
Managers, BusinessEurope and the development of European Works Councils

Jeremy Waddington, Valeria Pulignano, Jeffrey Turk and Thomas Swerts

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Contents

Abstract	4
Introduction	5
What do we already know?	6
Managers, BusinessEurope and EWCs: the findings	12
Management, corporate restructuring and EWCs	14
EWCs and restructuring: information and consultation	15
EWCs and restructuring: impact	19
Conclusions	24
Are EWCs value for money?	26
Conclusions	31
Operational concerns and value added	32
Operational difficulties encountered by management with EWCs	33
Are EWCs a hindrance to management?	36
How do EWCs assist management?	38
EWCs and the promotion of corporate identity	41
The value-added of EWCs	44
Conclusions	50
Has the Recast Directive made a difference?	52
Information and consultation	53
The operationalisation of 'transnational'	56
Training provisions	58
The role of experts	59
Constraint or improvement? The general impact of the Recast Directive	60
Conclusions	62
Where do we go from here?	63
Combining managerial participation in EWCs and sectoral social dialogue	64
Transnational company agreements	65
BusinessEurope and managers responsible for EWCs	68
Conclusion	71
Conclusions	73
Appendix: the research design	79
References	86

Abstract

This Working Paper examines the views of managers towards European Works Councils with an emphasis on operational matters. In addition, the Working Paper compares the views of managers responsible for European Works Councils within multinational companies with the political stance on European Works Councils adopted by BusinessEurope and explores the relationship between managers and BusinessEurope. The Working Paper demonstrates marked variation between the views of managers and the political stance of BusinessEurope, and identifies some of the areas in which managers think that BusinessEurope could develop a support function for companies with European Works Councils.

Introduction

On 22 September 1994 the Council of Ministers of the European Union (EU) adopted directive 94/45/EC (hereafter referred to as the Directive) ‘on the establishment of a European works council (EWC) or a procedure in Community-scale undertakings or Community-scale groups of undertakings for the purpose of informing and consulting employees’. Subsequently, the Directive was adopted by Iceland, Lichtenstein and Norway of the European Economic Area (EEA) in June 1995; by the United Kingdom (UK) in December 1997, following the opt-in of the UK to the Social Protocol of the Maastricht Treaty at the Amsterdam European Council; and by thirteen states that joined the EU in 2004, 2006 and 2013. The Directive was the first legal measure to underpin transnational institutions of employee participation within multinational companies (MNCs) with EU-based operations. In practice, the Directive required senior managers and employee representatives from within the countries in which the MNC has operations to meet with the objective of exchanging information and engaging in consultation. A review of the Directive led to the adoption of Recast Directive 2009/38/EC on 6 May 2009 (hereafter referred to as the Recast) with the stated purposes of promoting growth in the number of EWCs and improving the operation of existing EWCs (Recital 7; Kerckhofs 2010).

These legal measures set in train a process that by June 2015 had resulted in the establishment of 1,071 EWCs (De Spiegelaere and Jagodzinski 2015). The purpose of the research presented in this Working Paper is twofold. First, the research ascertains the views of managers responsible for EWCs within MNCs on the operation of the institution. Second, the research examines the policies of BusinessEurope on EWCs vis-à-vis the views of managers responsible for EWCs. To this end fifty-six managers responsible for EWCs were interviewed using a structured interview schedule. The experiences of fifty-six different EWCs are thus reported. These interviews constitute the largest number of research interviews yet conducted with managers responsible for EWCs.

To achieve these objectives this Working Paper comprises three parts. The remainder of the introduction identifies two underlying assumptions on which EWCs operate and reviews existing research on managerial views of EWCs. The second part reviews the findings in five sections that, in turn, examine management, corporate restructuring and EWCs; are EWCs value for money?; operational concerns and value added; the impact of the Recast; and where do we go from here?. Finally a conclusion reviews the implications of the findings by reference to the policy debate and the academic literature. The procedures used in the compilation of the interview material are available in the Appendix.

Six arguments resonate throughout the Working Paper. First, the findings add to the literature on managers and EWCs. In particular, the findings demonstrate a wide range of managerial strategies and practices towards EWCs with the consequence that EWCs should not be viewed as a monolithic institution. A range of structural variables influences these strategies and practices. Second, the findings show that EWCs are an institution in process, the development of which is contested. In many of the cases reported here EWCs appear to be undergoing regular, if not continuous, change as the parties strive to pursue divergent, but overlapping, interests. Third, the intentions of European level policy makers regarding EWCs have yet to be realised in the majority of EWCs. Most EWCs, for example, remain institutions of information rather than information and consultation, and are not institutions that allow employee representatives the opportunity to influence the outcome of strategic decisions. Fourth, while some interviewees express concerns about the operation of EWCs, a greater number view EWCs as assisting corporate decision-making and as adding value to the operation of MNCs. Fifth, the political policy options advanced by BusinessEurope regarding EWCs are inconsistent with the perceptions of the majority of managers responsible for EWCs. Sixth, many managers would like more advice and support from employers' associations in undertaking activities associated with EWCs. In particular, managers would like an extended range of advice and support functions from BusinessEurope that, at present, is not forthcoming.

What do we already know?

The existant literature is reviewed in two stages. The first stage introduces two points of departure that serve as underpinning assumptions to the examination of management practices regarding EWCs: EWCs as an institution in process and EWCs as contested institutions. The second stage reviews three strands of research conducted on management approaches to EWCs. In turn, these examine initial country-specific studies, the factors that explain variation in managerial approaches towards EWCs and differences in the development of EWCs.

Two points of departure

Two points of departure borrowed from existing literature underpin the presentation of the data and the arguments advanced in this Working Paper: first, EWCs are an institution in process; and second, EWCs are contested institutions (see Waddington 2011). These points of departure are illustrated by reference to the development of EWCs since 1994 and the role of managers and BusinessEurope within this development.

The Directive was the first legislation to underpin institutions of transnational labour representation within MNCs. Managers and employee representatives engaged in the establishment of EWCs thus had no previous experience of transnational representation and very few precedents on which to draw to

establish best practice.¹ Furthermore, Article 13 of the Directive allowed the parties to EWCs established between 22 September 1994 and 22 September 1996 to negotiate founding EWC agreements without reference to the minimum standards detailed in the legislation. After 22 September 1996 when Article 6 of the Directive came into force many of the terms remained imprecise: there was, for example, no definition of ‘information’, the exchange of which is a key purpose of all EWCs. As a consequence of the ‘regulated, self-regulation’ (Platzer 2002) set in place by the Directive there was considerable scope for the parties to develop each EWC in a manner appropriate to its circumstances. While employers’ associations, trade union organisations and consultancies published guidelines on ‘best practice’, the features that constitute ‘best practice’ have not remained constant over time, as those involved in EWCs have sought to develop the institution. The conclusion of European framework agreements (EFAs), the establishment of working groups comprising sub-groups of EWC members and the rotation of EWC plenary meetings across the different sites operated by MNCs, for example, illustrate innovations that are now not infrequent, but were not initially envisaged in ‘best practice’ guidelines.

Accepting that collectively EWCs are an institution in process raises three points pertinent to this study. First, there is a wide variation in EWC practice as development has proceeded at different rates with varied policy objectives. Second, it is likely that formal arrangements, such as EWC founding agreements, the Directive and the Recast, are likely to lag behind practice in those EWCs where innovations in practice are introduced. Similarly, these formal arrangements may be merely aspirational if a party or the parties to an EWC see no appropriate objective of development. Third, practices implemented at one EWC and considered useful elsewhere may become more widespread. In other words, the parties to an EWC may learn from their counterparts elsewhere, which raises questions about the role of employers’ associations and/or consultancies in transmitting information about innovative practices between managers responsible for EWCs within MNCs.

A second point of departure is that EWCs are contested institutions within the industrial and political spheres. In the industrial sphere the development of EWCs is contested due to the terms of the Directive. In respecting the autonomy of the parties, coupled to the absence of precision in both the minimum standards and the definition of key terms, legislators created a space for the negotiation of the operation of EWCs. In practice, legislators ensured that the operation of EWCs is contested as the parties seek arrangements appropriate to their interests. The point here is that neither the Directive nor the Recast took transnational information and consultation out of competition, thereby contributing to the wide range of EWC arrangements that have been enacted.

1. More than forty EWCs had been established before the Directive was adopted in 1994, primarily in French- and German-owned MNCs (Kerckhofs 2006). There was no accepted model of operation of these EWCs, hence they offered little guidance to those establishing EWCs within the framework provided by the Directive.

In the political sphere our concern is with the contrast between the positions of the European social partners: BusinessEurope and the European Trade Union Confederation (ETUC).² BusinessEurope opposed the adoption of the Directive in arguing that voluntary arrangements were the most appropriate means to establish transnational information and consultation, and that legislation would create an inappropriate ‘one size fits all’ legal straight-jacket that ran counter to the dominant trend of managerial decentralisation of decision-making and would heighten hostility between management and labour (UNICE 1981, 1991). In contrast, the ETUC advocated a legislative approach arguing that voluntary arrangements would not constitute a sufficient basis for transnational information and consultation in the context of the movement towards a single European market. The ETUC was disappointed with the narrow coverage of the Directive and regarded the voluntary arrangements of Article 13, introduced as a result of lobbying by employers’ organisations, as limiting opportunities for employee representatives to influence strategic managerial decision-making (Danis and Hoffmann 1995).

Article 15 of the Directive committed the European Commission to review the operation of the Directive ‘not later than 22 September 1999’ in consultation with Member States and the social partners. At an EU-level conference convened by the social partners and funded by the European Commission (28-30 April 1999) managers responsible for EWCs within MNCs were generally positive about the operation of the Directive and highlighted the value added of EWCs in terms of communication and the generation of employee commitment. Some managers, however, were critical of the costs of EWCs and their impact on the lengthening of decision-making processes. BusinessEurope opposed the revision of the Directive. Initially, opposition from BusinessEurope focused on the lack of evidence on the operation of the Directive, linked to specific objections to any reduction in the time limit for SNB negotiations and to an increase in the coverage of the Directive (Waddington 2011: 184). While these specific arguments remained central to the position of BusinessEurope until the adoption of the Recast in 2009, other counter-arguments to a revision of the Directive were afforded a similar prominence after the year 2000. In particular, BusinessEurope emphasised the rising costs of EWCs, the impact of EWCs on the time required for corporate decision-making, the deleterious effects of allowing trade union involvement in EWCs, the limited benefits for MNCs of EWCs, and rejected the introduction of a negotiations function to complement the information and consultation functions. In short, BusinessEurope objected to further specification and extension of the legal framework, as such a development constituted movement away from its preferred voluntary approach. Extensive lobbying on behalf of the position advocated by BusinessEurope successfully excluded a reduction in the Special Negotiating Body (SNB) negotiation period and changes to the size thresholds, but with the intervention of the French Presidency BusinessEurope was unable

2. Until 2006 BusinessEurope was known as the Union of Industrial and Employers’ Confederations of Europe (UNICE). For the purposes of this Working Paper the title BusinessEurope is used throughout.

to prevent the revision *per se* (Waddington 2011: 180-210). BusinessEurope, however, secured the exemption of Article 13 agreements from the requirements of the Recast, thereby ensuring that the 328 EWC agreements concluded between September 1994 and September 1996 and in operation in 2009 remained as voluntary arrangements subject to no minimum standards.

Several of the amendments proposed by the ETUC were included in the Recast. Prominent among these amendments were the inclusion of a definition of 'information' and a new definition of 'consultation' intended to improve the timeliness and quality of both processes and to allow the conduct of 'in-depth' impact assessments (Articles 2f and 2g); an amended definition of 'transnational' to incorporate the impact of an event on the European workforce of a MNC (Articles 1.3 and 1.4); the stipulation that EWC representatives have a right to training without loss of wages (Article 10.4); a requirement that EWC representatives report back at national level the content and outcome of the deliberations of the EWC (Article 10.2); the requirement to report back and to gather information from constituents implicitly necessitates that EWC representatives are granted access to premises to undertake these duties (Group of Experts 2010; Picard 2010); 'where necessary' the function and procedural rules of a select committee should be specified (Article 6e); and the inclusion of measures to promote the involvement of the European trade unions in the negotiation of founding agreements and in the functioning of EWCs (Article 5; Recital 27).

Given the divergence in the views of the social partners towards the revision of the Directive, it is no surprise that both BusinessEurope and the ETUC viewed the Recast as a 'glass half full'. The objective here, however, is to identify whether the concerns expressed by BusinessEurope have been realised in practice. In particular, have the more detailed definitions of terms and the introduction of new rights and obligations for EWC representatives led to EWC developments contrary to the interests of management and has the retention of voluntary arrangements facilitated the development of EWCs?

Managers and EWCs

Although the primary focus of many researchers of EWCs has been on the attitudes, objectives and policy choices made by employee representatives, there are three distinct strands of research that place management centre stage. These strands examine how 'successful' EWCs may be used to generate added value for companies, the variables that influence managerial approaches to EWCs and the outcome of variation in managerial approaches to EWCs. These three strands of research are briefly reviewed here to identify some of the parameters for this Working Paper. Each of the three strands of research is primarily concerned with matters and relationships internal to the EWC and the MNC within which it operates. In addition to these internal matters, this Working Paper examines whether managers responsible for EWCs have developed external relationships to assist them in the conduct of EWCs.

Initial country-specific analyses of management and EWCs directed attention to the ‘potential added value’ to the company that may be generated from EWCs (Lamers 1998), the features that characterise a ‘successful’ EWC (Hume-Rothery 2004) and the evaluation of EWCs by managers within Japanese MNCs (Nakano 1999). In rejecting earlier approaches based on the ‘benefits’ of EWCs (Gold and Hall 1992) as being too narrow in meaning, Lamers argued that ‘potential added value’ embraces *inter alia* EWCs as communications platforms; counterparts to internationalisation; vehicles for information, communication and cross-pollination; supports for managerial decision-making; and the means to improve social cohesion, labour relations and local employee participation within the company (1998: 175). This position was based on interviews conducted within seventeen Dutch companies during the mid-1990s, each of which operated with an Article 13 agreement. EWCs were viewed as having realised their potential in adding value in these areas in sixteen of the seventeen participating companies (Lamers 1998: 199-200). The exception where no added value was realised was *Koninklijke Luchtvaart Maatschappij NV* (KLM) where the interviewee argued that as a company with a relatively small number of employees in a large number of countries worldwide the scope of an EWC was inappropriate (1998: 199). This Working Paper shows that managers are now using EWCs in ways that were not present in the study by Lamers. In particular, EWCs are used by management as both ‘top-down’ and ‘bottom-up’ communication mechanisms, thereby facilitating diffusion of managerial policy preferences while also integrating the European operations of the MNC (see Edwards *et al.* 2013).

A different, but linked, approach to the definition of a ‘successful’ EWC embraced the ‘deliberate’ use of EWCs by managers of UK-based MNCs ‘as an agent for change’ (Hume-Rothery 2004: 85), thereby ensuring that management can ‘take the workforce with them in the change process’ (Hume-Rothery 2004: 86). This approach thus prioritised the role of EWCs in corporate restructuring and defined ‘success’ in terms of the participation of EWC representatives in such events. Whether the participation of EWC representatives was at the strategic decision-making stage, as legislators who drew up the legislation assumed would be the case, or at the implementation stage was not explicitly addressed. To become a ‘successful’ EWC several barriers had to be overcome, including the limitations of the EWC agenda, as specified in the Subsidiary Requirements; potential conflicts between transnational and national legal obligations; and the knowledge and training of EWC representatives, which was viewed as insufficient to participate meaningfully in strategic company decision-making and implicitly suggesting that the implementation stage of corporate restructuring was most appropriate for EWC participation (Hume-Rothery 2004: 86-90). The findings of this study show that very few interviewees ‘take the workforce with them in change processes’.

An early study of managers at Japanese MNCs with responsibilities for EWCs complemented the Dutch and UK studies in so far as the majority of interviewees favourably evaluated EWCs, particularly regarding their role on the dissemination of management information, the exchange of opinions

between management and EWC representatives, and in promoting a spirit of cooperation (Nakano 1999: 317). The same managers expressed concerns about the cost of the institution and its impact in raising expectations among EWC representatives. Managers at Japanese MNCs thought that EWCs 'would not seriously affect corporate decision-making' in that EWCs were unlikely to obstruct or delay decision-making and to alter the strategic direction of the MNC (Nakano 1999: 323-325). This Working Paper examines whether the absence of EWC influence on strategic corporate decision-making remains the case.

Three research questions arise from this first strand of research on management and EWCs. First, do managers beyond the Netherlands use EWCs to generate added value and, if so, in which areas and to what extent? Second, are EWC representatives engaged at the strategic stage of decision-making on corporate restructuring, as the legislators intended, or are they engaged only at the implementation stage? Third, to what extent do the barriers to EWC development generate minimalist approaches to EWCs among managers?

A second strand of research on management and EWCs examines the factors that influence their development and practice by means of quantitative and case study analysis (Marginson *et al.* 2004, 2013; Telljohann 2005; Lecher *et al.* 1999, 2001; Hall and Marginson 2005; Pulignano 2006). The objective of these studies is to explain the variation in EWC practice. Among the variables identified as influencing the development of EWCs are the country of origin of the MNC and the manager responsible for the EWC; the sector of operation, the size and the extent of Europeanisation of the company; and the legislation under which the EWC functions. Specifically, MNCs based in the Nordic countries were shown to have developed sophisticated information and consultation strategies based on the early involvement of EWC representatives (Doherty and Huzzard 2005; Marginson *et al.* 2013) whereas UK- and US-based MNCs were more likely to operate minimalist strategies integral to which was the later provision and lower quality of information and consultation (Telljohann 2005; Waddington 2011). Similarly, larger and more internationalised companies are more likely to have established an EWC (De Spiegelaere and Jagodzinski 2015).

Two other factors were also identified within this strand of research as likely to influence the development of EWCs: the character of the human resources function within the MNC and unionisation, particularly in the home country of the MNC. Where the human resources function is not internationalised, information and consultation practices are more likely to be minimalist and concerned merely to comply with the legislation, whereas internationalised human resource functions are associated with more wide-ranging and participative information and consultation practices (Marginson *et al.* 2013; Weiler 2004). A union presence in the home country of the MNC is also positively and strongly associated with the establishment of an EWC (Marginson *et al.* 2013) and unionised EWC representatives are associated with superior information and consultation practices within EWCs (Waddington 2011: 107-114). The research presented here analyses the views

of managers responsible for EWCs within MNCs disaggregated by size, country of origin and the degree of Europeanisation.

A third and closely-related strand of research on management and EWCs focuses on the variation in the extent of development of EWCs and identifies different ‘types’ of EWC, reflecting variation in the approaches to EWCs among the parties involved (Lecher *et al.* 2001, 2002; Weiler 2004; Telljohann 2005). While this research has generated a range of typologies for EWCs, it accepts that EWCs vary from minimalist institutions, where engagement centres on the annual plenary meeting and the prime objective is to comply with the requirements of the legislation; to participative institutions where joint regulatory initiatives are commonplace, where the EWC is recognised as a partner in negotiations thus moving beyond the information and consultation brief and the EWC is engaged at the strategic rather than the implementation stage of corporate decision-making. As this strand of research comprises principally case study research, no attempt is made to quantify the number of EWCs at each stage of development. Furthermore, it is acknowledged that the development of EWCs need not be a linear progression through each of the identified types and that EWCs may regress to a more basic type as well as progress.

This third strand of research raises three research questions relevant to this study. First, on the basis of the fifty-six interviews, can some quantification of the extent of EWC development be introduced? Second, do managers responsible for EWCs view the legislative framework adequate for the development of the institution? Third, do managers responsible for EWCs wish to develop the institution to the participative stage and, if so, what added value do they secure for the MNC?

Managers, BusinessEurope and EWCs: the findings

The findings are presented in five sections entitled management, corporate restructuring and EWCs; are EWCs value for money?; operational concerns and value added; the impact of the Recast; and where do we go from here?. Throughout the findings part of the Working Paper the argument advanced is illustrated by quotes from the fifty-six managers responsible for EWCs that were interviewed during the research. As anonymity was promised to interviewees and the companies for which they worked, the number that was allocated to each company by the research team is the only reference provided. Also to protect anonymity, reference is made throughout to the terms EWC and select committee rather than the company-specific titles used for these institutions within some companies.

The Appendix outlines the procedures used to collect and analyse the interview material. The Appendix also defines the variables used to categorise the interview material. The variables employed throughout the findings and the number of interviewees within each category are as follows: EWCs operating under Article 6 agreements (N=33), Article 13 agreements (N=22) and the

Recast (N=1); manufacturing companies (N=31) and private sector services companies (N=25); companies with origins in coordinated market economies (CMEs, N=26), liberal market economies (LMEs, N=18) and mixed market economies (MMEs, N= 12); large companies (N=17), medium-sized companies (N=22) and small companies (N=17);³ extremely Europeanised companies with 150 employees in sixteen or more countries (N=13), highly Europeanised companies with 150 employees in between eleven and fifteen countries (N=14), Europeanised companies with 150 employees in between seven and ten countries (N=13), and barely Europeanised companies with 150 employees in between two and six countries (N=12); and employment concentration where employment in the home country is expressed as a proportion of employment in the EEA and represented as four categories up to 32 per cent, from 32 per cent and up to 44 per cent, from 44 per cent and up to 66 per cent, and 66 per cent and more (N=13 for each of these categories). Where the numbers for each variable do not sum fifty-six it is because of missing data from the European Trade Union Institute database that also could not be retrieved from company annual reports.

