Transnational company agreements and the role of European Works Councils in negotiations

A quantitative analysis in the metalworking sector

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Summary

The role of European company agreements as a new instrument in company-level industrial relations has been growing in importance since the early 2000s. Such agreements make it possible to adopt a transnational approach to issues relating to corporate policy, restructuring, labour policy, wages policy and employee representation.

The present study adopts a quantitative approach to analysing this phenomenon, examining the conditions under which it occurs and how it is likely to develop in the future. The study is based on telephone interviews with European Works Council members of 82 companies in the metalworking industry.

The central findings are as follows:

Publicly accessible documentation of existing agreements is incomplete, but the number of unreported agreements is insufficient to cast doubt on the validity of the available data.

The study offers the first empirical evidence of the importance of informal arrangements involving European Works Councils that lack the status of formally negotiated written agreements.
Foreword

This study follows on from a larger case study carried out with the support of the Hans Böckler Foundation that focused on the development of transnational company agreements and was published in book form in 2011. A short-term project funded by the Hans Böckler Foundation and financial support from the University of Fulda enabled us to expand and deepen the original study by adding a quantitative dimension to its primarily qualitative approach. The telephone interviews with European Works Council members in a total of 82 companies in the metalworking sector were carried out using a semi-standardised questionnaire, enabling qualitative opinions to be recorded in addition to the collection of quantitative data.

The fact that such a detailed analysis was possible was due to the cooperation, professionalism and openness of our interviewees. We would like to take this opportunity to reiterate our thanks to them for their trust and support.

We would not have gained access to our interviewees without the help of the EWC team at IG Metall. Our thanks also go to them for the comprehensive support they provided in terms of data and contact addresses, as well as the introductory e-mail that opened so many doors for us. In particular, we are most grateful to Dr Aline Hoffmann for her many helpful suggestions when we were drafting the final report.

Finally we would like to express our gratitude to Dr Stefan Lücking of the Research Department at the Hans Böckler Foundation, for his meticulous and enthusiastic support during the project and for his valuable remarks and suggestions during the drafting of the final version of this working paper.

The project team
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Fulda, June 2012
Introduction

The negotiation and conclusion of European company agreements is a relatively recent phenomenon in the historical process of Europeanisation of industrial relations. However, since the early 2000s they have been steadily growing in importance as a new, transnational instrument for tackling issues related to corporate policy (in particular company restructuring), labour policy, wages policy and employee representation.

The conclusion of transnational agreements by companies marks a new stage in the development of European industrial relations, and is a subject that the authors investigated in a recently completed study (see Rüb et al. 2011). In addition to company-level negotiations, which we examined on the basis of ten case studies, the process also involves the trade unions developing and implementing their own approach to managing these issues and organising their own political activities at EU level. The paper was thus devoted to investigating a process that is multi-dimensional, open-ended and politically controversial and involves nothing less than the development of a new order of company-level industrial relations in Europe.

The current study, with its quantitative approach, follows on directly from this previous, primarily qualitative investigation and focuses on questions that have hitherto remained unanswered in the literature (in EWC research in general and also in research on transnational company agreements).

One question in particular needs to be answered: how should we interpret the recent growth in transnational company agreements and how are they likely to develop in the future? Are the initial, pioneering agreements precursors of a development that is likely to continue and proliferate? Or will they remain confined to a small number of cases in which they have only been – and will only continue to be – possible because of highly specific conditions within the particular companies concerned?

This fundamental question regarding their (quantitative) growth also entails further questions that our survey tries to answer:

(1) Is the available data on publicly documented agreements (EU Commission lists; agreements recorded by the trade unions) reliable and complete – or are there unreported agreements, the existence of which needs to be explained?
(2) Is there also evidence of significant numbers of unpublished, informal arrangements? If so, does this mean that particular corporate cultures generate processes that, although informal, are – or could be – politically significant and transnationally effective, making these informal arrangements relevant to the overall picture of transnational agreements?

(3) In addition to existing, officially documented agreements, do European Works Councils have a policy of acquiring a negotiating role that might enable us to estimate future growth and developments in this area?

In methodological terms, the study, with its focus on current quantitative developments and potential growth, uses a questionnaire-based approach. We examine the innovative potential and limitations of this approach in detail in Chapter 2.

The basic data was drawn from a total of 82 telephone interviews carried out using a semi-standardised questionnaire that allowed qualitative opinions to be provided in addition to the collection of quantitative data. This methodological approach enabled the main questions described above to be further differentiated.

Especially as the study addresses the question of EWCS’ approach to negotiations, it offers an insight into further issues and developmental aspects of relevance to EWC research and to those involved in concluding (current or future) transnational agreements in practice:

These include the following issues in particular:

- To what extent do the EWC members surveyed see a fundamental need for European company negotiations and agreements?

- If they do, what matters could/should be the subject of (future) negotiations and agreements?

- If they don’t, why is this the case?

- What objective, political or structural factors underlie this perceived need or lack of need for negotiations?

- What do the interviewees believe to be the preconditions and enablers or limitations for developing company agreements (including the attitude of corporate management and employee-side factors/the ability of the EWC to take action)?

In political and academic discourse the terms “transnational company agreements” and “agreements involving the EWC” are used inconsistently. This study is based on the categories and definitions outlined below.
Transnational company agreements and the role of European Works Councils in negotiations

EWC involvement in agreements comprises the negotiation and conclusion of transnational company agreements. The term “transnational company agreements” is taken to mean all transnational texts signed by representatives of the company and its workforce.¹ In addition to joint contracts, i.e. collective agreements in the narrower, traditional sense, these also include joint positions or declarations that are deliberately not given the legal status of a formal agreement by the parties. The term “agreement” also covers cases in which issues over and above the operating procedures of the European Works Council were formally stipulated as part of (subsequently negotiated) EWC constitutions.²

Agreements involving the European Works Council exist when an EWC is significantly involved in the drawing up of a transnational company agreement. However, the involvement of EWCs in initiating and negotiating agreements could only be clearly established for our sample. For companies not included in the sample, we used the formal criterion of whether or not the EWC had signed the agreement.

“Informal arrangements” involving the European Works Councils refer to the negotiation with employers of transnational arrangements that do not have the formal status of a written agreement. These can take the form of gentlemen’s agreements where the two sides do not regard a more formal, written document to be necessary for it to be valid and effective. They can also be arrangements between European Works Councils and European corporate management recorded in the minutes of EWC meetings or as notes appended to the minutes.

1. In some cases the trade unions are the official negotiating partners, meaning that the EWC is only informally involved in the negotiation and conclusion of the agreement (see Rüb et al. 2011).
2. We differentiate between agreements involving the EWC on issues relating to itself – which we call agreements of the first order (mainly EWC constitutions) – and agreements involving the EWC relating to improvement of the working and employment conditions of the workforce or the rights of the company employee representatives and trade union representatives at national or local level – which we refer to as agreements of the second order. The distinction is based on the agreement’s subject matter or content and not on the form that it takes. In our study, this was particularly relevant in one case where minimum standards for providing information to employee and trade union representatives at national and local level were formally stipulated as part of subsequently negotiated EWC constitutions.
1. Political context and current status of research

The authors have already systematically investigated the complex new field of formal transnational company agreements (Rüb et al. 2011). The state of current research covered by this case-study based investigation and its key findings are summarised below.

A steady growth in the number of formal transnational company agreements has been observed since 2000 (see Figure 1). By the end of 2011, a total of 244 formal transnational agreements – including 125 international framework agreements3 – had been documented in 143 companies.

![Figure 1: Development of numbers of transnational company agreements](image)

This trend in the development of transnational company-level industrial relations since the early 2000s has raised new questions for industrial relations research and for the day to day work of works council and trade union representatives.

The development of transnational company agreements has triggered a variety of activities both among the trade unions and in the political sphere. In 2006, following difficult internal negotiations, the European Metalworkers’

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3. We regard international framework agreements in the widest sense as being all transnational company agreements that bear the signature of one or more global trade union federations and are global in scope, irrespective of their specific content.
Federation (EMF) proposed a negotiating procedure aimed at ensuring the involvement of the trade unions at affected company sites and linking transnational company negotiations with trade union functions in the field of corporate and collective bargaining policy (EMF 2006). The EMF procedure has played a pioneer role in this field, with many central elements subsequently adopted by other ETUFs.

At European policy level, an initiative taken by the European Commission in 2005 put the creation of an (optional) legal framework for transnational company agreements on the political agenda.

These developments at company, trade union and EU institutional level indicate that the establishment of a European transnational level for negotiating and concluding company agreements is an open-ended, multi-dimensional and politically controversial process.

The political significance of this move towards a new level of Europe-wide company industrial relations lies in the fact that such transnational company agreements tread new ground that is as yet not legally regulated. This means that in every negotiating process – in addition to the actual subject matter of the negotiations – the ground rules for a European policy on company agreements are also being negotiated. Which works council and/or trade union players are to be involved in the negotiating process and which are to be excluded (deliberately or otherwise)? Which rules will/should govern the actions of the players involved? And what procedural arrangements will be established during the negotiating process that will (or could) influence any future arrangements?

The process of negotiating formal company agreements entails opportunities, but also problems, risks and new challenges, especially for the trade unions. On the one hand, companies are characterised by growing transnationalisation in quantitative, structural and strategic terms. This makes them the most politically important and dynamic sphere for developing transnational industrial relations – especially because other areas that were originally the domain of the trade unions, such as transnational coordination of wage bargaining or the EU Social Dialogue, have so far had only a limited impact on policymaking. Moreover, the institutional and political scope for bipartite industrial relations at a global level is even weaker (for more on the topic of sectoral industrial relations and trade union activities at European and global level, see Platzer/Müller 2011).

On the other hand, there are both structural and political barriers to the expansion of a European approach to company-level negotiations. These come from the fact that the functions of works councils, trade unions and/or supra-company collective bargaining representatives have developed in very different directions in the various national industrial relations systems. This means that – both in terms of relations between trade unions in different countries and the relationship between European Works Councils and trade unions – a difficult process of balancing and coordinating their different
interests is required when it comes to developing and handling transnational agreements. A particularly controversial, but strategically crucial issue is the question of whether and how the current active (co-)negotiating role of European Works Councils should be further promoted and, if so, what direction this should take.

The central questions related to this process – of equal relevance to both academics and policymakers – are as follows:

– How have formal transnational company agreements developed so far, and how are they likely to develop in the future?
– What direction has the discussion of an EU legal framework and suitable support measures taken, and what is the likelihood of an (optional) legal framework being created?
– What is the trade unions’ approach to managing company-level processes, and what impact has this approach had so far?
– What conflicts and patterns of negotiation can be identified from agreements concluded so far, and how should these be assessed in terms of the question of a (future) “order” for European company-level industrial relations?
– What is the overall impact of transnational company agreements on the process of Europeanisation of industrial relations?

1.1 An (optional) EU legal framework for transnational agreements?

In 2005, the European Commission put the development of an (optional) legal framework for transnational collective bargaining on the EU policy agenda. The idea is to give the social partners an instrument that enables them to carry out transnational collective negotiations and formalise the results. The Commission argues that, in particular, such an instrument can help companies and industries to resolve problems arising in the fields of work organisation, employment, working conditions and further training (European Commission 2005).

This legislative plan fits in with the EU Commission’s basic philosophy of modernising the European Social Model and its perception of a growing need for transnational, EU-wide problem-solving strategies. At the same time it is pursuing a policy approach that leaves the task of managing and regulating transnational issues – where this is possible and if necessary with the backing of EU legislation – to civil society and the social partners. As in the case of the EWC Directive, with its flexibility to negotiate the scope and functions of EWCs (but with the safety net of defined legal standards and fall-back positions), such an optional legal framework would also constitute an EU policy approach that can be described as “regulated self-regulation” (Platzer 2002). The Commission’s original move to include the sectoral level as well as the company level in the optional legal framework has since been dropped (European Commission 2008b).
Up till now, the employers’ associations and trade unions have taken up radically opposed positions in the Commission’s hearings. Employers see no need for Community legislation and reject the idea of an EU legal framework in this area. Their attitude is in line with a basic position that has been articulated on several occasions in recent times – namely that there should be a moratorium on any EU legislation in the fields of labour and social policy. In this specific case, the employers’ umbrella association Businesseurope argues that decisions on whether to pursue negotiations and agreements, who should be involved and the exact nature of the process should reside exclusively with the relevant company-level actors. (Businesseurope 2009: 2). In the case of transnational company agreements, the association argues that existing instruments at global level – the ILO Tripartite Declaration on Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises – provide a more suitable framework than any set of instruments restricted to Europe (ibid.). Despite the decidedly negative stance currently adopted by their European umbrella organisation, the possibility cannot be excluded that increasingly noticeable pressure from a growing number of member companies who are keen to make use of and develop transnational agreements could lead to a more positive attitude by employers’ organizations towards the idea of an EU legal framework.

The trade unions have welcomed the Commission’s proposal and are in favour of the basic principle of creating a legal framework. However, their support and political backing for such a framework is linked to certain conditions and elements that they regard as essential and non-negotiable. The primary core demand made by the European Trade Union Confederation (ETUC) is that both the negotiating mandate and the right to sign agreements should reside exclusively with the trade unions (ETUC 2005: 7). A second core demand of the ETUC relates to compatibility issues and protection of national domains. It argues that any transnational agreement must be compatible with existing national collective agreements that have been negotiated at any of the relevant levels, and should not interfere with existing powers and responsibilities (ibid.). A third core demand is that the quality of agreements should not be inferior to existing national regulations (ibid.). This position of basically welcoming a European legal framework but linking it to essential conditions is not just a negotiating stance (maximising initial demands) but also a reflection of a multi-faceted debate within and amongst trade unions which itself reflects the wide range of legally and politically sensitive issues involved in a transnational legal framework. It also explains why the trade unions in Europe and their European confederations have not put the question of a transnational legal framework at the top of their EU agenda, expressing general support for the idea but not promoting it with any great vigour.

It is not currently possible to make any reliable predictions about further legislative progress. The fact that, following its expert hearings in 2011, the EU Commission once again included the issue on its social and political agenda for 2012 and intends to table a report presenting its conclusions may not be a definite indication that this particular legislative project will be successfully developed and concluded, but it does show that it still retains a certain political momentum. This is also indicated by various other EU Commission activities
in the fields of industrial and corporate policy which could provide additional impulses for the creation of a legal framework for transnational collective agreement policy. In this context, special mention should be made of the preparatory work for an “EU framework for anticipation and management of change and restructuring” (European Commission 2011), over which the Commission has been consulting the European social partners. A Green Paper is also being planned on this subject.

What can definitely be said is that the Commission’s initiative on the creation of an (optional) legal framework for transnational company agreements has already generated a “shadow of the law effect” in the sense that it has resulted in the trade unions adopting a coordinated position at European level on this issue. The EMF negotiating procedure analysed below is therefore not only an instrument for managing the current trend for negotiating company agreements with a transnational impact and ensuring that they remain a matter for the trade unions alone – it also represents a trade union “blueprint” for a possible legal framework.

### 1.2 The EMF procedure for managing company-level negotiations

In June 2006, the EMF Executive Committee approved an internal EMF procedure for negotiations with multinational companies that obliges EMF-affiliated organisations to adhere to certain procedural guidelines contained within it (EMF 2006).

With these guidelines the EMF and its affiliated trade unions were pursuing twin goals. Firstly they wished to ensure a leading role for the trade unions in European company-level negotiations vis-à-vis EWCs that wish to or already do play a role in negotiations. Secondly, they wished to guarantee the ultimate decision-making rights as European players of the national trade unions vis-à-vis both the EMF and EWCs. Thus, the EMF negotiating procedure is not just an expression of the trade unions’ wish to retain their prerogative vis-à-vis company works councils but also the prerogative of national trade unions vis-à-vis the European trade union level – in other words any attempt by the EMF Secretariat to “go it alone” during European company-level negotiations. As the fruit of a difficult internal debate, the procedure represents a compromise that reflects the concerns of individual EMF-affiliated trade unions that company negotiations at European transnational level could lead to a gradual erosion of their national competences (a detailed reconstruction of this decision-making process can be found in Rüb et al. 2011: 84 ff.). The EMF negotiating procedure initially defines the information and consultation requirements and processes within the nexus of EWC/steering committee, EMF (Secretariat, Executive Committee, policy committees) and national trade unions. The procedural rules also relate to the requirements and processes in relation to securing the agreement and mandate of the relevant national trade unions and the EMF. Every stage in the procedure is subject to trade union approval.
A formal trade union resolution is required for negotiations to get under way, for mandates for the negotiations to be allocated and for the text of the agreement negotiated with the company to be approved. The agreement also has to be signed by the EMF’s General Secretary, his deputy or a third party appointed by them. The hurdles that need to be overcome in order to arrive at a resolution are considerable. As far as possible, a unanimous decision has to be made by all the EMF-affiliated trade unions concerned. The trade unions of a particular country can block the commencement of negotiations and the allocation of mandates unless they represent five per cent or less of the entire European workforce. Such high hurdles reflect the need for national trade unions to retain control over what is from their point of view a highly sensitive area, as transnational company agreements overlap with the sphere of national collective bargaining. The high hurdles are also the result of a view that agreements should have as wide a scope of application as possible in order to prevent competitors with lower standards from undermining them. At the same time, it is important for the trade unions to be able to demonstrate to employers their ability to get their members to accept the results of the negotiations.

