (EU) employees per company (based on 31 responses), which would translate in a much higher estimate of 27.5 – 41.2 million employees.²⁷⁴ The targeted survey also delivers a median value of 13,000 EU employees per company with an EWC, which is more in line with results from other sources. The excessively high mean value is likely to be due to a number of factors, including self-selection of respondents, small sample size, and self-report bias.

On the other hand, the data provided by Eurostat²⁷⁵ indicates that 29.6 million EU employees are eligible to be covered by an EWC as of 2021, which would correspond to 28.5 – 34.9 million EU employees in 2023²⁷⁶ assuming a constant growth of 3.42%, based on the growth rate in the years (i.e., 2019-2021 for which this indicator was measured).

Using the average number of EU employees per eligible company derived from Eurostat data to calculate the number of EU employees in companies that currently have an EWC is theoretically possible, but it is likely to significantly underestimate the true population value. This is because the Eurostat estimates also include companies that do not currently have an EWC, which are likely to be smaller than those that already have one given the trend observed in the 2016 ICF study and the 2018 Commission evaluation. For the same reasons, the reverse process (i.e., using the number of EU employees in companies that currently have an EWC, based on the available sources, to calculate the average number

²⁷² ICF (2016) 'Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council'. p. 61.

²⁷³ European Commission (2008), Commission Staff Working Document Accompanying The Proposal For A Directive Of The European Parliament And The Council on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (recasting), Impact Assessment. COM(2008) 419 final. SEC(2008) 2167.

²⁷⁴ 20% range applied to the central value of the ICF 2016 and the 2023 survey estimates.

²⁷⁵ Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Employment_in_large-scale_multinational_enterprise_groups

²⁷⁶ 10% range applied to the central value of the Eurostat estimates.

of EU employees per eligible company) may lead to an overestimation of the 'eligible' workforce.

From the three data sources, two estimates that appear to be internally consistent are the Eurostat figures for employees covered by the Directive and the 2016 ICF study figures for employees in companies that currently have an EWC. These two are therefore the preferred estimates for the respective populations of EU employees concerned.

Taking into account the 2016 estimate, more than 50 % EU-based workers employed in eligible companies are covered by an EWC.

Table 11. Employees with an EWC or under the scope of the Directive, EU/EEA, 2023, estimate comparison (in millions: Mn)²⁷⁷

Source	Average number of EU/EEA employees per undertaking	Employees in undertakings that currently have an EWC (2023)		Employees potentially within the scope of the Directive / in eligible undertakings (2023)	
		Lower bound	Upper bound	Lower bound	Upper bound
Eurostat, EuroGroups Register, 2023	N/A	N/A	N/A	28.6 Mn	34.9 Mn
ICF study, 2016	16,612	13.3 Mn	20.0 Mn	N/A	N/A
Targeted survey, 2023	34,321	27.5 Mn	41.2 Mn	N/A	N/A

Eurostat ad-hoc extraction from the EuroGroups Register, ICF study (2016), ICF targeted survey (2023).

A1.3 Data mapping

Table 12 provides an overview of the main data indicators for the description of the issues examined in this study.

²⁷⁷ The percentages used to calculate the lower and upper bounds follow the same logic as explained above. The data from Eurostat (EuroGroups Register) are considered to be particularly reliable and therefore a range of 10% is applied. Estimates from the 2016 ICF study and the targeted survey are deemed less reliable due to the small sample size, the risk of selection bias and the higher variability of responses, so a 20% range is applied.

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE
RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Table 12. Overview of the main data indicators ²⁷⁸

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
N of EWCs (total)	1001 ²⁷⁹	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	The number of EWCs could grow with more companies relocating to Europe, yet a trend cannot be established with the current data.	Net annual growth (absolute terms) = total new annual EWCs – annual inactive EWCs.	
Average creations of EWC EWCs per year	+19.9	All EWCs (2009-2022)	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	Fixed annual number of new active EWCs	The figure is based on the 2009-2022 average.	
Average dissolutions of EWCs per year	-10.9	All EWCs (2009-2022)	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	Fixed annual number of new inactive EWCs	The figure is based on the 2009-2022 average.	
N. of art. 6 EWCs	616 (51.4%)	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	Fixed annual net (linear) growth: +8.72 (96.9% of new EWCs) (+/-10%)	New EWCs to be art. 6 EWCs, to progressively increase as a share of the total and replace exempted EWCs. Assumed fixed ratio between new art. 6 EWCs and new EWCs under sub. req.	Incorporating decimal values in the calculation of annual net creation of EWCs, (e.g., 8.72 yearly net increase in art. 6 EWCs) may appear odd, yet it facilitates the incorporation of the small share of EWCs with subsidiary requirements in the analysis, with resulting

²⁷⁸ % ranges always indicate percentages, not percentage points, even when the base value is itself a percentage

²⁷⁹ The ETUI Database also includes five “body type to be specified”, and nine “information and consultation procedure”, in addition to the EWCs of a specified type listed in this table.