3. Because the research sample comprised relatively large numbers of larger MNCs, three non-standard size categories were used: Small MNCs, with up to 10,000 employees; medium-sized MNCs, with employees in the range 10,001 to 40,000; and large MNCs with 40,001 or more employees. For each category the number of employees refer to those within the EEA.

Management, corporate restructuring and EWCs

The adoption of the Single European Act in 1986 was associated with a sharp rise in the rate of corporate restructuring as companies sought to adjust to new European circumstances (Buiges *et al.* 1990; Jacquemin 1991). The high rates of corporate restructuring attained during this initial period of adjustment were sustained well into the twenty-first century (*Acquisitions Monthly* various; UNCTAD various). The European Commission anticipated the increased rate of transnational corporate restructuring and argued that employee participation in such restructuring was prerequisite to its satisfactory development. In building the case for the adoption of the Directive, for example, the European Commission argued that EWCs should be integral to corporate restructuring processes and several of the issues mentioned in the Subsidiary Requirements, as illustrations of the agenda that EWC may follow, refer to corporate restructuring. The ‘high road’ philosophy adopted as an element of the 2000 European Lisbon agenda also suggests the emergence of specific institutions and modes of employee participation as important accompaniments to the emergence of production regimes apposite to the knowledge economy (Pulignano and Kluge, 2007). Furthermore, enshrined in the principles of the ‘European social model’ in the form of Article 27 of the *Charter of Fundamental Rights of the European Union* is the recognition that ‘workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time’, a point emphasised in the Recast by the promotion of ‘in-depth’ impact assessments.

During the debate that led to the revision of the Directive corporate restructuring was contentious on two counts. First, during 2005 the European Commission linked EWCs and corporate restructuring in the form of simultaneous consultation on the two topics (European Commission 2005). BusinessEurope and the ETUC rejected the linking of these topics, arguing that such a linkage was inappropriate as EWCs were engaged in more than corporate restructuring (Waddington 2011: 194-195). Second, BusinessEurope was concerned to ensure that EWC involvement in transnational corporate restructuring should be limited to the implementation phase of the process to avoid any challenge to the managerial ‘right to manage’. This position contrasted with that of European level policy makers. Regarding a draft of the Recast, for example, BusinessEurope stated that ‘the text leaves the door open to a possible consultation process taking place before the decision [to restructure] is taken. This would not only challenge the right of management to take decisions approved by shareholders, but also slow down operations’ (BusinessEurope 2008).

Transnational corporate restructuring is thus a key subject for examination of managerial approaches to EWCs and the role of information and consultation. It should also be noted that EWC representatives are critical of managerial policies towards EWCs during restructuring. In particular, under 18 per cent of EWC representatives report that they were either informed or consulted before the decision to restructure was finalised and no fewer than 32 per cent report that they were not consulted at all about corporate restructuring (Waddington 2011: 103). To examine the role of EWCs during corporate restructuring this section of the report comprises two substantive stages, which, in turn, examine information and consultation provisions during restructuring and the impact of EWCs on decisions to restructure and the terms of restructuring. The argument running through both of these stages is that although stock market listed companies may be constrained in the provision of information, a positive strategic impact of the EWC is most pronounced in the very few cases when managers provide timely and good quality information to the EWC on restructuring plans. The key conclusion from these findings is that only a small minority of interviewees report information and consultation taking place at a time to allow EWC representatives to participate in the strategic phase of corporate restructuring decisions. More likely is the release of information to allow the EWC to engage in the implementation of a restructuring decision. A minority of interviewees report that no consultation took place with the EWC during restructuring.

EWCs and restructuring: information and consultation

The provision of information by management and consultation between central management and EWC representatives are at the core of EWC activities. While the Directive included no definition of ‘information’, the Recast remedied this omission and clarified the definition of ‘consultation’ to emphasise timeliness and improvements in the quality of both processes, together with arrangements to facilitate the undertaking of ‘in-depth’ impact assessments by, or on behalf of, EWC representatives (Articles 2f and 2g). Similarly, the revised definition of ‘transnational’ included in the Recast refers to the impact of managerial policy on the European workforce of a company rather than an impact within two or more countries as in the Directive (Articles 1.3 and 1.4). In the context of corporate restructuring the legislation thus obliges management to inform and consult with the EWC before the final decision to restructure is made, allowing time for an ‘in-depth’ assessment of the strategic options under consideration.

Thirty-two interviewees mentioned the timing of information during the corporate restructuring. Four of these interviewees (13 per cent) exchanged information before the strategic decision to restructure had been taken, twenty-three (72 per cent) exchanged information at a point simultaneous with or very close to the public announcement of the restructuring event, and five (15 per cent) mentioned that information was exchanged some time after the public announcement. In the majority of cases it is thus not possible for EWC representatives to influence the strategic decision to restructure, although they may be in a position to influence the implementation of the managerial

decision to restructure. These results are consistent with those reported by EWC representatives, the majority of whom are unable to influence strategic restructuring decisions (Waddington 2011: 103).

Three of the four interviewees who exchanged information before the strategic decision was finalised operated with Article 6 agreements, while the fourth operated with an Article 13 agreement that had been amended to be compliant with the Recast. The Article 13 case was also influenced by practices from Sweden, the home country of the MNC, where national legislation on restructuring is specific and demanding (Elvander and Holmlund 1997; Swenson 2002). The majority of interviewees who exchanged information at about the same time as the public decision to restructure comprised 62 per cent of the Article 13 companies and 81 per cent of the Article 6 companies; 85 per cent of the LME-based companies compared to 67 per cent of MME-based companies and 62 per cent for CME-based companies; and 82 per cent of companies with operations in private sector services compared to only 67 per cent of the manufacturing companies. Other factors such as company size and degree of Europeanisation are not influential. The majority of interviewees provide information in both verbal and written forms and are careful to ensure its accuracy. This provision did not vary markedly between any of the variables employed in this study.

Thirty-seven interviewees elaborated the situation on consultation during corporate restructuring and the responses suggest a varied pattern regarding the extent, timing, depth and forms of consultation. The same four interviewees who reported that information was exchanged before the managerial decision was finalised also indicated that consultation took place before the strategic decision to restructure had been taken. Slightly more than one-third of interviewees (thirteen) reported that consultation with the EWC occurs only after all the required information has been received from headquarters to reach a clear view of the situation in the company. This corresponds to when the 'decision has already been taken' and is simultaneous or very close to the public announcement of the restructuring event. Twelve interviewees (32 per cent) stated that consultation took place after the public announcement and eight interviewees (22 per cent) indicated that consultation regarding restructuring did not take place at all. Replicating the situation regarding information, thirty-three of thirty-seven cases (89 per cent) suggest that the timing of consultation does not allow an opportunity for the EWC to influence the strategic managerial decision, but in twenty-five (68 per cent) of these cases there is the possibility that EWC employee representatives, provided they have the appropriate skills, competences and attitudes, may be involved in decisions on how to implement restructuring decisions and, hence, be engaged in the management of the restructuring process.

'They [the EWC] were not consulted in the sense that the decision was already made. Full stop. And that's something they don't like but that is something that is part of the deal. We are stock listed, there is an end to what you can and cannot do. However, they were involved and engaged about how to merge those within the company.' (Company 1)

‘They [The EWC] found that minimal because they were always saying - Yes we want to be consulted before you take that decision. We said - Well, we did not take a decision, we don’t make the decision, the board takes the decision formally-speaking [..]. But we decided to agree about our disagreement and say ‘Well, you know, as long we are the management, this is the way we do it.’ (Company 30)

In eight cases consultation did not take place at all regarding corporate restructuring events contrary to the expectations of European level policy makers and illustrating that the Recast has yet to enforce managerial engagement in these circumstances. The situation reported here is very similar to that reported before the adoption of the Recast when the Directive was in force (EPEC 2007: 75-77). It is noteworthy that all of the eight MNCs that did not consult regarding corporate restructuring were in private sector services. The remaining variables employed in this Working Paper had no significant influence on the prevalence of consultation during transnational restructuring events.⁴

Turning to the four cases where interviewees report that information and consultation took place before central management had reached a decision. Interviewees in these cases indicated that information and consultation occurs within a climate of trust and mutual collaboration, where respect between management and employee representatives is entrenched. In these cases the interviewees are well aware that the involvement of the EWC in the restructuring process needs to be planned well in advance in order to guarantee that the employee representatives can present their own view to management. This means engaging the EWC representatives much earlier in the restructuring process, well before the strategic decision is finalised, thereby widening the opportunities for the EWC to contribute substantially to the management of change. Interviewees argued that there is less scope for disagreement between employee representatives and management in the process of transnational restructuring, as a result of early information exchange and consultation.

‘This is what they [EWC representatives] claim always. They want to bring up alternatives. This is why they have to be involved at the very beginning because, if the decision is already made, it’s too late.’ (Company 4)

The majority of interviewees report information exchange as taking place at about the same time as the public decision to restructure, thereby precluding

4. The distribution of the eight MNCs that failed to consult during restructuring was as follows: by country of origin, four CMEs, two MMEs, two LMEs; by company size, two large, four medium sized, two small; by Article of EWC, five Article 6, three Article 13; by employment concentration, one no data, two up to 32 per cent, one between 32 per cent and 44 per cent, two, between 44 per cent and 66 per cent, two more than 66 per cent; by Europeanisation, one no data, three with 150 employees in between two and six countries, one with 150 employees in between seven and ten countries, and three with 150 employees in sixteen or more countries.

EWC representatives from influence other than on the terms of the implementation of the decision. This finding replicates that of the Impact Assessment conducted on the Directive in 2007 and suggests that the Recast has had little impact on the capacity of EWCs to participate in strategic decision-making on corporate restructuring (EPEC 2007). Interviewees mentioned a number of factors as explaining this situation, prominent among which were stock market obligations. In particular, companies listed on the stock exchange are under pressure to provide timely and accurate information to conform to stock exchange regulations. The need to be certain of the accuracy of information is used to justify the timing of the release of information, which, in most cases, is ‘just a little before’ or ‘at the same moment’ as the public announcement of restructuring, and in accordance with confidentiality rules.

‘[Information is provided] very quickly since at the moment when the information is official because, as [name of the company] we also have confidentiality rules to respect towards shareholders. So, once the information is official, we send invitations and organise the meetings in the two following weeks.’ (Company 24)

Stock exchange rules, however, were not always insurmountable, as illustrated by the impact of an Article 6 agreement.

‘According to the founding Agreement, we have to give information to the EWC after the Board’s [...] the Board approval and before the public disclosure. We are in the middle. Approval of the board, communication to the EWC and then public disclosure. We always respect this term. And, I have to say that sometimes we go beyond, because we inform the EWC also since the announcement of the feasibility study.’ (Company 46)

Interviewees also elaborate the difficulties of providing quality and timely information and consultation during restructuring. In particular, the majority of interviewees report the difficulty of articulating information and consultation between European and national levels due to differences in European and national law, which negatively affect the extent to which information and consultation can be provided in advance or in parallel during restructuring. Management is often not clear at which level, European or national, information and consultation should first be provided. The risk is that the space for developing good information and consultation practices within MNCs at the European level is restricted.

‘Well, we struggled with [providing parallel and timely information and consultation in case of restructuring] because we see conflicting legislation in countries and on the European level. They claim that they should know first and that we should do the consultation with them. We say ‘If we do that we have legal risks in several countries where legislation says you have to inform us first’. I can refer to Renault, for example, where it was decided somewhere else. But there I think the law in Belgium, as far as I understand it, says we have to inform the local works councils before any third party and the European works council, according to us,

is a third party [...] Or, at least, they will consider it as being a third party because they don't think that ... they don't work together ... the locals and the European. So what we do is – and that's what we do the last three years or so – we first inform the European works council. One hour after that we inform all the local works councils and then we inform the employees. So all in a matter of a couple of hours.' (Company 38)

In practice, interviewees in this position of uncertainty required clarification of their legal position in order to proceed confidently.

EWCs and restructuring: impact

The impact of the information and consultation practices of EWCs on transnational corporate restructuring has been the subject of intense scrutiny (Lecher *et al.* 2001, 2002; Hall and Marginson 2005; Carley and Hall 2006). Research tends to distinguish between 'symbolic' EWCs, where the information provision is minimal, consultation is absent and there is little or contact between employee representatives and central management with the consequence that there is no engagement of the EWC in restructuring processes; and 'active' or 'participative' EWCs. In explaining the characteristics of 'active' or 'participative' EWCs, emphasis is placed on the positive effects of appropriate resources available to, and the networking between, EWC representatives; articulated activities between representatives of labour at European and national levels; close relations with trade unions that provide resources and expert assistance; as well as cooperative and high trust relations with central management. Each of these factors facilitates the engagement of the EWC in transnational restructuring decisions. Structural factors, in particular the degree of Europeanisation and integration of the business operations of the companies concerned, are also considered crucial elements in influencing the capacity of EWCs to affect the outcome of strategic managerial decision-making in MNCs (Marginson *et al.* 2004). As several of these features were not examined in this research, the central concern here is with the impact of EWCs on corporate restructuring decisions, the effect of structural factors on this impact and whether cooperative and high trust relations developed between central management and EWC representatives influence the impact of EWCs on corporate restructuring decisions. The research also set out to establish whether the shortfall in influence of EWCs on corporate restructuring associated with the Directive (EPEC 2007: 69-77) has been addressed by means of the Recast as envisaged by European level policy makers.

To shed light on these issues we examine responses to the question: 'did the EWC alter any aspects of the restructuring proposal?'. This question was asked to interviewees who reported that they either informed or consulted the EWC regarding a restructuring event, irrespective of whether the impact was on the strategic or implementation stage of restructuring. Of the forty-nine interviewees that responded, thirty (61 per cent) indicated that consultation with the EWC had no meaningful impact on the proposal, five (10 per cent) reported a marginal impact and fourteen (29 per cent) reported that the EWC

had a marked impact. The majority of EWCs thus exert no meaningful impact on proposals to restructure, contrary to the intentions of the Directive and the Recast.

Confirming the effect of structural factors on the impact of the EWC on corporate restructuring, the extent of the impact was dependent on the industrial relations characteristics of the home country of the company, single country dominance, the Article under which the EWC operated and the Europeanisation of the company, but was not influenced by company size or sector. Only 17 per cent of CME-based companies, for example, indicated that the EWC had an impact on restructuring, while for MME-based companies and LME-based companies these proportions were 38 per cent and 41 per cent respectively. In the eleven companies where 66 per cent or more of the EEA workforce was located in a single country, 55 per cent of the interviewees indicated an impact of the EWC compared to only 21 per cent of the other companies. This latter finding suggests that an EWC dominated by representatives from a single country is likely to bring more influence to bear and illustrates the challenges of coordinating representatives from a wide range of national backgrounds. Almost 40 per cent of the twenty-seven interviewees operating in conjunction with an Article 6 agreement reported an impact of the EWC, while only 15 per cent of the twenty-one interviewees with Article 13 companies did so, again suggesting a more limited impact arising from voluntary Article 13 agreements. The degree of Europeanisation was positively, but not significantly, correlated with impact, with only 22 per cent of the nine companies with more than 150 employees in seven or fewer EEA countries reporting impact, while 31 per cent of the thirteen companies with more than 150 employees in more than fifteen EEA countries reported impact. This proportion was about 28 per cent for the remaining companies.

Among interviewees reporting that EWCs had some impact on restructuring, two types of impact that can be identified. First, there is a strategic impact of the EWC, requiring the involvement of the EWC in managing the social effects of restructuring, which presupposes that the EWC has taken part in the strategic decision to restructure. Second, the EWC may be excluded from the strategic decision to restructure, but may have a procedural impact in facilitating communications with employees, thereby legitimating restructuring and assisting in its implementation. As is apparent from the data presented above on the timing of information and consultation, only four interviewees indicated that the EWC had a strategic impact during restructuring. An impact of the EWC on the implementation of a decision to restructure is illustrated as follows.

‘I remember a project about a joint venture with [name of the company] where we planned to bring to the joint venture about 4,000 people in six countries, ten big locations, etc. to [name of the company] with one location and the same number of people approximately. When we announced it, it was just a big surprise for everyone but, with the questions from the EWC, it enabled us to have the right communication towards the impacted teams and to make sure that it was not perceived,

after a few weeks or months, as a threat, but as an opportunity by most people.’ (Company 10)

Although the qualitative methodology employed in this report does not enable the establishment of causality, interviewees who indicated that the EWC had a strategic or an implementation impact were those that also reported a relatively good quality of debate between central management and EWC representatives; relatively strong engagement of EWC representatives in the human resources activities of the MNC; management engaging in EWC training and other activities when restructuring occurred; and high levels of trust and respect between management and employee representatives. Some quotes from interviewees illustrate these situations.

‘I think it’s also worthwhile to mention that they have been asking for, and we have been providing, also educational training type of support, with respect to training, on what is the role of the EWC. On several occasions they have asked for updates about training about business topics. They ask for updates on the support positions, HR transformation. In general, we do quite a lot to get them up-to-speed. Even on a local level, two members of my team came up with the great idea to, in the future, launch leadership development training on a company level. And we are now thinking of involving them in a kind of subset of this training to give them a better understanding of what is happening around leadership development. So I think what we try to do is getting them gradually up-to-speed because we believe, if you have more mature counterparts, the level of your discussions are probably much better as well.’ (Company 6)

‘For us it’s normal practice that [...] what we usually do is, when the board of [company name] is deciding to initiate that type of process, we immediately inform the EWC the same day - and this is usually a very short information - and then, of course, we plan for a meeting where we provide them all the information when it’s necessary. The example of the extraordinary plenary meeting we had a couple of years ago was that we announced this big restructuring involving many countries in Europe and that’s why we said ‘OK then let’s sit down we will present the details to you in an extraordinary plenary meeting’ for example.’ (Company 16)

‘And it’s important that anyone in the leadership role is trustworthy and, you know, that’s critical. They need to be able to believe you. You need to be straightforward and honest with them. It’s amazing, actually, how far you can get with straightforwardness, honesty, openness in that kind of situation.’ (Company 27)

What is the management perspective on the trusting social relationships that underpin more meaningful information exchanges and consultation? Interviewees describe trust as synonymous with transparency, not having a ‘hidden agenda’, being open, and, as much as possible, communicative on what happens at company level. This is not to argue that there are no differences in interests between management and labour, but is to acknowledge that there

may be shared objectives, such as maintaining employment, and when these are highlighted the development of trust is more likely (Edwards *et al.* 2006). A trusting social relationship is facilitated when both management and employee representatives are equally competent regarding the task under discussion.

‘Because we have five core values: to know, to serve, to trust, and then very important in terms of [dialogue], simultaneously promoting promotion of all interests, and the fifth of our core values is striving for perfection. [...] So we said [...] as management to our workers ... we are going to be more demanding in your direction. It is not only for fun coming to head office and receiving information. The question is, what are you going to do with that information, when you are back in your operating company? And where you are part of the co-determination process in your country, how are you going to share this information with your colleagues in your country? What are you going to bring back as information? Because that gives us even more added value, because it is always nice, what my HR colleagues said, when I have a discussion with the HR directors of the operating countries and I ask them questions. They give me an answer, but I’m also interested in issues, receiving answers not from my HR colleague, but from our own employees. And we can use the [dialogue] platforms, the Works Councils in the countries, to bring that information. Then we have information and answers on questions from two sides. And so in that sense, it is of added value for us.’ (Company 49)

Trusting social relationships also imply a mutual understanding of specific issues and embrace the general understanding of trust as ‘a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behaviour of another’ (Rousseau *et al.* 1998: 395). Trust is beneficial for social dialogue at company level. It helps both management and EWC representatives to build up cross-border activities and local cooperation procedures, which, as the interviewee below argues, may be beneficial for the management of restructuring.

‘I think transparency and trust, and communication. But the two are linked. I think that’s what I sense in those relations is probably for all employee relations. And I would probably add to that also consistency. I think, if they can see that you are transparent, despite how difficult a message is, knowing that they very much know that you can’t disclose everything. Actually, in all fairness, we have a relationship today that sometimes senior management says ‘OK, we are going to share something with you that will not appear in the [...] and that we will share with you on a confidential basis’. So that’s where I think trust, consistency [...] so, if they see that you want to talk and you communicate properly, and do not have a hidden agenda, I think that works very well.’ (Company 6)

Interviewees also endorse the view expressed in the Recast that the provision of quality and timely information and consultation are prerequisite to

maximising the impact of an EWC on restructuring (Recitals 22 and 23). Support for this position is underpinned by the observation voiced by interviewees that quality and timely information and consultation contribute to setting the scene for an open and transparent relationship between management and EWC representatives. Such information and consultation has the potential to generate relationships based on trust, and hence to the development of good dialogue at the European company level.