When it came to the negotiating mandate, the most controversial issue was the role in the negotiations to be allocated to the EWC and/or its members. On the one hand, the EMF-affiliated trade unions from Germany, Austria and the Netherlands – with their established tradition of acting as advisers to works councils involved in negotiations in the national context – took the line that as long as European Works Council members were trade unionists they should be given a central role in European company-level negotiations. In particular, Germany’s IG Metall argued that the negotiating role of EWCs should be extended in recognition of the political reality of European Works Councils already involved in negotiations and the political balance of power between works councils and trade unions at national level.

By contrast, the southern European, Scandinavian and Anglo-Saxon trade unions, in whose national contexts company-level negotiations are carried out exclusively by the trade unions, rejected any negotiating role for the EWC out of hand. Eventually – partly in recognition of existing practice regarding European agreements – a consensus was achieved that involvement of European Works Councils should be optional, given that in many cases EWC members have a trade union mandate to take part in negotiations at national level.

1.3 Negotiating models and the question of an ‘order’ for transnational company agreements

Even a comparison of our ten company case studies indicates that there is no consistent pattern in terms of the players and processes involved in negotiating transnational agreements: they all vary according to the particular conditions in the companies concerned. Moreover, only in some cases have relatively
consistent negotiating practices emerged, whereas in others they have developed organically and on an ad hoc basis. In the cases of Ford and EADS, previous European company negotiations have resulted in the establishment of formal negotiating structures and procedures.

In terms of the players on the employee side, one can essentially differentiate between two models for European company negotiations. The first has the EWC as the central player. Although representatives of the relevant European trade union federation or individual national unions may also be involved, the EWC remains in charge at every stage of the process. In this model, the trade unions’ claim to lead the negotiations is rejected and the EMF procedure is only followed as a compromise. In the second case, the trade unions, representatives of the relevant European trade union federation and the national trade unions concerned have the leading role on the employee side of the negotiations. The EWC accepts the leading role of the trade unions in the negotiations, or voluntarily transfers responsibility for European company negotiations to the unions and confines itself to an information and consultation role. EWC members who are also trade union members can be brought into the negotiations in their capacity as lay trade union officials or EWC office-bearers (chairperson, member of the steering committee), but the trade unions take on the formal – and usually also the practical – lead role in the negotiations and lay down the internal structures and procedures for the employee side in the negotiating process.

Given these two contrasting models, it is pertinent to ask whether and to what extent the EMF procedure has so far had any impact, whether there is any prospect of it contributing to greater harmonisation of negotiating procedures in the future and what problems and constraints are likely to be associated with this approach. We do not yet have enough experience with the EMF procedure for a final assessment to be made of its practicability and effectiveness. However, the empirical evidence provided by the case studies, which also describes the basic configurations of transnational company agreement policy in the metalworking sector, allow the following initial conclusions to be drawn.

National customs and practices in company and supra-company industrial relations and the related “country effect” regarding the approach to negotiations have an influence on the negotiating process and the perceived roles of specific players. In France, the key features of the EMF procedure, with its focus on the prerogative of the trade unions – in other words, its tendency towards a trade union-led order – fit in with the traditional division of labour in company negotiations between elected employee representation bodies and trade union representation structures. As with the EMF procedure, the role of lead negotiators of company agreements in France is usually taken by the trade unions, whilst the French Comité de Groupe (group works council) is designed purely as an information and consultation body without any formal negotiating powers. In line with this national model, EWCs whose culture is shaped by the French employee representatives occupying its key positions do not claim a leading role for the EWC when it comes to European company negotiations.
The EMF procedure, that regards the trade unions as the sole partners for negotiating and signing agreements, is in line with national traditions that have also been taken on board by the management of French (parent) companies. Because they are accustomed to similar practices in the national context, the latter have few problems dealing with European negotiations led by the trade unions. In fact, given the competition between French unions with differing ideologies within companies, management often prefer the negotiations to be led by the EMF, as this European umbrella organisation is in a position to draw together the potentially conflicting stances of the different trade unions and represent them vis-à-vis management. Consequently, the EMF procedure has hitherto been relatively well-received by French-led EWCs and has generated few role conflicts and little friction.

By contrast, the use of the EMF procedure in the German industrial relations system, in which works councils have a relatively large degree of autonomy and scope for action, has provoked reactions ranging from ambivalence to outright opposition. The EMF procedure may help raise awareness among German EWC leaders of the need to involve the trade unions in the negotiating process if they have a negotiating mandate at national level in the particular area concerned, but the trade unions’ claim that it is they who should be leading the negotiations does not go down well at all. One contributing factor (in the case studies) was the fact that the people who initiate and carry out company-level negotiations have in the past been insufficiently – if at all – familiar with the EMF procedure. Implementation of the EMF procedure will therefore be easier if the trade unions can promote an internal exchange of experience, political dialogue and networking between the players involved in negotiations, thereby raising awareness amongst full-time and lay trade union representatives involved in European company negotiations of the need for such a procedure.

Thus, the overall empirical findings indicate that the EMF procedure is not developing the necessary momentum to offer “one” order for transnational company negotiations and agreements. However, a certain impact can be identified inasmuch as greater consideration is being given to trade union interests in the case of EWC-led negotiation models.

Over and above these employee-related issues regarding the achievement of a negotiating approach that is as pragmatic as it is efficient and legitimate, the case studies show very clearly that it is ultimately the interests and tactics of corporate management that have a crucial influence on whether transnational negotiations are initiated at all, what matters are negotiated and who is involved in the negotiations. In other words, transnational agreements not only touch on basic issues related to trade union policy vis-à-vis companies and in-house company co-determination or collective bargaining policy, but also involve questions related to the balance of power between employers and employees, questions which are now framed at a transnational level.
1.4 Transnational company agreements and prospects for further Europeanisation of industrial relations

In order to place transnational agreements in the longer-term context of the Europeanisation of industrial relations, a number of results and predictions from the study (Rüb et al. 2011: 209 ff.) are highlighted below.

Involvement in transnational agreements helps EWCs develop into what the authors have described elsewhere as “participative European Works Councils” (Platzer/Rüb 1999; Lecher et al. 2001). It also confirms a view that has been found in academic discussion of EWCs from the very outset – that the EWC Directive is a transitional arrangement, both in itself and in its impact (Höland 1997: 103) and that this transitional nature is also expressed in the way that European Works Councils develop. It is a view that regards European Works Councils as characterised by a negotiation-oriented approach from the moment they are first set up and confronted from the very outset by the structural problem of operating at different levels if they wish to have any practical impact at European/transnational level. Transnational company negotiations and agreements merely perpetuate this situation. Once they have concluded the initial or subsequent negotiations to set the EWC up, they produce “second order” agreements aimed at regulating specific issues. The themes range from “soft” labour policy regulations (along the lines of codes of conduct), to “hard” regulations in areas such as corporate restructuring/job security and performance-related pay. Whatever the subject, the negotiations become a test case for multi-level decision-making and – even in the case of trade union-led negotiations – tend to elevate the EWC to the role of a transnational corporate policy player or at least enable it to appear as such (for the first time). The negotiating process intensifies transnational interaction and contributes to a horizontal Europeanisation of internal company industrial relations. Even in cases where the negotiations are dominated by a national EWC contingent from the country where the company has its headquarters, there is also a process of vertical Europeanisation, since the negotiation steps are communicated back to the European representation level of the entire EWC and the decision to conclude the agreement is made at this transnational level.

Transnational company negotiations also affect the interaction between the national trade unions and their European federation as well as between the EWC and the unions – with the internal company roles and functions of the unions also becoming more Europeanised. The comparative case studies enabled certain process models – EWC-led versus trade union-led negotiations – to be identified which can themselves be traced back to

4. The telephone survey whose results form the basis of this paper and which covered a quarter of the existing European Works Councils in the area covered by the EMF, provides the following picture: around a quarter of the 82 EWCs surveyed see themselves primarily as information bodies, but around half of them have already concluded formal agreements or informal arrangements or believe that they are likely to do so at some point in the future.
“country effects” and national (in our case, German and French) industrial relations traditions. The finding that no clear order for European company negotiations has emerged makes it difficult to assess whether and to what extent transnational agreements (could) also have an impact that leads to longer-term changes in national (company-level) industrial relations. Such changes would, for example, occur if the European agreements resulted in the trade unions being displaced or (in the dual system) supra-company collective bargaining policy being weakened. However our investigation did not provide any indications of such a scenario, for two reasons. Where the EMF procedure is used, its inbuilt de facto veto mechanisms offer the national unions scope to block anything that threatens to erode national traditions. In addition, the cases of an EWC-led approach to negotiating agreements that we examined indicated that the employee representatives involved in the negotiations felt a strong identification with the trade unions to the extent that there was no evidence of them pursuing interests relevant to their own company to the detriment of trade union interests. One crucial factor is the level of trade union membership in the company concerned and the extent of the trade unions’ supervisory role and role as intermediaries. However, this also means that in sectors or companies where – in contrast to the cases we examined – these conditions are not met, it is possible that an approach to agreements might establish itself in which European Works Councils (with no or only weak trade union links), which may even have been hand-picked and set up by their company’s management, conclude agreements that could conflict with national structures and traditions.

All in all, however, the investigation indicates that even if the momentum of transnational agreements picks up, they will not lead to erosion of national co-determination and collective bargaining traditions. It is not transnationalisation of company-level industrial relations that will, in the medium term, pose an external threat to the stability of national (internal company) industrial relations and the strength of the trade union role in this context. What is much more serious is the gradual erosion from within, which in many EU countries takes the form of declining trade union membership, reduction in the coverage of collective agreements, and a tendency for companies to quit membership in employers’ associations (see Visser 2011).

Finally the study raises the question of whether and to what extent transnational agreements also have an impact on the European sectoral and cross-sectoral level of industrial relations and collective bargaining in the EU, and therefore also have an effect at the European level of the multi-level system as a whole. At EU level, the trade unions’ and employers’ European umbrella organisations interact within the institutional framework of the Social Dialogue, and the sectoral associations within the framework of the 40 or so Sectoral Social Dialogue Committees that currently exist (for more on the development and outcomes of this dialogue policy see Platzer/Müller 2011: 803 ff.).

Such a view of the overall context of industrial relations at European level also includes a conceivable structure where European Works Councils have a role in the implementation and monitoring of sectoral and cross-sectoral...
agreements between the social partners within companies. These ideas have already started to crop up in the strategy debates of individual European trade unions. In this scenario, active European Works Councils, especially those with negotiating experience, would work together with the trade unions to take up issues and matters for negotiation and tackle and negotiate these issues within the company in areas that are or could also be the subject of sectoral social dialogue. In this way, company agreements would provide internal company experience and political momentum to the desired (framework) regulation at European sectoral level. There are, indeed, scenarios in many sectors where it is possible to envisage European Works Councils in major companies with a dominant position in their sector taking on such a role – managed and supported by the trade unions – and concluding pilot agreements that could support or even expedite sectoral European industrial relations in the fields of industrial and labour policy.

However, moves in this direction have yet to get beyond the stage of strategic thinking.
2. Study design and methodology

2.1 Study design

This quantitative study of formal agreements and informal arrangements involving European Works Councils in the metalworking sector was conceived to investigate the gaps in the research that became apparent during our previous case study-based investigation, as described in the introduction.

The first question raised by a general empirical appraisal of the development trends and prospects of bargaining at European company level is whether existing lists of transnational company agreements are in fact accurate and complete. The European Commission is committed to keeping an up-to-date, centralised record of the number of transnational company agreements (European Commission 2008a and 2009; European Commission 2012).

The suspicion that there may be a number of unreported agreements arises from the fact that the records of existing transnational company agreements compiled by the European Commission or European and national trade union federations are heavily dependent on the relevant employer or employee stakeholders having publicised the fact that an agreement has been concluded. Until now, a key determinant of the trade unions’ ability to record transnational company agreements has been the extent to which they were involved in initiating and negotiating these agreements. However, the sometimes substantial differences in trade union membership between different companies mean that there is no guarantee that the trade unions will necessarily even be informed when an agreement is concluded. Where organisational and communication links between the company works council and trade unions are weak, it becomes far likelier that the trade unions will receive little or no feedback, even if company works councils are in fact active transnationally. This in turn increases the probability of agreements not being recorded on the relevant lists.

Company size plays an important role in determining whether or not formal agreements and informal arrangements are recorded, since this can influence the extent of trade union presence within the company and the level of communication with them. In smaller companies, even if they have a transnational structure and may thus also have a European Works Council, it is usually harder for the trade unions to provide company works councils with support than in large companies that are major players in the industry – and any support they are able to provide is generally more limited. It can be assumed that bargaining at European company level is also taking place in small companies, which however is either not officially documented or not reliably communicated to the trade unions.
In addition to checking the validity of published figures on the number of formal agreements, we also wished to investigate the informal arrangements between EWCs and management on specific issues. Informal arrangements are by definition not included in the existing lists and databases. Nevertheless, it is one of the fundamental assumptions underpinning this study that informal arrangements are relevant to the overall picture of transnational agreements. Furthermore, this is an aspect that has been almost completely overlooked in the literature on EWCs.

The final parameter investigated by this study is the attitude of the actors towards a negotiating role, i.e. whether, under which circumstances and on which topics European Works Councils can imagine being or wishing to be involved in transnational negotiations. This is key to predicting the future development and growth of transnational company agreements.

The next section describes how the empirical design and methodological approach of this study address the research gaps described above and their associated lines of investigation.

This study is based on telephone interviews with EWC members at 82 companies using a semi-standardised questionnaire. Data obtained from other sources was also evaluated for the purpose of secondary analysis. The flow diagram in Figure 2 describes how the telephone interviews were conducted and summarises their key content. The full telephone interview questionnaire is included in the Appendix. The secondary analysis drew on unpublished EWC data obtained from the EMF and IG Metall’s EWC team, together with the European Commission’s figures on transnational company agreements (European Commission 2008a/2009; European Commission 2012) and other studies carried out by the authors (Platzer/Müller 2011; Rüb et al. 2011).

Figure 2 shows how the telephone interviews were divided into three parts. The first section comprised questions about the interviewee’s personal details and elicited information about the structure of their EWC and company. The questions in this section were aimed at obtaining detailed information about personal and EWC- or company-specific factors that could support or hamper the development of formal or informal European agreements and arrangements. In order to ensure that we obtained as complete a picture as possible of the structural data for the EWCs and companies included in the study, we also made use of unpublished data from the EMF’s EWC database.

Part two of the telephone interview sought to establish the number and key characteristics of the formal agreements and informal arrangements involving the EWCs in our sample. In the case of formal agreements, the findings of the telephone interviews were collated and combined with the available published figures referred to above. However, no previous data was available regarding the number and characteristics of informal arrangements. Consequently, the quantitative appraisal of informal arrangements in this study is based entirely on the findings of the telephone interviews.
Figure 2  Structure of telephone interviews

Key features of formal agreements
- Number of formal agreements concluded?
- Date of conclusion?
- Subject of agreement(s)?
- Nature of agreement(s)?
- Degree to which agreement(s) binding?
- Initiator of agreement(s)?
- Negotiator of agreement(s)?
- Impact of agreement(s)

Reasons for formal agreements
- Specific reason: reaction to serious event (e.g. restructuring)
- Willingness of management to negotiate
- Strategy of expanding EWC’s role (to include negotiation)

Prospects
- Quantitative: further agreements expected?
- Qualitative: better quality agreements expected (regarding content and degree to which binding)?
- Reasons for answers

Key features of informal arrangements
- Number of informal arrangements concluded?
- Date of conclusion?
- Subject of arrangement(s)?
- Degree to which arrangement(s) binding?
- Initiator of arrangement(s)?
- Negotiator of arrangement(s)?
- Impact of arrangement(s)

Reasons for informal arrangements
- Pragmatic response to demands from EWC (conflict resolution strategy/specific reason)
- Industrial relations tradition of informal arrangements
- Refusal of management to formalise informal arrangements
- Reluctance of EWC to formalise informal arrangements

Prospects
- Further informal arrangements expected?
- More formal agreements expected?
- Reasons for answers

Reasons for EWC having no negotiating role
- No perception of any need by EWC
- Inability of EWC to negotiate
- EWC has different understanding of its role
- Reluctance of management to negotiate

Prospects
- Negotiating role for EWC expected?
- Reasons for answers

No

Yes

Source: own calculations.
Note: un-weighted average of six sub-indices.
The empirical focus in the third section of the telephone interview was geared towards ascertaining why interviewees thought formal and/or informal European company agreements had been concluded (or, where relevant, why the EWC had not been involved in negotiating such agreements) and what they thought the prospects were of concluding further formal agreements and informal arrangements in the future. In empirical terms, there is thus a more qualitative dimension to this part of the study, since it goes beyond merely recording the number of formal agreements and informal arrangements. In order to ensure that interviewees had plenty of scope to express their personal opinions, far greater use was made of open-ended questions in this part of the telephone interview than in the first two sections.

From a methodological point of view, all the answers obtained during the telephone interviews were coded so that a statistical analysis of the data could be performed in SPSS. The two main methods employed for this statistical analysis were simple frequency counts to describe a particular item and crosstabs to check for possible associations between two variables. A significance level of 0.05 was selected, meaning that we accepted a five per cent risk of any association identified in the sample being random. Fisher’s exact test was employed as a significance test (Baltes-Götz 2010: 191 ff.).

