

Chapter 4

Information and consultation: still struggling to make the grade

This chapter examines three aspects of the core information and consultation practices of EWCs: first, the quality and timeliness of information and consultation procedures; second, the efficacy of the EWC as a means of facilitating information exchange and consultation and influencing management; and third, the role of the EWC in restructuring, thus establishing whether EWCs influence strategic corporate decision-making. Information and consultation rights were viewed as enhancing transparency within MNCs and opening up a space for transnational employee participation (Hall 1992). The Directive and Recast set European standards for MNCs with European operations with the intention of mitigating the impact of differences in the provisions for information and consultation between Member States.

Given the centrality of information exchange and consultation to the purpose of EWCs, it was surprising that there was no definition of the term ‘information’ in the Directive. The absence of a definition of information was a measure of the effectiveness of lobbying by employers’ organisations, which favoured negotiated solutions. In practice, the omission of a definition of information left the social partners to negotiate a working definition on a company-by-company basis, which, in turn, meant that information practices in Member States were likely to influence EWC practice and that EWC information practices would not be uniform. In contrast, the Directive included a definition of consultation, which was regarded as meaning ‘the exchange of views and the establishment of dialogue between employees’ representatives and central management’ (Article 2(f)). The inclusion of the phrase ‘establishment of dialogue’ went beyond conventional definitions of consultation (Bercusson 1996: 289), but the definition in the Directive left issues such as timeliness to the social partners to agree.

The imprecision of the Directive contrasted with Directive 2001/86/EC on employee involvement in SEs, which defined information as meaning:

‘the informing of the body representative of employees and/or employees’ representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE’ (Article 2(i));

and consultation as:

‘the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees’ representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees’ representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE’ (Article 2(j)).

In short, Directive 2001/86/EC introduced timeliness and content as criteria of the quality of information and consultation procedures. Also, the reference to consultation as being taken into account in the decision-making of European companies suggests that managers should finalise their strategic decisions only after consultation has taken place, a point absent from the definition of consultation in the Directive. The content of the legislation promoted negotiation between the social partners on two dimensions. First, there was negotiation within EWCs regarding the definitions of, and the practices involved in, information and consultation. Second, as Chapter 2 demonstrated, the ETUC and the ETUFs campaigned in favour of uniform definitions of information and consultation rather than having different definitions applying to EWCs and SEWCs.

The imprecision of the Directive also prompted a number of court proceedings intended to determine the meaning of information and consultation as well as ensure that managerial disregard for the Directive be brought to book. Initially, the Renault (Vilvoorde) case clarified the issue of timeliness where restructuring has ‘significant effects’ on the workforce insofar as information and consultation should take place beforehand (Moreau 1997). Similarly, courts ruled that the merger between Gaz de France and Suez could take place only after the board of directors of Gaz de France had consulted with the EWC and appropriate national representative bodies (TGI Paris, 21 November 2006; Cour d’Appel Paris, 21 November 2006; Cour de Cassation, 16 January 2008). Directly illustrating the ambiguity inherent in the legislation, some courts applied the definitions of information and consultation from other directives to cases brought under the Directive (Beiersdorf: TGI Melun, 13 October 2006),¹ whereas others did not (Alcatel Lucent: TGI Paris, 27 April 2007).

Supplementing the court cases was an ever-broadening range of research evidence demonstrating that EWC practices amounted, at best, to information rather than information and consultation provision. Case study evidence illustrated a broad range of EWC practices with large numbers of EWCs operating at a rudimentary level (Telljohann 2005b; Kotthoff and Whittall 2014), while survey evidence showed that the occurrence of ‘useful information and consultation’ was reported by fewer than 30 per cent of EWC representatives (Waddington 2011: 90–91). Similarly, the impact assessment initiated by the Commission highlighted the infrequency of EWC meetings as limiting the utility of the information provided, the absence of comprehensive information and consultation arrangements, and shortcomings in the timeliness of

1. The court hearing the Beiersdorf case cited the more exacting definitions included in the Framework Directive 2002/14/EC on national-level information and consultation arrangements.

consultation (European Commission 2007: 62–63). As a consequence of the court cases and the range of research evidence available, the Commission conceded that the expectations of EWCs with regard to information and consultation ‘are far from being satisfied’ (European Commission 2008a: 2).

In recognition of the failings of the Directive with regard to information and consultation, new definitions were introduced in the Recast. The new definitions were similar to those of Directive 2001/86/EC. In the Recast, information means:

‘transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings’ (Article 2(1)(f));

and consultation means:

‘the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees’ representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings’ (Article 2(1)(g)).

One purpose of this chapter is to establish whether these new definitions have led to improvements in the quality and timeliness of information and consultation procedures from the perspective of EWC representatives. In addition, the chapter analyses the efficiency of EWCs, which, in this context, refers to the performance of EWCs as a means of facilitating information exchange and consultation and influencing management.

A second purpose of this chapter is to examine whether EWC representatives have been able to influence the content of strategic corporate decision-making on company restructuring. Chapter 2 showed that the ETUC was able to resist the initiative of the Commission formally to link EWCs and corporate restructuring on the grounds that the agenda of EWCs should not be restricted to restructuring. The fact that EWCs should be involved in corporate restructuring, however, was not in doubt. The Commission, for example, viewed the Single European Act as likely to promote corporate restructuring as companies adjusted to the European single market. The Directive was adopted as a means of enabling workers to influence the outcome of restructuring decisions made in this process of adjustment (Savoini 1995). Similarly, the ETUC and the ETUFs regard EWC involvement in strategic restructuring decisions as a central purpose (UNI Europa 2011; EFFAT 2004). In recognition of the extent of corporate restructuring, the Recast also introduced an ‘adaptation clause’ (Article 14) to facilitate the revision of voluntary

EWC agreements concluded under Article 13 of the Directive in order to meet any new demands arising from corporate restructuring. When coupled with the requirement specified by the Recast that information be made available to enable the undertaking of an ‘in-depth assessment of the possible impact’ of managerial decision-making, this amendment highlights the centrality of corporate restructuring to EWC practice and the concerns of European policy-makers about pre-Recast practice. This chapter examines the effects of these revisions on EWC practice.