‘I think it depends on how you present the restructuring, how you communicate with the people and how you share information with them. It makes no sense just to have a meeting with them and say ‘OK these are the measures, this is project, this is the content, give me your views’. You have to explain this and to give them the information in such a fashion, with such a timing, that they can create the opinion. [...] That’s about the people.’(Company 29)

‘They want to know [...] There is trust, really a trusted relationship. They want to understand why we are taking these actions and the trust is always in danger. The trust is always in danger. If one day, they realised that we are closing a site not for good reasons, trust could disappear. So we always try to explain the reasons behind. And then we give the update on the negotiation process at local level.’ (Company 22)

Interviewees were divided about the skills of EWC representatives and their capacity to participate in either the strategic or implementation phases of corporate restructuring. Only one-third of the respondents stated that EWC representatives had the appropriate European attitude and skills (particularly language) for the EWC, but more than one-third said that EWC representatives, albeit characterised by skills which are improving, remained somehow local thinkers, and, thus, unable to understand the international dynamics that are implicit in the restructuring processes of a MNC. Interviewees also highlighted the heterogeneity of the EWC, by making distinctions within the same EWC between those employee representatives that were more broadly European and those who remained more closely linked to local and parochial issues.

‘The employee representatives coming from 50 countries [...] some of them are very highly educated, hold really senior positions and, for them, it’s easy to understand.’ (Company 1)

‘Everything is relative. I would say, it is very in line with the quality we have on the local level definitely, in the more developed employee relations countries like in Belgium, France where we have an established culture of employee relations. I would say it’s very much in line. I would even say that because it’s transnational, there is probably a broader perspective to it. I would rate it ... of course I would like to rate it higher but I think it’s also a maturity level that we see rapidly increasing.’ (Company 6)

‘I would say most of them. However, if you look into different country cultures where they come from [...] if you look at Eastern Europe, for example, Communism was replaced and my general perception is that these people believe that they manage their situation on their own. So they do not need Communist structures once again where you have representatives and stuff like this. So they do not necessarily see the need to have a lot of representation. [...] So the engagement levels are different and that is also related to the size of an organisation but also to the historical background of a country. That’s my perception.’ (Company 7)

Conclusions

European level policy makers intended EWCs to have effects on strategic transnational corporate restructuring decisions in order that representatives of labour could contribute to developments towards the single European market. Managerial interviewees indicate that this intention is not being realised in practice. Only four interviewees, for example, engage in information and consultation with the EWC before the decision to restructure has been finalised. The concern expressed by BusinessEurope that EWCs would impinge on the ‘right to manage’ during corporate restructuring has thus not generally materialised. This situation constitutes a policy conundrum that has yet to be satisfactorily addressed. On the one hand European level policy makers intended that EWCs have a strategic impact on corporate restructuring. In contrast, BusinessEurope opposes this position and argues that the role of EWCs should be restricted only to the implementation of a managerial decision. In practice, managers adopt the same position as BusinessEurope, yet in the few cases where managerial practice is consistent with the intentions of European level policy makers transnational restructuring events are facilitated and expedited.

In the majority of cases the exchange of information takes place at about the same time as the public announcement of restructuring, enabling the EWC to influence the implementation of a restructuring decision, but not its strategic content. This confirms earlier findings that EWCs are essentially information institutions rather than information *and* consultation institutions in circumstances of transnational corporate restructuring (EPEC 2007: 77). These results also confirm case study evidence showing that only a minority of EWCs are ‘active’ or ‘participatory’ (Lecher *et al.* 2001, 2002; Hall and Marginson 2005) and survey evidence generated from EWC representatives that illustrates their exclusion from strategic decision-making when restructuring occurs (Waddington 2011: 103). The findings presented here suggest that the Recast has little impact on the extent of influence exerted by EWCs on corporate restructuring contrary to the expectations of European level policy makers. The absence of influence over strategic corporate decision-making exerted by EWC representatives using the mechanisms available in the Directive and the Recast is associated with the relatively large number of European framework agreements concluded on corporate restructuring procedures (da Costa and Rehfeldt 2011; Pulignano *et al.* 2012).

A prerequisite for the participation of EWC representatives in both the strategic and implementation phases of restructuring decisions for the perspective of the interviewees is the establishment of cooperative and high trust relationships, which, in turn, depend on transparency and the early exchange of information. Barriers to these processes centred on the reporting requirements imposed on listed companies and the different requirements of European and national legislation. Stock market requirements are thus contradictory to timely information and consultation practices according to managerial interviewees. Similarly, differences between European and national legislative requirements generate uncertainty among managers regarding the appropriate course of action.

The influence of the EWC on corporate restructuring was also dependent on several structural factors such as the country of origin of the MNC, with companies based in LMEs reporting a more marked impact on the implementation of a strategic decision to restructure; single country dominance, with MNCs with a single country dominance reporting a higher impact on implementation; and the Europeanisation of the company, with more Europeanised companies reporting a higher impact on restructuring decisions at the implementation phase; but was not influenced by company size or sector. Interviewees operating with Article 6 agreements were more likely to involve the EWC in strategic decision-making and were more likely to report that the EWC had an impact on restructuring processes than those operating with voluntary Article 13 agreements.

Are EWCs value for money?

The Directive states that companies should cover all the costs of the EWC (Subsidiary Requirements). In this context costs include material issues, together with the time of EWC representatives and managers. No fewer than 95 per cent of active EWC agreements in 2015 included a clause to indicate that the company will cover the basic expenses of EWC activity (de Spiegeleare and Jagodzinski 2015: 40). Basic expenses in this context include travel and accommodation costs, administrative assistance and communication facilities. Despite the almost universal coverage of such clauses the financial cost of EWCs is a contentious topic on two counts. First, some employers' organisations have repeatedly argued that the cost of implementing and operating EWCs is high and rising and is not justified by the benefits arising from EWCs (BDA 2004). In opposing the revision of the Directive, BusinessEurope also stated that high and rising costs were a reason for not extending the coverage of the Directive and for not introducing more exacting provisions (UNICE 2004). These arguments contrast with findings from surveys of managers with responsibility for EWCs which show that one manager from forty-one (ORC 2007) and zero from ten (Weber *et al.* 2000) highlighted costs as problematic. The findings enable assessment of these positions. Second, total costs of EWCs comprise variable components for plenary, select and other meetings, the number of EWC representatives and managers in attendance, training, and the presence of experts. Each of these components is contested, in that the negotiated solution found within companies is specific to that company. The cost of the EWC will depend on the agreed solution found. This stage of the analysis thus initially identifies the direct financial costs of EWCs and assesses these costs by reference to the number of EWC representatives, plenary meetings and steering committee meetings. Table 1 shows the results for the thirty-four cases where responses to most or all of these questions were provided.

Two points are immediately apparent from Table 1. First, there is a huge variation in the cost of an EWC. The range is €10,000 to €1,000,000 per year. The median annual running cost is €60,250. This compares with running costs of £53,000 (€68,370) reported for ten EWCs in 2000 (Weber *et al.* 2000: 17) and a range of costs reported for 2008 of between €7,500 and €2.5 million with a total average annual costs of €272,000 (European Commission 2008a).⁵ Comparisons between the data reported here and the earlier data suggest that

5. The figure of €272,000 includes both fixed costs and costs for time of both managers and EWC representatives.

Table 1 The costs of European Works Councils

Company	Total annual costs € ¹	Number of reps.	Number of plenary meetings per year	Number of Select Ctte meetings per year	Additional comments
1	900,000	50	2+	4+	€300,000 staff costs; €600,000 material expenses
2	150,000	25	1	2+	About €100,000 for plenary; between €25,000 and €30,000 for the Steering Ctte; interpretation is principal cost
3	50,000	45		4	Excludes travel costs; additional two week language training for 20 delegates cost €80,000
6	50,000	18	4		€25,000 interpretation; costs may rise to €100,000 in a year of change
8	50,000	14	1	2	
9	50,000	14			€36,000 of the total is interpretation
10	50,000	38	1	4-12	Includes 30 people travelling
11	50,000	15	1	2	Includes plenary (€40-41,000) and Steering Ctte
12	100,000	33	2	4-5	
13	1,000,000	30	1	12	Invite 100 people to Annual Meeting, which meets for a week in Brussels; Steering Ctte meets two days per month
14	150,000	17, 20, 15	1 for each	4	Three EWCs in operation; €50,000 per plenary
16	50,000	20	1	6	Principal cost is interpretation
19	100,000	30	2		Excludes travel (costs met by local companies); excludes 0.3 FTE administrator costs
20	150,000	35	1	2	Includes €40,000 for the hotel; costs also include quarterly and ad hoc meetings of EWC reps to discuss company reports
21	60,000	20-25	1	4	€30,000 for plenary plus €30,000 for 4 Steering Ctte meetings
22	40-50,000	12	4		
25	28,600	18	1	3-4	
26	100-120,000	24	2	2	
27	50,000	17	1+	6	
28	88,320	7	1	2	€12,900 for the Annual Meeting
30	50,000	44	1	3+	
34	15,000	9	1+	2+	
36	117,000	36/37	1	6	Annual Meeting comprises €62,000 of the total
38	137,500	30	2	4	Includes 2 plenary meetings per year and €15,000 for interpretation
39	96,500	20	2+	4	
42	96,500	19	1	4	€41,325 interpretation; €34,500 hotel; €13,800-€20,500 travel
43	20,000	10	1		Excludes travel of between €10,000 and €20,000
44	60,250	25	4	4	
47	10,000	15	2		Excludes travel (costs met by local companies)
48	300,000	29	2	3	
49	40,000	25	1	4	Excludes travel (costs met by local companies)
51	40,000	18	1	4	Interpretation €25,000; hotel and travel €15,000
53	200,000	44	2	3	
54	120,000	20	1	4	Three day meeting; €50,000 hotel; €50,000 interpretation; €8-9,000 Steering Ctte

Note: ¹ Where data were provided in the currency used within the company, the cash sums have been converted to euros.

increases in costs have not been as pronounced as some employers' organisations claim. Second, there is no direct relationship between the total annual cost of an EWC on the one hand and the number of EWC representatives, plenary meetings and steering committee meetings on the other hand. The annual cost of each of the EWCs at Companies 3, 6, 8, 9, 10 and 11 is €50,000, for example, yet the number of EWC representatives varies between fourteen and forty-five, the number of plenary meetings per year varies between one and four, and the number of select committee meetings per year varies between two and twelve.

The absence of a direct relationship between costs, representatives and meetings suggest that companies use EWC meetings for different purposes. Reference to the two outlying cases (Companies 1 and 13) illustrates the point. The annual cost of the EWC at Company 1 is €900,000 and that at Company 13 is €1,000,000. The EWC at both these companies has an annual running cost at least three times that of any other EWC within the research sample and, in combination, the cost of these two EWCs constitutes 41 per cent of the total cost of the thirty-four EWCs detailed in Table 1. The EWC at Company 1 is the largest among the research sample at fifty members and meets in plenary session a minimum of twice per year. While these factors certainly contribute to the cost, it is the extensive recent company restructuring that has necessitated more frequent meetings and, hence, increased costs. But, as the interviewee from Company 1 remarked.

'I think for €900,000 with the massive number of changes that we have had over the last years and will still continue to have in the future, it's peanuts compared to having social unrest, strikes, stoppages, delays to projects, not being able to implement, going to court for whatever cases.'

In short, the interviewee viewed €900,000 as value for money when extensive restructuring is underway. Similarly, in Company 13 the EWC of thirty members is fairly large and monthly meetings of the select committee also contribute to costs. A more significant cost, however, arises from the one hundred people that attend the plenary meeting for a week in Brussels. The large numbers that supplement the thirty EWC representatives comprise 'leaders' and 'HR staff' from the different business units of the company, many of whom are from the US and attend the EWC as part of developing the strategy of the company in conjunction with the EWC. In this instance, the high cost of the EWC results from the approach to business strategy adopted by the company and the involvement of the EWC in formulating the business strategy.

A further point suggesting that companies use EWCs for different purposes concerns the frequency of meetings. Among the research sample only eighteen of the thirty-four companies (53 per cent) that made financial data available reported holding a single annual plenary meeting. Similarly, steering committee meetings were held at least quarterly within seventeen companies (50 per cent). These figures compare with the situation for all EWCs where 70 per cent hold one plenary meeting per year and 8 per cent convene the steering committee quarterly or more (De Spiegeleare and Jagodzinski 2015). In other

words, companies in the research sample convene plenary and select committee meetings more frequently than all companies with an EWC. This result may be a consequence of the predominance of large companies within the research sample (see Appendix), but the implication is that EWC costs incurred by the companies within the research sample are likely to be higher than those of all companies with an EWC because of the decision to opt for more meetings.

Following up on the issue of costs, interviewees were asked ‘do the benefits of the EWC justify the costs?’. In this question no attempt was made to define the term benefits, thereby allowing interviewees *carte blanche* in their response. Three interviewees declined to answer the question. Twenty-nine (54 per cent) interviewees answered the question ‘yes’, the benefits do justify the costs, ten (19 per cent) interviewees responded that the costs were not matched by the benefits and a further fourteen (26 per cent) interviewees answered the question in terms of a requirement to comply with the legislation rather than whether the benefits justified the costs. Examining the sub-group of thirty-four companies for which financial data are available (see Table 1), sixteen (47 per cent) interviewees regarded the benefits as outweighing the costs, six (18 per cent) thought that costs were greater than benefits and ten (29 per cent) answered the question in terms of compliance.⁶

Four of the variables identified at the outset of this report influenced the distribution of views on whether the benefits of EWCs justified their costs: the Article under which the EWC operates, company size, the country of origin of the MNC and sector. Examining these variables in turn by reference to the proportion of the companies within the research sample within each category where the interviewee responded that the benefits of the EWC justified the costs shows that 45 per cent of interviewees operating in conjunction with an Article 13 EWC answered yes, compared to 58 per cent with an Article 6 agreement. Company size is inversely related to a yes response with 59 per cent of interviewees in small MNCs responding yes, compared to 50 per cent in medium-sized MNCs and 47 per cent in large MNCs. Variation by country of origin of the MNC was present, but not marked with 54 per cent of interviewees employed by a company based in a CME indicating that the benefits of EWCs outweighed the costs compared to 50 per cent in MMEs and 44 per cent in LMEs. Finally, no fewer than 64 per cent of interviewees in private sector services companies thought that the benefits were greater than the costs, while only 42 per cent of their counterparts in manufacturing companies adopted the same stance. In short, interviewees in small, private sector services companies based in a CME and operating with an Article 6 EWC were the most likely to report that the benefits of EWCs justified their costs.

Among the majority of interviewees who thought that the benefits of EWCs justified the costs, three quotes illustrate supporting arguments by reference

6. Two interviewees who provided financial data did not answer the question on whether the benefits outweighed the costs or *vice versa*.

to the avoidance of conflict, increased speed of implementing corporate change, and a more sophisticated understanding of the company.

‘Yes because it avoids a lot of conflicts. Saying OK we are taking charge of the travelling costs to go to [a city], but it’s not that expensive when we are comparing to what we can pay to bankers in the divestment or to lawyers in the reorganisation. If we can avoid some conflicts during meetings about so few things, it’s always good. They [EWC representatives] appreciate it, they better understand the topics, they don’t feel that we are hiding some information from them. So it’s really a way to ease the topic.’ (Company 23)

‘I think so. But then again, you are talking to somebody who sees all the benefits. I see it all the time. I know if there is a business change, we act quickly, we get an opinion from the representatives on behalf of their employees and it enables the business to do change in a nimble way and without it, it might be clunky. We might be having disputes, we might be having all that, I don’t know. I can’t tell you because we haven’t got them.’ (Company 41)

‘I think that the most important benefit is that the EWC is a very important tool to make easier the understanding of what the company does. This is the most important for me. The information to the employees, the improvement of social dialogue, the knowledge of the local situation is very important, but the main benefit is that the EWC is a facilitator to understand the expectation and the needs of the employees and, on the other hand, to make it easier why the company does the things it does.’ (Company 46)

Similarly, among those for whom the costs outweighed the benefits, two issues stood out: concerns about the capability of EWC representatives and the relationship between European and national levels of decision-making.

‘I think it goes back to the capability of the ... and the appetite of the representatives to really engage at a European level. If you go back to the issues they bring up, they are still concerned with what is going on in their locations rather than what concerns them as a kind of European citizen and what is concerning their colleagues as European citizens. And it’s about the ability to think and interact in a strategic way. Has it improved over the last, gosh, more than 15 years, you know, 18 years? Yes sure. But there is really a long way to go’. (Company 42)

‘Because it is a duplication of national processes’. (Company 55)

Irrespective of whether interviewees viewed benefits as outweighing or outweighed by the costs of EWCs, two issues were regularly cited as under examination within companies regarding costs. First interviewees highlighted the cost of interpretation (often referred to as translation) as constituting a large proportion of costs and tended to downplay costs associated with travel,

accommodation and administration. Second, several interviewees were examining the possibility of videoconferencing or other electronic means of communication as a means of reducing the number of face-to-face meetings. It was not clear, however, to what extent such practices were already in operation. Some trade union organisations, however, are sceptical about the replacement of face-to-face meetings with electronic communications on the grounds that electronic communications impair the development of trust and personal relationships among employee representatives and between employee representatives and central management (Cox 2005: 65).

Conclusions

The huge variation in the costs of EWCs reported in earlier studies is replicated here. There is neither a direct relationship between costs and features of the EWC, such as the number of meetings and EWC representatives, nor evidence of increasing costs of EWCs over time. There is no consistent evidence provided by managerial interviewees that high and rising costs are a central concern. To the contrary, the majority of interviewees thought EWCs to be good value for money, including those with the largest EWC budgets.

Operational concerns and value added

Studies of managerial approaches to EWCs have focused on operational concerns and the added value of EWCs (Lamers 1998; Nakano 1999; Hume-Rothery 2004). Furthermore, managers express their views on EWCs to policy makers using variants of the same distinction (European Commission 2008a). This section of the Working Paper replicates this approach in examining managerial views on operational concerns by reference to the difficulties they have encountered in the operation of EWCs and assessing whether managers think EWCs constitute a hindrance to the functioning of the MNC. It should be noted from the outset that many managers favoured legislative change to address many of the operational concerns they had encountered before the adoption of the Recast (European Commission 2008a; ORC 2007), contrary to the position of BusinessEurope which favoured voluntary solutions particular to each company rather than a revision of the Directive (UNICE 2004; BusinessEurope 2008). An assessment of operational concerns expressed by interviewees thus also constitutes an initial examination of the efficacy of the Recast from the perspective of managers, a purpose of which was to improve the operation of EWCs. The next section of the Working Paper addresses the Recast directly.

The added value of EWCs to MNCs has been expressed in terms of communication systems, the generation of employee commitment, the reinforcement of corporate identity, a means to improve labour relations and as an agent for change (Lamers 1998; Hume-Rothery 2004). BusinessEurope brought into question the extent of the added value secured by MNCs from EWCs in rejecting proposals to revise the Directive (BusinessEurope 2008). In particular, BusinessEurope regarded the proposed legislation as ‘over-prescriptive and ill-suited’, as endangering business in the EU and as establishing ‘such high obstacles to taking decisions quickly and adapting to competition’ (BusinessEurope 2008). The objective here is to establish whether the range of strategies employed by managers has been extended as part of the institutional development of EWCs and whether the concerns expressed by BusinessEurope have been realised from the perspective of managers responsible for EWCs. Three stages of the analysis develop an understanding of the benefits of EWCs for MNCs from the perspectives of the interviewees. The first of these stages examines the assistance provided by the EWC to the MNC. The second stage elaborates how EWCs have been used to reinforce the corporate identity of the MNC, while the third stage reviews the forms of added value that accrue to MNCs from EWCs.

The argument advanced in this section is that interviewees have encountered operational difficulties, but relatively few of these difficulties hinder the functioning of the MNC. Furthermore, the assistance and added value to the MNC arising from EWCs are more wide-ranging than the challenges generated by their introduction. The range of assistance and added value appears to be broadening as managers 'learn' how best to generate benefits from EWCs, lending further support to the idea of EWCs as an institution in process.

Operational difficulties encountered by management with EWCs

Interviewees were asked to specify the operational difficulties they had encountered with EWCs and how these difficulties had been/might be overcome.⁷ Eight interviewees did not respond to the question on difficulties, fifteen interviewees (31 per cent) detected no operational difficulties with the EWC and thirty-three interviewees (69 per cent) identified operational difficulties of varying magnitude. Twelve interviewees mentioned how the difficulties they encountered had been overcome.

Interviewees mentioned a range of operational matters as constituting a difficulty. Although there was no consistency among interviewees, three operational matters were mentioned by three or more interviewees. These included:

Communication

Several interviewees acknowledged that communication with the EWC was difficult, although this acknowledgement was qualified in so far as communication *per se*, irrespective of the parties involved, was viewed as presenting challenges. Interviewees highlighted particular aspects of communication as problematic, including issues associated with the different cultures present among the EWC representatives and management, uncertainties about the message that each EWC representatives might take home and how this is influenced by the quality of interpretation, how individual EWC representatives dominate meetings to the exclusion of others, and issues associated with the cascading of information from the EWC throughout the company employees and management.

Two points are pertinent at this juncture. First, what are often presented as communication difficulties are, in practice, differences of opinion and reflect divergent interests *between* management and EWC representatives and *within* both groups. Second, the generation of transnational identity or solidarity is an issue of long-standing research interest in the context of EWCs. Recent

7. In all the stages of this section of the Working Paper no attempt was made by the interviewer to define the terms 'difficulty', 'hindrance', 'assistance' and 'added value' with the consequence that interviewees mentioned a variety of issues within each of these terms.

contributions to this debate suggest that trust arising, in part, from continuity and transparency is prerequisite to the incorporation of varied cultural and political perspectives within unified policy approaches (Kotthoff and Whittall 2014; Hürtgen 2011).