The database of IG Metall’s EWC team was used as the basis for selecting the EWCs and companies to be included in the study sample. This database holds records for all the companies and EWCs that the EWC team has had contact with during the course of its work. The decision to use this database was taken on pragmatic grounds, since the vast majority of its records contained the EWC representative contact details needed in order to conduct the survey.

At the time when the study sample was selected in September 2011, the database held a total of 850 records of companies that currently have EWCs, used to have them or could potentially have them in the future. 569 of these records were excluded from the remainder of the study. These comprised:

- 473 records of companies that met the requirements for establishing an EWC or SE works council, but where no EWC agreement had been concluded (35 were in fact shown not to meet the requirements for EWC establishment);
- 33 records of companies where the EWC agreement was no longer in force or had not yet come into force;
- 46 records of companies outside the metalworking sector (timber/plastics, textiles/clothing, printing or chemicals);
- ten records of companies where there were no German employee representatives on the EWC and
- seven records of European Companies (SE). Six of these had established SE works councils, whilst the remaining one had neither an SE works council nor an EWC.

Based on the information in the database of IG Metall’s EWC team, this left a total of 281 current EWCs in the metalworking sector with German
representatives. In order to achieve a sufficiently large statistical population, data from the European Metalworkers’ Federation (EMF) EWC database was also included. At the time of the survey (December 2011), this comprised 324 metalworking companies with a current EWC (or alternative transnational information and consultation procedure) or SE works council, 308 of which currently had EWCs. The IG Metall EWC team’s database accounted for 281 of these companies, or more than 90% of the total.

A further 38 of the 281 current EWCs in the metalworking sector were automatically ruled out because no EWC contact details were available for them. A sample of 121 (50% of the remaining 243 records) was arrived at by computer-generated random selection. However, the contact details for 25 of these companies proved to be out of date. In order to maintain a total sample size of 121 EWCs, these companies were replaced by 25 new companies, also chosen by computer-generated random selection.

IG Metall’s EWC team initially made contact with potential interviewees by sending them an introductory e-mail describing the project’s goals and content and asking whether they would be prepared to participate in the study. Over the course of the next two months, the 121 EWC members who received e-mails were contacted by telephone in alphabetical order of their company names. In order to ensure a reasonable balance between the time spent trying to contact people and the number of successful contacts, a target response rate of 66% was established. This meant that at least 81 companies would need to be contacted successfully. No attempt was made to contact additional companies once this target response rate had been met. The final sample size was thus 82 companies, accounting for slightly more than a quarter of all the EWCs currently in force in the metalworking sector.

When it came to selecting interviewees at the companies chosen for our study, we endeavoured, wherever possible, to interview either the chair or deputy chair of the EWC, a member of the steering committee, or the EWC secretary responsible for the day-to-day activities of the EWC. This approach was based on the assumption that the people interviewed would have a better knowledge of the EWC if they occupied a position that was key to its strategic development and work. As can be seen in Figure 3, almost three-quarters of the interviewees (74%) met these conditions. Furthermore, even in those cases where the interviewee did not hold a key post in the EWC, we nevertheless had the impression that, with very few exceptions, they provided us with carefully considered opinions about the EWC’s situation and development. The professional attitude of the vast majority of interviewees is a testament to the high degree of continuity among EWC members and the experience that they therefore possess in EWC-related matters. In fact, 61% of the people who participated in the survey had more than five years’ experience as EWC members.

6. Based on a total of 308 current and genuine EWCs in the metalworking sector, our sample accounts for a figure of 27%.
7. Just under a quarter (24%) of the interviewees had between three and five years’ experience as EWC members and just 15% had only been EWC members for two years or less.
The introductory e-mail sent by IG Metall’s EWC team was important in getting the EWC members who we contacted to trust the intentions of the study and ensured that they were much more willing to participate and provide information.\textsuperscript{8} None of the people we contacted was fundamentally opposed to participating in the study. Just two people said that they did not have time to take part because their company was in the middle of a restructuring programme. The main reason for interviews failing to be carried out – or the “principal cause of failure”, to give it its technical name – was that, for a variety of reasons, it proved difficult to contact EWC members even though they had expressed their willingness to participate in principle.\textsuperscript{9} In some cases, people were unable to keep interview appointments because another matter requiring their attention came up unexpectedly. We were able to record the reasons for interviews that fell through and can say that there was no “systematic” (Schnell et al. 1992: 318) association between variables relating to the subject of the study and failure to carry out interviews which could have systematically distorted the sample. Interview failures were in fact “random” in nature – in other words, our sample can be seen as a “random sample of a random sample” (ibid.), meaning that in terms of “response” it did not indicate any distortions resulting from systematic failures.\textsuperscript{10}

\textsuperscript{8.} A further factor that enhanced people’s willingness to trust the study’s intentions was the fact that they were told it was being funded by the Hans Böckler Foundation.

\textsuperscript{9.} This was the case irrespective of their company’s specific characteristics such as size or head office location. Although it is true that in larger companies works council members are full-time employee representatives and often even have their own staff, they nevertheless have to perform a variety of functions on the central, group and European works councils as well as the company supervisory board. This involves a lot of travelling and can make it hard to get in touch with them. In smaller companies, meanwhile, our ability to contact potential interviewees was hampered by the fact that they did not have their own staff and were often only at their desks for very short periods of time.

\textsuperscript{10.} The biases introduced into the sample itself owing to our use of the database of IG Metall’s EWC team to select participants for the study are described and discussed in detail in Chapter 2.2.
2.2 Sample structure

Although the selection procedure that was employed achieved positive results in terms of the target response rate and the willingness of interviewees to provide information, it did have the drawback of systematically biasing the sample vis-à-vis the statistical population.

The most significant bias in the sample relates to the nationality of the principal trade union responsible for advising the EWC on behalf of the EMF. Figure 4 shows the distribution of principal trade union advisers both for the 308 EWCs in the overall statistical population and the 82 EWCs in our study sample.

As can be seen in Figure 4, EWCs advised principally by IG Metall were significantly over-represented in our sample, accounting for 44% of the total. If the sample had been uniformly distributed, IG Metall would have been the principal adviser for just 25% of the EWCs, i.e. 20 rather than the actual total of 36.\textsuperscript{11} EWCs advised by UK and French trade unions are also slightly over-represented. Conversely, EWCs advised by trade unions from countries with, as a whole, relatively few current EWCs in the metalworking sector (Belgium, Finland, Italy, the Netherlands, Norway and Denmark) were under-represented in the sample.

The over-representation of EWCs advised principally by IG Metall can probably be put down to the fact that the quality of the contact details for

\textsuperscript{11} Fisher’s exact test gives a significance level of 0.001.
potential interviewees held in the EWC Team’s database was relatively better for these EWCs.

In addition, the distribution of the study sample compared to the statistical population was also non-uniform with regard to the proportion of “German” companies\textsuperscript{12}, which were also over-represented in the sample. Figure 5 shows the distribution of companies’ nationality (i.e. the location of their European HQ) for both the statistical population and our study sample. Companies with their European headquarters in Germany accounted for 41\% of the study sample and were thus significantly over-represented. If the sample had been uniformly distributed, it would have included just 24 (as opposed to 34) of the 85 EWCs in the statistical population from companies with their European HQ in Germany, or just 28\%.\textsuperscript{13} Once again, Germany is over-represented at the expense of countries that have relatively few EWCs in the metalworking sector (Italy, Finland, Denmark, Norway, Austria, Ireland, Switzerland, Spain, Luxembourg and Slovenia).

![Figure 5: Distribution by company nationality (company’s official HQ in the EU)](image)

This systematic bias can be traced back to the following factors. Firstly, when the EWCs were selected, all those without German involvement were automatically excluded. These include both the 27 EWCs that were registered in the EMF database but not in the database of IG Metall’s EWC team and the ten EWCs from the IG Metall database that were excluded on the grounds of them not having any German members. In addition, the country bias in the

\textsuperscript{12} These include companies whose central management is based in Germany and companies whose head office is located outside the EU but which have designated the German business as “the company’s representative within the Community” in accordance with the EWC Directive.

\textsuperscript{13} Fisher’s exact test also gives a significance level of 0.001 on this occasion.
Transnational company agreements and the role of European Works Councils in negotiations

The sample is closely connected to the bias in favour of EWCs that are principally advised by IG Metall, as described above. Since EWCs advised by IG Metall are mostly found in German companies, the contact details for potential interviewees from these EWCs held in the database of IG Metall’s EWC team tend to be more accurate and up-to-date than for non-German companies that are not directly supported by IG Metall.

This country and trade union bias should be taken into account when interpreting the findings of this study and analysing the influence of specific variables on the development of formal agreements and informal arrangements. Moreover, any attempt to extrapolate the results of this study to the rest of the population of current EWCs should be undertaken with caution. In addition to this bias in the selection criteria, there is one further analytical bias that needs to be taken into account: since only German EWC members were interviewed, their answers (particularly to the open-ended questions about their opinions) were inevitably influenced by their national industrial relations background.

The following section describes the sample structure in terms of company- and EWC-specific variables that could potentially influence the development of formal agreements and informal arrangements involving European Works Councils. In order to check for and identify further possible biases, we have, wherever possible, drawn on data from the EMF database to enable a comparison of the study sample structure with the structure of the entire population of current EWCs in the metalworking sector.

![Figure 6](image-url)

**Figure 6  Nationality of companies in the sample (according to location of central management)**

The first company-specific factor that could potentially have an influence is where the company’s central management is located. Various qualitative studies of both the general development of EWCs (see Hauser-Ditz *et al.* 2011) and the specific development of European agreements (see Rübb *et al.* 2011) have found that the industrial relations culture in the country where the company’s head office is located has a major influence on relations between the EWC and management and the way that they interact with each other.
Figure 6 shows the geographical distribution of our sample according to the country where the company’s central management is located. Unfortunately, no equivalent figures were available for all of the EWCs currently operating in the metalworking sector, since the EMF database only holds details of companies’ official EU headquarters. However, the most recent figures for all current EWCs according to the EWC database of the European Trade Union Institute (ETUI) (Jagodzinski 2012) indicate that our sample shows no significant differences compared to the ETUI data in terms of the geographical distribution of central management location. As can be seen in Figure 6, the same main countries occur in our sample as in the ETUI data, i.e. the US, Germany, France and Sweden.

Another company-specific variable that is relevant to the analysis of formal and informal transnational agreements and arrangements is the size of the companies included in the study. For one thing, EWCs in large companies might be thought likelier to negotiate such agreements than EWCs in smaller companies (for more details, see the findings presented in Chapter 3.3). In addition, even where formal agreements or informal arrangements involving the EWC do exist within smaller companies, they are less likely to be officially documented. Figure 7 divides the sample into five groups based on company size. The graph shows that the proportion of small companies and groups with fewer than 10,000 employees in Europe is exactly the same in our sample as the proportion of large companies with more than 10,000 employees in the countries of the EU.

In addition to these company-specific factors, EWC-specific factors were also recorded, such as the age and size of the EWC, type of EWC constitution and nationality of the EWC’s chairperson, since the chair generally has a strong say in the EWC’s overall policy. These variables were captured in order to investigate their influence on the development of formal agreements and informal arrangements at European company level.

Figure 8 provides a breakdown by age of the EWCs included in our study. It shows that 85% of the EWCs in the sample have existed for more than five years and two thirds have been up and running for more than ten years.
Figure 8  **Age of EWCs**

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2 years</td>
<td>4%</td>
</tr>
<tr>
<td>3-5 years</td>
<td>11%</td>
</tr>
<tr>
<td>6-10 years</td>
<td>19%</td>
</tr>
<tr>
<td>over 10 years</td>
<td>66%</td>
</tr>
</tbody>
</table>

Figure 9 compares our sample with the total statistical population of current EWCs in the metalworking sector based on the year that the EWC was established. It shows that the structure of our sample and the structure of the overall population are broadly comparable as far as this variable is concerned.

**Figure 9  Year EWCs were established**

The broad similarity between the sample and the rest of the current EWCs in the metalworking sector that is evident in the age structure breakdown is corroborated by the breakdown by EWC constitution type presented in Figure 10. The graph distinguishes between EWCs established under a voluntary agreement (particularly Article 13 agreements as per the 1994 EWC Directive), EWCs established in accordance with the standard statutory procedure stipulated by the Directive (especially Article 6 agreements as per the 1994 EWC Directive) and EWCs established in accordance with the subsidiary requirements provided for in Article 7 of the EWC Directive.

Figure 10 shows that our sample is broadly similar to the overall statistical population in terms of the proportions of different EWC constitution types. The distinction between different constitution types is relevant to this study in view of the fact that Carley and Marginson’s (2000: 50) comparison of Article
13 and Article 6 agreements, for example, found that the latter were far likelier to give EWCs an active role. This might in turn lead us to suspect that Article 6 agreements are likelier to favour the development of formal and/or informal agreements and arrangements.

**Figure 10** Comparison of EWC constitution types

<table>
<thead>
<tr>
<th>EWCs in the study sample</th>
<th>All current EWCs in metalworking sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>not negotiated</td>
<td></td>
</tr>
<tr>
<td>negotiated in accordance with statutory procedure</td>
<td><img src="chart.png" alt="" /></td>
</tr>
<tr>
<td>negotiated on voluntary basis</td>
<td><img src="chart.png" alt="" /></td>
</tr>
</tbody>
</table>

Figure 11 shows a breakdown by size of the EWCs included in the study. We have used three EWC size categories in order to assess the potential influence of EWC size on the existence or development of formal and informal European agreements.

**Figure 11** Size of EWCs

<table>
<thead>
<tr>
<th>Size of EWCs</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 10 members</td>
<td>17 %</td>
</tr>
<tr>
<td>10 to 20 members</td>
<td>48 %</td>
</tr>
<tr>
<td>over 20 members</td>
<td>35 %</td>
</tr>
</tbody>
</table>

Our research group’s qualitative, case study-based investigation of the negotiation of European company agreements found that the initiation and progress of negotiations was very heavily influenced by the local bargaining culture of the strongest national EWC contingents, since these are the countries whose members usually occupy the key positions on the EWC (Rüb et al. 2011: 220). In view of this fact, the interviews contained a question about which country the EWC chair was from, bearing in mind that it might not necessarily be the same as the country where the company’s central or European management was based. Figure 12 provides a breakdown of these
data for our sample. It is striking that well over half of the EWC chairs in our sample (55%) are from Germany, although the European top management is only officially located in Germany in 41% of the companies.

The high number of German EWC chairs in our sample is due to the bias in the selection of the sample as described above. Since the EWC chairs in German companies are normally also from Germany themselves, the over-representation of German companies in the sample automatically also introduces a bias with regard to the variable concerning the EWC chair’s nationality. Furthermore, even in non-German companies, if the EWC chair is from Germany then we can assume that the EWC will have closer ties with the trade unions, which will in turn have a positive effect on the quality of the contact details in the EWC database of IG Metall’s EWC team. However, this bias does not affect the investigation within the study sample of the causal relationship between the EWC chair’s nationality and the development of formal and/or informal European agreements involving the EWC. The bias in favour of Germany merely makes it harder to extrapolate our findings to the rest of the EWCs currently in existence.

In addition to the statistical bias, the large total of 16 German EWC chairs in non-German companies might also be connected to the perception among non-German EWC members that German works council members are very professional and often have significantly better resources at their disposal.

![Figure 12 Nationality of EWC chairs](chart)

**2.3 Telephone interviews as a research method**

Telephone interviews were selected as the methodology for the study for the reasons outlined below.

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14. Since in total 45 of the EWCs in the sample have a German chair, more than a third (35.6%) are therefore in non-German companies.
Firstly, the fact that the interviewer is speaking directly with the interviewee means that, unlike in a written questionnaire, both parties have the opportunity to ask for clarifications and provide detailed explanations. This was extremely important for a topic as complex as the collection of information about formal agreements and informal arrangement involving EWCs, since it enabled us to reiterate the subtle distinction between the two during the interview. For example, in some of the interviews it was necessary to explicitly highlight the difference between agreements of the first order (EWC constitutions) and those agreements of the second order that are relevant to our study (concrete regulations on matters of labour and corporate policy). Furthermore, when it came to recording informal arrangements, it was sometimes necessary to prompt interviewees to remember that such arrangements had in fact been concluded, owing to their informal nature. From a methodological point of view, the fact that we had direct contact with the EWC members enhanced the validity of the semi-standardised questionnaire, since it was possible to make sure during the interview that the questionnaire was actually recording the phenomena that it was designed to record.

Secondly, telephone interviews allowed us to combine quantitative and qualitative elements of social research by enabling a large number of people to be interviewed yet still leaving room for qualitative questions. It was crucial for the study to ensure that both of these aspects were covered, since its aim was not simply to systematically record the number of European formal agreements and informal arrangements but also to investigate the stakeholders’ motives and opinions together with the general enablers and prospects for the development of bargaining at European company level.

Thirdly, we believed that a telephone interview would make potential interviewees more likely to participate in the study and share information, since it is easier to gain people’s trust when you are talking to them directly than with a postal survey, for example. That is why the interviews were conducted personally by the members of the research team – the interviewer’s knowledge of the subject is key to winning the potential interviewee’s trust and thus also to ensuring that they are willing to participate in the study and share information. In practice, this proved to be especially important for the open-ended questions in the survey, where interviewees were required to provide more detailed responses.