The argument that runs through the chapter is that the provision of information and consultation improved between 2007 and 2018, but EWCs still operate primarily as information rather than information *and* consultation bodies. These limitations are exacerbated in the context of corporate restructuring, as the vast majority of EWC representatives are unable to influence the content of managerial decision-making in these circumstances. EWC representatives thus do not report substantial increases in the efficacy of EWCs between 2007 and 2018. To elaborate these arguments, the chapter comprises four sections. The first section examines the quality of information and consultation arrangements, the second considers the timing of information and consultation processes, and the third assesses the utility of EWCs from the perspective of EWC representatives. The fourth section analyses the influence EWCs allow representatives to exert on corporate restructuring decisions. Throughout these sections, the data refer only to those EWC representatives that have attended either a plenary meeting or, in the fourth section, an extraordinary meeting.

Quality of information and consultation

The initial analysis of the quality of information and consultation processes focuses on agenda items raised at EWCs and comprises three stages. The first examines the quality of information and consultation procedures in 2018 in order to establish whether the Recast has enabled EWCs to move from being primarily institutions engaged in information exchange to institutions engaged in both information exchange *and* consultation. The second compares the survey results of 2007 and 2018. It thus identifies whether EWC information and consultation practices have improved with the adoption of the Recast. The third assesses how different groups within the category EWC representatives perceive the quality of the information and consultation processes.

Quality of information and consultation in 2018

Table 4.1 illustrates the views of all EWC representatives in 2018 on the quality of the information and consultation processes. The survey question specified that responses refer to plenary meetings that had taken place ‘in the past three years’. Table 4.1 is divided into two panels. The top panel includes agenda items specified in point 2 of the subsidiary requirements annexed to the Directive. These items reflect the views of European policy-makers on the basic subject matter that should comprise a transnational information and consultation agenda. Analyses of EWC founding agreements show that more than half of such agreements explicitly include most of these items as issues for

Table 4.1 Quality of information and consultation procedures (2018)

	Not raised %	Raised, but useless information %	Useful information, but no consultation %	Useful information and consultation %	N
Economic and financial situation of the company	2.0	4.7	55.6	37.7	1,424
Corporate strategy and investment plans	4.3	7.9	55.1	32.7	1,403
Changes to working methods	23.7	8.4	41.3	26.7	1,365
Closure of or cutbacks in plants/workplaces	13.5	9.0	34.1	43.4	1,399
Mergers, takeovers and company acquisitions	16.3	9.2	46.3	28.2	1,401
Introduction of new technology or processes	14.9	8.3	50.9	26.0	1,389
Reorganisation of production lines	39.3	7.0	34.8	18.9	1,359
Relocation of production	30.8	8.0	34.5	26.7	1,381
Employment forecasts	26.9	11.3	43.5	18.4	1,383
Research and development policy	28.2	10.4	47.4	14.1	1,369
Vocational training	46.3	8.5	30.8	14.5	1,382
Equal opportunities	38.5	9.0	34.4	18.1	1,365
Health and safety	18.2	7.4	36.7	37.7	1,396
Environmental protection	33.2	8.4	35.4	23.0	1,377
Trade union rights	52.9	6.3	23.4	17.4	1,358
Working time	54.6	7.4	22.4	15.6	1,372
Profit sharing/financial participation	48.6	9.0	29.8	12.7	1,371
Parental leave	73.1	5.6	12.7	8.6	1,364
Employee data protection	40.6	8.8	29.3	21.4	1,377
Wages and grading systems	53.2	9.3	25.4	12.1	1,371
Gender equality	46.1	8.6	28.1	17.1	1,375
Performance of different plants	30.6	9.4	42.3	17.7	1,378
Outsourcing/subcontracting	36.8	12.4	34.0	16.8	1,384
Working conditions of atypical workers	57.1	9.7	21.5	11.7	1,377

the agenda of the EWC (De Spiegelaere and Jagodziński 2015: 27). The lower panel of Table 4.1 comprises additional agenda items that are relevant to management-labour relations, are the subject of European legislation or have a high transnational policy profile. Collectively, these items are referred to as the extension agenda to distinguish them from the subsidiary requirements agenda. While these issues are less likely to be explicitly mentioned as agenda items in EWC founding agreements, the intensity and quality of the extension agenda is an indicator of the extent to which the agenda of EWCs has been extended beyond the minima defined by European policy-makers and, as such, is a proxy for the extent of institution building within EWCs in the form of the intensity of participation (Knudsen 1995: 8–10).

Table 4.1 illustrates that the extent of non-appearance of items from the subsidiary requirements agenda ranges from 2.0 per cent of EWC representatives reporting that the ‘economic and financial situation of the company’ was ‘not raised’ to 39.3 per cent reporting that ‘reorganisation of production lines’ was ‘not raised’. It is not surprising that the ‘economic and financial situation of the company’ and ‘corporate strategy and investment plans’ are so infrequently reported as ‘not raised’, as point 2 of the subsidiary requirements of the Directive and the Recast states that the EWC will be ‘informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business [...] and its prospects’. In short, not to raise these issues would be to question the *raison d’être* of the legislation. It is also arguably an easy requirement for management to fulfil in the form of annual reports and similar material. More difficult to comprehend is the failure of ‘employment forecasts’ to appear on the agendas of 26.9 per cent of EWC representatives over three years. Indeed, it is difficult to imagine how EWC representatives can formulate coherent responses to managerial proposals in the absence of knowledge on employment levels, an issue of prime importance for the workers represented by the EWC.

Reference to the subsidiary requirements agenda items listed in Table 4.1 also shows that only a minority of EWC representatives report ‘useful information and consultation’. On only one issue, ‘closure of or cutbacks in plants/workplaces’ (hereinafter ‘closure or cutbacks’), did more than 40 per cent of EWC representatives report ‘useful information and consultation’. At the lowest point in the range, fewer than 20 per cent of EWC representatives reported ‘useful information and consultation’ on ‘employment forecasts’. As the survey question required respondents to indicate their perceptions of practices over the preceding three years, it is apparent that the Recast has failed to ensure ‘useful information and consultation’ for the overwhelming majority of EWC representatives on the issues considered central to an EWC agenda by European policy-makers.