Relations between the transnational and national levels

The specifics of the difficulties encountered in these relations differed markedly, with some interviewees emphasising difficulties associated with the release of information at the European and national levels whereas others reported that representatives treat the EWC as an additional layer of information and consultation to supplement national level arrangements. More specifically, interviewees mentioned that local managers take operational initiatives without informing central management, with the consequence that some local representatives attended the EWC with more information at their disposal than central management; that a failure of managers and representatives to reach agreement at national level had resulted in both parties taking the issue to the EWC, although in the view of the interviewee it was clearly a national issue; and that it was important for EWC representatives to understand that the EWC should be seen as more influential than institutions at the national level. Relations between transnational and national levels of activity are thus problematic when they preclude the achievement of managerial diffusion and integration objectives.

Two points emerge from these findings. First, Article 12(2) of the Recast proposes that the signatories to EWC agreements should find a solution to the linking of European and national level activities. It is clear that this proposal has either not been implemented or is not a solution to the question of linkage in all MNCs. Second, Article 12(3) of the Recast indicates that where no linkage arrangements are agreed in the EWC agreement there should be information and consultation at both levels, although no detail is provided as to how these procedures should be linked. The absence of detail concerning linkage is clearly problematic for some interviewees.

Timing

Interviewees mentioned several operational difficulties concerning timing including the 'standard' problems associated with diaries and dates; the time at which information should be made available to the EWC; the length of time required by EWC representatives to analyse information and conduct consultation before reaching a conclusion; and the need to coordinate the timing of a strategic company decision with that of the annual plenary meeting of the EWC.

Several of these operational difficulties concerning timing, particularly those on the release of information and the duration of consultation, figured large in debates prior to the adoption of the Recast. While the continued appearance of these operational difficulties suggests that the terms of the Recast failed to eliminate them, their continued presence confirms the contested nature of the institution. EWC representatives require the early release of information in order to have time to reach a considered view on the matter at hand, whereas

some managers may wish to delay the release for operational reasons, as illustrated above vis-à-vis corporate restructuring.

In addition to the difficulties encountered by three or more interviewees were a number of issues raised by single interviewees. These are listed below:

- inadequate education of EWC representatives regarding language and business understanding;
- the EWC is not really a community;
- lack of initiative among EWC representatives in preparing for meetings;
- poor relations between employee representatives;
- the need to create an appropriate environment;
- the operational definition of an ‘in-depth assessment; and
- the need to increase the turnover among employee representatives by limiting the extent of their re-election.

As is apparent several of these issues are directly related to the themes of communication (the EWC is not really a community and poor relations between employee representatives) and timing (operational definition of ‘in-depth assessment).

In terms of the proportions of interviewees that reported difficulties with EWC operations, there was no overall influence arising from either company size or the degree of Europeanisation, although interviewees from larger and more Europeanised companies were the most likely to report difficulties with communications. Similarly, the distinction between manufacturing and private sector services did not impinge on the extent to which difficulties were reported. Interviewees operating with Article 6 EWCs were more likely to report difficulties with the operation of the EWC than their presence in the research sample would suggest (70 per cent of those reporting difficulties; 59 per cent of the research sample), but this difference is not significant. Interviewees based in companies that originate in CMEs were also more likely to cite difficulties, whereas their counterparts in companies based in LMEs were less likely to mention difficulties. Interviewees in companies based in MMEs identified difficulties in proportion to their presence within the research sample.

Company size, the degree of Europeanisation and the legal underpinning of the EWC had no influence on the frequency at which no operational difficulties were reported with the EWC. Interviewees in private sector services, however, were more likely to report no operational difficulties than their counterparts in manufacturing. Interviewees based in companies originating in MMEs were more likely to mention that they had experienced no specific difficulties than their presence in the research sample would suggest, whereas their counterparts in CMEs were less likely. Interviewees in companies based in LMEs cited no specific difficulties at a rate proportional to the presence of such companies in the research sample.

Twelve interviewees elaborated the mechanisms that had been adopted to address the operational difficulties they had encountered. As with the difficul-

ties, there was no consistency in the mechanisms adopted. Three themes, however, were in evidence. First, to address issues associated with timing, interviewees had introduced agreed protocols or clauses to EWC agreements that stipulated time limits for different processes, and had implemented new managerial guidelines for national and business unit managers regarding the release of information, with the intention of coordinating this release at national and transnational levels. These measures are consistent with the approach recommended in Article 12(2) of the Recast. Second, to address issues regarding the knowledge and expertise of EWC representatives, interviewees had tried to influence the selection of EWC representatives by providing a job description, offering training on cultural differences and on national industrial relations systems, and are contemplating the introduction of formal qualification requirements as already used within the company for the supervisory board. Third, to ensure a more equitable rate of contribution from all EWC representatives at meetings *tours de table* had been introduced, thereby, allowing every representative present to make a contribution. Each of these developments was directed towards a specific difficulty encountered by interviewees. More generally, interviewees highlight the advantages of using video and other electronic communications technology to supplement face-to-face exchanges, the necessity of establishing trust, and the benefits of informing the EWC at the earliest opportunity in any process of change. As mentioned above, however, trade unions are sceptical about such developments as they may lead to more limited face-to-face exchanges and limit the development of trust (Cox 2005: 65).

Are EWCs a hindrance to management?

To further explore the extent to which EWCs were viewed as restricting managerial prerogative interviewees were asked ‘in what situations has the EWC acted as a hindrance to management?’. It was expected that there would be considerable overlap between the responses on difficulties and those on hindrance. This expectation was not realised: interviewees were more likely to mention the operational difficulties of EWCs than they were to regard EWCs as a hindrance to management. Only ten (18 per cent) interviewees stated that they had experienced operational difficulties with the EWC and thought that the EWC was hindrance to management. Two interviewees regarded the EWC as a hindrance, but had experienced no operational difficulties.

Ten interviewees did not answer the question on whether EWCs were a hindrance to management. Of the remaining forty-six interviewees no fewer than thirty-four (74 per cent) stated that EWCs did not constitute a hindrance to management, whereas twelve (26 per cent) expressed the opposite view. Reference to every one of the sub-groups used in this Working Paper reveals a similar pattern with interviewees reporting that EWCs do not constitute a hindrance forming the majority: Article 6 EWCs, 76 per cent; Article 13 EWCs, 71 per cent; CMEs, 75 per cent; LMEs, 83 per cent; MMEs, 60 per cent; manufacturing, 81 per cent; private sector services, 65 per cent; large companies, 74 per cent; medium-sized companies, 72 per cent; and small companies 80 per cent.

Issues concerned with timelines were most often cited as hindering management, with EWCs regarded as slowing down management decision-making processes, although the proportion of interviewees mentioning that EWC slow down decision-making is lower than that recorded in 2007 and suggests that it is less of an issue now (EPEC 2007: 58). Interviewees qualified their comments on this matter, however, in suggesting that the slowing down of management decision-making processes was the result of inclusive information and consultation processes, which interviewees tended to regard as the bedrock of appropriate decision-making. In short, interviewees acknowledge that there may be delays in decision-making if decision-making is to include the EWC, but these delays are justified as they enable managers to engage in inclusive decision-making processes. Three quotes illustrate the impact of the engagement of the EWC.

‘For example, sometimes we get requests from management: ‘this is our project, until yesterday it was strictly confidential, now we are open to communicate. Today is Thursday and we want to implement next week on Monday. Full stop’. That doesn’t work because we have to follow the rules and legislation.’ (Company 1)

‘Not really a hindrance, but, I would say, slowing things down. For instance, if we announce an intention in Belgium to move some products from Belgium to another country, a kind of restructuring. Of course in Belgium then you have the ‘Renault Law’. Also, with these kinds of big decisions or intentions, we also involve the European works council and then you have to find a moment to get them together, and you lose some time in your processes to go to a decision.’ (Company 9)

‘For example ... we are discussing to move parts of our component production to Eastern Europe so the Western Europe guys, they align and start to chase us for information. Is that a burden? I think that it is their right to do so and they do it via the European works council so.’ (Company 55)

A further quote highlights the learning curve on which EWCs are travelling in arguing that present timelines are not straightforward, but are likely to ease with experience and learning.

‘As the group works council, for example, or the works councils we are used to [within the home country], they have been professionals for fifty years. They know how to do it, how to be organised, how to communicate with each other, who is the boss, who makes the decision, who you can rely on and so on. The EWC is learning that now, and has problems of language and culture and so on. The variety of people in the EWC makes it a little bit harder for the organisational issues.’ (Company 3)

Of the twelve interviewees that regarded EWCs as constituting a hindrance to management six mentioned timelines. Among the remaining six interviewees, one did not specify how the EWC hindered management and a second commented that the EWC had once hindered management ‘but without

dramatic consequences' (Company 10). A third interviewee was also aware of one instance when the EWC had hindered management, but added the qualification 'I think that was more down to misunderstanding and maybe miscommunication, and also, potentially, whether our senior management team had a clear understanding of what their [the EWC's] requirements actually were' (Company 39). A fourth interviewee based in a company with Italian origins highlighted national differences in industrial relations practices as underpinning the impact of the EWC in stating.

'I think that the French way of managing industrial relations is deeply formalised ... basically bureaucratic, which affects the way the EWC in a French-based company is managed. Because I was feeling that the management was running a procedure, not informing the site. So too much structure affects the openness and the reliability of what we are saying.' (Company 35)

Two other interviewees took up the question 'what is transnational?' as a hindrance. This issue is taken up in more detail in the section of the Working Paper on the Recast.

How do EWCs assist management?

The initial stage of the analysis concerning the benefits of EWCs for managers is based on responses to the question 'in what circumstances has the EWC been of assistance to management?'. It is noteworthy that seven of the ten interviewees that reported both operational difficulties and EWCs as a hindrance commented that EWCs also assisted the MNC. Similarly, twenty-two of the thirty-three interviewees reporting operational difficulties and eleven of the twelve interviewees who reported the EWC as a hindrance also indicated that the EWC was of assistance to the MNC.

Four interviewees offered no response to the question on assistance. Among the fifty-two interviewees that responded forty (77 per cent) reported that the EWC had assisted management and twelve (23 per cent) indicated the contrary. Disaggregating the data into different sub-groups reveals a remarkable consistency with assistance provided by the EWC to management at 78 per cent of cases with an Article 6 EWC, 75 per cent of cases with an Article 13 EWC, 76 per cent of companies based in CMEs, 77 per cent of companies based in LMEs and 80 per cent of companies based in MMEs. Interviewees from private sector services companies were more likely to report assistance from the EWC (86 per cent) than their counterparts in manufacturing companies (70 per cent). There is also a positive relationship between company size and the assistance provided by the EWC to management with 73 per cent of interviewees at small companies reporting that assistance was provided compared 75 per cent at medium-sized companies and 84 per cent at large companies. In every sub-group, therefore, a substantial majority of interviewees reported that assistance had been provided by the EWC to management.

Interviewees provided a very wide range of areas in which the EWC had been of assistance to management. It is not the intention here to list the entire range, but to highlight those areas that had been of assistance to managers in many companies. Of course, it is acknowledged that these areas are not entirely independent of one another.

Communication

The communication benefits of EWCs covered both the top-down cascading of information from management via the EWC to the operational sites of companies and the bottom-up flow of information from employees to central management. That is, the diffusion and integrative aspects of communication were highlighted (Edwards *et al.* 2013). The top-down cascading of information, for example, was seen as a means:

- to reduce or eliminate conflict;
- to encourage support for management policy initiatives among local representatives;
- and to explain managerial practices and, thereby, ensure an accurate understanding among EWC and local representatives of the managerial position.

A considerable body of research shows that German works councils (*Betriebsräte*) contribute to high rates of productivity growth in Germany by acting as conduits for bottom-up information flows from the shop floor to management (Mueller 2015). While interviewees do not draw the linkage between EWCs and productivity growth, they acknowledge that EWCs are conduits for bottom-up flows of information that contribute to integrative improvements in company performance.

‘In some projects, I think the feedback from the different countries helps as well, what is working and what is not working. If, in a shared service centre, for example, some services are not provided in the quality, etc. The local get more information so they can use the sessions they have afterwards in the EWC and transmit this feedback. And, for the project lead [manager], it’s interesting to get this feedback and say “well, perhaps there are some details I haven’t seen yet.” This might help as well. And also perhaps for the ... we try to be more international so spreading information across borders, etc. can help as well, for example, in the hiring processes or making a competence centre in one country and staffing it not with people from this country, etc. So this as well.’
(Company 4)

Generating commitment

Very much interlinked with the idea of cascading information down from the EWC to sites operated by MNCs is the generation of employee commitment to company objectives. Several interviewees mentioned the assistance provided by EWCs in generating such commitment, which is clearly illustrated by the statement below.

‘[The EWC] really helped management to achieve, well ... no I wouldn’t say that there is a specific thing which we can point out. In general we still see it as I have described it: getting commitment from the people.’ (Company 19)

Furthermore, the commitment generated among EWC representatives can lead to improvements in managerial policy through feedback, even in companies based in countries where such feedback is not generally sought or offered within the industrial relations tradition.

‘So, I would say that each time we have a business case to present, all their [EWC representatives’] questions are very valid. And, over the course of the years, because now we have had an agreement in place for almost ten years and it’s working very well, I can say that our business leaders are much more prepared than before because of the consistent feedback coming from the EWC members about how employees are treated, what is going to happen to them, whether alternatives looked at can be defined before presenting this project. So I guess yes in the thinking process. Especially because we are an American company so, in America you just say bye-bye and that’s it, very easy. I’m, of course, oversimplifying but this is how it is in reality. Whereas here we need to prepare well, we need to make sure that we have looked at all the end goals of the business case and that it gives a structure and a very structured way of doing things, which is good.’ (Company 13)

Company restructuring

The form of assistance provided by EWCs to management reported by most interviewees concerned the assistance provided during corporate restructuring. In this context, the information and consultation agenda pursued at EWCs was viewed as:

- creating an appropriate atmosphere;
- substituting for the absence of local expertise or institutions;

‘There are several levels of answers. The first one I would say is that, in some places, the local employee reps do not have any access to expertise. Let’s say Spain, for example. And when we have been restructuring some of our activities in Spain, that has been an opportunity - because there was an expertise at European level - to share that at local level so that people could understand why we were changing, what we were changing and which consequences it could have. So it could be considered a substitute to what is missing locally or not organised by the local regulation.’ (Company 10)

- recognising that corporate restructuring often requires an agreed time table;
- facilitating employment transfers between sites in different EU Member States; and
- a means to examine the functioning of enterprises.

EWCs and the promotion of corporate identity

Although a variety of terms have been employed, studies of managerial attitudes towards EWCs have tended to argue that the reinforcement of corporate identity is a management objective from EWC engagement. Lamers, for example, highlights the influence of EWC engagement in ‘promoting cohesion’ and ‘corporate citizenship’ (1998: 181-182), whereas Weber *et al.* show that 40 per cent of companies with operations in the UK within their research sample thought that a benefit associated with EWCs was the ‘development of corporate culture’ (2000: 21). This stage of the report examines responses to the question ‘do you use the EWC as a means to strengthen corporate identity across (and within) the company?’.

Twenty-two interviewees provided no response to the question on EWCs and corporate identity. Among those that answered the question twenty-four (71 per cent) interviewees responded positively in asserting that the EWC was used as a vehicle to promote corporate identity, whereas ten (29 per cent) interviewees reported no such usage. Company size and the degree of Europeanisation had no marked effects on the distribution of respondents on the question of EWCs and corporate identity. Sector of operations, legal underpinning and industrial relations system, however, were influential on the extent to which management used EWCs to promote corporate identity. Regarding sector, for example, 67 per cent of interviewees based in manufacturing companies used to EWC to promote corporate identity, a proportion that rose to 80 per cent among interviewees based in private service sector companies. Similarly, 58 per cent of interviewees operating with an Article 13 EWC promoted corporate identity through the EWC whereas 77 per cent of interviewees with an Article 6 EWC did so. Among interviewees based in companies with origins in LMEs and CMEs 77 per cent and 71 per cent respectively used the EWC to promote corporate identity, while only 50 per cent of interviewees employed by companies with origins in the MMEs did so. In short, managers of companies in private sector services with an Article 6 agreement, which originated in a LME were the most likely to use the EWC to promote corporate identity.

Within the rubric corporate identity, interviewees reported the pursuit of a variety of objectives, reflecting the diversity of corporate policy and strategy, the communication challenges inherent in the management of a MNC and the advantages of partnership and social dialogue as mechanisms to promote corporate identity. Regarding the promotion of corporate objectives and strategies through EWCs, three quotes on the impact of EWCs in promoting a unified corporate identity after company restructuring illustrate the dynamics into which EWCs can be incorporated.

‘I think recently as we have brought two organisations together, it [the EWC] really has been a strong vehicle for that [promoting corporate identity]. It’s almost been ‘forget your legacy companies and this is about what we are nowadays’ and actually bringing the two together. A great example of it is the timing of our last meeting. So normally, we’d have our

scheduled annual meeting [of the EWC] in the fall, but we moved it up, because as a result of this latest acquisition, where it was so fundamental, the company's name changed, and they were planning on having their meeting in [name of city] in June. So, we said 'well why don't we just have the combined meeting in June instead of waiting until the fall. It's a much better opportunity to sell the corporate identity, to market it and to get stakeholder involvement and acceptance of it.' (Company 41)

'So, for example, when in the early days of building up the product area strategy of the company, when the company bought [Company A] and [Company B], it [the EWC] was very much used as a way of reinforcing the company brand. Discussing and sharing initiatives like what used to be called 'the company way'. So, what are the core values of the company, how they are communicated across the group, what does that mean for each individual, and location and, of course, across the region and then how do individuals as representatives respond to that.' (Company 42)

'I think yes. The company, as it is today, is the result of a merger of several companies and we have several identities. We have an international presence throughout Europe. And after the merger of these related companies especially Company [A], Company [B], and the previous German company, we created an EWC. And I think that it is something that identifies in a very particular way our company.' (Company 46)

Similarly, an EWC can be used to anticipate the future effects of corporate strategy.

'Well I think that's [the promotion of corporate identity] one of the reasons we're doing what we are trying to do, which is have this EWC because it gives us the opportunity to use it for that very purpose and to get our core beliefs and culture out there more, in a more measured way. And to get the message across to people who can hopefully go and be advocates on our behalf. So that's certainly one of the reasons we are doing what we're doing. Obviously, that's a valuable potential outcome. Whether we achieve this, that is a different question, but that is certainly one of the things we hope we will achieve. So we do invest time talking about future plans, you know. Last week we had a big session on the industrial internet and the internet of things. This isn't going to come into practice for years and we spent a lot of time making sure the [EWC] reps understood this all connected up and it was a great session. So to the extent that that type of thing is corporate identity, yes we do that.' (Company 27)

As was demonstrated in the section of this Working Paper on transnational corporate restructuring, management communication mechanisms are facilitated by means of the EWC. Managerial messages concerning corporate identity and branding are particularly difficult to disseminate in the absence of institutions of employee representation. As the following quote illustrates, EWCs present opportunities to improve communications vis-à-vis corporate

identity and branding where there are no institutions of labour representation in place.

‘In this case we are really talking about the businesses, the companies, the brands. And there, in particular for those countries where we don’t have a strong union or strong works council in the country, there’s more of a need to have some formal communication channels in place. You typically don’t need that much in some of those countries where you have strong works councils, strong unions, where you already have a dialogue.’ (Company 14)

More generally, well thought out communication disseminated through the EWC can improve the perception of corporate identity.

‘I think it [the EWC] can be [of assistance in promoting corporate identity]. It can be. If the company focuses on the right communication it can help to communicate the right identity because ... again, provided the company put ... the management put the right effort in preparing the communication, sharing with the employees ... with the delegates. So all in all I will say yes.’ (Company 54)

‘But again, going back to the communication point of view, yes because I think it’s predominantly when senior management give what we call their strategic updates that the representatives really sense in which direction the organisation is going. ‘Corporate identity’ is a little bit strong I find. It [the EWC] will contribute to that, more from the communications angle and have the visibility directly between employee reps. and senior management on very strategic topics, topics that they normally would not be involved with. And I think, from that perspective, it’s definitely reaching that goal.’ (Company 6)

A third area linked to corporate identity by interviewees concerns the development of social dialogue or social partnership. Interviewees are unequivocal in viewing appropriate systems of social dialogue as integral to the enhancement of corporate image, as the following quotes in response to the question on corporate identity demonstrate.

‘In total, yes. We try in the whole labour relations area to take social partnership very seriously. We have in 2013 agreed a joint statement with UNI. It’s not an international framework agreement, but it’s a joint statement. A framework agreement was too much for us. But a joint statement, like Coco Cola did, is a one pager that we like each other, that we give each other help from time to time. And we meet each other, also on a global level. There is an alliance meeting where I participate. It is a meeting of UNI. So the social partnership is for us important, including also on the European level, here in the European works council, so that we have the possibilities to have a good communication platform.’ (Company 2)

Yes. Yes. For example, in the annual meetings [of the EWC] they have informal programmes as well, so team building programmes. And it could not only affect the culture, but the reputation as well of the Group. And I think at the international level, the European works council is a good example. And this is, of course, very good news from the management point of view as well.' (Company 18)

Yes because, for example, in our agreement it's written that we through the EWC, through dialogue with the EWC, we want to achieve a great sense of belonging. We want to, yes, label the EWC as our partner in the social dialogue. Why not also in improving the CSR, the corporate social responsibility? It is a good vehicle. For example, we presented to them the new code of conduct, the ethical code of the company. We explained to them how many alleged illegal violations under the code of conduct. Not the name obviously, but the kind of allegations.' (Company 53)

The relationship between EWCs and social dialogue is a theme examined in later section of this Working Paper.