Language can obviously have a major influence on the quality of information obtained through a telephone survey. Even if they have good foreign language skills, it is much easier for both interviewers and interviewees to express complex ideas in their mother tongue. Consequently, before we carried out the survey we decided that we would only conduct interviews with German EWC members. Our intention in so doing was to enhance the validity of the questionnaire, since it enabled us to rule out language issues as a potential source of misunderstandings. We also believed that it would increase the likelihood of potential interviewees being prepared to take part in the study. Finally, we believed that it would enhance the quality of our data, since experience shows that when interviewees provide their answers in a foreign language they tend to be less accurate and substantially shorter.
3. **Empirical survey findings**

3.1 **Frequency of formal agreements and informal arrangements in the European metalworking sector**

3.1.1 The problem of potential unreported agreements

One of the key aims of this empirical survey was to establish whether and to what extent the number of agreements involving European Works Councils is being accurately assessed or systematically underestimated by academics and policymakers.

In accordance with the definition provided in the introduction to this study and based on the available figures for transnational company agreements in the European metalworking sector\(^{15}\) and the findings of our survey, the numbers of transnational agreements involving EWCs can be broken down as follows:

1) **Companies with officially documented formal transnational agreements and agreements involving the EWC in the metalworking sector** (see Figure 13)

- The available figures recorded a total of thirty companies with formal transnational agreements in the metalworking sector. This is equivalent to just under 10% of the 308 metalworking companies with EWCs that make up the statistical population of our study.
- 21 of these companies had concluded international framework agreements.\(^{16}\) Moreover, in 14 of these companies, the international framework agreement was the only transnational agreement that had been concluded. International framework agreements constitute a special case, since they are primarily negotiated and implemented by the trade unions and are very much a union-driven initiative.
- In 19 of the thirty companies referred to above, the European Works Council was a (co-)signatory to at least part of the agreements, and in one further case the EWC was directly involved in the negotiations. This means that there were twenty instances where there was evidence of

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15. The exact details of the sources used are as follows: EU database on transnational company agreements (European Commission 2012), EU lists of agreements for 2008 and 2009 (European Commission 2008a and 2009) and the IMF’s list of international framework agreements (in Platzer/Müller 2011: 140).

16. As defined in footnote 3.
agreements involving the EWC. In the remaining ten cases, it was the trade unions who handled the negotiations and were the official parties to the agreement along with the company.\textsuperscript{17}

Figure 13  \textbf{Number of companies in the metalworking sector with formal transnational agreements (publicly available figures)}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure13.png}
\caption{Number of companies in the metalworking sector with formal transnational agreements (publicly available figures)}
\end{figure}

2) \textbf{Companies with formal transnational agreements and agreements involving the EWC in the study sample (see Figure 14)}

– Our sample contained twenty metalworking companies that had concluded at least one formal transnational agreement, equivalent to 24\% of the 82 companies in the sample. This total includes 16 of the thirty officially documented agreements in the metalworking sector. In other words, companies with officially documented formal transnational agreements were significantly over-represented in the sample.\textsuperscript{18} Moreover, our survey discovered a further four companies

\begin{itemize}
  \item [17.] For more on this point, see Chapter 3.2.6.
  \item [18.] In view of the fact that 30 companies throughout the entire European metalworking sector were listed as having formal transnational agreements (approximately 10\% of the total), one would expect only eight companies with such agreements in the sample if this ratio were to be preserved (significance level per Fisher: 0.002). A similar effect was detected with regard to international framework agreements. 21 companies were officially listed as having international framework agreements (accounting for 7\% of the total), so one would have expected to find six such companies in the sample (significance level per Fisher: 0.038). Consequently, it can be seen that the bias in the selection of the EWCs included in the study that was described in the section on the study methodology had a significant effect on the distribution of officially documented formal transnational agreements. Presumably, the difference in distribution between the sample and the statistical population is attributable to effects connected with where companies have their European HQ and the nationality of the principal trade union advising the EWC. The study methodology section already highlighted the bias in the sample with regard to these two variables. Further analysis confirms this association: 14 of the 30 companies listed as having formal transnational agreements have their European HQ in Germany (accounting for 47\% of the total), whereas the equivalent figure for all the companies in the statistical population is just 27\%. IG Metall is principal adviser for 53\% of the EWCs in companies listed as having formal transnational agreements (16 out of 30), whereas the equivalent figure for all the EWCs in the statistical population is just 25\% (77 out of 308). In other words, companies listed as having formal transnational agreements are more likely to have their European HQ in Germany, and IG Metall is also more likely to be the principal trade union adviser to their EWCs.
\end{itemize}
with formal transnational agreements which have not been officially documented. 19

- Eleven of these twenty companies had concluded international framework agreements, and in seven of them the international framework agreements were the only type of formal transnational agreement that had been concluded.

- In our sample, EWC involvement in negotiating the agreements can be considered a reliable indicator of the existence of a policy of concluding agreements, since there was an explicit question about this issue in our survey. 15 respondents indicated that the full EWC, its chair or its steering committee had participated in the negotiations either on their own or together with trade union officials. In other words, 15 companies, or 18% of the 82 metalworking companies with EWCs included in our sample had concluded formal agreements involving the EWC.

Figure 14  Number of companies in the metalworking sector with formal transnational agreements (study sample)

The number of formal agreements recorded in our study was compared against the official lists of agreements in order to establish whether a proportion of agreements are going unreported.

It is important to remember that the bias in the sample described above, whereby companies with officially documented formal agreements are over-represented in the sample, means that the sample data on unreported agreements cannot really be extrapolated to the wider statistical population.

Nevertheless, the four companies in our sample that had concluded formal transnational agreements which were not (or at least not yet) registered on the official lists do point to the existence of unreported formal European company agreements. Four companies represent 5% of the 82 companies in the total sample and 20% of the twenty companies in the sample that had formal transnational agreements. There may be additional unreported agreements

19. Furthermore, in some cases the existence of additional company agreements was discovered.
owing to the fact that the EU database does not always record all the individual agreements concluded with the EWCs from the listed companies.

Although the bias in the sample precludes direct extrapolation of the figures to the overall statistical population, it is nevertheless likely that some of the 308 metalworking companies with current EWCs do have formal transnational agreements that are as yet unreported. This is especially true because the sample comprises EWCs that have close links with the trade unions, making it likelier that their agreements will have been documented by the trade unions. Based on the thirty companies with officially documented formal transnational agreements and the four additional companies identified through the telephone survey, a conservative estimate would be that a further one to four per cent (equivalent to between one and twelve companies) of European metalworking companies with EWCs have concluded formal transnational agreements.20 This allows us to estimate that twelve to 15 per cent of companies (or between 37 and 46 companies) in the European metalworking sector have concluded formal transnational agreements. Likewise, based on the figure of 23 companies that have already been identified as having formal agreements involving the EWC, we can estimate that there are between 24 and 35 European Works Councils that have been involved in concluding at least one formal transnational agreement. This is equivalent to between eight and eleven per cent of all current EWCs in the metalworking sector.

However, these figures do not suggest that the number of unreported formal European company agreements is of an order that might cause the overall extent of such agreements to be systematically underestimated.

3.1.2 Informal arrangements – an overlooked phenomenon

What is far more relevant to the academic and policy debate surrounding European Works Councils and the development of European-level industrial relations within companies is the finding that there is a whole host of companies where informal arrangements have been concluded between the EWC and the company’s European management. This finding not only suggests that, in practice, EWCs go beyond their formal information and consultation role more frequently than is realised by either academics or policymakers, but also that European company regulations on industrial relations and working conditions are being promoted by more companies than was hitherto believed to be the case.

Until now, the phenomenon of informal arrangements between EWCs and companies’ European management has been completely overlooked by the literature on EWCs. Consequently, there is no data on the existence and distribution of informal transnational arrangements either in general or in the European metalworking industry.

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20. This estimate is intentionally lower than the 5% of companies in the sample with formal transnational agreements that were not officially recorded.
Our study sample contained 21 European Works Councils that reported having concluded informal arrangements with their European management. This was equivalent to 26% of the total sample of 82 metalworking companies with EWCs.\(^{21}\)

The bias in our sample means that it is not possible to directly extrapolate the proportion of informal transnational arrangements in the sample to the wider statistical population, especially since the effect of the country where the company has its European HQ and the principal trade union advising the EWC is similar for EWCs that have concluded informal arrangements with management to those that have concluded formal agreements.\(^{22}\)

### 3.1.3 Formal agreements and informal arrangements in the European metalworking sector

Taking both findings together, a total of 34 out of 82 European Works Councils in our study sample – or 44% – have concluded transnational formal agreements or informal arrangements with corporate management. Furthermore, if we include the five companies that concluded formal transnational agreements where the EWC was either not involved in the negotiations or not a signatory of the agreement, then the number of companies in our sample with transnational agreements and/or informal arrangements rises to 39, or 48% of all the companies in the sample.

![Figure 15](https://via.placeholder.com/150)

**Figure 15** Number of companies in the metalworking sector with formal agreements and informal arrangements involving the EWC (study sample)

- formal agreements: 15
- informal arrangements: 19
- nothing: 48

19% 25% 56%

**N.B.** Those EWCs in the sample that were known to have concluded both formal agreements and informal arrangements with corporate management were placed in the category of EWCs with formal agreements.

\(^{21}\) Although, as a rule, we did not ask interviewees about informal arrangements if their company already had a formal agreement, there were three cases where EWCs with informal arrangements had also concluded at least one formal agreement.

\(^{22}\) Of the EWCs with informal arrangements, 48% (ten out of 21) have their European HQ in Germany, while the figure is just 27% for all companies in the statistical population (significance level per Fisher: 0.041). Similarly, IG Metall is the principal adviser for 48% of the EWCs with informal arrangements (ten out of 21), but just 25% (77 out of 308) of all the companies in the statistical population (significance level per Fisher: 0.019).
Interviewees’ personal opinions about current policy regarding formal agreements and informal arrangements concluded between EWCs and management were rather less positive. Reasons for this include the fact that some respondents viewed the formal or informal agreements as a complete one-off that was unlikely to be repeated (for example an informal arrangement on a one-off bonus for all employees in Europe after the company had achieved exceptionally good results), some regarded the formal agreements or informal arrangements purely as a trade union initiative with no EWC involvement at all, whilst others had “forgotten” about the agreement because it had proved ineffective and showed no signs of becoming effective in the future. Thus, two of the EWC members who were interviewed placed their EWC in the informal arrangements category in terms of policy, despite the fact that they had actually concluded formal agreements. A further four respondents did not categorise their company as belonging to either group, even though their EWC had actually concluded formal agreements or informal arrangements. International framework agreements are particularly likely to be regarded as one-off, predominantly trade union initiatives that are not representative of normal EWC policy (this was the case for all seven companies where the international framework agreements were the only transnational agreements to have been concluded). Nevertheless, even if we base our calculations on interviewees’ personal opinions, 35% of the EWCs included in the study were considered to actively pursue formal agreements or informal arrangements. Figure 16 shows the detailed breakdown of these figures.

![Diagram showing interviewees' assessment of EWC policy of concluding formal agreements and informal arrangements (study sample)](image)

As has already been explained, the bias in our sample means that it is difficult to extrapolate the proportion of formal agreements and informal arrangements in the sample to the rest of the European metalworking sector. However, if we use the conservative estimate (12-15%) of companies with formal transnational agreements as described above, and combine this with the fact that the prevalence of formal agreements and informal arrangements in the sample was broadly similar (20 companies with formal agreements and 19 with informal arrangements), then it would not seem unreasonable to estimate that the proportion of companies with informal transnational agreements in the overall statistical population is also somewhere between twelve and 15 per cent. Based on this rather conservative estimate, we can say that between 24 and 30 per cent of companies in the European metalworking sector have a policy of concluding formal agreements or informal arrangements, equivalent to between 74 and 92 companies in total.
Using the same principle, it is possible to arrive at an estimate for the proportion of companies with formal agreements and informal arrangements in which the EWC was involved, based on the estimated prevalence of formal agreements involving EWCs (7.5-11%) and the estimated prevalence of informal arrangements involving EWCs (12-15%). The proportion of European Works Councils involved in concluding formal agreements or informal arrangements can thus be conservatively estimated at somewhere between 19.5 and 26 per cent. In other words, it may be estimated that between 60 and 80 of the 308 EWCs in the metalworking sector have already concluded formal agreements and/or informal arrangements with corporate management.

### 3.2 Characteristics of formal agreements and informal arrangements

To provide as complete a picture as possible of the characteristics of formal agreements and informal arrangements, we drew on all the transnational company agreements known to us in order to obtain information about the number and content of the agreements and the dates on which they were concluded. More specifically, in addition to the findings of our telephone survey, we also used the EU database on transnational company agreements (European Commission 2012), the EU lists of agreements for 2008 and 2009 (European Commission 2008a and 2009), the IMF list of international framework agreements in Platzer/Müller 2011: 140 and the list of European company agreements in the metalworking industry in: Rüb et al. 2011: 20f.

#### 3.2.1 Prevalence/number of agreements

The total number of formal agreements and informal arrangements far outstrips the number of companies where formal and informal European agreements and arrangements have been concluded. This is because, in most companies, these are by no means a one-off event.

In the European metalworking sector, a total of 78 formal transnational agreements were concluded across 34 different companies, giving an average of 2.3 per company. Only four of these 34 companies (12%) had concluded more than three agreements. The two companies with by far the largest number of agreements were General Motors Europe and Ford, where it has become the norm for the EWC and corporate management to negotiate formal agreements on the details of restructuring programmes. At the other end of the scale, there were 18 companies with just one formal agreement, 15 of which were international framework agreements.

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23. See also the list of officially documented transnational company agreements in the metalworking sector provided in the appendix. This list does not include those formal agreements that were only discovered during the telephone survey, since we promised interviewees that the information they provided us with would be treated anonymously.
As far as the number of informal arrangements is concerned, we are forced to rely on the findings of our telephone survey. We asked the respondents whether they had concluded one, two to three or more than three informal arrangements. Figure 18 compares the number of informal arrangements per company against the total number of formal transnational agreements per company and against the number of formal transnational agreements excluding international framework agreements, based on all known agreements in the metalworking sector.

The first thing that is clear from this comparison of formal and informal transnational agreements is that informal agreements are far less likely to be a one-off phenomenon than formal agreements. More than 70% of the companies with informal agreements involving the EWC (15 out of 21) had in fact concluded two or more such agreements, compared to 50% in the case of formal transnational agreements.

However, if the special case of international framework agreements is disregarded, i.e. if we do not include companies where international framework agreements were the only type of formal transnational agreement to be concluded, then the figure rises to 83% (15 out of 18). Thus, in some cases
both formal and informal agreements are firmly established as a standard practice.24

3.2.2 Time elapsed since last agreement and informal arrangement concluded

Far from being a historical phenomenon, the conclusion of formal agreements and informal arrangements is something that is still current practice today. The time elapsed since the last agreement or arrangement was concluded was two years or less for 55% of informal arrangements and 29% of formal agreements, whereas it was more than five years for 27% of formal agreements and just 17% of informal arrangements.

Figure 19  Time elapsed since last formal agreement or informal arrangement

Figure 20 shows the annual figures comparing the time elapsed since the last formal agreement for all companies with formal agreements and for companies that only have a one-off international framework agreement. It illustrates the fact that the time elapsed since the last formal transnational agreement was concluded only exceeds five years in companies where international framework agreements were the only type of formal transnational agreement to be concluded. This finding lends weight to the theory that, in many companies, the conclusion of international framework agreements is a one-off phenomenon that is not indicative of a policy of concluding formal transnational agreements, since the one-off nature of these agreements is clearly not due to the fact that the companies in question have only recently started concluding formal transnational agreements.25

24. Companies such as Ford and EADS can be said to have established a policy on formal transnational agreements, since in addition to concluding a number of such agreements they have also established a procedure for negotiating and concluding them.

25. Unlike other global trade union federations, the IMF achieved its biggest successes with regard to the conclusion of international framework agreements between 2001 and 2005. During this period, IG Metall was especially active in promoting international framework agreements in the automotive and automotive supplier industries on behalf of the IMF (for more on the motives and factors that influenced international framework agreement policy, see Rüb 2009: 208ff. for IG Metall, and Platzer/Müller 2011: 111ff. for the IMF.
3.2.3 Bargaining issues

The formal agreements and informal arrangements cover a broad spectrum of topics that can be grouped together under the following headings:

1) Transnational restructuring programmes

Transnational restructuring programmes are one of the most important topics dealt with by EWCs. Equal numbers of formal agreements and informal arrangements were concluded on this issue, with formal agreements in eight companies and informal arrangements in a further eight. The European Works Council was involved in negotiating these agreements at five companies.