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
							figures rounded for optimal presentation.
N. of pre-directive information and consultation bodies	282 (28.2%)	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	No new pre-directive bodies.	Projected decrease as a share of the total and possibly in absolute terms. Replacement by Art. 6 EWCs.	
N. of art. 3 (UK pre-directive bodies)	41 (4.1%)	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	No new UK pre-directive bodies.	Projected decrease as a share of the total and possibly in absolute terms. Replacement by Art. 6 EWCs.	
N. of art. 14 bodies	28 (2.8%)	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	No new art. 14 EWCs.	Projected decrease as a share of the total and possibly in absolute terms. Replacement by Art. 6 EWCs	Ca. half of these bodies report already applying art. 6 as under the Recast Directive.
N. of EWCs with subsidiary requirements	20 (2.0%)	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	Fixed annual net (linear) growth: +0.28 (3.1% of new EWCs)	New EWCs with subsidiary requirements are possible, but their share of the total is likely to remain stable. Assumed fixed ratio between new art. 6 EWCs and new EWCs under sub. req.	See comment on rounding under 'N. of art. 6 EWCs'
N. of eligible companies	3,970 potentially eligible companies (in 2023)	N/A	Eurostat EuroGroups Register		Linear growth at 3.9% annually	Starting value is the 2021 one: 3,676 potentially eligible companies. The growth rate is based on	

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
			(2023 extraction)			the average annual growth rate between 2019 and 2021). <i>The number of eligible companies could be growing with more companies relocating to Europe.</i>	
N. of employees within the scope of the Directive	31,690,945 employees within the scope of the Directive (in 2023)	N/A	Eurostat EuroGroups Register (2023 extraction)		Linear growth at 3.4% annually	Starting value is the 2021 one: 29,649,200 employees within the scope of the Directive. The growth rate is based on the average annual growth rate between 2019 and 2021). <i>The number of employees within the scope of the Directive would grow roughly in line with the growth in eligible companies.</i>	
Gender composition in the EWC (perceived)	24% of respondents reports equally represented, 2% >60% women, 62% >60% men.	233 respondents (180 employees, 53 management)	ICF Targeted survey (2023)	Not representative			Management: 28% equal representation, 2% >60% women, 62% >60% men. Employee rep.: 23% equal representation, 2% >60% women, 62% >60% men.
Rates of renegotiation (since creation)	53.8% for pre-Directive EWCs, 30.5% for Art 6 and subsidiary requirements EWCs	All EWCs	ETUI (2022): European Works Councils: contested			No evidence suggesting that rate of renegotiations will change over time.	Rates of renegotiations from the creation of the EWC to the year the ETUI survey, which is the source for this study, was conducted, i.e., 2018.

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
			and still in the making				
Average number of representatives per EWC	27	All EWCs	ETUI EWC Database (2023 extraction)	Source is neither exhaustive nor updated in real time	To remain unchanged on average.	No evidence suggesting this indicator will change	
Average n. of employees (EU) of companies with EWCs	16,612	37 employer and employee representatives	ICF 2016 evaluation	Not representative. Small sample size.	To remain unchanged on average.	No evidence suggesting this indicator will change	The ICF 2016 study provides lower average figures for number of employees and turnover, compared to the estimates of the 2023 targeted survey, but there is no evidence of this difference being indicative of an upward trend, especially because minima and maxima are similar. The most plausible explanation is sampling differences between the two surveys delivering different means. Hence, for turnover, the latest of the two is preferred. On the other hand, the estimate from the ICF survey on the average number of employees of companies with an EWC is preferred, while the Eurostat figures are preferred for employees covered by the Directive.
Average turnover (EU) of companies with EWCs (€ bn)	€ 13.9 bn	11 overall respondents	ICF Targeted survey (2023)	Not representative. Small sample size.	To remain unchanged on average.	No evidence suggesting this indicator will change over time in the baseline.	
Average turnover (global) of companies with EWCs (€ bn)	€ 4 23.9 bn	33 overall respondents	ICF Targeted survey (2023)	Not representative. Small sample size.	To remain unchanged on average.	No evidence suggesting this indicator will change over time in the baseline.	