On every item of the subsidiary requirements agenda except ‘closure or cutbacks’, EWC representatives reported ‘useful information, but no consultation’ more frequently than ‘useful information and consultation’. EWCs in 2018 thus remain essentially institutions engaged in the provision of qualified information rather than information exchange *and* consultation. This situation contrasts markedly with the intentions of European policy-makers. As early as 2008, for example, the impact assessment conducted on behalf of the Commission argued that the quality of information exchange and consultation at EWCs left much to be desired and that the Directive required reform if deficiencies were to be remedied (EPEC 2008). The results shown in Table 4.1 indicate that these deficiencies remain and that the revised definitions of information and consultation in the Recast have yet to lead to ‘useful information and consultation’ for the majority of EWC representatives. The results in Table 4.1, however, confirm the findings of the evaluation of the implementation of the Recast, which reported that consultation practices fell short of those intended by European policy-makers, particularly on the corporate restructuring issues included in the subsidiary requirements agenda (European Commission 2016a, 2016b). Views expressed within the Commission to the effect that EWC consultation practices require improvement (European Commission 2018a) are also supported by these results. Similarly, the survey results on the views of

EWC representatives are entirely consistent with those of EWC coordinators who also report post-Recast practice as primarily comprising information exchange rather than information exchange *and* consultation (Voss 2016: 13–15).

Turning to the extension agenda reveals generally lower reported levels of ‘useful information and consultation’ compared to the subsidiary requirements agenda. Replicating the situation of the subsidiary requirements agenda, items on the extension agenda are more likely to be the subject of ‘useful information, but no consultation’ than ‘useful information and consultation’. The situation with regard to the extension agenda confirms that EWCs operate primarily as information rather than information and consultation bodies across the complete range of the agenda.

Given the relative infrequency at which items from the extension agenda appear in EWC founding agreements, it is no surprise that large numbers of EWC representatives indicate that these items were not raised at the EWC. The infrequency of the appearance of items from the extension agenda suggests that the extent of institution building within the EWC beyond the formal recommendations is subject to marked limits. The pattern of (non-)appearance of the items from the extension agenda, however, illustrates two features of EWC information and consultation practices.

First, ‘health and safety’ is the only item from the extension agenda where ‘useful information and consultation’ occurs more frequently than ‘useful information, but no consultation’ and is the least likely to be ‘not raised’. Furthermore, ‘health and safety’ is the most frequently mentioned item from the extension agenda to appear in EWC founding agreements with 32 per cent explicitly mentioning it (De Spiegelaere and Jagodziński 2015: 27). The frequency at which ‘health and safety’ appears on EWC agendas confirms the transnational nature of the issue and suggests that the vast array of European health and safety legislation generates European standards that are the subject of EWC discussions. A similar, albeit more limited, argument could be made regarding ‘environmental protection’, which is also the subject of European standards, is mentioned relatively frequently in EWC founding agreements and, in consequence, is the subject of information and consultation. In short, where pan-European legislation is in place, the transnationality of the issue is beyond doubt, thereby enabling parties to raise the issue at the EWC.

Second, Chapter 2 reported that managers responsible for EWCs used the EWC to advance managerial objectives in the form of an HRM agenda. Furthermore, managers used EWCs to conduct coercive comparisons between different sites operated by the MNC (Aranea et al. 2018; Greer and Hauptmeier 2016). Several items from the extension agenda allow examination of these developments. In particular, managerial use of coercive comparisons is confirmed by EWC representatives, 42.3 per cent of whom report ‘useful information, but no consultation’ and 17.7 per cent of whom report ‘useful information and consultation’ on the ‘performance of different plants’. The managerial focus on information rather than information *and* consultation on the ‘performance of different plants’ suggests that managers provide comparative data on different plants in an instrumental way to lever concessions but are much more rarely prepared to consult on the issue. This illustrates the extent to which the managerial pursuit of an HRM-

based agenda is embedded within EWCs. Similarly, the growth of pan-European wage and grading systems (Gooderham et al. 2004; Marginson and Meardi 2009), profit sharing and financial participation schemes within MNCs (Pendleton et al. 2001) are associated with these items appearing on the agenda, as reported by 46.8 per cent and 51.4 per cent of EWC representatives respectively. While the managerial HRM agenda is advanced primarily by means of information exchange rather than information and consultation procedures, these results suggest that managers are extending the EWC agenda to meet their objectives of utilising EWCs to secure corporate added value: a point examined in detail in Chapter 8.

Comparing 2018 with 2007

An intended purpose of the Recast was to improve the quality of information and consultation procedures from the very low bar set by the Directive. Table 4.2 compares the results from the 2007 and 2018 surveys of EWC representatives. Two specific introductory remarks are apposite to supplement the general remarks on the surveys mentioned in Chapter 3. First, the range of extension agenda items included in 2007 was narrower than in 2018. Table 4.2 includes only agenda items that appeared in both surveys. Second, in 2018, respondents were asked to indicate the quality of information and consultation provision during the most recent three years, whereas, in 2007, there was no time period stipulated. On average, in 2007, EWC representatives had attended between four and five plenary meetings. At the time, the vast majority of EWC agreements allowed for a single annual plenary meeting, suggesting that, for the majority of respondents in 2007, the period under consideration was between four and five years. The point remains, however, that the comparison between the two surveys is not exact.

The comparison of the subsidiary requirements agenda between 2007 and 2018 shows that, with the exception of ‘closure or cutbacks’, ‘useful information, but no consultation’ dominated the responses in 2018. ‘Useful information and consultation’, however, was more likely in 2018 than in 2007 for every item of the subsidiary requirements agenda. The quality of information and consultation procedures was thus higher in 2018 than in 2007. Accompanying this improvement is the reduction in the proportion of EWC representatives reporting that every subsidiary requirements agenda item was ‘not raised’. The agenda of EWC meetings was thus broader in 2018 than in 2007.

In general terms, reporting on the quality of information and consultation on items from the extension agenda follows the pattern set by the subsidiary requirements agenda: ‘useful information, but no consultation’ occurs more frequently than ‘useful information and consultation’; with the exception of ‘vocational training’ and ‘trade union rights’, ‘useful information and consultation’ occurred more frequently in 2018 than in 2007; and, with the exception of ‘trade union rights’, ‘not raised’ was reported more infrequently in 2018 than in 2007. It is particularly noteworthy that information and consultation on ‘profit sharing and financial participation’ increased in coverage and quality between 2007 and 2018. The growth of such schemes is associated with employees working harder and longer, taking less sickness absence and being less likely

Table 4.2 Quality of information and consultation procedures before and after the Recast