The formal agreements or informal arrangements on transnational restructuring programmes can be divided into two categories. The first category involves agreements and arrangements that stipulate general guidelines applicable to all transnational restructuring programmes. The second category relates to imminent or ongoing restructuring programmes which are regulated in varying degrees of detail. In a qualitative study of transnational company agreements completed in 2011, the authors described the issues in this second category as “politically the most important and explosive, since restructuring programmes often go hand in hand with far-reaching negative repercussions for employees (redundancies, relocations, deterioration of conditions of employment). It is usually difficult for employees to arrive at a common position, since employees at different sites are affected in different ways by decisions on investment, location or outsourcing of parts of the business. As a result they can and often do find themselves competing with each other.” (Rüb et al.: 231)

Agreements stipulating guidelines for managing restructuring programmes were concluded at two companies. In both cases, measures were agreed aimed at keeping redundancies to a minimum in the event of restructuring programmes.
Seven companies have European company agreements containing measures relating to the implementation or mitigation of specific transnational restructuring programmes. The relevant agreements for five of these companies (Ford, General Motors Europe, Alstom, Schneider Electric and ArcelorMittal) are recorded in the EU database, albeit not in their full versions. Furthermore, the relevant agreements on this issue are well documented for at least four companies (for Ford, ArcelorMittal and Daimler, see the case studies in Rüb et al. 2011; for General Motors Europe, see Haipeter 2006, Hauser-Ditz et al. 2010, Weinert 2007).

The informal arrangements concluded with regard to restructuring programmes also cover both general guidelines applicable to all restructuring programmes (for example the principle of only using redundancies as a last resort or using short-time working to manage crisis situations) and arrangements regulating the details of specific restructuring programmes that have been arrived at as a result of the information and consultation procedure within the European Works Council. In one company, for example, corporate management and the EWC regularly agree on social and compensation measures to mitigate the impact on employees of transfers of production. When another company sold off some of its business units, informal arrangements were struck regarding the new owners and social measures to mitigate the impact on the affected employees. There are a number of other examples where, as a result of the information and consultation procedure, the EWC has reached an arrangement with corporate management on the specific way in which restructuring measures should be implemented (such as ruling out redundancies for operational reasons, or guarantees that existing wage and salary levels will be maintained in the event of a divestment).

2) Monetary issues

Negotiating monetary issues is generally the trade unions’ main task. In several instances, monetary aspects were negotiated as part of formal agreements on the implementation of restructuring programmes. This was the case at Ford, for example, with regard to guarantees of acquired rights including wages and salaries for employees affected by spin-offs and at Daimler with regard to the payment of a welcome bonus to employees choosing to move to a sales company that had been spun off (for further details, see the case studies in Rüb et al. 2011). However, the only company where monetary issues were actually the main topic of the agreement was EADS, where a number of profit-sharing agreements were concluded (ibid.).

In contrast, there were four informal arrangements regulating monetary issues. The relevant topics were as follows: a Europe-wide profit-sharing bonus, a bonus scheme for employees in the sales department, standardisation of pay scales and payment of the standard national minimum severance pay.
3) HR development and planning

Formal agreements in the sphere of HR development and planning were concluded at seven companies. Five of these companies had a French industrial relations tradition and used the EMF procedure to arrive at the agreements. The topics regulated by the agreements were employment and skills development (in some instances as part of a forward-looking change management process), equal opportunities and anti-discrimination policy, and target-setting interviews. The European Works Council only negotiated and signed the agreement at one of the seven companies.

Three companies concluded informal arrangements on matters relating to HR development and planning. The topics regulated were measures to improve gender equality in one national section of the company, measures to increase job security by enhancing employability and restrictions on the number of temporary workers (to 10-15% of the total workforce).

4) Health and safety and data protection

This area covers key issues relating to employee protection – the protection of their physical wellbeing and the protection of their personal information against unauthorised access by third parties.

Six companies concluded formal transnational agreements on health and safety in the workplace. Three covered all of the company’s global operations, while the remaining three were confined to Europe. The agreements include both specific (minimum) standards (e.g. compliance with guidelines on working with hazardous heavy metals) and procedural rules and structural measures such as the establishment of special health and safety committees.

Eight companies concluded informal arrangements relating to health and safety in the workplace. These informal arrangements stipulated specific minimum standards, harmonised standards across Europe (by applying the high standards of the country where the company has its European HQ to the rest of Europe) and introduced procedures involving the EWC in monitoring implementation of health and safety regulations (auditing, reporting, joint health and safety management). Some informal arrangements also addressed specific health and safety issues such as high forklift truck accident rates or the measurement and management of blood lead levels.

No formal agreements have yet been concluded in the European metalworking sector on the topic of data protection. However, three European Works Councils have concluded informal arrangements with European management on the protection of employees’ personal information.

5) In-house industrial relations arrangements

This area covers the rights and resources of internal employee representation bodies (works councils and trade unions) and the relationship or interaction
between these bodies and the relevant local, national or transnational management functions.

In-house industrial relations arrangements are an important element or the main topic of formal agreements at eleven companies in the European metalworking industry. Some of these formal agreements are explicitly geared towards improving the rights (industrial relations rights in general, information and consultation rights, right to participate in employee surveys) and resources of local employee representation bodies. One formal agreement of particular note is Volkswagen’s Global Charter on Labour Relations that extends the co-determination rights enjoyed by employee representatives in Germany to all of the company’s other locations throughout the world. In addition, the “anticipation of change” agreements that have mostly been concluded in French companies using the EMF procedure include a section aimed at strengthening the information and consultation rights of employee representation bodies at all levels (including the EWC) with regard to change processes within the company and the resulting HR policy requirements (particularly in terms of training and continuing professional development). In a similar vein, some formal agreements on equal opportunities or health and safety in the workplace also contain regulations creating specific local, national or transnational structures for facilitating relations between employee representatives and the relevant members of management on these issues. Finally, Ford and EADS have concluded formal agreements establishing a negotiating procedure for transnational company agreements.26

Four European Works Councils have concluded informal arrangements with management in this area. The arrangements dealt with provision of information to local employee representation bodies, presentation of reports by central management at local sites and participation of local employee representatives in an employee survey conducted by management.

6) Basic minimum social and ethical standards

These are formal agreements and informal arrangements relating to international standards such as the ILO’s core labour standards, the Global Compact or the OECD Guidelines for Multinational Enterprises.

There were 22 international framework agreements on this topic, making them the main type of agreement in this area. There are also a number of formal agreements with similar content that are not recognised as international framework agreements by the global trade union federations. These include the “Principles of Social Responsibility” adopted by General Motors Europe in 2002, Ford’s 2003 “Social Rights and Social Responsibility Principles”, both of which only cover Europe, and the 2007 “Principles of Social Responsibility in Labor Relations in the ThyssenKrupp Group” which,

26. We regard these as formal agreements of the second order, since they regulate the role of the trade unions as well as the rights and operating procedures of the EWC.
although they are global in nature, were adopted without the signature of the IMF (see European Commission 2012). Finally, this area also includes formal agreements centred on the ethical behaviour of employees and in particular management (compliance).

No informal arrangements were concluded on this subject matter.

7) Other issues

Two companies concluded other informal arrangements, one on the establishment of standard indicators (e.g. for pensions, absenteeism, etc.) and one on a continuous improvement suggestions system. No further details are available for these arrangements.

Figure 21 Topics covered by formal agreements and informal arrangements

Overall, it is evident that formal agreements and informal arrangements cover a similar range of topics. Basic minimum social and ethical standards are the only area that appears to be the exclusive preserve of formal agreements. Meanwhile, one of the main areas where EWCs have been involved in concluding informal arrangements is the protection of employees’ personal rights (health and safety, data protection). However, a significant proportion of informal arrangements also address transnational restructuring programmes and monetary issues.

3.2.4 Level of detail contained in agreements and arrangements

The level of detail contained in both formal agreements and informal arrangements varies considerably. It ranges from vague statements of intent and general guidelines to precisely defined rights to specific benefits or the establishment of concrete structural measures. An objective appraisal of the level of detail contained in the different formal agreements and informal arrangements would require a detailed analysis of their content, something that falls outside the scope of this study. In any case, it would not have been possible to perform a systematic analysis, since we only have the texts of some
of the formal agreements, whilst informal arrangements are, by their very nature, rarely available in written form.

We have therefore been forced to rely on the subjective opinions of our interviewees, which are presented below.

The majority (57%) of respondents rated their formal agreements as relatively good, both in terms of level of detail and how binding they were. This was especially true of European agreements (70%), but not of joint declarations (100% rated as relatively poor) or international framework agreements (50/50).

In contrast, half of the EWC members interviewed rated their informal arrangements as relatively poor both in terms of level of detail and how binding they were, although it should also be pointed out that more than a third rated them as relatively good on both counts. In the remaining three cases, the fact that several very different informal arrangements had been concluded made it impossible to draw any general conclusions about how detailed or binding these arrangements were.

![Figure 22] Level of detail in formal agreements and informal arrangements

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<thead>
<tr>
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<th>formal agreements involving EWCs</th>
<th>informal arrangements involving EWCs</th>
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<tbody>
<tr>
<td>high</td>
<td>5</td>
<td>10</td>
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<tr>
<td>average</td>
<td>8</td>
<td>3</td>
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<tr>
<td>low</td>
<td>7</td>
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</tbody>
</table>

N.B.: no data available for one EWC’s formal agreements and one EWC’s informal arrangements

3.2.5 Initiators of negotiations in the study sample companies

In eleven of the 15 companies (74%) for which data are available, the European Works Council was the sole or joint initiator of the formal agreements. Management was the sole initiator in two cases and the trade unions were the sole initiator in the remaining two.

The trade unions were sole or joint initiators of formal agreements in five companies (33%). They were especially likely to be involved in initiating negotiations for an international framework agreement, with three of the five cases relating to companies that only concluded one international framework agreement. By contrast, the trade unions were only involved in initiating other types of formal agreement in two out of 12 cases.
Management were sole or joint initiators of formal agreements in 15 companies (61%). If we disregard the cases where only an international framework agreement was concluded, this figure rises to as much as 75% (9 out of 12 instances).

Informal arrangements, on the other hand, were mostly initiated by employee representatives, with only 6 out of 21 informal arrangements (29%) being jointly initiated by the EWC and management. The European Works Council was always either the sole (11 cases) or joint (10 cases) initiator of informal arrangements. The trade unions, however, were only involved in initiating four informal arrangements (19%).

3.2.6 Signatories and (co-)negotiators

Full details of the parties involved in negotiating the formal transnational agreements in the European metalworking sector as a whole are not available (for details of the different types of EWC involvement in the negotiation of transnational company agreements where trade unions are the lead negotiating partners, see Rüb et al. 2011: 209ff.). However, we did ask a specific question about the involvement of the EWC in negotiating formal transnational agreements in the companies in our study sample. For the companies outside our sample, we opted to use the formal criterion of whether the agreement had been signed by the EWC as an indicator of the EWC’s involvement in the negotiations.
In 22 of the 34 companies with formal transnational agreements, including 14 companies in our study sample, the European Works Council was a (co-)signatory of at least part of the agreement. Our sample included one further case where the EWC had been directly involved in the negotiations but was not a signatory of the agreement in its own right. Consequently, at least 23 EWCs can be said to have been involved in concluding formal agreements. In the remaining 11 cases, the trade unions were the company’s official negotiating partner and the official party to the agreement on the employee side.

EWCs were signatories or (co)-negotiators of 13 of the 22 international framework agreements concluded in the European metalworking sector.

Table 1 shows a detailed breakdown of the signatories of formal agreements concluded in the metalworking sector. 63% of these agreements were concluded by company works councils, including 26% where the works council was the only signatory on the employee side. The trade unions were co-signatories of 64% of the agreements and sole signatories of 27%. Finally, European Works Councils were co-signatories of 60% of the agreements and sole signatories of 26%.

<table>
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<tr>
<th>Signatories of formal transnational company agreements in metalworking sector</th>
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<tr>
<td>Company employee representation bodies</td>
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<tr>
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<td>World company council</td>
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<td>EWC</td>
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</table>

Based on the authors' analysis of the seventy officially recorded and eight newly discovered formal transnational agreements in the metalworking sector.

A more detailed breakdown of the most recent agreements points to an increase in negotiations led by the trade unions. As can be seen in Figure 25, over the past two years EWCs were only involved in the negotiation and conclusion of agreements in four out of ten instances (compared to twelve out of 15 agreements concluded in the past five years and seven out of nine agreements concluded more than five years ago).
This could be partly due to the number of unreported formal agreements concluded by EWCs being higher than the number of unreported formal agreements negotiated and concluded by the trade unions. However, it may also point to the trade unions having increased their efforts to negotiate and conclude agreements with companies. The six formal agreements negotiated by the trade unions over the last two years comprise four agreements with French companies negotiated using the EMF procedure and two international framework agreements in Scandinavian companies.

A more detailed picture of the parties involved in negotiating agreements is available for the study sample, since a specific question was asked on this issue in the survey (See Figure 26).

The EWC was not involved in the negotiation of formal transnational company agreements in two of the companies in our sample. Meanwhile, the trade unions were involved in negotiating eleven out of 14 agreements (79%). The European Works Council was the sole negotiating party in three cases, while there were two cases where national trade union officials took part in the negotiations, but EMF representatives did not. The EMF Secretariat
Transnational company agreements and the role of European Works Councils in negotiations

participated in the negotiating process in three instances. Finally, the EMF coordinator was involved in his capacity as the company’s national trade union expert in two of the three companies (for which the relevant information is available) where only an international framework agreement was negotiated and concluded.

In contrast to formal agreements, informal arrangements seem to be much likelier to be concluded by company-level actors and EWC. The trade unions were not involved at all in negotiating ten of the 21 informal arrangements (48%). National trade union officials were involved in one of the remaining eleven cases, but not the EMF coordinator or the EMF Secretariat. Indeed, the EMF Secretariat was not involved in any of the informal arrangements. EMF coordinators are likelier to be involved in negotiating informal arrangements if they have close ties with the EWC.

### 3.3 Characteristics of companies with formal agreements and informal arrangements

#### 3.3.1 Nationality of the company

On the basis of where companies have their official European headquarters, the companies’ transnational agreements are spread across just eight of the 27 EU member states. Moreover, if those companies that only concluded international framework agreements are disregarded, the European HQs of the remaining companies are confined to just four countries: France, Germany, Luxembourg and the Netherlands.

![Location of European HQ of companies with formal transnational agreements (all known cases)](chart)

Figure 27 Location of European HQ of companies with formal transnational agreements (all known cases)

[27. The countries where companies have their official European HQ were taken from the EMF’s EWC database.]
Information about the location of the corporate head office was only obtained for the study sample. Three companies had a corporate head office located outside the EU, two of which were in the US and one in Switzerland. Once again, the corporate head offices of companies with formal transnational agreements tend to be located in either Germany or France.

Figure 28  Location of corporate head office of companies with formal transnational agreements (study sample)

A pronounced country-of-origin effect is evident here. Transnational company agreements were predominantly concluded in companies whose global head office and European HQ is located in Germany or France. Figures 29 and 30 show that this effect in favour of Germany and France is not simply a function of the strong presence of multinational enterprises in these countries, both of which in fact have a disproportionately high number of formal transnational agreements.  

Figure 29 shows that 38% of all the companies in the study sample have their corporate head office in Germany or France. However, a disproportionately high figure of 65% (13 out of 20) of companies with formal transnational agreements come from these two countries. This country-of-origin effect is even more pronounced if we look at the location of companies’ European headquarters. Companies whose European HQ is located in Germany or France are significantly over-represented, accounting for 76% of companies with formal transnational agreements (whereas just 41% of all the companies in the study sample had their European headquarters in Germany or France).

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28. The significance level per Fisher is under 0.001.
29. The proportion of German and French companies is over 60% both for companies that only concluded international framework agreements and for all other companies with formal transnational agreements.
30. This applies both to global agreements (although at 64%, the figure is slightly lower) and in particular to formal European agreements, where the figure is as high as 88%.
A comparison between France and Germany yields the following picture (see Figure 30):

Companies whose European HQ is located in France account for 14% of all European metalworking companies with an EWC, but 26% (9 out of 34, or almost double the amount) of all companies with formal transnational agreements. This figure rises to as much as 33% if international framework agreements are disregarded (seven out of 20).

28% of the companies in the sample have their European headquarters in Germany. However, the figure for companies with formal transnational agreements whose European HQ is in Germany is almost twice as high, at 50% (17 out of 34).
German companies account for 45% of companies with international framework agreements (ten out of 22) and 53% of companies that have concluded formal transnational agreements that are not – or at least not exclusively – international framework agreements (ten out of 19).

German companies turn out to be responsible for an even larger proportion of formal transnational agreements if we focus only on those cases where the European Works Council was involved in concluding the agreement. Companies with formal agreements involving their EWCs are based in just three countries: 17 out of 22 metalworking companies that concluded formal agreements with their EWC have their European HQ in Germany (equivalent to 77% of the total), four in France (18%) and one in the Netherlands (5%).

Figure 31 EWC involvement in formal transnational company agreements, by location of European HQ (overall statistical population)

The spread of company nationalities is somewhat wider if we look at the location of central management in the companies in the study sample with formal agreements involving the EWC. In this case, the number of countries rises to five, since the EWC was involved in concluding the agreement in all three companies with formal transnational agreements that are based outside the EU (two in the US and one in Switzerland). Nevertheless, central management is still located in Germany in 60% of all companies with formal transnational agreements.