The value-added of EWCs

A third and final stage of the analysis of the benefits of EWCs derived by management concerns the added value of EWCs. Interviewees were asked 'is there an added value for the company arising from the EWC?'. All interviewees responded to the question on added value with thirty-nine (70 per cent) reporting that EWCs added value, ten (18 per cent) that no added value accrued from the EWC, and seven (12 per cent) answering either equivocally or saying 'yes and no'. No fewer than seventeen interviewees regarded the EWC as both assisting the MNC and adding value to the MNC. Of the ten interviewees that reported operational difficulties and the EWC as hindering management nine indicated that the EWC added value to the MNC. Similarly, six of these ten interviewees reported that the EWC assisted and added value to the MNC.

The pattern of positive responses from interviewees was broadly reproduced in manufacturing and private sector services where 68 per cent and 72 per cent of interviewees indicated that added value resulted from the EWC. Similarly, 70 per cent of interviewees operating in conjunction with both Article 6 and Article 13 agreements indicated that the EWC had added value. The distribution more was differentiated by country clusters and company size. No fewer than 84 per cent of interviewees in companies with origins in LMEs thought that EWCs added value compared to 62 per cent in CMEs and 64 per cent in MMEs. In large companies 83 per cent of interviewees stated that the EWC had added value whereas in small and medium-sized companies this proportion fell to 71 per cent and 57 per cent respectively.

Turning first to the ten (18 per cent) interviewees who saw no value-added by the EWC. Among these interviewees there was no consistency in the reasons given to justify why the EWC failed to add value. The reasons cited were:

- EWCs are a necessity and no more;

‘I think that it’s [the EWC] a necessary evil for the company. We do it because we have to do it. Do we see any added value? At this moment in time, no.’ (Company 5)

- EWC representatives bring local matters to the meeting;

‘There is a tendency that the people bring their local frustrations to these meetings and that is something that is really, really difficult, and it really kind of disturbs the meeting quite a lot.’ (Company 20)

- the EWC represents too many interests;

‘It has no added value because of the different interests that people represent. Because when it is really tough business and when it comes to restructuring or what have you, or when it comes to “OK and now we have to merge, and now we have to make sure that we do the integration” and then we have too many people.’ (Company 30)

- EWC representatives express different interests to management;

‘For the moment no [there is no added value]. That’s my view. And that is always a big debate. They ([EWC representatives] want more. They want involvement, they want information, they want to give us their opinion, they want us to inform them ahead and we always ask them ‘what’s the added value?, what can you bring?’ (Company 38)

- the selection of EWC representatives;

‘The one is the system of being elected into these committees. It is a dead end road. Once you are elected, there is no way back to the business. And I know that’s a bit [unintelligible]. So, in theory, it might be possible, in practice I don’t see it. And that is limiting the number of people who agree to be elected for such committees and it is limiting as well the characters who agree to be elected. So I think that is really one of the key mistakes in that system. I would appreciate a lot if there was something like a limitation of being re-elected so that only people could be re-elected once or twice and then they have to go back to the business. I think that would help a lot.’ (Company 55)

- the manner in which EWC representatives use the information provided by management;

‘I’m thinking...so we tell the steering committee...we call them up in a conference call if a change is being made to the organisation. I’m always thinking what is that information being used for? Do they do anything with that information in the country? To be honest, I often think what’s the outcome? What is really the outcome of the...? Also, some of the

meetings ... we have a lot of meetings and a lot of information is given. So I'm thinking OK they do get a lot of information and I'm just wondering what they do with that information and where that information goes, and how do they work with it on a local basis. I mean we have actions and things we discuss with them when they're here, and I think we try to do what we can in order to fulfil the questions it asks. But what happens locally ... I'm not sure.' (Company 21)

- Europe is a small part of the company;

'I don't know. I don't know. It's very difficult because we don't have a special European view. OK? Our footprint is in America, not in Europe. And, as you say, our number of employees ... we have small companies in Europe. And then where we have big companies? We have big companies in America. Today, not in Europe.' (Company 32)

- the MNC is concentrated in the home country and outside of Europe;

'No because we have very small affiliates [subsidiaries] outside [of the home country]. So we have, for instance, 20 people in France, 40 in Germany. So the greater affiliates we have are in Japan and the US.' (Company 35)

- and the peculiarities of some segments of private sector services.

'Because we are a service company and we tend to run local businesses in local areas. We don't do a lot of cross-border trading and we don't shift people around. We don't have any manufacturing. So we don't really have ... we struggle to find items that have got a trans-European element to them.' (Company 43)

Single interviewees mentioned all of these issues with the exception of the bringing of local issues to the EWC, which two interviewees mentioned as prohibiting added value of the EWC. These quotes raise three points. First, several of the quotes are similar to the operational difficulties mentioned previously (EWC representatives bring local matters to the meetings and the manner in which EWC representatives use the information provided by management). The interviewees who state that these issues prohibit value added differ from those who view them as surmountable and have achieved added value by such means. Moreover, the issue of local matters is ambiguous. In the circumstances of a discussion on transnational company strategy a local matter may be an inappropriate topic as it may not resonate with the matter under discussion or it may be helpful as a contribution to the bottom-up flow of information mentioned by interviewees above as assisting management decision-making (see also the quote from Company 22 below). Second, the quote that 'EWCs are a necessity and no more' confirms the view that some MNCs persist with minimalist approaches to EWCs, irrespective of the content of legislation. Third, the acknowledgement that EWC representatives express different interests to management lends further support to the underpinning

assumption that EWCs are contested institutions. It is noteworthy that a single interviewee cited this issue as prohibiting the achievement of added value. This interviewee also suggests that EWCs generally constitute a procedural means whereby 'different interests' can be reconciled, or failing that, brought together in the form of an agreed *modus operandi*.

Given that thirty-nine (70 per cent) interviewees stated that EWCs added value to company operations, it is not surprising that interviewees cited a wide range of mechanisms whereby value was added. Among the mechanisms to add value identified by single interviewees were:

- EWCs add flexibility to local processes of representation;
- workshops comprising EWC representatives were established to examine issues of working time flexibility throughout the company. Workshops to examine other issues will be established in the future;
- the presence of an EWC forces the business to be very structured on how project initiatives are organised. This is a good discipline;
- the EWC has helped to generate new forms of debate;
- the EWC is closely connected to the core values of the MNC.

The following mechanisms to add value were each cited by several interviewees:

- a mechanism to cascade information throughout the sites of the MNC;

‘Balancing the interests between company and employees, it’s a communication topic. So we do not negotiate restructurings. This is consultation and exchange of opinions. This is getting a broader picture by taking into account additional views. This is sharing background information, explaining rationales, why we are going in a certain direction and that, in the end, leads to better acceptance of the final solution. Even so, based on our existing agreement, we are not obliged to adjust initial considerations. However, we have an extremely constructive atmosphere so both parties - we do not even say that we are two separate parties - the entire group aims to achieve the best result for [the company] and its employees.’ (Company 7)
- a mechanism whereby information from the localities at which the MNC has operations is brought to attention of central management;

‘In addition, there are other values. We have a good assessment of what is the feeling and the situation in our countries. So I think that we have good EWC meetings. We speak frankly and they speak frankly, and so we have good feedback from them, what their view is of how things are going in our countries in terms of industrial relations. And, of course, for us, it is normally a confirmation of the information that we already have from our management. And then it is a matter of having an open dialogue. So I’m normally positive about these meetings and there is always added value. My sense, if I can say, I think that the select committee meetings are even more valuable than the EWC meetings.’ (Company 22)

- a mechanism to promote employee engagement in the strategic development of the MNC;

‘I think so. I think the value for us is one of engagement. So not only sharing ideas in their earliest form or as early as you can and getting insights and feedback on them, but also engaging a group of employees around some ideas, future plans and having them buy in and help you with engaging a much wider population. So I think there’s significant value in that. Clearly, there is a role to be played in the tougher side of European works councils i.e. restructuring a business. So the topics aren’t always pleasant to deal with. You know, they’re difficult, uncomfortable. But I think, if you have a good relationship and you have good reps.’
(Company 27)

- a mechanism to create leverage between the European and local levels and thus facilitate the introduction of strategic initiatives;

‘The other big advantage for me is that, if you have a European works council which is composed by your key chairman, union leaders at a local level, the fact that the Presidents or the key project owners are explaining their project, the intended strategy really, really helps for the local procedure we have to follow but also the communication with our works council and then to our employees. So I would say, if you have this right composition, I think there is a big leverage you can make between European level and local level. And, also, on a day-to-day, I can see that – and it’s part of the value to [the company]of the way I think we do labour relations, employee relations – the fact that we are really open in the dialogue really helps also in terms of how the employees view the company and take into account the feedback. So, yes, in a nutshell.’
(Company 37)

- a mechanism to promote preparation among managers to consider in detail strategic options;

‘It’s a good question and I am speaking on behalf of central management. What I think, in the general sense, is that the fact that we have to inform and consult is an additional incentive, I would say, to central management to really prepare and consider well the decisions it intends to take, so it is an additional review basically, so from a personal point of view, I think that’s a big added value and on the other hand, it also helps to create, in the Dutch word, draagvlak, I don’t know the English word for it, but to have intended decisions be supported and shared more by ... throughout the company in Europe.’ (Company 47)

- a mechanism whereby a constructive counterweight to management is generated, which leads to improvements in the strategic solutions found within the company;

‘I think it’s good to have a counter-weight against management to discuss changes that have an impact on employees. I think from a principle perspective it’s good to have this counterweight and someone probing why or why not things are the right manner. So, in general, you would say having that conversation, a dialogue would improve, in the end, the solution found. Being realistic, on the EWC level, very often the majority of the impact is still being made on the local level and local information and consultation, because that’s where it’s more about the details. It does help our management to stay alert. If we want a change, we have to think about what the implications are for our employees. And does the EWC add value? Well, of course. I think we would probably say if you didn’t have the EWC probably life would be much easier and we would deal with it on the local level. However, in reality, it’s a bit of a question. That is to some extent irrelevant because it’s a law. So we need to make the most of it. And I think, for us, what has helped - within [the company] - over the last 10 years because we made this conscious decision: we wanted to have a joint body that helped us to drive change and to get things through in a timely manner without huge issues, without strikes, delays or even going to court. And I think that was predominantly due to the fact that we took them seriously, that we listened, but also that we have a joint body where we have always an interactive debate. And it’s easier for management to say this is our view, this is the reality and also be able to explain more: this is how things work, this is where the rationale came from.’ (Company 1)

- a mechanism to facilitate change within the company;

‘I believe there is, based on the way we approach the meetings because we are a group that aims at having homogenous policies throughout the world. We try to direct the meetings into a situation where we can actually deliver information, we can anticipate events and deliver information to the representatives of any transformation processes that may affect business, IT, systems, technologies, which are then to be implemented gradually in the different countries. So we do our best to explain to them how relevant those projects and those processes can be in order for them to understand the rationale behind it, and the level of efficiency that we’re aiming at after implementing them so that whenever these processes are implemented in the countries, employees are in a position to understand them better. And so that the trade union representatives for those employees know themselves the processes better and understand what rationale lies behind them.’ (Company 33)

- and a mechanism through which a more detailed understanding of the business may be ascertained by all those involved.

‘Added value? I think yes, because we get an immediate reflection from the business where the representatives are elected by, from the employees there, if our strategy, if our measures, sometimes personal measures, of course, if they are right for the structure, how the implementation is being done in the different businesses in our group. And so we hear both sides,

the reflection of the employees and, of course, the management guys, as well, and also, we have got ... we got a really good overview in all business sectors, like I explained it here - how the business is running from the point of view of the employees which are based or located there. What did you say? An effect. A positive effect, I would say.' (Company 52)

Conclusions

Throughout this review of the challenges (operational difficulties and hindrance) and benefits (assistance, corporate identity and value added) arising from EWCs to management four points are apparent. First, many of the challenges identified by interviewees are the same as the benefits identified by other interviewees. Indeed, in some cases the same interviewee highlights one issue as both a challenge and as a benefit. Top-down and bottom-up flows of information; timeliness; the bringing together of different cultures and divergent interests; and the engagement of EWCs in corporate restructuring are all cited as both challenges and benefits. In turn, this observation suggests that practices within MNCs towards EWCs remain varied with no indication that the Recast has restricted this variation. Second, the number of interviewees that identify assistance provided by the EWC and the value added of EWCs outnumber those who have encountered operational difficulties and, by a large margin, those who view EWCs as a hindrance. Third, a small minority (ten interviewees) mention that they have encountered operational difficulties and that the EWC has been a hindrance. Nine of these interviewees, however, viewed the EWC as contributing added value to the MNC, seven thought the EWC was of assistance to the MNC, and six considered the EWC as assisting and adding value to the MNC. In short, even where managers see EWCs as problematic, they also acknowledge the benefits that arise from the EWC. Fourth, the concerns expressed by BusinessEurope that the requirements placed on operational EWCs would constitute 'such high obstacles' that they might impair corporate decision-making have not been realised. To the contrary, the range of added value to MNCs arising from engagement with EWCs appears to be broadening, suggesting the overcoming of barriers rather than their consolidation. Furthermore, in the minority of cases where the EWC has been a hindrance and operational difficulties were encountered, managers regarded EWCs as adding value to the MNC.

More generally, it should be acknowledged that a considerable number of interviewees alluded to a 'learning curve' in the development of EWCs. Within this 'learning curve' interviewees reported that both management and EWC representatives developed an understanding of how best to work to generate mutual benefits and to come to compromise solutions when disparate interests have to be reconciled. The range of assistance and added value provided by EWCs to management reported here by interviewees, for example, is broader than that reported in the earlier studies of management and EWCs suggesting an additional impact of this 'learning curve'. Furthermore, interviewees commented that learning was a continual process as EWCs were new and innovative institutions. In particular, interviewees highlighted the benefits of

‘top-down’ and ‘bottom-up’ communication systems. ‘Top-down’ systems assisted in the diffusion of central management policy and facilitated the achievement of managerial objectives whereas ‘bottom-up’ systems enabled central management to ‘learn’ about local issues, which, in turn, may impact central management policy. As a consequence of these developments, several interviewees suggested that the EWC for which they were responsible would not remain a static institution, but was likely to change as the parties involved absorb further learning.

Has the Recast Directive made a difference?

Within the rubric ‘review by the Commission’, Article 15 of the Directive (94/45/EC) stipulated that the European Commission should review the operation of the Directive ‘not later than 22 September 1999’: that is, five years after the adoption of the Directive. It was fifteen years after 1994, however, that the promptings of the French Presidency led the European institutions to conclude an agreement on changes to the Directive in the form of the Recast (2009/38/EC). The purpose of the Recast was twofold: first, to promote growth in the number of EWCs; and second, to improve the operation of existing EWCs (Recital 7; Kerckhofs 2010). As fifty-five of the fifty-six EWCs covered in this research were established prior to the adoption of the Recast, this section of the Working Paper is primarily concerned with the second of these purposes. The Recast introduced a number of amendments intended to improve the operation of EWCs. Among these amendments were definitions of ‘information’, ‘consultation’ and ‘transnational’; the introduction of an obligation to provide training to EWC representatives; and amendments to the role of experts that offer advice to EWC representatives. In formal terms the Recast applies to Article 6 agreements only, as companies operating voluntary Article 13 agreements are under no obligation to renegotiate such agreements in order to comply with the amendments included in the Recast. Furthermore, MNCs with Article 6 agreements have to comply with the provisions of the Recast only when the term of the agreement concludes and renegotiation takes place. The interview schedule included questions on each of the specific amendments included in the Recast. In addition, more general questions enquired as to whether the Recast imposed constraints on management or not, and/or led to an improvement or deterioration in the operation of the EWC. Responses to the specific and general questions are presented below.

BusinessEurope ‘strongly opposed’ the revision of the Directive on the grounds that any revision would introduce further legislative restrictions and thus constitute movement away from the voluntarist approach favoured by BusinessEurope (UNICE 2004). More specifically, BusinessEurope argued that the introduction of tighter definitions of information, consultation and transnational would impair managerial decision-making and opposed the more extensive trade union involvement in EWCs. An additional purpose of this section of the Working Paper is thus to establish whether the expectations of the revision expressed by BusinessEurope have been realised in practice. This purpose is achieved by reference to material on the definitions, the role of experts and on managerial views on the impact of the Recast.

It should be acknowledged from the outset that the interviewee from Company 52 was unaware of the Recast and hence could not provide information vis-à-vis either the specific or general questions covered by this section of the report. In addition, the interviewee from Company 41 reported that the EWC within the company had been established after the Recast had been adopted and thus the measure had no impact on existing practice. This interviewee, however, indicated that the definitions of information, consultation and transnational were ‘very clear on legal obligations’ and assisted in the negotiation of the EWC founding agreement. It should also be noted that all of the remaining fifty-four interviewees did not answer every question: many, for example, focussed on the issues of direct concern to the company for which they work. The value of ‘N’ for each question is thus not fifty-four.

The argument that resonates throughout this section of the Working Paper is that the Recast generated relatively few changes in EWC practice. For the majority of companies, interviewees reported that the Recast formalised arrangements that were already in place: in effect, the legislation reflected current practice rather than promoting wide-ranging change. The absence of a marked impact of the Recast is, in no small part, a result of the periodic updating of EWC agreements. A large number of interviewees mentioned that these periodic reviews ensured that EWCs were on a continual ‘learning curve’, which resulted in amendments prior to the Recast that incorporated many of the changes subsequently agreed by the social partners in the Recast. A quote illustrates the point:

‘I think what the Recast did was [provide] a reason for our EWC to refresh the thinking. I would say that it served as a milestone on a journey that we were on. I would say that we have got better with it [the EWC] as the years have gone on, but I think that it is not uncommon in a European works council.’ (Company 27)

It is clear from the interviewees that the amendments included in the Recast were ignored in some companies. It is also apparent that EWC practices in a minority of companies are not compliant with the terms of the Recast, suggesting that some Article 6 agreements have yet to be revised following the adoption of the Directive, that measures are required to enforce a greater rate of compliance or that further legislation is required to ensure universal compliance with the law.

Information and consultation

The Recast introduced a definition of ‘information’ and amended the definition of ‘consultation’ available in the original Directive. These definitions were introduced to ensure greater coherence between the Recast and other directives concerning the information and consultation of workers (Laulom and Dorssemont 2015); to remedy the perceived limitations in the practice of information exchange and consultation within existing EWCs (Waddington 2011); and to distinguish ‘consultation’ from both the ‘negotiation’ and

‘collective bargaining’ processes that had been conducted in a growing number of EWCs (Schömann *et al.* 2012). Accompanying these definitions are measures that highlight the requirement for timeliness in information and consultation processes, together with a recognition that such processes should neither limit the competence of management nor slow down company decision-making (Articles 1.2 and 2.1; Recital 22). As was noted above in the section on transnational corporate restructuring, information and consultation with the EWC as part of the strategic managerial decision-making process is extremely rare, suggesting that the impact of the Recast is far from extensive.

The interview schedule required interviewees to respond to questions concerning the ‘impact’ of the Recast on the practices associated with information and consultation. In this context the distinction between there being ‘no impact’ of the Recast and the interviewee making no mention of any impact of the Recast on information and consultation practices is far from straight-forward. This situation is illustrated by reference to interviewee 51. In response to the question ‘would you say that the Recast Directive had an impact on the manner of operation [of the EWC]?’ the interviewee replied ‘no, not for us at this stage’, while also acknowledging that the written terms of the agreement do not yet meet the requirements of the Recast but ‘how it [the EWC] is being lived does’, again illustrating the complex relationship between compliance, enforcement and regulation in the context of EWCs. This apparent inconsistency, for example, may reflect the extent to which EWC practice develops, that the EWC agreement has not been recently renegotiated or that the Recast has not been influential on practice.

With this caveat in mind, however, the impact of the Recast appears to be limited in the majority of companies, regardless of the sector and home country of the multinational. No fewer than twenty-three (43 per cent) interviewees reported that the Recast had had no impact on the manner in which information and consultation were handled within the EWC. The majority of these interviewees took the view that current practice within the EWC was already compliant with the terms of the Recast prior to its adoption. A further seventeen (31 per cent) interviewees made no explicit reference to the impact of the changes introduced by the Recast on the information and consultation practices of the EWC. Fourteen (26 per cent) interviewees reported changes to information and consultation practices.

Sector does not appear to have a marked effect on whether interviewees reported an impact of the Recast on information and consultation practices. Of those interviewees who reported an impact of the Recast on information and consultation practices, for example, eight (32 per cent of private services companies in the sample) worked in the services sector and six (19 per cent of manufacturing companies in the sample) were in manufacturing. Similarly, interviewees who reported no change arising from the Recast were divided thirteen (42 per cent of the sample) in manufacturing, ten (40 per cent of the sample) in private services. The country of origin of the MNC also does not figure large as a means to differentiate interviewees who report an impact of the Recast on information and consultation practices. While only one of the

fourteen interviewees who reported change to information and consultation practices as a result of the Recast worked for a company based outside of Europe (Canada) and five interviewees working for companies based outside of Europe (one Japanese- and four US-based companies) reported making no change to information and consultation practices, the range of countries of origin of the companies was not consistent, suggesting other factors influenced the decision to change information and consultation practices. Similarly, among the European companies, German companies were equally distributed in the 'change' and 'no change' categories, as were those from Italy, the Netherlands and the UK. In short, on the basis of the data collected here there is no observable impact of the Recast on information and consultation practices by country of origin of the MNC. A larger sample may enable such an impact to be discerned.