	Not raised %	Raised, but use- less information %	Useful infor- mation, but no consultation %	Useful infor- mation and consultation %	N
Economic and financial situation of the company					
2007	6.6	5.4	60.5	27.5	941
2018	2.0	4.7	55.6	37.7	1,424
Corporate strategy and investment plans					
2007	9.7	5.1	57.3	27.9	941
2018	4.3	7.9	55.1	32.7	1,403
Changes to working methods					
2007	44.5	11.3	29.1	15.1	941
2018	23.7	8.4	41.3	26.7	1,365
Closure of or cutbacks in plants/workplaces					
2007	20.6	7.8	44.4	27.2	941
2018	13.5	9.0	34.1	43.4	1,399
Mergers, takeovers and company acquisitions					
2007	19.6	7.0	55.4	18.1	941
2018	16.3	9.2	46.3	28.2	1,401
The introduction of new technology and processes					
2007	42.7	9.9	37.4	10.0	941
2018	14.9	8.3	50.9	26.0	1,389
Reorganisation of production					
2007	48.5	7.5	33.2	10.8	941
2018	39.3	7.0	34.8	18.9	1,359
Employment forecasts					
2007	33.3	10.1	42.7	13.9	941
2018	26.9	11.3	43.5	18.4	1,383
Research and development policy					
2007	45.6	10.5	35.6	8.3	941
2018	28.2	10.4	47.4	14.1	1,369
Vocational training					
2007	49.9	9.4	25.0	15.7	941
2018	46.3	8.5	30.8	14.5	1,382
Equal opportunities					
2007	54.3	11.2	22.2	12.3	941
2018	38.5	9.0	34.4	18.1	1,365

Table 4.2 Quality of information and consultation procedures before and after the Recast (cont.)

	Not raised %	Raised, but use- less information %	Useful infor- mation, but no consultation %	Useful infor- mation and consultation %	N
Health and safety					
2007	36.9	8.3	27.6	27.2	941
2018	18.2	7.4	36.7	37.7	1,396
Environmental protection					
2007	43.4	9.6	28.2	18.9	941
2018	33.2	8.4	35.4	23.0	1,377
Trade union rights					
2007	52.6	9.4	19.7	18.4	941
2018	52.9	6.3	23.4	17.4	1,358
Working time					
2007	59.0	8.9	21.1	10.9	941
2018	54.6	7.4	22.4	15.6	1,372
Profit sharing/financial participation					
2007	66.7	6.8	18.1	8.4	941
2018	48.6	9.0	29.8	12.7	1,371
Parental leave					
2007	81.6	5.4	8.7	4.3	941
2018	73.1	5.6	12.7	8.6	1,364

to seek alternative employment (Bryton and Freeman 2019). The rise in the coverage and quality of information and consultation on this item further supports the argument that management is using the EWC to gain improvements in performance through the introduction of HRM techniques.

In brief, between 2007 and 2018, the quality of information and consultation arrangements improved and the breadth of the agenda increased. Interpretation of these data, however, is far from straightforward. Advocates of the Recast could conclude that the measure improved the performance of EWCs. In contrast, more critical trade unionists could argue that, although the Recast was a step in the right direction, further legislative reform is required, as the Recast has failed to ensure that EWCs develop from primarily information into information and consultation bodies, and that, for the overwhelming majority of EWC representatives, ‘useful information and consultation’ is not a feature of the EWC, a point confirmed by managers responsible for EWCs within MNCs (Pulignano and Turk 2016). The trade union position is reinforced by evidence showing that the Recast led to a step change in the information and consultation content of agreements, which, assuming a link between the content of agreements and practice, may have promoted improved information and consultation practices (De Spiegelaere

and Waddington 2017). Evidence from managers responsible for EWCs within MNCs, however, suggests the impact of a learning effect rather than a legislative effect, as the Recast merely formalised existing practice, rather than led to marked changes in procedure (Waddington et al. 2016: 53–56). For managers, learning effects rather than the Recast promoted the improvement in EWC information and consultation practices.

Differences within the cohort of EWC representatives

The analysis of differences in the perception of the quality of information and consultation practices within the cohort of EWC representatives proceeds in two stages. The first stage examines the impact of the industrial relations circumstances and background of the EWC representatives. The second stage assesses the potential impact of some of the policy preferences of the ETUC and the ETUFs mentioned in Chapter 2. Chapter 3 defined the categories of EWC representatives examined here, the results from which are presented in the form of an index where the value of three indicates ‘useful information, but no consultation’. Results from some of these categories are not reported, as there are no significant differences between them. Men and women, for example, reported very similar results on the quality of information and consultation practices. Where possible, comparisons are made with the situation in 2007 to examine whether relationships observed in 2007 persisted until 2018.

Industrial relations circumstances

The results presented in Table 4.3 are characterised by consistency among the different categories of EWC representatives. The narrow range of average index scores for the subsidiary requirements agenda varies between 2.8 and 2.9, while that for the extension agenda varies between 2.1 and 2.3. At less than 3, the average index score for the subsidiary requirements agenda is not equivalent to ‘useful information, but no consultation’, while the average index score for the extension agenda only just exceeds ‘raised, but useless information’. The quality of information and consultation on the subsidiary requirement agenda, however, consistently improves on that achieved for the extension agenda. The pattern of responses within the different categories of EWC representative is also consistent. The ‘economic and financial situation of the company’, ‘corporate strategy and investment plans’ and ‘closure or cutbacks’ repeatedly occur among the items attached to the highest quality of information and consultation within the subsidiary requirements agenda, whereas ‘reorganisation of production lines’ is consistently the agenda item with the lowest quality of information and consultation. Similarly, within the extension agenda, ‘health and safety’ and ‘environmental protection’ are prominent as the items on which the quality of information and consultation is superior, while information and consultation on ‘parental leave’ is universally of the lowest quality. The persistently higher index scores for items from the subsidiary requirements agenda compared to those from the extension agenda suggests that the inclusion of items recommended for information and consultation at EWCs in the subsidiary requirements encourages a higher quality of information and consultation and supports the recommendation of the ETUC that the list of agenda items specified in the subsidiary requirements be extended (see Appendix B, point 10).