31. The breakdown for international framework agreements involving EWCs is as follows: Germany 77% (10 out of 13), France 15% (2 out of 13) and the Netherlands 8% (1 out of 13).
Figure 32  EWC involvement in formal transnational company agreements, by location of corporate head office (study sample)

The nationalities of companies with informal arrangements are rather more evenly and widely distributed. The location of these companies’ European headquarters is as follows: Germany (ten companies), UK (five), Belgium (two), the Netherlands (two), France (one) and Norway (one). The figure of ten German companies with informal arrangements is more or less in line with what one might expect based on the overall proportion of companies that have their European HQ in Germany (48% of German companies have informal arrangements, while 42% of all the companies in the study sample have their European HQ in Germany). One striking phenomenon is that a disproportionately high percentage of companies whose European headquarters are in the UK have concluded informal arrangements with their EWCs. 24% of companies with informal arrangements have their European HQ in the UK, compared with just 15% of all the companies in the study sample.

Figure 33  Location of European HQ of companies with informal transnational arrangements (study sample)
There is a clear tendency for companies with informal arrangements involving their EWCs to have their corporate head office in either the US (eight cases) or Germany (seven). Companies with their corporate head office in these two countries account for 71% of all companies that have concluded informal arrangements involving their EWCs (whereas only 62% of all the companies in the study sample are based in these two countries). The other companies with informal arrangements have their central management located in the UK, Italy, Japan, Canada, Norway and the Netherlands (one in each country).

It is interesting to note how few French companies have concluded informal arrangements (one out of 13 companies based on the location of their European HQ and none out of ten based on the location of the global corporate head office). More research is needed to understand why French companies conclude formal transnational agreements but hardly any informal arrangements.

3.3.2 Size of companies

The indicator selected to determine company size was the number of employees in Europe. For the companies in the study sample, we asked interviewees what their company’s European headcount was during the telephone interviews. However, since for most other companies European employee numbers are only rarely publicly available, our headcount data are confined to the companies in our sample.

In our sample, the majority of companies that concluded formal transnational agreements were large companies. 85% of the companies with formal transnational agreements (17 out of 20) had more than 10,000 employees in Europe, while 70% (14 out of 20) had more than 20,000.
If we disregard the seven instances where only international framework agreements were concluded, then all the remaining 13 companies with formal transnational agreements had more than 10,000 employees and eleven of them (85%) had more than 20,000. In contrast, international framework agreements were also to be found in companies with under 10,000 employees and were more evenly distributed overall across different company sizes.

The companies identified as having informal transnational arrangements were distributed across all size categories, although there was a relatively high proportion of smaller companies with fewer than 10,000 employees (nine out of 21, or 43%).

Figure 37 compares the number of companies with formal agreements and informal arrangements in each size category. It illustrates that formal transnational agreements in the European metalworking sector tend to be concluded by large companies, whereas informal transnational arrangements are more likely to be concluded by smaller companies.
3.4 Characteristics of EWCs involved in negotiations

Full details for the entire statistical population are available for the variables relating to “type of EWC constitution” (Art. 6 versus Art. 13 agreements), “age of the EWC” and “nationality of the trade union responsible for advising the EWC on behalf of the EMP”. As for the variable relating to “nationality of the EWC chair”, we only have data for the companies in the study sample.

3.4.1 Relationship between type of EWC constitution and the conclusion of formal agreements or informal arrangements

Of the 23 EWCs in the metalworking sector known to have concluded formal agreements, 13 (57%) were founded in accordance with the statutory procedure and 10 (43%) were based on “voluntary” agreements that maintained the standards of previously concluded EWC constitutions (in accordance with Article 13.1 of Directive 94/45/EC or Article 3.1 of Directive 97/74/EC). In the case of informal arrangements involving EWCs, the ratio of EWCs founded in accordance with the statutory procedure to EWCs based on voluntary agreements was 13 to 8 (62% versus 38%).

It was not possible to detect any influence of EWC constitution type on the probability of formal agreements or informal arrangements involving the EWC being concluded. Indeed, the distribution for EWCs with both formal agreements and informal arrangements is almost the same as the distribution of the different constitution types in the statistical population as a whole (61% versus 39%) and exactly the same as in the sample (62% versus 38%). Consequently, there was nothing in our study to support the finding of Carley and Marginson (2000) referred to earlier in this study that EWCs based on Article 6 agreements tend be more active than EWCs based on Article 13 agreements.
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The ratio changes in the case of companies where the negotiation of formal transnational agreements was led by the trade unions. Of the eleven companies that negotiated formal agreements without involving the EWC, three had EWCs established in accordance with the statutory procedure (27%) and eight had EWCs based on voluntary agreements (73%). However, there is some evidence to suggest that this could be due to the age, nationality and company size of these EWCs rather than differences in EWC constitution type. A qualitative analysis of the negotiation of formal transnational company agreements showed that the question of whether the negotiations were led by the trade unions or the EWC had very little influence over the degree of development of the EWC. Instead, the key drivers of EWC success appear to be national industrial relations culture and, by extension, the perception of what the EWC’s role should be (Rüb et al. 2011).

Figure 38  EWC constitution type and formal agreements involving the EWC (overall statistical population)

Figure 39  EWC constitution type and informal arrangements involving the EWC (study sample)
3.4.2 Relationship between EWC age and the conclusion of formal agreements or informal arrangements

The overwhelming majority (91%) of European Works Councils in the metalworking sector that have negotiated and concluded formal transnational agreements are more than ten years old and none of them have existed for five years or less. This suggests that before they can begin concluding formal agreements, EWCs need to develop their own internal operating and communication structures; their members need to learn to trust each other and they need to build a working relationship with corporate management. Once they have done this, their chances of concluding formal agreements will be significantly better.\textsuperscript{32} The findings presented in Section 3.4.1. rule out any possible influence of EWC constitution type on this distribution (something that might have been suspected owing to the fact that a disproportionately high number of older EWCs are based on “voluntary” agreements).\textsuperscript{33}

European Works Councils that have concluded informal arrangements tend to be younger than those that have concluded formal agreements. Four out of 21 EWCs that have concluded informal arrangements (21%) are five years old or less, four are ten years old or less (21%) and thirteen have existed for over ten years (62%).\textsuperscript{34} This might lead us to suspect that informal arrangements are a precursor to formal agreements, i.e. that an EWC that has concluded informal agreements is likelier to conclude formal agreements at some point in the future. However, further research is required to establish to what extent this is actually the case.

Figure 40 EWC age and formal/informal agreements involving the EWC

\textsuperscript{32} Although some well-known cases from other industries show that even very young EWCs can play a role in negotiating formal agreements (see e.g. the UniCredit case study in Rüb et al. 2011: 200ff.).

\textsuperscript{33} However, there is a correlation between EWC age and company size, although our data do not allow us to ascertain whether it is EWC age or company size that is the key variable.

\textsuperscript{34} This more or less corresponds to the age distribution of the EWCs in the sample, where 15% were “under five years old”, 19% “between six and ten years old” and 66% “more than ten years old.”
3.4.3 Nationality of the EWC chair

As a rule, the EWC chair comes from the national delegation that represents the largest number of employees. One might expect that this would usually be the same as the country where the company has its European headquarters. This assumption is largely confirmed by the figures showing the nationality of the EWC’s chair in companies where formal agreements and informal arrangements have been concluded with the EWC. The picture is dominated by EWCs with German chairs.

Figure 41  Relationship between nationality of EWC chair and number of formal agreements and informal arrangements (study sample)

Figure 42 shows that this phenomenon is not solely due to the bias in our sample. In fact, a disproportionately high number of EWCs with German chairs have been involved in concluding formal agreements and informal arrangements.

Figure 42  EWCs with German chair and formal and informal transnational agreements (study sample)
A comparison of the nationality of the EWC’s chair and the country where the company’s European HQ is located throws up a number of discrepancies, especially with regard to EWCs involved in concluding informal arrangements (see Figure 43). It is particularly interesting to note that there are more German and Spanish EWC chairs relative to the location of the companies’ European HQs and fewer EWC chairs from Belgium and especially the UK.

Figure 43 Nationality of EWC chairs in relation to location of company’s European HQ, for companies with informal transnational arrangements (study sample)

3.4.4 Nationality of the trade union responsible for advising the EWC

In 19 of the 34 EWCs in companies with formal transnational agreements, the trade union responsible for advising them on behalf of the EMF was IG Metall. Five were advised by French trade unions and one each by trade unions from Belgium, Norway, Switzerland, Sweden, Italy and Spain. In one company, the EMF advised the EWC directly, whilst there were three companies where the trade union responsible for advising the EWC had not yet been determined. 56% of the EWCs in companies with formal transnational agreements are thus advised by IG Metall (whereas IG Metall advises just 25% of all EWCs in the metalworking sector). The association between IG Metall advising an EWC and the existence of formal transnational company agreements is statistically significant. Our data did not allow us to establish the extent to which the location of the company’s HQ determined the likelihood of the EWC being advised by IG Metall or vice versa.

35. The significance level per Fisher is below 0.001.
IG Metall was responsible for advising ten of the 21 EWCs that had concluded informal arrangements\(^ {36}\), whilst five were advised by UK trade unions, one by a French trade union and one by a Dutch trade union. There were four companies where the trade union responsible for advising the EWC had not yet been determined.\(^ {37}\)

\(^{36}\) The ten EWCs advised by IG Metall account for 48% of the total. However, since 44% of all the EWCs in the sample were advised by IG Metall, no statistically significant association was found between EWCs advised by IG Metall and EWCs with informal arrangements.

\(^{37}\) In general, one would expect a weaker association between the trade union responsible for advising the EWC and whether or not the EWC has concluded an informal arrangement, since the trade unions tend to be less involved in informal arrangements concluded by EWCs than formal agreements involving EWCs (see 3.2.6).
3.5 Reasons for concluding formal agreements and informal arrangements

3.5.1 Reasons for initiating and concluding negotiations

The reasons given for initiating and concluding formal agreements and informal arrangements were restructuring (site closures, relocation or divestment of business units), health and safety issues (workplace accidents, blood lead levels), employee surveys (where the EWC wanted the right to participate in the survey) and, on a more positive note, outstanding business results that resulted in employee representatives demanding a share of the profits. One striking finding of our survey is that informal arrangements seemed to be much more frequently based on a specific issue than formal agreements (specific issues were cited by 95% of respondents for informal arrangements as opposed to 47% for formal agreements).

Where management signals that it is prepared to negotiate on a particular issue or even initiates the negotiations itself, there is a strong incentive for the EWC to enter the negotiations and try to ensure their success. There were some cases where discussions between the EWC and management on a particular topic resulted in a consensus that some form of agreement was needed, for example with regard to high accident rates in certain countries or the adoption of a social charter aimed at guaranteeing minimum social standards throughout the group. Management initiated the negotiations of its own accord in a number of instances, particularly for formal agreements. On the other hand, respondents felt that

38. The specific reasons cited for informal arrangements included:
   - Management’s announcement that they were going to carry out a worldwide employee satisfaction survey without any involvement of employee representatives (except in the country where the company had its head office);
   - A discussion between EWC and management regarding disparities in accident rates between different countries that led both sides to agree on the need to harmonise workplace safety standards;
   - A site closure that led to an informal arrangement on the content of the redundancy package;
   - Management plans to relocate business units;
   - Exceptionally good business results that led to an informal profit-sharing arrangement being concluded;
   - High accident rates causing employees to take sick leave, thereby generating considerable costs for the company;
   - Two fatalities as a result of accidents at sites in different countries;
   - A worldwide employee survey carried out by the company’s US management. They posted the results online without previously informing the EWC and the national employee representatives;
   - The suspicion that blood lead levels were not being properly recorded at one site and that false data were being published.

39. Our survey did not investigate their reasons for so doing. However, the qualitative study that we carried out between 2009 and 2011 identified the following management motives: “We hope it will simplify negotiating processes and thus reduce transaction costs, help to harmonise divergent national regulations throughout Europe, enabling more centralised regulation and management of HR policy and industrial relations in the individual countries (e.g. with a view to promoting a cooperative approach to industrial relations in all countries). We hope it will strengthen employees’ and employee representatives’ perception of working for a European company and allow us to identify and agree on transnational (compromise) solutions to transnational problems and disputes arising during restructuring programmes. And finally, we hope it will ensure cooperative involvement of the EWC and/or the trade unions in the company’s restructuring initiatives, so that any potential disputes can be kept to a minimum (desire to promote good relations between management and employee representatives).” (Rüb et al. 2011: 225)
only 14% of informal arrangements came about as a result of management’s willingness to negotiate (as opposed to 67% for formal agreements).

Another reason for EWCs to negotiate formal agreements or informal arrangements with management is the expectation that, irrespective of the actual result of the negotiations, doing so will strengthen the EWC both in terms of its internal organisation and cooperation and as a bargaining partner vis-à-vis management. This was cited as a reason for 47% of formal agreements but just 24% of informal arrangements.

The trade unions’ desire to initiate negotiations and conclude agreements was primarily cited as the key reason in the case of international framework agreements.

**Figure 46**  Reasons for formal agreements and informal arrangements

<table>
<thead>
<tr>
<th>Reason</th>
<th>Formal Agreements</th>
<th>Informal Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific reason</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Management willing to negotiate</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Strengthen EWC</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Trade union initiative</td>
<td>7</td>
<td>0</td>
</tr>
</tbody>
</table>

### 3.5.2 Reasons for concluding informal arrangements instead of formal agreements

Informal arrangements are likelier to be concluded when there is a culture of informal interaction in the country where the company has its head office. Thus, some interviewees attributed their policy of concluding informal arrangements to the existence of a tradition of trust and cooperation between employee representatives and management that made formal agreements unnecessary for both sides. One respondent explained that if you shook hands on a deal at their corporate HQ in the Netherlands you could still rely on both parties to keep their word.

The obstacle to formalising informal arrangements, where this is desired, tends to be on the management side. 65% of those who answered this question (13 out of 20) said that informal arrangements could not be formalised because management had refused to do so. Some interviewees believed that

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40. Only 20 of the 21 members of EWCs with informal agreements answered this question.
the main reason for this was opposition from the company’s non-European corporate management (in the US or Japan) who were imposing this policy on the European management. Others stated that their German corporate management was opposed in principle to formalising informal arrangements so as not to set a precedent that might have knock-on effects for other companies or lead to difficulties with their employers’ association. Some put management opposition down to Anglo-Saxon or French industrial relations traditions, where the culture of works council-based co-determination was, they said, a completely foreign concept. A fourth group of respondents simply described their experience of management refusing their calls for more formal agreements. In one case, the EWC had proposed the negotiation of a formal agreement on minimum social standards, but the company simply drew up a unilateral Code of Conduct instead.

In contrast to management, European Works Councils are much keener to formalise the outcomes of their negotiations. Only 20% of the interviewees (four out of 20) said that the EWC had shown little interest in formalising negotiation procedures and outcomes. The reasons cited in these four cases were as follows: (1) the subjects covered by the informal arrangements that they had concluded did not require more formal regulation; (2) they lacked the experience and competences needed to negotiate formal agreements; (3) the EWC did not wish to jeopardise the trust that it had built up with management by calling for more formal agreements; and finally (4) the French EWC delegates had blocked the negotiation of a formal agreement.

Figure 47 Reasons for informal arrangements

3.6 European Works Councils that have not concluded formal agreements and informal arrangements

This section of the analysis will concentrate on the 53 EWCs (approx. 65%) in our sample where we found no evidence of formal agreements and/or informal arrangements. The main aim of the study was to investigate why companies
had failed to sign any formal agreement or informal arrangement. We focused on three possible causes:

- the extent to which interviewees perceived a need to enter negotiations with their European management in order to regulate particular issues,
- the extent to which internal EWC issues affected their ability to take action and the EWCs’ perception of their own role and
- Management’s stance on whether the EWC should have a negotiating role and interviewees’ assessment of how likely their management was to consider involving the EWC in any negotiations.

The next section will provide a more detailed description of our study’s findings with regard to this issue. Figure 48 provides an overview of the results.

Figure 48: Reasons for failure to conclude formal agreements or informal arrangements

3.6.1 Perceived need for negotiations

It appears that there is a widely perceived need for European agreements and informal arrangements. Three-quarters of respondents from EWCs that had not concluded any formal agreement or informal arrangement (40 out of 53) said that they perceived a need to enter into negotiations with management on specific issues. Drilling down into the data, it becomes clear that interviewees from companies whose (European) head office is in Germany were significantly less likely to see a need to negotiate with their European management.41 “Only” half of the respondents in this category (9 out of 18) identified a need for negotiations, whereas the equivalent figure for interviewees from companies in other countries was 88% (31 out of 35 interviewees from companies whose European HQ is not located in Germany).

41. The significance level per Fisher is 0.005.
The EWC members of German companies who we interviewed cited the following reasons for their opinion that their EWC had little need to negotiate agreements:

- Their national representation structures such as central or group works councils and supervisory boards already offered them plenty of scope for influencing management’s decisions.
- There were no problems that required European agreements.
- The company’s decentralised or heterogeneous structure prevented direct competition between different sites in Europe, making it unnecessary to regulate restructuring programmes at European level.

These explanations highlight the influence of the relatively strong rights enjoyed by German works councils and are indicative of a “country-of-origin-effect” in Germany. This strong position within their own country influences the way that German respondents perceive problems, since they only see a need for the EWC to get involved when specific problems arise, such as pressure from transnational competitors, that cannot be addressed via the national structures and their privileged access to central management in Germany.