Turning to the breakdown of the responses by the Article on which the EWC is based illustrates some variation. It is surprising, for example, that fifteen (45 per cent of those with an Article 6 EWC) interviewees who reported no impact of the Recast on the practice of information and consultation operated an EWC under Article 6, whereas seven (32 per cent of those with an Article 13 EWC) interviewees operated an EWC under Article 13. All other things being equal, the Recast would be expected to have had a more marked impact on EWCs based on Article 6 as the definitions were substantially amended and Article 6 EWCs are required to comply with the Recast. Interviewees operating an EWC under Article 6 tended to argue that existing practice was compliant with the terms of the Recast and its adoption merely formalised practices already in place. No interviewee operating with an Article 6 agreement argued that arrangements would be compliant when the agreement was renegotiated. The seven interviewees who reported 'no impact' and operated an EWC under Article 13 were under no obligation to change practices: the 'no impact' response is thus expected. Among those who changed practices to be compliant with the Recast, interviewees with an EWC based on Article 6 outnumbered their counterparts operating under Article 13 by about 2:1 as anticipated. Four interviewees with an EWC based on Article 6 where the Recast had an impact on information and consultation practices reported that the Recast had led to improvement in this aspect of EWC operation (Companies 39, 49, 53, 55). That five (23 per cent) interviewees working in conjunction with an Article 13 agreement reported a change in information and consultation practices as a consequence of the Recast illustrates a managerial concern to develop the institution regardless of the character of its legal underpinning.

Seven of the fifty-four (13 per cent) interviewees suggested company-specific points regarding information and consultation provisions. Three interviewees (Companies 4, 14, 29) expressed concern about the time over which consultation could take place and how this might impinge upon company decision-making processes; one interviewee (Company 16) suggested that future legislation could be more precise on the distinction between consultation and negotiation; and a single interviewee (Company 27) bemoaned the lack of clarity regarding the definition of information. While these matters refer directly to issues the Recast was intended to address, two

further interviewees (Companies 9, 38) highlighted an indirect effect of the Recast in reporting that the measure had not led to a change in the definition of consultation within the EWC agreement, but had generated more consultation in practice at the EWC. How this link was drawn was not substantiated by interviewees.

There is thus no wide-ranging evidence from interviewees suggesting that the tightening of the definitions of information and consultation has impaired managerial decision-making as envisaged by BusinessEurope. The data presented above on information and consultation in the context of corporate restructuring, however, indicate that the intentions of European level policy makers are not being realised as the timing of information and consultation continues to prohibit the involvement of EWCs in strategic corporate decision-making. It thus remains a moot point whether the tightening of the definitions has been matched by appropriate changes in practice.

The operationalisation of 'transnational'

The competence of EWCs specified in the Recast is restricted to transnational matters in the expectation that information exchange and consultation occurs 'at the relevant level of management and representation, according to the subject under discussion' (Article 1; Recital 16). The Directive stated 'the provision of transnational information and consultation' to be a prerequisite of an EWC agreement (Article 13) and that managements are obliged to provide information on transnational issues that have a significant effect on workers' interests (Article 6). An objective of both the Directive and the Recast was/is to exclude local issues from the EWC agenda. To clarify ambiguity in EWC practice, the Recast attempts to delineate the competences of EWCs from those of local works councils or their equivalents (Recitals 15 and 16). In addition, reflecting the court ruling on British Airways (Interim Injunction Proceedings, 6 December 2006, 73/06) the European Parliament amended the meaning and scope of 'transnational' to embrace issues of concern to the European workforce as defined in terms of their potential impact, irrespective of the number of Member States involved, or which involve transfers of activities between Member States (Recital 16). The delineation between the activities of EWCs and local works councils or their equivalents is thus clouded, as any issues deemed as important for the European workforce fall within the ambit of responsibility of the EWC and, at least, one local works council or its equivalent (Dorssemont 2009; Lamers 2010). The objective of the research regarding the definition of 'transnational' is thus to establish whether the Recast has led to changes in EWC practice and clarified the distinction between local and transnational events.

No fewer than twenty-one (39 per cent) interviewees reported that the Recast had led to neither change in the EWC agreement nor reform of EWC practice. As in the case of the impact of the definitions of information and consultation, interviewees suggested that practice prior to the adoption of the Recast was compliant with its requirements thus precluding the need for change. A further

eleven (20 per cent) interviewees indicated that changes had been implemented as a consequence of the Recast, six of whom linked these changes to improvements in EWC practice. One interviewee from each of these two categories reported that there were no problems with the definition of 'transnational', but there were issues of practical interpretation arising from differences in perspective between senior management and EWC representatives.

In terms of the numbers involved, manufacturing companies (sixteen companies, 52 per cent of the sample) were more likely than their counterparts in private services (five companies, 20 per cent of the sample) to have implemented no change to practices on transnationality as a result of the Recast. Conversely, private service companies (seven) comprised the majority of those that had introduced changes to be compliant with the Recast. This is not to argue, however, that manufacturing companies are more resistant to change than companies in services, as it is in manufacturing companies that most of the comments originate to the effect that EWC practices prior to 2009 were compliant with the terms of the Recast. There are no significant relationships between the country of origin of the MNC and changes to practices on transnationality.

The Recast anticipates that Article 6 EWCs are more likely than their counterparts underpinned by Article 13 to be changed to become compliant with the new definition of transnational, because the coverage of the Recast excludes Article 13 agreements. This expectation is not realised in so far as eleven of the twenty-one interviewees who reported no change to EWC practices regarding 'transnational' worked in conjunction with an Article 6 agreement (33 per cent of the Article 6 EWCs in the sample). Six of the ten interviewees who reported change in order to become compliant with the Recast worked in conjunction with an EWC based on Article 6 (18 per cent of Article 6 EWCs in the sample). The four companies that changed practices yet operated with an Article 13 EWC constitute the same rate of change (18 per cent of Article 13 EWCs within the sample). The latter confirm the results on information and consultation in so far as there is a group of companies with Article 13 agreements that are concerned to remain compliant with the current legislation, although there is no obligation to do so.

In addition to the interviewees reporting change and no change were nine interviewees who expressed more specific views on the issue of transnationality. Two of these interviewees wanted a change in the legislation on this topic to achieve greater clarity, but were unable or unwilling to specify how this clarity might be achieved. A further four interviewees thought that the Recast had not clarified the issue of transnationality. Three of these interviewees thought that greater clarity should be derived from case law rather than a further amendment of the underpinning legislation, while the fourth did not regard the absence of legal clarity to be an issue in practice. Finally, three interviewees argued that the Recast had clarified the situation on transnationality. In short, there is no uniform position among the interviewees towards the operation of the term 'transnational'.

Training provisions

The Recast introduced an explicit obligation on company managements to provide members of the Special Negotiating Body (SNB) and EWC representatives with training ‘necessary for the exercise of their representative duties in an international environment’ without any loss of wages (Articles 10.1 and 10.4). The inclusion of training provisions was intended to develop the capacity of EWCs by ensuring that representatives have the appropriate skills to actively participate in the affairs of the EWC. Both BusinessEurope and the ETUC argued that training was not a controversial issue and that the content of training should be decided through agreement between senior management and EWC representatives within each company (European Commission 2010). The Group of Experts appointed to review the implementation of the Recast reported that immediately prior to its adoption in 2008 training was available for some EWC representatives at 79 per cent of EWCs and there was a right to training at 60 per cent of EWCs (2010: 42). A more recent and more comprehensive review of EWC agreements shows that 66 per cent of EWC agreements active in 2015 made provision for training (De Spiegelaere and Jagodzinski 2015). As the Recast stipulated that the cost of training should be met by the company, the two data sources suggest that between 21 per cent and 40 per cent of companies would be expected to incur additional costs to meet the new training requirements.

The general statistical expectation is met by the responses of the interviewees. Putting aside the fifteen interviewees who offered no explicit comment on training provisions, no fewer than thirty-two (82 per cent) interviewees indicated that the training requirements of the Recast resulted in no change to the operation of the EWC, while four (10 per cent) interviewees reported that changes had been implemented in conjunction with the new regulations. In other words, a small minority comprising three companies (8 per cent) introduced completely new training arrangements. Training provisions consistent with the Recast were thus in place in the vast majority of companies. Furthermore, two interviewees emphasised that they had experienced no additional demand for training from EWC representatives.

Within the four companies that had introduced change, the form of the new arrangements varied. In a single company an expert was introduced for the first time in a renegotiated agreement of 2012. One of the tasks of the expert was to provide training to EWC representatives. Elsewhere the amendments to training provisions comprised a reworking of existing provisions rather than the introduction of training *per se*. In one company the agreement was amended so that training ‘was taken more seriously’. In two companies the existing training provision was extended. In both of these cases the extensions were supported by the interviewees who described them as a ‘nice addition’ and ‘fine’ in arguing that training improves the working of the EWC.

Research on training within EWCs demonstrates that the absence of, or restricted, training provisions are concentrated in small multinationals (De Spiegelaere and Jagodzinski 2015). The smallest company that implemented

change to training provisions employed almost 12,000 people: that is, a medium-sized multinational by reference to the classification used here. Three of the four companies were in manufacturing, three functioned with an Article 6 EWC and three were European. Given the small number of companies where changes were introduced it is not justifiable to argue that sector, country of origin, company size or legislative underpinning are influential on the decision to implement change.

The role of experts

The Directive allowed the presence of experts during negotiations for the establishment of EWCs (Article 5) and the Annex to the Directive enabled experts to assist the EWC to carry out prescribed tasks (Paragraph 5). The Recast extended the rights of the SNB to access advice from experts, allowed experts to be present at negotiation meetings in an advisory capacity and specified that the experts can be a representative of ‘competent recognised Community-level trade union organisations’ (Recital 4). The explicit and formal acknowledgement of a role for trade union organisations in the operation of EWCs was opposed by BusinessEurope, which argued that ‘the text [of the draft Recast] is biased in favour of trade unions, giving them undue legal recognition and a major role that corresponds neither to their influence in Europe nor to the interests of workers themselves’ (BusinessEurope 2008). The direct possibility of calling upon trade union experts is substantiated in terms of an acknowledgement of the role trade unions can undertake in supporting representatives in the negotiation of agreements (Recital 27). The single interviewee who had negotiated an EWC in 2011 reported that the SNB had access to an expert with the full support of the company as recommended by the Recast.

The Recast is not as specific on the role of experts in operational EWCs as it is on their role in SNBs, although the explicit linkage between trade unions and experts has led some to suggest that the Recast clarified the legal position in so far as there had been questions in practice whether European-level trade unionists could be experts (Cremers and Lorber 2015). Analysis of EWC agreements active in 2015 indicate that no fewer than 92 per cent of EWCs have access to some form of external support, but in many of these cases the position, status and affiliation of the expert is not specified (De Spiegelaere and Jagodzinski 2015: 41). The same source reports that at 40 per cent of EWCs, representatives of the ETUFs can join the EWC and 25 per cent of EWCs allow national trade union or works council representatives to join the EWC.

There is an expectation, therefore, that the Recast will have had little impact on EWC practice regarding the role of experts. It is thus no surprise that the majority of interviewees either made no comment on experts (twenty, 37 per cent) or reported that the Recast had not influenced the operation of the EWC (thirty-one, 57 per cent). Of these thirty-one companies, six were based outside of Europe. The remaining twenty-five were distributed across no fewer than twelve European countries with concentrations of four companies based in

both Germany and Sweden. The distribution by sector of the companies where the Recast had not influenced the operation of the EWC regarding experts showed no specific concentrations with eighteen manufacturing companies (58 per cent of all manufacturing companies that participated in the study) and thirteen service sector companies (52 per cent of those that participated in the study). There is a positive relationship between company size and no change concerning experts as a result of the Recast with 39 per cent of small multinationals reporting no change, 47 per cent of medium-sized multinationals, and 61 per cent of large multinationals. This positive relationship between company size and the absence of an impact of the Recast on the use of experts suggests that larger companies were the most likely to be compliant with the terms of the Recast prior to its adoption. Almost 64 per cent of the sample of interviewees operating with an Article 13 agreement reported no change regarding the use of experts whereas 50 per cent of interviewees with an Article 6 EWC reported no change. This suggests that large numbers of Article 6 EWCs were compliant with the terms of the Recast before it was adopted.

Each of the three interviewees who reported change regarding experts, however, worked in conjunction with an Article 6 EWC. In two of these three cases an expert was introduced for the first time. In the third case agreement was reached to allow the experts to attend the plenary meeting of the EWC, an amendment regarded by the interviewee as improving EWC practice because 'it was much better for him [the expert] to hear, than to get second-hand information'. As there are only three cases of change regarding experts it is not viable to assess the impact of sector, home country or company size on these changes.

Constraint or improvement? The general impact of the Recast Directive

In addition to the specific amendments on information and consultation, transnational, training and the deployment of experts, legislators intended the Recast to resolve 'the problems encountered in the practical application of Directive 94/45/EC' (Recital 7). The general intention was examined in the interview schedule by means of two questions: 'does the Recast Directive introduce any constraints on management vis-à-vis the EWC?' and 'has the Recast Directive contributed to improving the operation of the EWC from the perspective of management?'. For both questions interviewees were prompted for a yes-no answer before being given the opportunity to elaborate on their initial response. It is acknowledged that there is a degree of overlap between these questions. As a consequence, many interviewees responded to one rather than both questions. Twenty-two (41 per cent) interviewees, for example, made no explicit comment regarding constraints arising from the Recast and twenty-eight (52 per cent) interviewees declined to comment on whether there was an improvement or deterioration in EWC practices as a consequence of the Recast.

Twenty-seven of the thirty-two interviewees (84 per cent) who responded to the question on constraints argued that the Recast had added no additional constraints to EWC practice. Confirming the results on the more specific questions, two-thirds (eighteen) of these interviewees operated in conjunction with an Article 6 EWC where changes would be expected to have been implemented (55 per cent of those with an Article 6 EWC). In short, in these cases the practices of the EWC before the adoption of the Recast were such that the measure introduced no new constraints or the amendments were ignored. Each of the five interviewees reporting constraints worked with an Article 6 EWC. The four specific constraints identified by these interviewees, however, differed markedly. The Recast was viewed as giving more power to EWC representatives and trade unions by an interviewee working for a US-based multinational, who also stated that information and consultation had become more complex. An interviewee from a European-based MNC agreed that information and consultation had become more complex. Additional points made only by interviewees based in European MNCs included: the Recast introduced constraints in terms of the time period between the release of information by management and the response of the EWC representatives; and that the term 'means required' introduced ambiguity into the EWC in that it encouraged EWC representatives to think that 'they should have the means required to do whatever they need to do'. A final interviewee from a European-based company who acknowledged constraints as arising from the Recast commented that these are 'good' and 'necessary' and enable 'top management' to understand why they are asked to explain company strategy.

Turning to the twenty-six (48 per cent) interviewees who voiced an opinion on whether the Recast had improved the EWC: three interviewees indicated that the EWC had deteriorated, thirteen that there had been an improvement in the EWC, while ten mentioned that there had been neither an improvement nor a deterioration. Managerial interviewees who viewed the Recast as promoting improvements in EWC practices thus outnumber by 4:1 those who thought that the EWC had deteriorated as a result of the measure. Where deterioration had taken place it took the form of increased power to EWC representatives and to trade unions, which was associated with a slowing down of company decision-making processes. Improvements in the operation of EWCs noted by interviewees as arising from the adoption of the Recast included more engagement from EWC representatives, more professionalism and reliability among EWC representatives, the promotion of openness and involvement, better information and consultation, greater legal direction, better cooperation during company restructuring, more concrete definitions and more encouragement to management to improve their presentation of information. No more than two interviewees mentioned each of these improvements, highlighting their specificity to company operations rather than a general effect of the Recast.

Three interviewees raised a further point regarding EWCs, not in response to the questions discussed above, but which express concern regarding the future of EWCs. Two interviewees from German-based MNCs expressed the view that they do not wish further development to assume more features akin to German

co-determination, while an interviewee working for a US-based MNC thought that there should be no further moves towards a French model. These interviewees neither elaborated what was Germanic or French about current practice nor what they envisaged were the likely future developments.

Conclusions

The predominant tendency reported by interviewees was that the Recast generated no need for change, as EWC practices were generally compliant with the terms of the new legal measure. In short, fourteen (26 per cent) interviewees reported change on information and consultation, eleven (20 per cent) on transnational, four (8 per cent) on training and three (6 per cent) on the role of experts. In practice, the Recast formalised existing practices in the majority of EWCs. In the minority of cases where change had been implemented Article 6 EWCs tended to be in operation. On information and consultation and transnational, however, some Article 13 EWCs were also amended to be compliant with the Recast. As these amendments were not legally required, they demonstrate a managerial commitment to develop the institution irrespective of its legal underpinning. Of concern, however, is the minority of cases where companies are not compliant with the terms of the Recast. This section of the Working Paper also demonstrated that the Recast had introduced constraints to the operation of EWCs at only five (16 per cent) companies in the research sample; a proportion far smaller than the 50 per cent of interviewees who reported that the Recast had improved the EWC.

BusinessEurope argued that the Recast would raise ‘such high obstacles’ that would impair decision-making within MNCs. Managers responsible for EWCs interviewed in this research demonstrate that these fears were ill founded. In particular, the definitions of information, consultation and transnational, together with the requirements on training and experts have generated limited change, which for half of the interviewees led to improvements in the operation of the EWC. In many cases the Recast merely formalised arrangements that were already in place rather than raising high obstacles, as BusinessEurope predicted. Five interviewees (16 per cent), however, noted constraints arising from the Recast, one of whom regarded them as ‘good’ in that they required top management to explain their actions.

Where do we go from here?⁸

This section has two points of departure concerning European industrial relations and the pattern of development of European institutions. In the context of European integration a range of industrial relations institutions have been established ranging from EU level social dialogue through sectoral social dialogue to various institutions of information and consultation at company level. In combination, these institutions and the processes associated with their operation constitute movement towards ‘multi-level governance’ in the ‘Europeanisation’ of industrial relations (Marginson and Sisson 2004). Key to movement towards multi-level governance within industrial relations is coordination between the activities conducted in the range of established institutions. As mentioned above, some interviewees also view social dialogue as a means of promoting corporate identity and adding value to the MNC. This Working Paper examines whether there is any coordination between managers responsible for EWCs and institutions of sectoral social dialogue: that is, have managers coordinated their activities in EWCs with sectoral social dialogue as a means of ‘Europeanising’ industrial relations?

A second point of departure concerns the pattern of development of institutions within the integrative processes of the EU. In acknowledging that outcomes of European integration are fixed neither by founding treaties nor subsequent agreements or regulations, neo-functionalists argue that the creation of institutions and processes is likely to result in ‘spill-over’ as these institutions and processes influence extant actors and promote the establishment of new actors and processes as specific adaptations (Haas 1964). Neo-functionalists accept that spill-over is by no means certain. They also argue that the diversity of interests and the inter-dependence of issues within a specific policy field will influence whether spill-over will take place and, if so, its character. In the context of EWCs and European industrial relations it is apparent that in response to the Directive and the subsequent establishment of more than one thousand EWCs, European trade union organisations have adapted operations to serve political and support objectives (Waddington 2011: 28-54). In campaigning for the revision of the Directive the ETUC was the European level spokesperson, while the ETUFs and national affiliates suggested to the ETUC the preferred policy options. Support for representatives on EWCs is provided by the ETUFs in the form of *inter alia* training, advice and the provision of experts. This division of labour and the processes attached to it were developed

8. The questions that form the basis of this section of the Working Paper were not included in the initial formal interview schedule, but arose as a result of queries raised by interviewees.

in response to the adoption of the Directive. Similarly, the ETUFs have established procedures whereby transnational company agreements can be ratified by trade union organisations rather than left entirely in the hands of EWCs whose members may not all be trade unionists.

BusinessEurope has certainly taken a political role in arguing against the adoption of the Directive and against the revision of the Directive. When these positions were no longer tenable BusinessEurope argued in the European polity for and against specific policy preferences (BusinessEurope 2008; Waddington 2011: 180-210). The ETUC and the ETUFs are broadly in favour of some form of integrated approach to European industrial relations, hence the introduction of political and support functions for EWC development. In contrast, BusinessEurope favours voluntary and decentralised approaches to European industrial relations. This preference raises the question: has BusinessEurope developed a support function from which managers can draw advice and other functions as they develop EWCs? This Working Paper thus explores the extent of liaison between BusinessEurope and managers responsible for EWCs, and the support that such managers would like to receive from BusinessEurope.

To these ends, this section advances in three stages. The first stage explores the extent of coordination between EWC activities and sectoral social dialogue in the form of the personal engagement of managers in the two areas. The second stage identifies the number of transnational company agreements concluded by the MNCs in the research sample and the reasons why managers took this strategic approach. The third stage examines the contact between managers responsible for EWCs and BusinessEurope, the extent of support provided to such managers by BusinessEurope and the support that managers would like BusinessEurope to provide.

This section demonstrates that there is very little coordination between EWC activity and sectoral social dialogue and that at a minority of companies a negotiations function resulting in the conclusion of European framework agreements has been added to the information and consultation functions initially assigned to EWCs by European level policy makers. BusinessEurope is shown to be 'distant' from managers responsible for EWCs in MNCs who would prefer BusinessEurope to provide a wide range of support functions in order to improve the operation of EWCs.