Table 4.3 Differences in perception of the quality of information and consultation procedures. Industrial relations circumstances and background

	Reps from dual channel systems	Reps from single channel systems	EWC members	Office holders	Home country reps	Foreign reps	Reps from EU-based MNCs	Reps from non-EU-based MNCs	Article 13 reps	Article 6 reps
Economic and financial situation of the company	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3
Corporate strategy and investment plans	3.2	3.1	3.1	3.2	3.2	3.2	3.2	3.1	3.2	3.1
Changes to working methods	2.7	2.8	2.7	2.7	2.6	2.7	2.7	2.7	2.7	2.7
Closure of or cutbacks in plants/workplaces	3.0	3.1	3.0	3.2	3.1	3.1	3.1	3.1	3.1	3.1
Mergers, takeovers and company acquisitions	2.8	2.9	2.9	2.9	2.8	2.9	2.9	2.8	3.0	2.8
Introduction of new technology or processes	2.8	3.0	2.9	2.9	2.8	2.9	2.9	2.8	3.0	2.8
Reorganisation of production lines	2.3	2.5	2.4	2.3	2.2	2.4	2.3	2.5	2.4	2.3
Relocation of production	2.6	2.6	2.6	2.6	2.5	2.6	2.5	2.7	2.6	2.5
Employment forecasts	2.5	2.6	2.5	2.5	2.5	2.5	2.5	2.5	2.4	2.6
Average for subsidiary requirements agenda	2.8	2.9	2.8	2.8	2.8	2.8	2.8	2.8	2.9	2.8
Research and development policy	2.4	2.5	2.5	2.5	2.5	2.5	2.5	2.4	2.5	2.4
Vocational training	2.0	2.2	2.2	2.1	2.1	2.1	2.2	2.1	2.1	2.1
Equal opportunities	2.2	2.4	2.4	2.2	2.3	2.3	2.4	2.0	2.5	2.2
Health and safety	2.9	3.0	2.9	3.0	2.9	2.9	3.0	2.8	3.1	2.9
Environmental protection	2.5	2.6	2.5	2.5	2.4	2.5	2.5	2.3	2.6	2.4
Trade union rights	2.0	2.2	2.1	1.9	2.0	2.1	2.1	2.0	2.2	2.0
Working time	1.9	2.1	2.1	1.8	1.9	2.0	2.0	1.9	2.1	1.9
Profit sharing/financial participation	1.9	2.1	2.1	2.0	2.0	2.1	2.1	2.0	2.2	2.0

Table 4.3 Differences in perception of the quality of information and consultation procedures. Industrial relations circumstances and background (cont.)

	Reps from dual channel systems	Reps from single channel systems	EWC members	Office holders	Home country reps	Foreign reps	Reps from EU-based MNCs	Reps from non-EU-based MNCs	Article 13 reps	Article 6 reps
Parental leave	1.5	1.7	1.7	1.5	1.5	1.6	1.6	1.5	1.7	1.5
Employee data protection	2.3	2.4	2.3	2.4	2.2	2.3	2.3	2.4	2.4	2.3
Wages and grading systems	1.8	2.0	2.0	1.9	1.9	2.0	2.0	2.0	2.1	1.9
Gender equality	2.0	2.3	2.1	2.2	2.1	2.2	2.3	1.9	2.3	2.1
Performance of different plants	2.3	2.5	2.5	2.4	2.4	2.5	2.4	2.6	2.4	2.5
Outsourcing/subcontracting	2.3	2.4	2.2	2.5	2.3	2.3	2.3	2.3	2.2	2.3
Working conditions of atypical workers	1.8	2.0	1.9	1.9	1.8	1.9	1.9	1.9	1.9	1.8
Average for extension agenda	2.1	2.3	2.2	2.2	2.2	2.2	2.2	2.1	2.3	2.2
N	458-482	564-593	761-792	480-508	293-312	1,059-1,110	1,025-1,076	324-346	445-462	910-960

Note: The index data were calculated by treating 'not raised' as one point, 'raised, but useless information' as two points, 'useful information, but no consultation' as three points, and 'useful information and consultation' as four points.

The stated purpose of EWCs, as mentioned in the Directive and Recast, 'is to improve the right to information and to consultation of employees' (Article 1(1)). Within EU Member States, approaches to information exchange and consultation vary; prominent among them are single and dual channel systems of participation. EWCs originate in the dual system approach to information exchange and consultation. The first pair of categories of EWC representatives are included to examine whether origins in single or dual channel systems influence perceptions of the quality of information and consultation practices. Regarding the subsidiary requirements agenda, there are marginal differences between the two categories on individual agenda items, but the average index score is marginally higher for representatives from single channel systems. 'Representatives from single channel systems' view the quality of the information and consultation processes for items on the extension agenda more favourably than 'representatives from dual channel systems'. For all of the 15 extension agenda items, 'representatives from single channel systems' thought that the quality of the information and consultation processes was superior compared to 'representatives from dual channel systems'. The greater satisfaction of the 'representatives from single channel systems' suggests that the quality of information and consultation practices at EWCs is perceived as constituting a more substantial improvement compared to domestic arrangements than that reported by 'representatives from dual channel systems'.

In 2007, office holders reported a higher quality of information exchange and consultation for both the subsidiary requirements and extension agendas, suggesting that the category EWC representative was not monolithic, but was layered due to privileged access to information exchange and consultation, and inadequacies of internal EWC articulation and communication (Waddington 2011: 88-96). The difference in perception between office holders and EWC members was explained in terms of office holders attending more meetings and having more regular contact with managers. By 2018, the inequalities in the perception of the quality of information exchange and consultation between office holders and EWC members had dissipated on the subsidiary requirements and extension agendas. By definition, office holders still attend more meetings than EWC members and are more likely to be in contact with managers. The parity between office holders and EWC members in 2018 may result from the higher expectations of office holders or from improved articulation and communication within the EWC. The need to improve these aspects of internal EWC relations has been emphasised by the ETUFs in their guidelines since 2009 (EFFAT 2009; UNI Europa 2011). This emphasis may have led to improved practice. EWC articulation and communication are examined in more detail in Chapter 5. It should also be noted that, in 2007, EWC representatives had, on average, attended between four and five plenary meetings, whereas, in 2018, EWC representatives had, on average, been in post for 10 years. Continuity in post among EWC representatives was thus higher in 2018 than in 2007, which may have facilitated internal EWC articulation and communication.

Competing arguments underpin debates on the different perceptions of home country representatives and foreign representatives. Critics of the Directive argued that EWCs are likely to become mere extensions of national systems of employee participation in which representatives from the home country of the MNC have undue influence over the EWC as a result of their more intense and long-standing links with management

compared to foreign representatives (Streeck 1997). In contrast, those emphasising the potential of the legislation argued that information disclosed by central management at the EWC would otherwise not be available to foreign representatives (Knutzen 1997). Managers have also used EWCs since their inception to generate commitment to corporate objectives through communication with foreign representatives (Lamers 1998; Waddington et al. 2016: 41–44). Table 4.3 shows that foreign representatives generally rate the quality of information exchange and consultation higher than home country representatives insofar as there is not a single item on either the subsidiary requirements or extension agenda on which home country representatives regard the quality of information provision and consultation to be superior, although the average scores are the same. This result replicates the situation in 2007 (Waddington 2011: 88–96) and confirms that foreign representatives are in an information deficit compared to their home country counterparts. The consistency of the results over the two surveys confirms that managers have used EWCs to ‘reach’ foreign representatives. The results are problematic for those arguing that EWCs will become extensions to national systems of participation, as there is clearly an added value for foreign representatives.