The specific topics where interviewees identified a need for agreements to be negotiated were largely identical to the subjects covered by existing formal agreements and informal arrangements (see Figure 49). Interestingly, however, although a relatively large number of existing agreements regulate basic minimum social and ethical standards, not one single respondent mentioned a need to negotiate agreements on this topic.
The main area where interviewees saw a need for agreements was with regard to restructuring programmes. This perceived need for negotiations could be broken down into the same two categories that we established for the existing formal agreements and informal arrangements identified in our study. One group of interviewees saw a need for negotiations that enable them to influence the content of concrete imminent or ongoing restructuring initiatives in order to keep the negative consequences for employees (particularly redundancies) to a minimum. The other group identified a need for negotiations to establish guidelines on the general management of transnational restructuring programmes. These would be geared towards preventing competition between different sites within the company and countering the management tactic of playing off employees from different sites and countries against each other. Several interviewees cited the need for Europe-wide regulation of the way that production volumes are shared out among different countries and sites.

The second most commonly identified need for negotiations concerned issues relating to the protection of individual rights in the areas of health and safety and data protection. Respondents felt that there was a particular need to harmonise standards throughout Europe in this area. Some people thought that a best practice approach to harmonisation should be adopted, with particularly comprehensive national standards being rolled out across the whole of Europe.

A need for negotiations was also identified with regard to HR development and planning. Specific topics mentioned in this area included training and continuing professional development, phased early-retirement and the formulation of standard European guidelines for management conduct towards employees. Temporary agency work was also a key issue in this area. Interviewees cited a need to limit the extent of agency working by setting upper limits for the whole of Europe on the number of agency workers and the number of hours they work. They also pointed to the need for European agreements guaranteeing equal treatment of agency workers and permanent staff (particularly with regard to pay).
The interviewees also identified a need for negotiations on the following topics:

- harmonisation or improvement of social standards, e.g. with regard to working time, retirement or the company’s social responsibilities in general,
- monetary issues, particularly with regard to European harmonisation of financial fringe benefits and one-off payments such as incentive payments, profit-sharing bonuses and annual bonuses,
- bringing the information, consultation and co-determination rights of employee representatives in the different countries into line with the company’s best practice in order to facilitate in-house industrial relations, and finally,
- a single European standard for continuous improvement suggestions.

3.6.2 Ability and desire of EWCs to enter negotiations

This section of the questionnaire was designed to find out to what extent the respondents thought that their EWC was at all capable of entering into negotiations with management in view of its internal structures and the degree of cooperation among its members. It also aimed to establish how the different EWCs perceived their role, i.e. whether the majority of the EWC’s members wanted to be involved in negotiations or whether they saw their EWC primarily as an information and consultation body in line with the EWC Directive.

Figure 48 shows that just under half (49%) of the members that we interviewed from EWCs without formal agreements or informal arrangements believed that internal issues in their EWC prevented it from entering into negotiations with management. At 57% (30 out of 53), the figure was eight per cent higher for the proportion of interviewees who felt that their EWC did not perceive itself as having a negotiating role with management.

These figures point to the fact that just because people think their EWC has no desire to negotiate doesn’t necessarily mean that they think it is unable to perform a negotiating role. Indeed, approximately one third of interviewees from the 53 EWCs without formal agreements or informal arrangements (30%) gave different answers to these two questions. Nine respondents – accounting for a not insignificant 17% of all EWCs in which no negotiation were conducted – said that although the internal situation within their EWC meant that it was capable of entering into negotiations with management, the majority of its members had no wish to be involved in such negotiations. There were a further seven cases where the respondents said that the EWC would like to be involved in negotiations but was not in a position to do so. In other words, in these seven cases, while the EWC did aspire to a negotiating role, it was prevented from performing this role by internal issues.
The reasons cited by interviewees for their EWC’s inability to perform a negotiating role largely confirm the findings of the existing EWC literature regarding the factors preventing EWCs from becoming genuinely “European” actors (Müller/Hoffmann 2001). In both cases, the main culprits are the factors that prevent EWC members from building the relationships and trust with each other that are essential if they are to identify their common interests and develop a joint position vis-à-vis management. The reasons most commonly cited in our survey for EWCs’ inability to perform a negotiating role are listed below in descending order of importance:

- direct contact between the EWC members is insufficient and is largely confined to the annual EWC meeting (cited seven times);
- language issues inhibiting direct communication between delegates outside formal meetings, since interpretation is only available during the formal meetings (cited five times);
- a lack of basic operating structures in the EWC (e.g. a steering committee or thematic sub-committees) (cited five times);
- a tendency for delegates to pursue national workplace interests, making it difficult to develop a joint strategy vis-à-vis management (cited five times);
- a high turnover of EWC delegates preventing any continuity in the EWC’s work (cited four times); and
- the existence of very different national industrial relations cultures and the fact that employee representatives in different countries have different rights, meaning that delegates have very different ideas about the role and function of the EWC (cited four times).

Lack of interest in performing a negotiating role was most often ascribed to the fact that the EWC was currently focused on obtaining an adequate flow of information from management. This reason was cited by over a third of respondents from EWCs without formal agreements or informal arrangements. Two distinct categories of EWC are apparent with regard to this issue. The first comprises EWCs that, in the words of one interviewee, “don’t want to run before they can walk”. The primary concern for these EWCs is to build a functioning information process with management. Any thoughts of a possible negotiating role for the EWC will have to wait until this first goal has been achieved. Consequently, interviewees from these EWCs believed that it was too early in the EWC’s development for them to realistically start thinking about negotiating with management. The second category comprises EWCs whose members consciously stick to an information role, since they consider this to be the appropriate function for this body in their company’s particular circumstances. Based on the responses provided by the EWC members in our survey, both groups are about the same size.

Other frequently cited reasons for EWCs not being willing to perform a negotiating role can be summarised under the heading of “influence of national industrial relations cultures and interests”. The main factors at play in this category are different national perceptions and ideas about the EWC’s
role and whether national interests should be pursued through the EWC. The interviewees were particularly critical of the divide that exists between EWC delegates from countries where local works councils are involved in negotiations at national level and delegates from countries where the trade unions are normally responsible for handling negotiations and who therefore have little interest in the EWC taking on a negotiating role.

The interviewees also cited the following reasons for their EWCs not being willing to perform a negotiating role:

- a lack of political support from the EWC chair or the dominant national delegations,
- a tendency for the EWC to stick to the functions stipulated by the relevant legislation,
- opposition on behalf of management preventing any realistic chance of the EWC being involved in negotiations,
- a general lack of interest in a negotiating role on behalf of the EWC members and
- the lack of any real need for negotiations, thus preventing the EWC from seeing itself in this role.

The distribution of EWCs with formal agreements and informal arrangements showed a pronounced country-of-origin-effect towards EWCs with a strong German influence. It would seem reasonable to assume that German EWC members’ perception of what an EWC’s role should be is influenced by the familiarity of German works councils and trade unions with the concept of co-determination, i.e. the understanding that part of a works council’s role is to negotiate and conclude agreements with management. This suspected country-of-origin-effect with regard to EWCs’ willingness to perform a negotiating role is endorsed by the comments of some interviewees who saw national industrial relations cultures and interests as responsible for EWCs’ unwillingness to be involved in negotiations. We might therefore assume that EWCs without formal agreements or informal arrangements are likelier to be receptive to the idea of performing a negotiating role if they are dominated by a German industrial relations culture.

In order to test this hypothesis, we analysed EWCs’ willingness to perform a negotiating role in relation to three variables: “European management located in Germany”, “German EWC chair” and “IG Metall responsible for advising EWC”. The results are presented in Figure 51. The graph shows that there is not a particularly close correlation between the willingness of German-dominated EWCs to perform a negotiating role and whether their European management is located in Germany or whether they have a German chair. There is only a disproportionally high willingness to perform a negotiating role in EWCs advised by IG Metall, but even in the case of this variable, the effect is not statistically significant.
3.6.3 Management’s willingness to negotiate

In 34 of the 53 companies (64%) without formal agreements or informal arrangements involving the EWC, the EWC members who we interviewed accused management of refusing to negotiate with the EWC (see Figure 48). Since you cannot have negotiations without two parties (“it takes two to tango”), management’s refusal to negotiate represents a major obstacle for EWCs wishing to conclude formal agreements or informal arrangements. The most frequently cited reason was the very general observation that management’s strategy vis-à-vis the EWC was simply to do the bare minimum, i.e. to comply with the minimum legal requirements in terms of information and consultation.

In ten of the 34 cases where management was accused of refusing to negotiate, the interviewees answered in the affirmative to all our questions about the employee-side factors affecting the conclusion of formal agreements or informal arrangements (i.e., they thought that the EWC had the need, ability and desire to negotiate). This is equivalent to 19% of the 53 EWCs without formal or informal agreements. Put another way, less than a fifth of the interviewees from companies with no formal or informal agreements felt that management’s refusal to negotiate was the sole reason for the EWC having failed to conclude any formal agreements or informal arrangements with them.

The strategy of refusing to negotiate with the EWC is adopted by management from companies based in countries with very different industrial relations traditions (US, Germany, France, Sweden and Japan). There is a pronounced country-of-origin-effect in the case of companies whose central management is located in the US (Figure 52). Indeed, of the EWC members who we interviewed from EWCs in US-based companies without formal agreement or informal arrangement, not one felt that management was in principle willing to negotiate with the EWC. The most common reason cited by interviewees for management’s unwillingness to involve the EWC in negotiations was that their US head office was fundamentally opposed to employee or trade union co-determination in any shape or form and therefore simply stuck to complying
with the minimum requirements stipulated by the different national laws transposing the Directive. In the majority of cases, the EWC members in our survey reported that their US head office had explicitly forbidden European management from going beyond the information and consultation role defined in the Directive in their dealings with the EWC.

Figure 52 Willingness of management to negotiate at companies with US-based head office

![Willingness of management to negotiate at companies with US-based head office](image)

Other reasons cited by interviewees for US management’s unwillingness to negotiate ranged from the lack of a tradition of cooperative industrial relations in the US right down to open opposition to employee representation structures and trade unions and US management’s obsession with controlling costs, which causes them to see employees and trade unions primarily as cost drivers that need to be kept to a minimum.

However, a desire to avoid any more extensive participation by employee representatives and to preserve management’s prerogative to take its own decisions are given as the reasons for management’s refusal to negotiate with EWCs in countries other than the US, too. Indeed, these were also the two most frequently cited reasons for central management opposition to involving the EWC in negotiations in companies whose head office is in Europe.

In 16 of the 53 companies where the EWC has not been involved in concluding formal agreements or informal arrangements (30%), the EWC had had requests for negotiations rejected by management. The requests for negotiations refused by management covered the full spectrum of topics on which other EWCs have concluded formal agreements or informal arrangements: monetary issues, transnational restructuring programmes, health and safety, HR development and planning, in-house industrial relations arrangements and basic minimum social and ethical standards (see 3.2.3). It is particularly striking that management turned down a total of five employee-side requests for negotiations on monetary issues.42 This could indicate that management’s

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42. More specifically, these requests for negotiations on monetary issues concerned the following topics: profit-sharing, regulation of bonuses, one-off payments and a request to introduce standard European rules regarding company anniversary celebrations.
reluctance to conclude European company agreements is particularly pronounced with regard to monetary issues.43

Notwithstanding the fact that almost two thirds of interviewees were sceptical about management’s willingness to negotiate, some 36% of respondents from EWCs without formal agreements or informal arrangements (19 out of 53) did believe that management would be willing in principle to negotiate with the EWC. The reasons given for management being willing to involve the EWC in negotiations were the existence of a culture of cooperative industrial relations and the belief that management considered the establishment of a European negotiating structure to be in its own interests. In the latter case, it was felt that management saw European-level negotiations as an opportunity to harmonise divergent national standards across Europe, keep transaction costs down by replacing several national or local negotiations with a single set of negotiations at European level and use European-level agreements as a means of resolving national disputes. The findings of our telephone survey thus largely confirm the results of our qualitative study with regard to management motives for concluding European company agreements which are described in footnote 40 (Rüb et al. 2011).

3.7 Prospects and growth potential for formal agreements and informal arrangements

3.7.1 Prospects for formal agreements and informal arrangements

Interviewees were predominantly sceptical about the prospects for formal agreements.

Figure 53 Prospects for formal agreements

---

43. On the other hand, we did identify one company with formal agreements and four companies with informal arrangements on monetary issues (see 3.2.3).
Only six of the 15 respondents from EWCs with formal agreements (40%) expected to conclude more formal agreements in the future, whilst two (13%) were unsure and seven felt it was unlikely that further formal agreements would be concluded. The latter group included five companies that had hitherto only concluded a single formal transnational agreement (and two of the three EWCs where the only formal transnational agreements concluded were single international framework agreements).

The following explanations were given for the more optimistic responses: the negotiation of previous formal agreements had helped to develop a process acceptable to both parties that could serve as a model for the negotiation, conclusion and implementation of future formal agreements; the EWC’s negotiating role was accepted and recognised as a problem-solving mechanism by both parties; central management seemed to be increasingly interested in driving harmonisation of HR and labour policy across Europe through formal European company agreements; the German EWC chair was committed to strengthening the role of the EWC in the future and working towards further formal agreements; and, finally, although the first formal European agreement was a non-binding “joint declaration”, it could serve as a basis for enabling future negotiations.

Meanwhile, the pessimistic responses regarding the likelihood of future formal European agreements were given the following explanations: management had only been willing to conclude a formal transnational company agreement under a very specific set of circumstances (e.g. conclusion of a one-off international framework agreement); there were currently no other issues that needed regulating at European level; and the EWC’s experience of using the EMF procedure had put it off trying to conclude other agreements in the future.

Figure 54  **Prospects for informal arrangements**

![Diagram showing the prospects for informal arrangements with data points indicating the percentage of respondents expecting further arrangements and the increase in importance expected.](diagram.png)
Only three interviewees thought that the existence of an established procedure for concluding formal agreements and a strong desire on behalf of management to continue concluding such agreements made it likely that future formal European agreements would be of increased significance (in terms of how binding they were and/or their content). In a further four cases, respondents said that they did not expect future formal European agreements to become more important because the existing agreements were already very good.

In contrast to formal agreements (in the shape of official contracts), respondents were much more positive about the prospects for informal arrangements.

Just three out of 21 interviewees from EWCs with informal arrangements were sceptical about their future prospects. The reasons given for these sceptical responses were personnel changes in the European management team, the fact that the informal arrangement had been a one-off, and their recent experience of management turning down a request from the EWC to negotiate an agreement on agency working.

Among the 18 interviewees who gave optimistic responses, six felt there was a chance of their EWC progressing towards concluding formal agreements, whilst the remaining twelve expected further informal arrangements to be concluded, although two of them explicitly ruled out the prospect of their EWC concluding formal agreements.

In seven out of 18 (valid) cases (39%), the interviewees said that they did not expect any increase in the importance of future informal arrangements (in terms of how binding they were and/or their content). The most frequently cited reason was that management would refuse more extensive regulation. One respondent cited the high quality of existing informal arrangements, whilst another said that the informal arrangements they had concluded were an exception.

Nine of the interviewees (50%) expected the issue of informal arrangements to gain in importance in the future. The reasons they gave were that the company’s growing presence throughout Europe would cause the EWC’s role to become more prominent and increase the need for European negotiations and informal arrangements; that the positive experience with previous informal arrangements had built trust between the EWC and management, providing a sound basis for future arrangements; and, finally, that the EWC intended to engage in a variety of initiatives and actions to improve the quality of its informal arrangements and gradually work towards the conclusion of formal agreements.
3.7.2 Potential for future increases in the number of formal agreements and informal arrangements

In total, 34 companies with formal transnational agreements were identified in the European metalworking sector, four of which were discovered in the course of our survey. If we extrapolate these figures to the overall statistical population, we get a rather imprecise total figure of between two and 28 metalworking companies with currently unreported formal agreements.\(^{44}\) This enables us to derive a conservative estimate of around 40 companies with formal transnational agreements in the European metalworking sector.

The EWC was involved in concluding the formal transnational agreements in 23 of the 34 companies. Once again, four of these were discovered through our survey. Consequently, a conservative estimate would put the number of companies in the European metalworking sector where the EWC was involved in the conclusion of formal agreements at around 25.

Our sample contained 15 EWCs that had concluded formal agreements with their corporate management. However, only six (40%) of the interviewees from these EWCs thought it likely that further formal agreements would be concluded in the future. Among the 19 other EWCs that have concluded informal arrangements, five interviewees thought it possible that their EWC might progress to concluding formal agreements at some point in the future. Finally, among the remaining 48 EWCs with no formal agreement or informal arrangement, seven interviewees (15%) felt that there was some prospect of their EWC entering into negotiations and concluding formal agreements in the future.\(^{45}\)

This means that in total there are 18 EWCs where there is a prospect of formal agreements being concluded in the future. This figure is very similar to the total of 15 EWCs that have already concluded formal agreements with corporate management in the past. Consequently, our data do not show any evidence of an upward trend in the number of formal European company agreements.

\(^{44}\) Four companies account for 4.9% of the sample. On this basis, if we calculate the number of companies in the overall statistical population with unreported formal agreements using a 95% confidence interval, we get a figure of 4.9% +/- 4.2% for such companies. This means that we can say “with 95% confidence” that there are unreported formal agreements in between two and 28 (15+/-13) of the 308 metalworking companies in the overall statistical population (without taking into account the bias in our sample). It is also possible that there are additional unreported formal transnational company agreements in cases where the national or local trade unions or employee representation bodies have concluded such agreements without any involvement on behalf of the EWC, EMF or IMF.