Combining managerial participation in EWCs and sectoral social dialogue

More than forty sectoral social dialogue committees have been established since 1998, when attempts were made to standardise the arrangements arising from the Val Duchesse exchanges between the European Commission and the social partners (Glassner 2014). Sectoral social dialogue committees cover the segments of manufacturing and private sector services in which the MNCs

participating in this research operate. European level sectoral employers' associations represent the interests of employers within each sectoral social dialogue committee, although there appears to be considerable variation in the composition of the employers' side of such committees between committees and within committees over time (Keller and Bansbach 2000). The objective here is to establish whether managers responsible for EWCs in MNCs engage directly or indirectly in sectoral social dialogue.

Forty-three interviewees addressed the issue, thirty-six (84 per cent) of which indicated that they did not participate in sectoral social dialogue either directly or indirectly. Five interviewees (12 per cent) indicated that they were directly involved in sectoral social dialogue and two interviewees (4 per cent) stated that they participated indirectly through national, rather than European, employers' associations.

It is apparent that the majority of interviewees were unaware of the existence and/or purpose of sectoral social dialogue. When sectoral social dialogue was raised interviewees asked 'pardon, what was that again?', 'what do you mean by sectoral social dialogue?' and 'what do you mean by participation in sectoral social dialogue?'. These questions indicate little or no knowledge of sectoral social dialogue. For the majority of interviewees coordination between the activities of EWCs and sectoral social dialogue is thus not on the agenda.

The five interviewees who indicated that they participated directly in sectoral social dialogue were distributed across the range of variables employed in this research and were not concentrated in any specific category. This distribution across the range of the variables included company size and sector, employment concentration, Article of EWC and the degree of Europeanisation. For interviewees that participated in sectoral social dialogue committees the issue of coordination was paramount.

'we have some great folk that we manage through the matrix [sectoral social dialogue] to ensure that where we need to be coordinated we are coordinated.' (Company 36)

'we have participated since 1997. I belong to [acronym for European sectoral employers' association] in the field. It is a Sectoral Employers' Association in Europe and they have a task group to develop employee relations and cooperation among [companies in the sector] in Europe.' (Company 25)

Transnational company agreements

The European Commission defined a transnational company agreement (TCA) as:

'an agreement comprising reciprocal commitments, the scope of which extends to the territory of several States and which has been concluded

by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives' (European Commission 2008b).

In practice, a distinction is usually drawn between international framework agreements (IFAs) and European framework agreements (EFAs). IFAs are concerned principally with the enforcement of international labour standards and allowing trade union access for organising purposes to all the sites operated worldwide by an MNC. In the main IFAs have been concluded by Global Union Federations. EFAs tend to be European in coverage, include a wider range of topics and tend to be negotiated by EWCs, but ratified by the appropriate ETUF. (Hammer 2005; Ales 2006; da Costa and Rehfeldt 2011; Rüb *et al.* 2013). The number of IFAs and EFAs has increased markedly since the year 2000. The objective here is to establish the extent to which the participating companies have concluded either IFAs or EFAs.

Forty-four interviewees reported that a TCA was either present or absent. Thirty-five (80 per cent) of these interviewees indicated that no TCA had been concluded, while nine (20 per cent) reported that at least one TCA had been signed. Of the nine interviewees that reported the presence of a TCA, three reported the conclusion of an IFA and six the conclusion of at least one EFA. The three interviewees that reported the presence of an IFA mentioned that negotiations had been conducted with the global union federation rather than the EWC and are thus not discussed further here. Replicating the situation vis-à-vis social dialogue, the distribution of MNCs with and without a TCA showed no particular concentrations among the variables employed in this study, but were distributed throughout the range of each variable.

Among the reasons provided for the absence of an EFA no demand for such an agreement from employee representatives was mentioned by twenty-two (63 per cent) of those without a TCA. Two specific reasons were provided by single interviewees to explain why no EFA had been signed:

- a reluctance to centralise;

'You know we have a practice of going close to the business where things are happening with your collective labour. So a kind of decentralisation of things. If we don't have to centralise things, we don't do it.' (Company 9)

- and a lack of confidence in the EWC as a partner in negotiations.

'We have to take care, we have to balance the interests of all. So, if you take, for example, the situation of the unions' power, the power of the unions in the different countries is to sign agreements, collective agreements. If we shift power to the EWC, I don't think they are ready ... We know the EWC is not entitled to sign or to bargaining.' (Company 53)

Only two interviewees voiced an ‘in principle’ opposition to engaging in negotiations with the EWC in stating:

‘We do not have transnational [company agreements]. We are afraid of that.’ (Company 38)

‘Sometimes the Chairman brings it up [the subject of TCAs], but I try to stop such initiatives, because it is not necessary according to the law. And I am quite open-minded to have a good relationship and to find new kinds of participation, all this, but not, in general, giving more than I have to ... I won’t accept transnational, yes transnational agreements right now.’ (Company 52).

Several interviewees based in MNCs that had not signed a TCA, however, did not rule out the possibility in the future.

‘I think that if all the parties will find that this could be important for all, because the initiatives of the group are growing in terms of transnationality, maybe in the future, you know, we can find solutions for all our employees through European agreements.’ (Company 53)

The subjects covered by the nine EFAs concluded by six MNCs within the sample were:⁹

- corporate restructuring (two agreements);
- sustainable growth and development;
- social responsibility;
- framework for employment;
- health and safety;
- training, learning and professional development;
- inclusion, anti-discrimination and equal opportunities; and
- responsible sales.

In each of these cases interviewees report that the EWC was involved in the negotiation of the EFA if it did not take the lead. That six of fifty-six MNCs in the research sample have negotiated an EFA is in proportion to the number of all MNCs with an EWC that have concluded EFAs (da Costa and Rehfeldt 2011; Rüb *et al.* 2013). Neither the degree of Europeanisation and the concentration of employment appeared to influence whether an EFA had been concluded. No small companies, however, had concluded an EFA. Companies with an Article 6 agreement, based in a CME and operating in private sector services were the most likely to have signed an EFA.¹⁰

9. A further agreement was in the process of negotiation at the time of the interview. Details of this agreement are excluded from the discussion on the grounds that they may undermine the anonymity of the company concerned.

10. No statistical significance is claimed here, however, as the number of MNCs with an agreement is small.

Only two managers in MNCs that had concluded an EFA elaborated their reasons why such an approach had been adopted. One interviewee outlined the approach by reference to relations between MNCs and employees and as a means to maintain appropriate standards.

‘We are doing it for two reasons. We are doing it because we truly believe that you have to treat people right and therefore you have to pay them the minimum wage and all that we talked about [earlier in the interview]. So that’s one side of it obviously, which is why we do that for our employees. And the other side of course is about the market and making equal opportunity in the marketplace and saying ‘if you want to compete, compete on fair terms’. And in some markets, that’s just very difficult because the market dynamics are just not like that. Very difficult work because we have to work in maybe corrupt countries or countries where it’s difficult to talk about things like this. So that’s why we are in favour of doing it that way.’ (Company 21).

A second interviewee expressed the view that during corporate restructuring a reliance on local level activities is insufficient.

‘Because [the EWC] is a good forum to cover these representative levels because it is not enough to communicate with the local representatives. So they need something that covers the whole company as representatives and we [management] need it as well because it is not easy to negotiate with all representatives in all countries. So it’s good for us, the European works council.’ (Company 18)

Both of these arguments replicate those reported elsewhere in so far as managers are increasingly prepared to enter into EFAs as a means of facilitating change, maintaining standards and ensuring liaison between European and national levels of activity (Rüb *et al.* 2013; Müller *et al.* 2013).

BusinessEurope and managers responsible for EWCs

BusinessEurope is a recognised social partner with the responsibility of representing the interests of business at European level. As has been demonstrated earlier in this Working Paper, BusinessEurope has engaged politically and lobbied within European institutions for particular policies at the core of which is a preference for voluntary rather than legal approaches to information and consultation. This stage of the Working Paper explores the relationship between BusinessEurope and managers responsible for EWCs within MNCs in two steps. The first step establishes the extent to which interviewees liaise with BusinessEurope in undertaking their responsibilities towards the EWC. The second step identifies the support and/or services that interviewees would like to be provided by BusinessEurope to improve the operation of EWCs.

With regard to the first of these steps, thirty interviewees addressed the issue, two (7 per cent) of which reported that they liaised with BusinessEurope indirectly through an independent advisor or consultant, while twenty-eight (93 per cent) indicated that they did not liaise with BusinessEurope at all regarding the operation of the EWC in the company. In short, no interviewee liaised directly with BusinessEurope in conducting EWC activities on behalf of MNCs. It would thus appear that BusinessEurope pursues its political brief without direct contact with managers responsible for EWCs. It could be argued that direct liaison with BusinessEurope is not necessary as liaison with BusinessEurope could take place through the national employers' associations that affiliate to BusinessEurope. No interviewee suggested, however, that liaison took place via a national employers' association. Five (17 per cent) interviewees mentioned that they liaised with consultants, lawyers or advisors rather than BusinessEurope in conducting EWC affairs.¹¹

The 'distance' between BusinessEurope and managers responsible for EWCs is illustrated by the following quotes.

- 'I've never even heard of BusinessEurope.' (Company 12);
- 'BusinessEurope, what do you mean, is this an organisation?' (Company 52);
- 'And what do you mean by BusinessEurope?' (Company 47);
- 'To be totally honest, I've heard the name [BusinessEurope], but I don't quite know what it has to do with this interview.' (Company 56)

This 'distance' and lack of contact may explain some of the differences between the views of interviewees and the political stance taken by BusinessEurope in so far as interviewees base their views on direct experiences with EWCs whereas BusinessEurope is principally concerned to promote voluntarist approaches to information and consultation.

The second step of this stage of the analysis deals with the support/services that interviewees would like BusinessEurope to provide in order to improve the operation of the EWC. Eleven (23 per cent) of the forty-seven interviewees that addressed this issue reported that they required no support/services from BusinessEurope. Single interviewees indicated that 'I don't know what they [BusinessEurope] can offer' and 'I was not aware that there is an association in place', again suggesting a 'distance' between BusinessEurope and those that the organisation represents. Seven (15 per cent) interviewees sought support/services from national employers' associations, two (4 per cent) referred to lobbyists and legal advisors as the source of support/services, and four (9 per cent) were engaged in networks with other companies through which support/services were pooled in order to improve the operation of the EWC. In total, thirteen interviewees thus acquired support/services from

11. There was no question included in the interview schedule on other persons with whom interviewees liaised regarding the operation of the EWC. The five interviewees who mentioned liaison with these parties are thus likely to constitute some, rather than all, of those who liaised with others in the conduct of EWC affairs.

organisations other than BusinessEurope. One interviewee who was part of a network of companies outlined both the merits and the limitations of such an approach.

‘What we do is best practice sharing with other companies, direct contact. So yes, if there were easy access to research, yes that could be interesting. What we do is reach out to our colleagues in other companies, which are more or less German companies only because we are in German networks via our local colleagues. They are also in national networks. We have limited access to non-German based European multinationals that have European works councils. There is no platform. This happens by accident because you know somebody somewhere. So this [support from BusinessEurope] could be something that we would like to understand. The meeting sequences, how do we structure this? That could be of interest. There are other areas where benchmarking is more crucial.’
(Company 7)

Twenty-three (49 per cent) interviewees would have preferred to receive some form of support/services from BusinessEurope in order to improve the operation of the EWC, several of which mentioned that more than one support/service was preferred. Given that the principal function assumed by BusinessEurope is activity in the political sphere, it is remarkable that only one of these interviewees mentioned that BusinessEurope could usefully provide political support, as the interviewee felt that at present balance was lacking in the development of EWC practice. More frequent were requests for support/services that would improve the operation of extant EWCs. Interviewees sought support/services in four areas:

— Legislative advice;

‘I think that anything we can know in anticipation of potential changes that could happen in the EWC directive or information and consultation or redundancy or transfers of undertakings. That’s very important for us to anticipate because that means, from a company perspective, whatever the decision is, we will have to adapt our processes, our internal processes.’ (Company 13)

‘If we get a presenter who is able to give an overview for the panel [of managers within the company responsible for the EWC], to provide a comparison between the national tasks and the issues and behaviours between management and European works councils based on national legislation of national behaviour, whatever, maybe culture. I’m not able to collect all this information and I’m not able to get to it.’ (Company 52)

— The provision of information;

‘I think it’s a test for us to make it good. So in time and good information at a good quality.’ (Company 18)

— Managerial training;

‘And there’s no, there’s not much government money around, if you wanted anything anyways. If an employers’ association paid for this level of good [training], for other organisations, maybe they might be run better.’ (Company 41)

— Benchmarking and best practice.

‘I think it’s more like this kind of investigation that you [interviewer] are doing and how other companies are dealing with it [the EWC]. That would be interesting to see, what are the trends, what are the developments?’ (Company 2)

‘What is interesting for me normally is to have practices from other companies and best practices from other companies, and to see what they do. So this is also why I am interested in the research because then it would be interesting to see what other companies do.’ (Company 22)

‘I mean in the end, most likely what would be interesting would be to have a more constant, more periodic update about what other companies are doing with European works councils and the way they approach social dialogue in Europe. That is something that would be interesting.’ (Company 54)

‘I think that what would really be helpful, for example, would be how things are done right now. So, just to get to know how other companies with a long tradition of international business deal with it [the EWC].’ (Company 3)

‘Well actually, what I like pretty much is to have some information on how other companies deal with their European works councils.’ (Company 19)

Five interviewees mentioned legislative advice as their preferred form of support from BusinessEurope; four mentioned the provision of information; five mentioned managerial training; and no fewer than eleven mentioned benchmarking and best practice. Interviewees who requested support/services from BusinessEurope were distributed across the range of the variables employed in this study and were not concentrated to a significant extent at any point in these ranges.

Conclusion

This section has demonstrated that coordinated multilayered European industrial relations is unlikely to develop in the short-term. Many managers

responsible for EWCs are unaware of sectoral social dialogue and/or make no attempt to coordinate EWC activities with those of sectoral social dialogue. EWCs remain located exclusively within the company. This absence of coordination with institutions outside of the company contrasts with developments in more than 10 per cent of MNCs in the research sample that have introduced a negotiations function within the company to supplement the information and consultation function specified in the Directive and the Recast. The breadth of issues covered by EFAs demonstrates the advantages perceived by managers in concluding European-wide company agreements. Finally, the section showed that although no interviewees liaised directly with BusinessEurope regarding the operation of EWCs, almost half of them stated that BusinessEurope should make available support/services that would improve the operation of EWCs. Of course, it remains to be seen whether BusinessEurope is prepared to invest resources to meet this demand from managers responsible for EWCs. To do so would be to abandon BusinessEurope's exclusive reliance on activity within the political sphere. Such an approach would also be consistent with that of the European trade union organisations, which have invested monetary, personnel and time in developing networks for EWC representatives that managers see as absent in supporting their activities.

Conclusions

The Directive set in train the establishment of the first institutions that allowed representatives of workers from European countries in which MNCs have operations to regularly meet central management with the purpose of exchanging information and engaging in consultation. EWCs were thus innovative institutions for which there was no precedent. As with any innovation, EWCs presented challenges to worker representatives and to managers. For worker representatives the challenges centred on the articulation of interests in a transnational setting where differences in culture, language and experience were marked. For managers the challenge was to comply with the requirements of the legislation, while concurrently developing EWCs to serve the interests of the companies of which they are a part; and articulating European and national level activities. The purpose of this research was to document managerial experiences with EWCs and the extent to, and ways in, which managers have been able to meet these challenges. The responses of managers to questions posed during the interviews demonstrate that many EWCs are in an almost continual process of development as the parties involved progress along an irregular learning curve, and managers strive to develop the institution to meet the objectives of the company. In consequence, the category 'EWC' is not monolithic, but comprises a wide range of forms and types reflecting different paths of development pursued by managers. These conclusions highlight these different paths of development, while also bringing together the principal themes observed in the research.

A range of variables was shown to influence differences in the approaches of interviewees towards EWCs. In particular, interviewees based in CMEs, LMEs and MMEs; operating with an Article 13 or an Article 6 EWC; based in manufacturing or private sector services; and based in small, medium-sized or large MNCs reported the adoption of different policy approaches and a wide-ranging impact of these variables on the pattern of development of EWCs. Less wide-ranging and more specific in effect were variables associated with the concentration of employment in the home country of the MNC and the degree of Europeanisation. Among the variables that had a wide-ranging impact on the development of EWCs, the impact did not appear to be consistent. Taking the distinction between CMEs, LMEs and MMEs illustrates the point. The frequency of plenary meetings at EWCs within CMEs was greater than elsewhere, yet select committee meetings were more frequent within EWCs based in LMEs. Similarly, good quality debate, the promotion of corporate identity and added value were most prevalent at EWCs within LMEs whereas within CMEs confidentiality was less likely to be a problem and the benefits of EWCs were the most likely to outweigh the costs. EWCs in MMEs provided the

most assistance to managerial interviewees and were the least likely to be used to promote corporate identity. In short, the findings demonstrate the influence of a range of variables and make the case for further research to specify how these variables influence the development of EWCs and how these variables interact.

The operational matters emphasised by interviewees cover a range of issues familiar to those engaged in debates on EWCs. In particular, the majority of interviewees mention that they do not have a problem in linking transnational and national levels of information and consultation. Some stressed the benefits that arise from such a linkage when the two levels work in parallel, if they are not integrated. Operational benefits also accrue in some instances when employee representatives exhibit proactive attitudes and are engaged; when the relationship between managers and employee representatives is based on trust; when trade unionists are involved as experts; and when regular, some say frequent, meetings of the select committee are convened. Some interviewees also mention, however, the need to improve the quality of company level dialogue between employee representatives and management by enhancing the skills and competence of employee representatives. More particularly, interviewees argue that the benefits from these approaches are qualified by the institutional circumstances in which EWCs are located. Regarding the linkage between information and consultation at transnational and national levels, for example, interviewees point to operational difficulties arising from differences in national legislation on information and consultation, which place them under different, and not necessarily consistent, obligations. In a manner that repeats a wide range of earlier studies EWCs in the research sample were primarily institutions of information exchange rather than of information and consultation. Compounding this issue are the requirements of the stock exchange, which may necessitate the provision of information to the stock market before other stakeholders. A related area of long-standing concern regarding all institutions with a brief on information and consultation is confidentiality. Interviewees were sanguine on the issue of confidentiality in the context of EWCs in so far as they recognised it as an operational concern, but argued that shared understandings of the nature of confidentiality had been generated, particularly where trust had been established, where employee representatives were involved in decision-making processes and where shared information between management and employee representatives was the norm.

During the 1980s it was expected that movement towards a single European market would result in extensive corporate restructuring as companies adjusted to new circumstances. This expectation has been realised in the form of very high levels of corporate restructuring since the mid-1980s. In arguing in favour of the Directive, the European Commission stated that EWCs would enable employees to be involved and to influence the outcome of strategic decision-making on transnational corporate restructuring. This research thus examined managerial perspectives on whether EWCs exert an influence on the outcomes of transnational corporate restructuring. Interviewees argue that they face a dilemma regarding the provision of information in so far as stock

market regulations necessitate that one group of stakeholders (shareholders) should be the first to be informed of any transnational corporate restructuring proposal to the exclusion of another group of stakeholders (employees), yet interviewees acknowledge that the provision of timely and good quality information and consultation is a pre-condition for the involvement of the EWC in the strategic decision-making associated with restructuring. This legislative conundrum results in managers involving EWC representatives at the implementation stage of transnational corporate restructuring rather than in strategic decision-making. While this legislative conundrum was the most influential factor in the extent of involvement of EWCs in corporate restructuring, the influence of the EWC on the implementation stage of corporate restructuring was also dependent on the country of origin of the MNC, where companies in LMEs reported less impact than those based in CMEs; and the concentration of employment within the MNC, where there was a positive relationship between concentration and impact.

As a result of the different managerial approaches to EWCs there was a huge variation in the cost of the institution to companies (median annual cost is €60,250). This variation was influenced, but not determined, by the frequency at which meetings were convened and the number of EWC representatives. Irrespective of the cost of EWCs a majority of interviewees thought that the benefits of EWCs outweigh their cost and only 19 per cent of interviewees argued that the costs outweighed the benefits. The innovative nature of EWCs and the efforts made by managers to 'shape' the institution to serve the interests of the company were reflected in 69 per cent of interviewees mentioning that they had faced operational difficulties. The majority of operational difficulties did not hinder management, as only 26 per cent of interviewees reported that EWCs constituted a hindrance. In practice, many operational difficulties had been overcome as managers gained experience of EWCs and sought to set company objectives for the EWC. The form of company objective sought by managers for EWCs varied markedly reflecting different corporate strategies. More than 70 per cent of interviewees, however, reported that the EWC was useful as a means to promote corporate identity. Managers also used EWCs as the means to facilitate both top-down and bottom-up communication, to generate commitment among employees to corporate goals and to expedite corporate restructuring. The wide range of mechanisms whereby EWCs add value to companies reported here compared to earlier studies of managerial views on EWCs lends further support to the idea of EWCs as an institution in process with managers on a learning curve as they adapt the institution to serve corporate purposes.