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
Restructuring	91.1% of EWC members confronted with restructuring in the considered 3 years	1,496 EWC representatives from 365 EWCs	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential bias	Annual probability of restructuring: $91.1\%/3 = 30\%$	<i>The analysis of external factors suggested an increase in restructuring activities in the future, however a trend cannot be established with the current data.</i>	
Adjustment costs (one-off): setting-up costs for Recast EWCs	€ 157,241	37 employer and employee representatives	ICF 2016 evaluation	Small sample size	Point estimate adjusted for inflation.	2014 value: €119,207	
Hassle costs: setting-up costs	Additional costs were deemed negligible	N/A	ICF 2016 evaluation		Negligible hassle costs		E.g., costs associated with obtaining support from experts or from European social partners
Average length of negotiations to set-up EWCs	14 months for Recast EWCs	37 employer and employee representatives	ICF 2016 evaluation	Small sample size, unclear definition	Ranged average: 19 – 25 months. Assumed from first SNB meeting to the conclusion of the EWC agreement.	The two figures are very different but seem to measure the same "part" of the negotiation process. Instead of discarding one of the two, they are aggregated.	
	2-3 years from the establishment of the SNB to the conclusion of the EWC agreement	N/A	EC 2018 evaluation	Unknown sample size, unknown source			

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
Time from request to EWC agreement (% > 18 months)	51% Management: 9% Employee rep: 41%	233 respondents (180 employees, 53 management)	ICF Targeted survey (2023)	Not representative	To remain unchanged in relative terms.	No evidence suggesting this indicator will change	Statistics net of "Don't know / prefer not to say" responses
Time from request to SNB (% > 6 months)	51% Management: 7% Employee rep: 44%	233 respondents (180 employees, 53 management)	ICF Targeted survey (2023)	Not representative	To remain unchanged in relative terms.	No evidence suggesting this indicator will change	Statistics net of "Don't know / prefer not to say" responses
Access to external experts/trade union	92% of EWC agreements provide for access to external expert support	1,496 EWC representatives	ETUI (2022): European Works Councils: contested and still in the making	Potential bias	Assumed that 8% does not have a guaranteed access to external expert support in their agreement.	8% = share of respondents reporting that their EWC agreement does not specifically guarantee access to an external expert.	Note that not having guaranteed access to external support in the agreements does not mean that it could not be provided in practice upon ad hoc request.
	68% (185) have guaranteed access to one, 26% (72) to two, 6% (22) to three or more	279	ETUI EWC Database (2023 extraction)	Source not exhaustive nor updated in real time	Fixed proportions over time.	No evidence suggesting this indicator will change	
Annual cost of running EWC	Avg: € 165,000 Min: € 45,000 Max: € 500,000	20	ICF 2016 evaluation	Small sample size, not including employee time	Estimate of fixed costs		

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
	Median: €60,250 Avg (excl. 1mn outlier): €105,000 Min: €10,000 Max: €1 mn	35	Pulignano et al. (2016): European works councils on the move: management perspectives on the development of a transnational institution for social dialogue	Potential bias, small sample size			
Clarity of definition of transnational matters	73% of EWC agreements had definition at least or more extensive than the Recast Dir	15 randomly selected case study	ICF 2016 evaluation	Very small sample size	Percentage of EWCs with definition of transnational matters: 67-83%. Fixed shares over time.	The estimates from the survey are in line with previous estimates, which indicate a stable situation. Percentage range of each additional element: employee - management range.	Divergent responses between employees and management. Additional information on elements included in definitions.
	Probability of including definition: 85% in Recast EWCs (65% pre-Recast)	23 respondents	ICF 2016 evaluation	Very small sample size			
	70% of respondents declare that their EWC have a	233 (180 employees, 53 management)	ICF Targeted survey	Not representative, unbalanced sample			