\(^{45}\) The exact breakdown of the answers given is as follows: “possibility of negotiations/formal agreements” 15%, “possibility of negotiations/formal agreements only under certain conditions” 42%, “little prospect of negotiations/formal agreements” 43%. Our calculations only use the responses that did not express any conditions regarding the possibility of future negotiations or formal agreements, since some of the specific conditions cited in the middle category (e.g. if the EWC acquired the legal right to a negotiating role, if the relevant management members changed their stance, or if cooperation between the EWC’s members improved) are unlikely to be met.
The interviewees from 18 of the 21 EWCs with informal arrangements expected these arrangements to be extended or further arrangements to be concluded in the future. Once again, there will be some companies that do not conclude any further informal arrangements, some that progress from informal arrangements to formal agreements and some that conclude informal arrangements for the first time. However, as things currently stand, there is nothing to suggest that the number of informal arrangements will grow significantly in the foreseeable future.
This study set out to collect quantitative data on trends regarding formal agreements and informal arrangements at transnational company level in the metalworking sector. Its findings are summarised below.

(1) The first goal of our study was to check whether the available data on officially listed and documented agreements was accurate and complete. We tested the very plausible hypothesis that there could be a number of companies with unreported transnational agreements in the metalworking sector that did not feature on the official lists. Our findings on this issue were fairly unambiguous. The telephone survey identified four new companies with formal transnational agreements that were not officially documented. We were thus able to show that unreported agreements do exist, although their number is insufficient to seriously call into question the extent to which the officially listed formal agreements can be regarded as representative.

(2) The main focus of the study was to evaluate the future development and growth prospects for the practice of concluding transnational company agreements that has been witnessed since around the year 2000. The results of our survey allow us to put forward a conservative estimate of around 12-15% for the proportion of companies with EWCs in the European metalworking sector that have already concluded formal transnational agreements (negotiated and signed by the EWC and/or trade unions). The survey results suggest that there will be a gradual increase in the number of companies signing formal transnational agreements over the next few years, but that their number should not be expected to grow exponentially. This is because the answers to the survey’s questions about future prospects for agreements indicate that although some companies are on the verge of concluding formal transnational agreements for the first time, there are also companies that have previously concluded formal transnational agreements but are unlikely to do so again in the future, since the agreements that they concluded were one-offs (designed to regulate a specific issue) and were not indicative of an established policy of concluding formal agreements.

(3) Our study was also the first to gather empirical evidence regarding the significance of informal arrangements involving European Works Councils. The EWCs of around a quarter of the companies in the study sample had concluded informal arrangements with their European
corporate management that did not have the full status of formal, written agreements. This finding not only suggests that, in practice, EWCs go beyond their formal information and consultation role more frequently than is realised by either academics or policymakers, but also that the regulation of industrial relations and working conditions at European company level is being promoted by more companies than was hitherto believed to be the case. Taken together, the numbers of informal arrangements and formal agreements point to the growing importance of transnational, supra-state industrial relations and regulations at the level of individual companies.

(4) Industrial relations research has discussed a number of features of the development of both enterprises and European Works Councils that seem to point to the likelihood of transnational formal agreements and informal arrangements becoming more important in the future. These include structural changes that are seeing companies move towards a brand of integrated transnational corporate management that increasingly also incorporates HR management. This is resulting in a better “organisational fit” between corporate and management structures on the one hand and the transnational employee representation structure provided by EWCs on the other (Hoffmann et al. 2002; Marginson/Sisson 2004; Hauser-Ditz et al. 2010). Furthermore, the development of specific transnational forms of corporate management generates a greater need for transnational solutions to labour policy issues. Developments within employee representation bodies also hint at a growing negotiating role for EWCs. According to the results of an extensive survey of EWCs (Waddington 2011), there are certain events within companies – particularly restructuring programmes – that can or do cause EWCs to acquire or consolidate a negotiating role that goes beyond the information and consultation role envisaged for them by the EWC Directive.

(5) Our survey findings painted a very clear picture with regard to the future development prospects of European Works Councils. EWCs have become one of the political players representing the interests of members of multinational enterprises. They have undoubtedly gone beyond their description as “neither European nor works councils” (Streeck 1997) that is often quoted in the EWC debate, painting a rather bleak picture of their future prospects. If we use the authors’ EWC typology that distinguishes between the four categories of symbolic, service-providing, project-oriented and participative EWCs (Lecher et al. 2001; Platzer/Rüb 1999), the survey results point to significant numbers of participative EWCs. Although approximately a quarter of the 82 EWCs in our survey see themselves primarily as having an information role (and continuing to do so in the future), around half of them have already concluded formal agreements or informal arrangements with their
Transnational company agreements and the role of European Works Councils in negotiations

Corporate management or believe that they are likely to do so at some point in the future.\textsuperscript{46}

(6) Research conducted into EWCs using qualitative methods and case studies has found that “country-of-origin-effects” play an important role in the development of transnational company-level industrial relations (Hauser-Ditz et al. 2010; Rüb et al. 2011). Our study of the European metalworking sector (based on the assessment of publicly available lists of agreements and our telephone survey) indicates that formal agreements and informal arrangements have been concluded in around half of the companies where there is a strong German influence on the way that European industrial relations are conducted (European management located in Germany, German EWC chair, German trade union responsible for advising the EWC). There is also a disproportionately high number of formal transnational agreements in French companies. This suggests there is a need for further research into the association between an EWC’s dominant country and whether or not it has concluded formal transnational agreements.

(7) Based on what we currently know, it is still too early to draw any definitive conclusions or make any reliable predictions about the specific relevance of this study’s findings for the wider debate on European industrial relations trends and the Europeanisation of the trade union movement. On the one hand, the trend for EWCs to conclude informal arrangements could lend weight to the syndicalisation theory (see e.g. Schulten 1996) which argues that company-level arrangements are becoming increasingly dissociated from general trade union policy. This idea is supported by the fact that although the majority of informal arrangements are concluded without trade union involvement, they nevertheless address significant topics, including monetary issues (profit-sharing, bonuses), that are or could be relevant to collective bargaining, at least in some of the national businesses that they apply to. On the other hand, informal arrangements could equally be seen as a pragmatic response to the need for transnational regulations. According to this view, their informal nature means that they do not necessarily pose a threat to the trade unions and could even be regarded as an interim step towards the conclusion of formal agreements in which the trade unions are also involved. This interpretation sees EWC involvement in informal arrangements as a compromise solution in companies where there is little prospect of concluding formal agreements either in the short or longer term, mainly due to management opposition.

\textsuperscript{46} The specific characteristics of the metalworking sector (it is the industry with the highest number of formal transnational agreements) and the possible bias in our sample (under-representation of passive EWCs since they are less likely to be in touch with IG Metall’s EWC team) mean that the findings of our study cannot be extrapolated to all of the 970 or so European Works Councils currently in existence. The general conclusions are nevertheless still valid.
5. References


### 6. Annexes

#### 6.1 Questionnaire for telephone interviews

<table>
<thead>
<tr>
<th>Name:</th>
<th>Company:</th>
</tr>
</thead>
</table>

#### A. Personal details

| A/1 What is your function in the EWC? | (1) EWC member  
(2) Steering committee member  
(3) (Deputy) EWC chair  
(4) EWC secretary  
(5) Other |
|--------------------------------------|--------------------------------------------------|
| A/2 How long have you been a member of the EWC (in years)? | (1) 1-2 years  
(2) 3-5 years  
(3) more than 5 years |

#### B. Basic information on the EWC and the company (if not known)

| B/1 How long ago was the European Works Council founded? | (1) 1-2 years  
(2) 3-5 years  
(3) 5-10 years  
(4) More than 10 years |
|----------------------------------------------------------|--------------------------------------------------|
| B/2 How large is the EWC (as precise a figure as possible)? | (1) Fewer than 10 members  
(2) Between 10 and 20 members  
(3) More than 20 members |
| B/3 What is the composition of the European Works Council? What countries have large/small delegations in the EWC? Are there one or more country delegations that dominate the EWC? | (1) A few large EWC country delegations  
(2) Few large and many small EWC country delegations  
(3) One dominant and many small EWC country delegations  
(4) Many small EWC country delegations  
(5) Other |
| B/4 Who are the main players within the EWC? (name countries, abbreviation list) |
| B/5 Where does the EWC chair come from? (name country, abbreviation list) |
| B/6 Where is the European management based? (name country, abbreviation list) |
## C. Question about the existence of formal agreements or informal arrangements

C/1 In legal terms, European Works Councils are not negotiating bodies. However, in practice a number of European Works Councils do carry out negotiations and conclude agreements with management. Possible subjects include restructuring, equal opportunities, workplace health and safety, minimum social standards or profit-sharing. These are not always referred to as formal agreements – in some cases they have the status of “joint declarations” or “joint texts”, and in other cases they are simply recorded in the minutes of EWC meetings. Has the European Works Council at ... concluded any such agreements with management?

(1) Yes (continue with D)
(2) No (continue with C-2)

C/2 In addition to negotiating and concluding such formal written agreements, we also assume that some European Works Councils conclude informal arrangements with management that are not recorded in written form or are at most recorded in the minutes of EWC meetings. Has the EWC at ... already concluded any such informal arrangements with management?

(1) Yes (continue with E)
(2) No (continue with F)

## D. Formal agreements involving the EWC (characteristics, reasons, prospects)

D/1 How many formal agreements has the EWC concluded with management? (as precise a figure as possible)

(1) One
(2) Two to three
(3) More than three

D/2 When was/were the formal agreement(s) concluded? (as accurate figures as possible; in the case of several, when were the first and last ones concluded?)

First agreement concluded:
(1) In the last 2 years
(2) In the last 5 years
(3) More than 5 years ago

Last agreement concluded:
(1) In the last 2 years
(2) In the last 5 years
(3) More than 5 years ago

Comments/details:

D/3 What was the subject of the negotiations/formal agreement(s) (see our list)?
### D/4 What form did the formal agreement(s) take?

- (1) A mutual contract/formal agreement
- (2) A joint declaration
- (3) A note in the minutes
- (4) Other

### D/5 How detailed and binding is/are the formal agreement(s)?

- (1) Extremely detailed/binding
- (2) Of a general nature and not particularly binding
- (3) Other

### D/6 Who were (in each case) the initiators of the negotiations/formal agreement(s)? (Multiple answers possible) yes = 1, no = 0

- (1) EWC
- (2) Management
- (3) Trade unions

Other/details:

### D/7 Who negotiated the formal agreement(s) on behalf of the employees? Possible follow-up questions: Were trade union/EMF representatives involved in the negotiations? Who were the main negotiators? (Multiple answers possible; yes = 1, no = 0)

- (1) EWC chair
- (2) Steering committee
- (3) Entire EWC
- (4) EMF Secretariat
- (5) EMF coordinator
- (6) Other trade union officials
- (7) Employee representatives from the affected sites

Other/details:

### D/8 What were the reasons for starting negotiations and concluding the formal agreement? Was there a specific reason for starting the negotiations (e.g. in reaction to European restructuring or a serious workplace accident)? Were negotiations started more as a reaction to management’s willingness to negotiate? Or were they the result of a fundamental wish on behalf of the EWC to develop into a negotiating body? (Multiple answers possible)

- (1) Specific reason/reaction to serious event
- (2) Management willingness to negotiate
- (3) Strategy of expanding remit of EWC (to become a negotiating body)

Other/details:

### D/9 How does the future look? Can further formal agreements be expected (or was this a one-off event or the end of a cycle)?

- (1) Yes, because...
- (2) No, because...

Reasons:
D/10 Are future formal agreements expected to be of greater importance (in terms of content and/or how binding they are)?
(1) Yes, inasmuch as...
(2) No, because...
Reasons:

E. EWC policy on informal arrangements (characteristics, reasons, prospects)

<table>
<thead>
<tr>
<th>Question</th>
<th>Options</th>
</tr>
</thead>
</table>
| E/1 How many informal arrangements has the EWC concluded with management? | (1) One  
(2) Several  
(3) Common practice                                                      |
| E/2 When was/were the informal arrangement(s) concluded? (if several, when were the first and last ones concluded) | (1) In the last 2 years  
(2) In the last 5 years  
(3) More than 5 years ago                                                 |
| (E/3) What was the subject of this/these informal arrangement(s) (see our list)? | (1) A gentlemen’s agreement (verbal, handshake)  
(2) Included in the (management-approved) minutes of an EWC meeting (written/signed by the management)  
(3) Other |
| (E/4) What form did the formal arrangement(s) take?                       | (1) A gentlemen’s agreement (verbal, handshake)  
(2) Included in the (management-approved) minutes of an EWC meeting (written/signed by the management)  
(3) Other |
| (E/5) How detailed and binding is/are the informal arrangement(s)?       | (1) Extremely detailed/binding  
(2) Of a general nature and not particularly binding  
(3) Other |
| (E/6) Who were (in each case) the initiators of the informal arrangement(s)? (Multiple answers possible) yes = 1, no = 0 | (1) EWC  
(2) Management  
(3) Trade unions |
| Other/details:                                                           |                                                                         |
| (E/7) Who negotiated the informal arrangement(s) on behalf of the employees? Possible follow-up questions: Were trade union/EMF representatives involved in the negotiations? Who were the main negotiators? (Multiple answers possible; yes = 1, no = 0) | (1) EWC chair  
(2) Steering committee  
(3) Entire EWC  
(4) EMF Secretariat  
(5) EMF coordinator  
(6) Other trade union officials  
(7) Employee representatives from the affected sites |
| Other/details:                                                           |                                                                         |
(E/8) What were the reasons for this/these informal arrangement(s) coming into being? Was there a specific reason for starting the negotiations (e.g. in reaction to European restructuring or a serious workplace accident)? Were negotiations launched more as a reaction to management’s willingness to negotiate? Or were they the result of a fundamental wish on behalf of the EWC to develop into a negotiating body? (Multiple answers possible)

| (1) Specific reason/ reaction to serious event |
| (2) Management willingness to negotiate |
| (3) Strategy of expanding remit of EWC (to become a negotiating body) |

Other/details:

| (E/9) What are the reasons for informal arrangements not having been more formalised? (Multiple answers possible) |
| (1) Because of an industrial relations tradition of informal arrangements (“the way things are usually done in the company”) |
| (2) Refusal by management to formalise informal arrangements |
| (3) Lack of willingness within EWC to formalise informal arrangements |

Other/details:

| (E/10) What does the future look like? Is this policy on informal arrangements expected to continue (or was this a one-off event, the end of a cycle, or an interim step on the way to achieving formal agreements)? |
| (1) Yes, because... |
| (2) No, because... |

Reasons: |

| (E/11) Are future informal arrangements expected to be of greater importance (in terms of content and/or how binding they are)? |
| (1) Yes, inasmuch as... |
| (2) No, because... |

Reasons: |
### F. Companies with no formal agreements/informal arrangements involving the EWC (reasons and future prospects)

<table>
<thead>
<tr>
<th>F/1</th>
<th>How would you rate the need for such agreements? From the point of view of the EWC, would there be any need in principle to enter into negotiations with management?</th>
</tr>
</thead>
</table>
| (1) | Yes, in the field of ...
| (2) | No, because...
| **Reasons/details:** | |

<table>
<thead>
<tr>
<th>F/2</th>
<th>How would you rate the ability of the EWC to take action? Does the way the EWC operates internally mean that it is capable of entering into negotiations with management and concluding an agreement?</th>
</tr>
</thead>
</table>
| (1) | Yes
| (2) | No, inasmuch as...
| **Details:** | |

<table>
<thead>
<tr>
<th>F/3</th>
<th>How do you think the EWC sees itself? Would it like to take on a negotiating role? Is it trying to do so? [Seek clarification if necessary: it wants to but can't; or it can but doesn't want to]</th>
</tr>
</thead>
</table>
| (1) | Yes
| (2) | No, inasmuch as...
| **Details:** | |

<table>
<thead>
<tr>
<th>F/4</th>
<th>How would you rate the willingness of management to allow the EWC a negotiating role and conclude informal arrangements with it?</th>
</tr>
</thead>
</table>
| (1) | Willing in principle
| (2) | Conceivable that it could be willing under certain circumstances
| (3) | Not willing in principle

<table>
<thead>
<tr>
<th>F/5</th>
<th>Has management already blocked attempts by the EWC to enter into dialogue or negotiations?</th>
</tr>
</thead>
</table>
| (1) | Yes, with regard to ...
| (2) | No
| **Details:** | |
(F/6) Can you imagine that the EWC could in future enter into negotiations with management and conclude formal agreements or informal arrangements with it?
(1) Yes, because …
(2) Yes, on condition that …
(3) No, because …
Reasons/conditions:
### 6.2 List of formal transnational company agreements documented for the metalworking sector

<table>
<thead>
<tr>
<th>Company</th>
<th>Year</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ford</td>
<td>2000</td>
<td>Restructuring: Hiving off Ford Visteon Organisation</td>
</tr>
<tr>
<td>Ford</td>
<td>2000</td>
<td>Restructuring: Hiving off one area into a joint venture with Getrag</td>
</tr>
<tr>
<td>GME</td>
<td>2000</td>
<td>Restructuring: Hiving off one area into a joint venture with Fiat</td>
</tr>
<tr>
<td>GME</td>
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47. IFAs are marked grey.
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