Associated with the debate concerning home country and foreign EWC representatives are discussions about the effect on information and consultation arising from the home country of the MNC. In particular, European regional managerial systems in US-based MNCs are familiar and responsive to EWC-style practices, as they are largely staffed by Europeans (Hall et al. 2003) while Japanese managers treat EWCs as integral to managerial decision-making processes (Nakano 1999). Table 4.3 shows that there are no differences in the perception of the quality of the subsidiary requirements agenda between ‘representatives from EU-based MNCs’ and ‘representatives from non-EU-based MNCs’, although ‘representatives from EU-based MNCs’ rate the quality of information provision and consultation on the extension agenda marginally more highly. The broad equality between the two categories of EWC representatives supports the argument that European regional management structures in non-EU-based MNCs are comparable to their counterparts from EU-based MNCs. By definition, many strategic corporate decisions are made by the company board in the home country of the MNC. It remains to be seen whether ‘representatives from non-EU-based MNCs’ are able to exert as much influence over the content of these corporate decisions as their counterparts in EU-based MNCs. This issue is examined later in this chapter.

The various definitions of information and consultation applying to SEWCs and EWCs were discussed at the outset of this chapter. In practice, the Recast refined the definition of consultation and introduced definitions for EWCs broadly comparable with the definitions in Directive 2001/86/EC. Legislators’ expectation was that EWCs operating under Article 6 of the Directive would update the definitions in founding agreements in order to comply with the definitions included in the Recast. In contrast, managers operating EWCs with voluntary agreements concluded under Article 13 of the Directive do not regard themselves to be under an obligation to update the definitions of information and consultation in order to comply with the Recast (Pulignano and Turk 2016).²

2. It is argued that such managers are obligated to comply with the new definitions, because it is the obligation to provide information and engage in consultation that is important and has not changed. To comply with this obligation, it is necessary to act in accordance with the new definitions provided in the Recast (Picard 2010).

Furthermore, when these Article 13 agreements were concluded, there was no obligation to comply with the rudimentary definition of consultation included in the Directive, and there was no guidance offered in the legislation with regard to a definition of information, with the consequence that the two terms were defined either on paper or in practice by the parties to the EWC agreement.

Table 4.3 demonstrates that representatives operating with voluntary agreements concluded under Article 13 of the Directive report a slightly higher quality of information provision and consultation on the subsidiary requirements and extension agendas than their counterparts operating with legal definitions. This finding raises questions about the quality of agreements concluded under Article 13 of the Directive, and the relationship between legislation and learning effects on EWC practice. One point arising from this finding is that practices associated with EWCs operating under Article 13 are not necessarily inferior to those with legislative underpinning. Some of the EWCs working with a voluntary agreement are pioneers of transnational industrial relations (Lecher et al. 1999, 2001). A second point centres on learning effects: in the absence of legislation that determines the definition of information and consultation in voluntary agreements concluded under Article 13 of the Directive, learning effects may explain the higher quality of information provision and consultation reported by EWC representatives at such EWCs. Agreements concluded under Article 13 of the Directive are relatively longstanding, having initially been concluded before September 1996, which may amplify the impact of a learning effect on information and consultation. This finding is consistent with the views of managers responsible for Article 13 EWC agreements who report a continued evolution of information and consultation practice (Pulignano and Turk 2016: 80–83). These survey findings and the managerial research support the idea that learning effects impact on EWC practice regarding information and consultation procedures. Of course, this is not to argue that other aspects of legislative reform included in the Recast, such as provisions on training, will not improve the position of EWC representatives with agreements concluded under Article 13 of the Directive. The argument returns to this point in Chapter 7.

Trade union policy preferences

Since the formation of the initial EWCs, trade union organisations have promoted a range of policy preferences aimed at mitigating perceived limitations of the legislation. The impact of some of these policy preferences on perceptions of the quality of information exchange and consultation among EWC representatives are examined here.

As with the impact of industrial relations circumstances, the overall position reported in Table 4.4 is a consistency of results, albeit within a marginally wider range: between 2.7 and 2.9 for the subsidiary requirements agenda; and between 2.0 and 2.3 for the extension agenda. The best average index score for the subsidiary requirements agenda of 2.9 is almost equivalent only to ‘useful information, but no consultation’, while the average index scores for the extension agenda are closer to ‘raised, but useless information’. Again replicating the situation regarding the impact of industrial relations circumstances, there is a pattern of responses within the two agendas: ‘economic and financial situation of the company’, ‘corporate strategy and investment plans’ and ‘closure or cutbacks’ are

Table 4.4 Differences in perception of the quality of information and consultation procedures. Trade union policy preferences

	EWC coordinator present	No EWC coordinator	One or two plenary meetings	Three or more plenary meetings	Unionised EWC reps	Non-members
Economic and financial situation of the company	3.3	3.3	3.3	3.3	3.3	3.3
Corporate strategy and investment plans	3.2	3.1	3.2	3.1	3.2	3.1
Changes to working methods	2.7	2.8	2.7	2.7	2.7	2.7
Closure of or cutbacks in plants/workplaces	3.0	3.1	3.1	3.1	3.1	3.1
Mergers, takeovers and company acquisitions	2.8	2.9	2.9	2.8	3.0	2.8
Introduction of new technology or processes	2.8	3.0	2.9	2.8	3.0	2.8
Reorganisation of production lines	2.3	2.5	2.3	2.5	2.4	2.3
Relocation of production	2.6	2.6	2.5	2.7	2.6	2.5
Employment forecasts	2.5	2.6	2.5	2.5	2.4	2.6
Average for subsidiary requirements agenda	2.8	2.7	2.8	2.9	2.8	2.9
Research and development policy	2.6	2.3	2.5	2.4	2.5	2.3
Vocational training	2.1	2.0	2.1	2.3	2.1	2.2
Equal opportunities	2.3	2.2	2.3	2.5	2.3	2.6
Health and safety	3.1	2.6	2.9	3.0	3.0	2.9
Environmental protection	2.6	2.2	2.5	2.5	2.5	2.4
Trade union rights	2.1	1.8	2.0	2.2	2.1	2.0
Working time	2.0	1.7	2.0	2.3	2.0	2.2
Profit sharing/financial participation	1.9	2.1	2.1	2.0	2.2	2.0
Parental leave	1.5	1.4	1.6	1.7	1.5	1.8
Employee data protection	2.4	2.1	2.3	2.5	2.3	2.5
Wages and grading systems	1.9	1.9	1.9	2.5	1.9	2.3
Gender equality	2.2	2.0	2.1	2.4	2.1	2.4
Performance of different plants	2.5	2.4	2.5	2.3	2.5	2.4
Outsourcing/subcontracting	2.3	2.3	2.3	2.4	2.3	2.4
Working conditions of atypical workers	1.9	1.6	1.9	2.0	1.9	1.9
Average for extension agenda	2.2	2.0	2.2	2.3	2.2	2.3
N	832-867	274-293	1,217-1,277	129-136	1,160-1,271	191-203