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
	definition of transnational matters (67% employees, 83% management; 71% EWC under 94/09 Directives, 76% under pre-Directive EWC).		(2023) (2023)				
	24% had to seek legal advice in relation to issues of transnationality, with an average cost of such advice at EUR 15,000	9 companies	ICF 2016 evaluation	Very small sample size	Probability of problems concerning unclear definition of transnational matters: 30%	The second estimate is more robust than the first, so it is preferred. A greater range is applied to the cost to reflect the high degree of uncertainty.	
	Art 6 / subs req: 24.53% of claim to have frequent discussions with management on whether or not an issue is transnational (against 15.66% saying they don't). Art 13/14/3: 11.18% does so (against 9.92% saying they don't).	1496 EWC representatives	ETUI (2022): European Works Councils: contested and still in the making	Potential bias			

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
Number of plenary meetings per year	79.36% (646) have one, 26.29% (214) have two, the rest (29) have three to six	889	ETUI EWC Database (2023 extraction)	Source not exhaustive nor updated in real time	Ranged average for each category. Fixed shares over time.	No evidence suggesting this indicator will change	
	0.87% say <1 meeting per year; 50.13% say 1; 38.37% say 2; 10.63% say 3 or more	1496 EWC representatives	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential Bias			
Extraordinary meetings	94% of Recast EWCs have a right to hold extraordinary meetings. 42% had used this right by 2016.	35 EWC representatives	ICF 2016 evaluation	Small sample size	Right in agreement: 94% [88%-100%]. Probability of using the right: 44.45%	Range of right in agreement is capped because the upper bound cannot be more than 100%. Percentage of EWCs that had extraordinary agreements to increase with time, but there is no evidence suggesting the probability of using it will change	
	46.9% reported that an extraordinary meeting had been called in the last restructuring event (42.1% no,	1496 EWC representatives	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and	Potential Bias			

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE
RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
	11.9% don't know)		SEWC representatives				
Unitary cost of plenary meetings	35% <25k, 15% 25-50k, 30% 50-70k, 10% 75-100k, 10% 100-200k, 0% >200k	20 employer representatives	ICF 2016 evaluation	Very small sample size	Ranged average. Projections adjusted for inflation.	No evidence suggesting this indicator will change	
Days of training received	34.0% none, 12.4% one day or less, 21.7% 2-3 days, 9.2% 4-5 days, 13.6% more than 5 days	1496 EWC representatives	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential Bias	Fixed proportion over time.	No evidence suggesting this indicator will change	
Perceived effectiveness of I&C: timing (after decision is taken)	73.4%	1496 EWC representatives	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential bias	Fixed proportion over time.	No evidence suggesting this indicator will change	

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE
RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
Perceived effectiveness of I&C: timing (after implementation has started)	29.0%	1496 EWC representatives	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential bias	Fixed proportion over time.	No evidence suggesting this indicator will change.	
Use of confidentiality	58.4% of EWC members say management often refuses to give information due to confidentiality. 24.3% disagree.	202 EWC respondents	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential bias		No evidence suggesting this indicator will change	
	49% of employees and 4% of management report having had a problem with confidentiality	233 (180 employees, 53 management)	ICF Targeted survey (2023)	Not representative, unbalanced sample			
Frequency of conflict	Experienced serious dispute? Art 6 or sub req	1496 EWC representatives	ETUI (2019): Can anybody	Potential bias	Value projected		

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE
RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
	EWCS: yes at 32.97%, no at 68.03%. Art 13/14/3 EWCs: yes at 23.88%, no at 76.12%		hear us? An overview of the 2018 survey of EWC and SEWC representatives		To be compared with anecdotal evidence (from interviews)		
Access to justice	Art 6 / sub req: 16.3% reported going to court in case of serious conflict, 79.4% reported not taking the case to court Art 13/14/3: 4.4% reported going to court in case of serious conflict, 95.6% reported not taking the case to court	1496 EWC representatives	ETUI (2019): Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives	Potential bias	Access to court: weighted average of employees and management estimates Fixed proportions over time.	No evidence suggesting this indicator will change	Divergent responses between employees and management. The various reasons for not going to court are also taken into consideration.
	66% of employees experienced problems with related to enforcement of EWC rights and obligations	233 (180 employees, 53 management)	ICF Targeted survey (2023) (2023)	Not representative, unbalanced sample			