The notion of EWCs being on a learning curve is substantiated by responses to interviewees to questions on the Recast Directive. The dominant response from interviewees was that the Recast Directive generated no need for change as EWC practices and agreements were already compliant with the new requirements prior to the adoption of the Recast Directive. A small minority of interviewees reported changes arising from the new definitions of information, consultation and transnational, and the new measures of experts and training. It is also noteworthy that interviewees operating under the

auspices of Article 13 were as willing to amend their EWC as their counterparts operating under Article 6, again suggesting that EWCs are not static institutions, but are in a process of repeated or continual change rather than institutions that are adapted merely to comply with the terms of new legislation.

The findings demonstrate that the Recast Directive served two broad purposes. First, the Recast Directive brought the legislation into line with the practices of some EWCs. Second, the Recast Directive has prompted the amendment of EWC agreements and the reform of EWC practices within some other EWCs. From the findings it is also apparent that some companies are not yet compliant with the terms of the Recast Directive. This may be because companies have not yet renegotiated Article 6 EWC agreements, operate Article 13 EWC agreements or have simply ignored the amendments of the Recast Directive. There is thus scope for further action to enforce compliance with the terms of the Recast Directive and to bring the legislation up to date with the innovations in practice implemented by managers to EWCs since 2009 when the Recast Directive was adopted.

The findings highlight the complex relationship between compliance and enforcement in the development of EWCs. The relationship between practice and regulation illustrates this complexity. Some interviewees, for example, report that they updated EWC agreements to ensure that they were consistent with the practices of the EWC. This process of development was viewed as regular, if not continuous, reflecting the introduction of innovative practices within EWCs. As a result, EWC practices and EWC agreements in these instances were consistent with the provisions of the Recast Directive prior to its adoption and when adopted the Recast Directive merely confirmed EWC practices and the content of EWC agreements. It is apparent, however, that other interviewees operated EWCs that were not compliant with the provisions of the Recast Directive. The challenge for EU-level policy makers is thus to ensure universal compliance while also promoting processes of internal development within EWCs. Similarly, very few interviewees report that the EWC was involved in strategic company decision-making, yet several of those who involve the EWC only in the implementation phase of decision-making also report that the EWC slows down decision-making. In this context, the challenge for EU-level policy makers is to encourage more involvement in strategic company decision-making while ensuring that decision-making is not slowed down.

In relation to the literature on management and EWCs the findings of this research contribute five overarching points. First, the research confirms that there is a considerable range of management practice in operational terms regarding EWCs (Lecher *et al.* 2001; Weiler 2004). Second, the research confirms significant variation in the strategies adopted by managers towards EWCs (Lecher *et al.* 2001; Hall and Marginson 2005), with some adopting minimalist stances and others being more inclusive. In combination these two points demonstrate that the legislation does not act as 'strait-jacket' on either the operational or strategic approaches adopted by managers in developing

EWCs. Third, the research demonstrates that managers tend to involve EWC representatives at the implementation stage rather than the strategic decision-making stage of change processes (see also Marginson *et al.* 2004). This approach is particularly evident in transnational company restructuring. That managers responsible for EWCs report the involvement of EWC representatives at the implementation stage, rather than the strategic decision-making stage, is consistent with evidence from EWC representatives who report that they are excluded from strategic decision-making processes (Waddington 2011: 102-107). The intention of EU level policy makers to involve EWC representatives in strategic decision-making is thus not being realised in practice and constitutes a limitation of existing legislation. Fourth, the findings confirm that EWCs are an 'institution in process' that exhibits a learning dynamic, resulting, in part, from the contestation of negotiated outcomes. In this sense some EWCs are not static, but are continually engaged in a process of development. The challenge is to ensure that more EWCs are engaged in this process of development. A fifth and related point to emerge from the findings is that the breadth of the value added by EWCs has been extended since initial studies of the topic (Lamers 1998) as managers have 'tailored' EWCs to serve the interests of companies. In particular, interviewees report the benefits of bottom-up communication via the EWC that were not mentioned in earlier studies and the introduction of more sophisticated means to use EWCs to facilitate and expedite corporate restructuring.

The findings also expose differences between the political stance of BusinessEurope vis-à-vis European level institutions and the position of managers responsible for EWCs within MNCs. The 'high obstacles' to the operation of MNCs that BusinessEurope predicted that the Recast would erect, for example, have not materialised. To the contrary, managers responsible for EWCs tended to report that the Recast formalised arrangements that were already in place rather than necessitating significant change to either agreements or practices. The range of practices and forms associated with EWCs also demonstrate that the 'strait-jacket' BusinessEurope predicted would result from legislation on European level information and consultation is not evident. Similarly, the concerns expressed by BusinessEurope regarding the costs of EWCs, the involvement of trade union organisations and experts in the setting up and operation of EWCs, changes to the definitions of information and consultation, and the delays to corporate decision-making are voiced by some interviewees, but only by a minority of interviewees. It is possible that the differences between the view of BusinessEurope and those of managers responsible for EWCs within MNCs are a result of the limited liaison that takes place between the two parties. More research, however, would be required to investigate this explanation. What is more certain is that managers responsible for EWCs within MNCs require a more elaborate support function from BusinessEurope in order to improve the operation of EWCs.

The implications of the findings for European level policy makers are fourfold. First, information and consultation does not usually take place before strategic decisions to restructure have been finalised, with the consequence that EWCs only discuss the implementation phase of such processes. The terms of the

Recast, particularly those regarding timeliness and the allowance of ‘in-depth impact assessments’ are thus insufficient to enable EWCs to have a strategic impact. Second, there are anomalies between the objectives sought by European level policy makers for EWCs on the one hand and stock market regulations and national legislation on information and consultation on the other hand. These anomalies may generate uncertainty regarding the appropriate course of action among a minority of managers responsible for EWCs. Third, there is a balance to be achieved between enforcement and flexibility. The wide range of practices and forms associated with EWCs demonstrates the considerable flexibility inherent in the legislation. Conversely, the limitations of EWC involvement in transnational corporate restructuring, the limited impact of EWCs on the content of corporate decision-making and the absence of timely consultation in many cases highlight deficiencies in enforcement. Fourth, European level policy makers have striven to establish regulations allowing the establishment of a range of industrial relations institutions of which EWCs are an example. The findings here show that the generation of the means to articulate between these institutions is an outstanding policy challenge. Links between EWCs and sectoral social dialogue, for example, are shown to be extremely limited, while articulation between EWCs and national institutions can also be far from straightforward for managers. If multi-level governance in industrial relations is the policy objective, the means to articulate between existing institutions is prerequisite.

Appendix: the research design

This appendix outlines how the research sample was generated; the definition of the variables used throughout the report and the allocation of the interviewees to categories within these variables, the design of the interview schedule, and the application of NVivo, the software package used to analyse interviews.

Research sample

The distinction between manufacturing and private sector services was the initial point of departure in assembling the research sample. Two arguments underpinned this position. First, the research team and the Advisory Board anticipated that companies in the two sectors have different requirements and these might be reflected in the operation of EWCs. Secondly, it was acknowledged that the majority of research conducted on EWCs has focussed on manufacturing companies. Ensuring a substantial presence of companies within private sector services was intended to remedy this shortfall.

To operationalise the distinction between the two sectors the companies with an EWC listed in the European Trade Union Institute (ETUI) database were identified as either manufacturing or private sector services companies by reference to NACE codes. For the purposes of this research, manufacturing companies were defined as those with their primary operations assigned to NACE codes 13-15, while private sector services companies comprised MNCs with operations in NACE codes 41-43, 45-47, 49-56, 58-62, 63-74, 77-82, 85-87 and 92. The companies with an active EWC in these two categories were then listed to produce a sample of 581 manufacturing companies and 224 companies in private sector services. A second variable of the home country of the MNCs was then introduced. The home country of the companies within each of the two lists was identified. The research team was thus able to identify the number of MNCs based in each country. This was important because the distribution of MNCs by home country differed between manufacturing and private sector services.

The initial intention was to conduct seventy interviews, equally distributed between the two sectors. A one in sixteen sample for manufacturing and a one in six sample for private sector services was generated, each of which controlled for the distribution by home country to produce two lists of thirty-five companies. The control for the distribution of the home country of the MNC was necessarily partial as the number of countries in which MNCs are based is

huge and the sample is relatively small. To address this problematic the research relied on distinctions between clusters of countries to simplify the construction of the sample by the home country of the MNC. It was also essential to cluster the companies by reference to their home countries to protect the anonymity of those companies that were the only companies from a country or were one of a small number of companies from a country.

To cluster the countries in which the MNCs were based the research team referred to existing literature. A modified version of the clusters employed by Visser (2008) and subsequently used by the European Commission (2013: 47) was applied. Two modifications were introduced to the system employed by Visser. First, in the light of recent findings on economic developments in the New Member States of Central and Eastern Europe, these countries were allocated to the liberal-market economy cluster, with the single exception of Slovenia (Bohle and Greskovits 2007; Meardi 2012). Second, as many EWCs are in companies with a country of origin beyond the EU it was necessary to add these countries to the clusters. The distinction between liberal market and coordinated market economies informed the allocation of these countries to the clusters (Hall and Soskice 2001). On this basis three clusters of countries were identified that covered all the home countries of MNCs where an EWC had been established:

- Liberal-market economies (LMEs):
Australia, Bulgaria, Croatia, China, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, South Africa, United Kingdom and the United States;
- Co-ordinated market economies (CMEs):
Austria, Belgium, Denmark, Finland, Germany, Japan, Luxembourg, the Netherlands, Slovenia and Sweden;
- Mixed-market economies (MMEs):
France, Greece, Italy, Portugal and Spain.

All of the countries from each of these categories were not represented in the research sample. Only one MNC, for example, was based in Central and Eastern Europe. Benefits of this clustering procedure are that the anonymity of companies can be protected and it is possible to generate meaningful analyses, although the sample remains relatively small.

The two lists of thirty-five companies were then sent to BusinessEurope. During the design process of the research BusinessEurope had agreed to identify the relevant managers for interview, to make initial contact with, and to explain the purpose of the research to managers. Unfortunately, BusinessEurope was unable to identify a full complement of interviewees. The research team thus liaised with Presence Consulting, other members of the Advisory Board and personal contacts to increase the number of interviewees. By these means the number of interviews was increased to fifty-six. A consequence of this procedure was that the initial intended equal distribution

between manufacturing and private sector services was lost and the final distribution of companies was 55.4 per cent in manufacturing and 44.6 per cent in private sector services. In terms of the sectors there was also an absence of consistency by reference to the country clusters: LMEs, 72.2 per cent manufacturing; CMEs, 57.7 per cent manufacturing; and MMEs, 33.3 per cent manufacturing.

The demographics of the research sample

The purpose here is to record the characteristics of the MNCs within which interviews were conducted and to compare these characteristics with the entire population of MNCs with EWCs. In addition, the legal underpinning of EWCs within the selected MNCs is identified. One of the key objectives of the research was to establish whether managers in manufacturing MNCs held similar or different views to their counterparts in MNCs operating within private sector services. The intention was to generate a sample of interviewees equally distributed between the manufacturing and private sector services rather than one representative of the population of EWCs. For the reasons outlined above, this intention was not realised. As Table A1 illustrates, however, in comparison with the entire population of existing EWCs, MNCs in private sector services are over-represented in the research sample, but not to the extent as initially intended.

Table A1 also illustrates the distribution of EWC population and the research sample by the number of employees within the EEA working for MNCs. By comparison with the EWC population, the research sample is skewed towards large MNCs. Although the number of large MNCs in manufacturing (nineteen) and private sector services (twenty) is similar, differences in the sample size mean that skewing towards large MNCs is most pronounced in private sector services. The implications of the under-representation of small MNCs are twofold. First, existing research demonstrates that by comparison with small MNCs, large MNCs operate more sophisticated communication systems in conjunction with EWCs, offer more extensive training programmes for EWC representatives and are likely to have been operational for a longer period with consequences for the development of a European identity (Lecher *et al.* 2002; Telljohann 2007; Müller and Rüb 2007). Second, the very limited number of small MNCs created operational research challenges in that the sample size precluded statistical testing. To address this situation three non-standard size categories were employed, all based on the number of employees within the EEA: seventeen small MNCs with up to 10,000 employees; twenty-two medium MNCs with employees in the range 10,001 to 40,000 employees; and seventeen large MNCs with 40,001 or more employees.

The interviewees were based in companies with origins in fifteen different countries. In order to conduct meaningful comparisons between interviewees based in MNCs with different home countries it was thus necessary to cluster countries into LMEs, CMEs and MMEs. Table A1 shows that 32.1 per cent of interviewees were based in companies with origins in LMEs, 46.4 per cent in

Table A1 The population and the research sample of EWCs

	Population		Research Sample	
	N	%	N	%
Sector				
Manufacturing	581 ¹	72.2	31	55.4
Private sector services	224 ¹	27.4	25	44.6
Company size²				
Small MNC (5,000 employees or fewer)	375	32	5	8.9
Medium-sized MNC (5,001 to 10,000 employees)	161	15	12	21.5
Large MNC (10,001 or more employees)	343	35	39	69.6
Country clusters				
Liberal market economies	318	29.7	18	32.1
Coordinated market economies	566	52.8	26	46.4
Mixed market economies	187	17.5	12	21.5
Legal underpinning				
Article 13 ³	532	49.7 ⁴	22	39.3
Article 6 ⁵	476	44.4	33	58.9
Recast Directive	64	5.9	1	1.8

Source: Data on the population of MNCs and EWCs are drawn from the European Trade Union Institute (ETUI) database (see De Spiegelaere and Jagodzinski 2015).

Notes: ¹ These figures refer to the number of companies with an EWC within the NACE categories employed for this study recorded within the ETUI database.

² The number of employees refer to employees working with the European Economic Area. The ETUI database does not have employment information on 19 per cent of the companies with an EWC, hence the percentage values listed in the table do not add up to 100 per cent.

³ The Article 13 agreements in the research sample include four EWCs in UK-based multinationals that were established under Article 3: that is, they were pre-directive EWCs established under arrangements to accommodate the initial opt-out of the UK from the Maastricht Protocol.

⁴ The ETUI database on EWCs includes SE works councils (9 per cent of all EWCs), companies with an information and consultation procedure rather than an EWC (1 per cent) and those listed as 'other' (2 per cent).

⁵ This includes two EWCs that were initially established under Article 13, but in changing the national legislation under which they operate adopted Article 6 status.

CMEs and 21.5 per cent in MMEs. The distribution of the research sample by country clusters is comparable with that of the entire population of EWCs, suggesting that the interviewees are broadly representative in terms of the country of origin of the MNCs.

A fourth means of differentiating EWCs presented in Table A1 concerns the legal underpinning of the institution. In practice, the research sample comprised three variants of legal underpinning: Article 13 EWCs were established between 22 September 1994 and 22 September 1996; Article 6 EWCs were established after 22 September 1996 and before 6 May 2009; and EWCs formed after May 2011 were subject to the Recast Directive. The key point regarding the analysis is that Article 13 EWCs are exempt from the requirements of the Recast Directive. Managers operating in conjunction with Article 13 EWCs are thus under no obligation to amend agreements or practices in order to comply with the Recast Directive. In contrast, their counterparts with Article 6 EWCs are under such an obligation, specifically when the term of operation of existing agreements expires. As is apparent from Table A1,

Article 6 EWCs are over-represented in the research sample, whereas those covered by Article 13 and the Recast Directive are under-represented. This pattern leads to the expectation that change to be compliant with the Recast Directive should be more pronounced among the research sample than among the population as a whole.

Two further characteristics of the companies were employed as analytical categories in the research: the degree of Europeanisation and the concentration of employment. It should be acknowledged that employment data for MNCs is notoriously unreliable and, thus, caution is required in interpretation of the results on these characteristics. With this caveat in mind, the degree of Europeanisation was based on the number of countries within the EEA in which the MNC has 150 or more employees. Four categories were identified, which, in ascending degree of Europeanisation, are: MNCs with 150 employees in between two and six EEA countries, twelve companies within the research sample; MNCs with 150 employees in between seven and ten countries, thirteen companies; MNCs with 150 employees in between eleven and fifteen countries, fourteen companies; and MNCs with 150 employees in sixteen or more countries, thirteen companies. There was no employment data available for four companies within the research sample. As a consequence, the data on the concentration of employment was restricted to fifty-two companies. The concentration of employment is calculated by expressing the number of employees in the home country of the MNC as a proportion of the total employment of the MNC. Again four categories were generated: with up to 32 per cent of employment in the home country thirteen companies within the research sample; with more than 32 per cent and up to 44 per cent of employment in the home country, thirteen companies within the research sample; with more than 44 per cent and up to 66 per cent of employment in the home country, thirteen companies within the research sample; and more than 66 per cent of employment in the home country, thirteen companies within the research sample. By comparison with the entire population of companies with an EWC, the research sample is skewed towards companies in the intermediate ranges of concentration. For example, 50 per cent of the companies in the research sample are in the concentration range more than 32 per cent and up to 66 per cent, while only 23 per cent of all companies with an EWC are in the same range. Among the lower levels of concentration the research sample and the population are comparable: 25 per cent of all companies with an EWC have up to 32 per cent of employment in the home country, which corresponds to the research sample. It is companies with the highest levels of concentration that are under-represented within the research sample as they constitute 25 per cent of the research sample, but 50 per cent of the population.¹²

12. All data on the population of companies with an EWC are taken from the ETUI database.

Interview schedule

A structured interview schedule was administered during each of the fifty-six interviews that were conducted. The research team generated the initial draft of the interview schedule. Through liaison with the Advisory Board, this draft went through several iterations, the outcome of which was the final draft used in the interviews. The interview schedule was in prepared English and the interviews were conducted in English in fifty-five of the fifty-six cases. In the single case where English was not used a translator was present. The interpreter interpreted the answers of the interviewee and the words used by the interviewer that the interviewee found difficult. There were several interviews where the language skills of the interviewer in French and Dutch facilitated the conduct of the interview.

Data management and analysis with NVivo

The NVivo software package (version 10) was used to facilitate the analysis of the data generated by the research project. There are five main phases of NVivo use that are described here: formatting and auto-coding of interview transcripts for use in NVivo; reading in company attribute data; analytical coding of interview questions and text searches; sub-coding of analytical nodes; and matrix coding, viewing and outputting of results.

Formatting and auto-coding of interview transcripts

All of the interviews were transcribed professionally into Microsoft Word files. Each company was assigned a number so that all identifying information for companies and the names of the interviewees were removed from the transcripts and kept in a separate and confidential file. The interviews were conducted loosely according to an interview schedule, but the interviewers and interviewees were encouraged to discuss issues and follow topics as they developed according to the sense and logical progression of ideas as they arose in the interview. In this way, the interviewer was free to skip forward and backward through the interview schedule and even skip topics if they had already been discussed. Fortunately, this does not present much of a challenge using NVivo, since the interview questions could be inserted into the transcripts where appropriate using a different heading style in Word. Transcripts could then be read into word and organised according to the different heading styles for interview question and speakers in the transcript. The speakers were typically the interviewer and one or two interviewees, whose anonymity was to be protected. When the interviews were transcribed, time stamps were included in the transcript to facilitate referral back to the audio file for questions on the transcript. After formatting, transcripts were uploaded and auto-coded into company 'nodes' (a NVivo term for data focal points), whereby responses to interview questions were sorted into the order of the interview schedule, even though the questions need not have been asked in that particular order. In this way, the responses were all grouped according to the order of the interview schedule.

Reading in company attribute data

Company information gathered from other sources, particularly the EWC database maintained by the ETUI was also collected for each company. Attribute information, such as company workforce size in the EEA and the country of origin of the MNC, were collected into a Microsoft Excel spreadsheet and read into NVivo. In addition, information from company annual reports and online searches were also input into NVivo; and the company attributes assigned to the respective company nodes. Transcript information broken down by question as described above was also assigned to the respective company nodes.

Analytical coding of interview questions and text searches

Because points of analytical interest were found in different parts of the interview, analytical nodes, which are separate from the individual questions in the company nodes were defined according to the topics of interest in the analysis. Responses to multiple questions of interest could then be assigned to individual analytical nodes, which collected useful data for issues such as confidentiality. In addition, results of text searches for useful phrases, such as 'local level' or 'European level' could also be assigned to the same or new analytical nodes so that all relevant information from the interviews could be gathered into analytical nodes for analysis.

Sub-coding of analytical nodes

In order to facilitate analysis, the information assigned to analytical nodes was pruned down so that just the most relevant information was kept in the node. Interruptions and digressions were thus removed from the nodes. Furthermore, the types of responses coded into the nodes could be further sub-coded into 'child node' types, such as a 'positive', 'neutral' or 'negative' response or even the different reasons for a positive or negative response, such as different categories of ways in which the EWC was of assistance to management.

Matrix coding and outputting of NVivo results

The next phase of the analytical process was to create matrices of analytical nodes by company attributes, so that the different types of responses could be analysed for any of the analytical categories employed in the research. NVivo allows for this kind of matrix coding. It also allows for simple viewing of the matrices for analysis and pursuing interesting questions that arise in the analysis of the coded data. Furthermore, the matrices can be exported into Excel files for further graphical work; and the individual cells from the matrices – or even complete analytical nodes can be exported into Word files in order to compare the types of responses collected in each of the matrix cells. The strength of NVivo is that every higher-level concept used in the analysis can be traced through the analytical nodes to the points in the transcripts or the company attributes where they are sourced. All conclusions are thus solidly grounded in the data.

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