Note: The index data were calculated by treating 'not raised' as one point, 'raised, but useless information' as two points, 'useful information, but no consultation' as three points, and 'useful information and consultation' as four points.

the subject of superior information and consultation within the subsidiary requirements agenda, while 'health and safety' is the topic of the best information and consultation within the extension agenda for most categories of respondent.

All ETUFs recommend that an EWC coordinator be appointed to liaise between the EWC and ETUF, and to inform EWC representatives of ETUF policies and recommended practice. Table 4.4 demonstrates the positive impact of this ETUF policy insofar as the presence of an EWC coordinator is related to a better perception of the quality of information provision and consultation on both the subsidiary requirements and extension agendas. These results replicate those recorded for 2007 (Waddington 2011: 101–102) and confirm a long-term impact of the presence of EWC coordinators, irrespective of legislation or learning effects. The policy question raised by this result concerns the coverage of EWC coordinators. No fewer than 19.9 per cent of EWC representatives report that there is no EWC coordinator present at the EWC, and a further 21.3 per cent did not know if a coordinator was present. While these proportions have declined markedly from the 67.1 per cent of EWC representatives with no EWC coordinator in 2007 (Waddington 2011: 101),³ there remains considerable progress to be made if the benefits of the ETUF policy are to be fully realised.

A second policy preference examined in Table 4.4 concerns the number of annual plenary meetings. Critics of the Directive, those who saw potential in the measure and the ETUFs have expressed the view that the minimum of one plenary meeting per year is insufficient to maintain continuity of the institution and to establish trust among the participants (Keller 1995; Martinez Lucio and Weston 1995). Although most of the ETUFs recommend more than one annual plenary meeting (EFFAT 2009; UNI Europa 2011), the issue of additional meetings is excluded from the ETUC (2017) reform agenda (see Appendix B). Table 4.4 suggests that additional meetings are paramount to improving the quality of information provision and consultation on both the subsidiary requirements and extension agendas. Initial testing showed that the impact of a single meeting in addition to the minimum requirement was marginal: however, when two or more annual plenary meetings were negotiated to supplement the minimum of one meeting per year, a marked impact is discerned to the extent that the average index score for the subsidiary requirements and extension agendas when there are three or more plenary meetings are not surpassed by any other category in Table 4.4.

All the ETUFs promote the election of union members to serve as EWC representatives as a means of generating a more uniform perspective within the EWC and facilitating the embedding of EWCs within networks of institutions of labour representation in MNCs. The average index scores for the subsidiary requirements and extension agendas are superior for non-members. EWC non-members thus view the quality of information exchange and consultation marginally more favourably than their unionised counterparts. It remains to be seen whether this is a result of differences in expectations or differences in the quality of information and consultation procedures available within national systems of worker participation.

3. In 2007, 310 EWC representatives reported the presence of an ETUF representative, while 631 indicated that no such representative was present at the EWC.

Timing of information and consultation

Critics of the Directive pointed out that, although information and consultation were central to the Directive, the terms and procedures, including the timing, of information and consultation were inadequately specified (Keller 1995; Streeck 1997). Similarly, legal analyses confirmed that the timing of information and consultation was not mentioned in the Directive, although the subsidiary requirements (point 3) and the 20th recital stated that, where exceptional circumstances affecting the employees' interests arise, employees should be informed and consulted 'as soon as possible', without specifying precisely when this should happen, thus leaving the issue of the timing of information and consultation open-ended (Blanke and Rose 2010: 330–333). Subsequent case study and survey evidence demonstrated that, in the main, information and consultation took place too late for EWC representatives to influence the content of corporate decision-making; however, in certain instances, the timing of information and consultation did allow EWC representatives to influence the implementation of corporate decisions (Telljohann 2005b; Hancké 2000; Waddington 2011: 102–107).

In acknowledging that the practices associated with the Directive failed to meet the objectives set for EWCs by European policy-makers, papers produced or commissioned by the European Commission identified the timing of information and consultation as a key issue for inclusion in the Recast (European Commission 2008a; EPEC 2008). To this end, the Recast states that 'information shall be given at such time [...] as [...] to enable employees' representatives to undertake an in-depth assessment' (Article 1(f)) and that consultation should take place 'at such time [...] as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related' (Article 1(g)). The Recast thus emphasises that the measures to which the information and consultation relate are 'proposed' rather than finalised and that EWC representatives can influence the content of corporate decision-making on the basis of an in-depth assessment (Article 2(1)(g); recital 16). Following the adoption of the Recast, BusinessEurope argued that 'many EWC agreements either provide for specific timeframes for [information and consultation] procedures or the parties to agreements tend to work out the [...] timeframes' (2017). In contrast, Spanish courts found that both Tenneco and Coca Cola had taken decisions before informing and consulting the EWC (European Commission 2016a: 35). The objective here is to establish whether the intentions underpinning the Recast are being realised in practice as BusinessEurope claims. The question on which the analysis is based did not appear in the 2007 survey, so a comparison over time is not possible. In addition to an 'all' category and following the approach implemented above, EWC representatives are examined by reference to industrial relations circumstances and trade union policy preferences.