STUDY EXPLORING ISSUES AND POSSIBLE SOLUTIONS IN RELATION TO THE
RECAST DIRECTIVE 2009/38/EC ON EUROPEAN WORKS COUNCIL

Data information					Methodological approach		
Indicator	Value(s)	Sample size	Source(s)	Data limitations	Key assumptions and limitations	Rationale	Comments
	provided by the existing rules, in comparison to only 2% management						
	<p>Employees: 16% stated there is no possibility to access court, 9% that there is, and it was used, 36% that there is and it was never used.</p> <p>Management: 8% stated there is no access to court, 6% that there is, and it was used, 66% that there is but it was never used</p>	233 (180 employees, 53 management)	ICF Targeted survey (2023) (2023)	Not representative, unbalanced sample			

A1.4 Challenges and limitations

In addition to the limitations in the data available, the study team encountered challenges related to the characteristics of the study topic and the diverse landscape of stakeholders associated with it. The study team had to evaluate the impact of such challenges on evidence collection and analysis of the defined problem areas and proposed potential corrective actions to mitigate any adverse effects.

These challenges included:

- Limitations in source materials from which most of the literature is derived;²⁸⁰
- Imbalances in the existing information sources available for research;
- Polarised views and expectations on the role and functioning of the Recast Directive among stakeholders;
- Reluctance among stakeholders to participate in the consultation activities, especially in the initial stages of the study.

Many of the sources identified report on the perspective of one stakeholder group only (namely, employees). The study team made efforts to ensure, where possible, a balanced representation of views between management and employees, both in the stakeholder consultations (see below) and in the elaboration of secondary data. Additionally, some sources rely on small samples or case studies, which, while interesting, do not provide sufficient evidence for a robust assessment at EU level. Finally, none of the surveys (including the one carried out as part of this study and those conducted other organisations) claim to be representative of the entire relevant population of employees, EWC representatives or managers. Indeed, most of the analysed sources carry a risk of selection bias. Where possible, information from potentially biased or limited sources has been cross-checked and validated using more reliable sources. The study highlighted disparities in perspectives and potential biases among the different stakeholder groups in the analysis (for instance, by reporting the views and opinions of each stakeholder group separately).

The study team developed a set of quality criteria for the identification and review of the key sources of literature. The review highlighted an imbalance in available sources. Most literature sources solely present the perspectives of employees, largely drawing from the 2018 large-scale survey and the ETUI database, both of which primarily focused on employees' inputs. The over-representation of one party in the sources could lead to skewed results in the analysis. To ensure a more balanced representation of both parties' perspectives (employees and management), the stakeholder consultation strategy was designed to give equal weight to both employees and management, and to draw from different realities rather than relying on a few well-documented examples. For instance, when identifying EWC representatives and management representatives for interviews, the study team made a deliberate effort to engage stakeholders through various channels beyond umbrella organisations. The aim was to gather input from diverse sectors and types of EWCs, encompassing not only those commonly highlighted in literature as best or worst practice examples, but those in between these two extremes).

The scoping interviews revealed very polarised views among the two main stakeholder groups (management and employee representatives) about the role and functioning of EWCs within the existing regulatory framework and about the possible need and directions for change. Management seemed to largely believe that the current framework was sufficient to support the correct functioning of EWCs (perhaps requiring only limited

²⁸⁰ One of these is the lack of up-to-date statistics on the relocation of EWCs where the applicable law was that of the UK, following Brexit, as there is still considerable uncertainty about this issue.

adjustments and/or clarifications). The understanding of the objective and role of EWCs in facilitating social dialogue varied significantly among employee representatives. Some appeared to expect a more extensive involvement of EWCs in companies' decision-making processes, akin to a co-decision mechanism in some instances. These divergent expectations on the role of EWCs are clearly reflected in the sources available, which also exhibit biases as previously described. Furthermore, these differences are reflected in the positions expressed by the various stakeholders throughout the study. Corrective actions included the cross-checking and verification of information, and the design of a consultation strategy in such a way as to collect different perspectives and to minimise bias. In addition, the study is transparent in reporting differences in views and potential biases among the different stakeholder groups in the analysis.

The implementation of the stakeholder consultation activities initially faced delays due to the reluctance of key EU-level stakeholders to actively disseminate the targeted online survey. To address such difficulties, alternative dissemination channels were identified and utilised to share the survey with key EU-level stakeholders. Despite the initial delays, the survey was eventually launched and achieved a good response rate. Similarly, the other stakeholder consultation activities, particularly the interviews, also encountered some initial delays, but most of the targets were nevertheless eventually achieved.

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
- at the following standard number: +32 22999696, or
- by email via: https://europa.eu/european-union/contact_en

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en

EU publications

You can download or order free and priced EU publications from: <https://op.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