'All' EWC representatives

Table 4.5 shows that 20.8 per cent of all EWC representatives report being in a position to influence the content of strategic corporate decision-making insofar as information and consultation takes place before managerial decisions have been finalised. For this

group of EWC representatives, the Recast appears to meet the expectations of European policy-makers. It is noteworthy that only four of 56 (7.1 per cent) managers responsible for EWCs reported that they engaged in information and consultation with the EWC before finalising their decision (Waddington et al. 2016: 15–18). EWC representatives and managers responsible for EWCs are thus agreed that the timing of information and consultation following the Recast remains inadequate.⁴

In practice, almost 80.0 per cent of EWC representatives receive information and engage in consultation after managers have finalised the corporate strategic decision and are thus unable to influence the content of that decision. For these representatives, EWC practices are failing to meet the core intention of the European policy-makers who drew up the terms of the Recast. These data contradict the claim made by BusinessEurope (2017) that satisfactory arrangements for the timing of information and consultation are in place within EWCs. More than 40.0 per cent of this group have the potential to influence the implementation of the strategic corporate decision in that implementation had not commenced before information and consultation had taken place, whereas the remainder are not in a position to even influence the implementation. The Recast has thus proved inadequate as a means of allowing the vast majority of EWC representatives to influence the content of corporate strategic decision-making.

Industrial relations circumstances

Although Table 4.5 illustrates variation between EWC representatives from different industrial relations circumstances, there is considerable consistency in their ordering of the timing of information and consultation. For each category of EWC representative, for example, information and consultation ‘after the managerial decision is finalised, but before implementation’ is the most frequent response. Similarly, for all but two categories of EWC representative, ‘representatives from dual channel systems’ and ‘representatives based in non-EU MNCs’, information and consultation ‘before the managerial decision on the issue is finalised’ occurs more frequently than ‘after implementation’. For each category of EWC representative, there are also substantial minorities that were unable to influence either the content or the implementation of corporate decision-making, as information and consultation took place ‘during’ or ‘after’ implementation of a managerial decision.

Table 4.3 showed that ‘representatives from single channel systems’ viewed the quality of information provision and consultation on the extension agenda to be higher than their counterparts from dual channel systems. Differences between the two categories, however, were marginal. Table 4.5 shows that differences between the two categories are marginal with regard to information provision and consultation ‘before the managerial decision on the issue is finalised’, but ‘representatives from single channel systems’ were more likely to report information provision and consultation ‘after the

4. The comparison is not direct, as the samples of the two studies differed, the wording of the questions was not the same and the study of managers utilised interviews, while this study relied on survey data. Both studies, however, are the largest that have been conducted in terms of the numbers of managers and EWC representatives involved.

Table 4.5 When do information exchange and consultation usually take place? Industrial relations circumstances and background

	All %	Reps from dual channel systems %	Reps from single channel systems %	Office holders %	EWC members %	Home country reps %	Foreign reps %	Article 13 reps %	Article 6 reps %	Reps from EU-based MNCs %	Reps based in non-EU MNCs %
Before the managerial decision on the issue is finalised	20.8	18.4	21.0	20.5	21.7	25.2	19.4	22.5	19.8	21.6	18.1
After the managerial decision is finalised, but before implementation	44.9	43.4	50.6	52.8	39.4	43.5	45.3	46.1	44.2	43.9	47.9
During implementation	18.5	24.2	12.6	18.7	18.9	18.1	18.7	17.7	19.0	18.7	18.1
After implementation	9.7	8.5	9.6	6.9	11.8	8.5	10.1	8.2	10.5	9.2	11.2
Don't know	6.2	5.5	6.2	1.2	8.1	4.8	6.6	5.5	6.5	6.6	4.7
N	1,427	482	596	509	793	312	1,115	466	961	1,081	346

managerial decision is finalised, but before implementation’, whereas ‘representatives from dual channel systems’ reported information provision and consultation ‘during implementation’ more frequently than their paired counterparts. This suggests that ‘representatives from single channel systems’ view the quality of the information and consultation processes to be higher than ‘representatives from dual channel systems’, in part, because information exchange and consultation take place earlier.

All other things being equal, ‘office holders’ would be expected to receive information earlier than ‘EWC members’, as the former, by definition, attend more meetings with management present than the latter. It is apparent, however, that management do not release information more readily to ‘office holders’ than ‘EWC members’ ‘before the managerial decision on the issue is finalised’. In contrast, ‘office holders’ were more likely to report that information exchange and consultation take place ‘after the managerial decision is finalised, but before implementation’ than ‘EWC members’. Given that there were no substantial differences between ‘office holders’ and ‘EWC members’ in their assessments of the quality of information provision and consultation (see Table 4.3), yet the two categories identify differences in the timing of information and consultation procedures, other factors would appear to underpin the relationship between the quality and timing of information and consultation procedures for ‘office holders’ and ‘EWC members’.

Critics of the Directive argued that the availability of information through national institutions of labour representation would result in EWCs becoming mere extensions of national participation arrangements, dominated by representatives from the home country of the MNC, rather than developing into transnational institutions (Keller 1995; Streeck 1997). On this basis, the timing of information provision and consultation would be anticipated to be superior for ‘home country representatives’. Table 4.5 shows that this is the case insofar as more ‘home country representatives’ report that information exchange and consultation take place ‘before the managerial decision is finalised’ than ‘foreign representatives’. The difference of 5.8 percentage points is not marked. ‘Foreign representatives’, however, are more likely to engage in information and consultation procedures ‘after the managerial decision is finalised, but before implementation’ than ‘home country representatives’, and differences between the two groups are marginal with regard to information provision and consultation ‘during’ or ‘after’ implementation. Regarding the timing of information and consultation procedures, the expectations of the critics of the Directive are thus, at best, qualified.

Related arguments apply to EWCs in MNCs based in EU Member States and those based elsewhere. As EWCs operating in non-EU-based MNCs do not necessarily have access to senior management and decision-making fora, it is anticipated that information and consultation are provided in a less timely manner. The evidence from Table 4.5 is equivocal. ‘Representatives from EU-based MNCs’ are more likely to report information and consultation taking place ‘before the managerial decision on the issue is finalised’ than ‘representatives based in non-EU MNCs’, but the reverse is true in the case of information and consultation ‘after the managerial decision is finalised, but before implementation’. These results suggest that EWCs in MNCs based outside the EU have fewer opportunities to influence the content of corporate decision-making, as

they have less access to managerial decision-makers based at corporate headquarters; however, once a corporate decision has been finalised, opportunities to influence the implementation of that decision are more marked.

‘Article 13 representatives’ report a superior timeliness of information and consultation procedures compared to ‘Article 6 representatives’. Irrespective of the content of agreements and the absence of legal underpinning, the practices associated with the timeliness of information and consultation procedures clearly ensure that ‘Article 13 representatives’ are informed and consulted in more timely manner than ‘Article 6 representatives’. This may contribute to their assessment of the quality of information provision and consultation also being superior (see Table 4.3). The impact of the German system on the timeliness of information and consultation procedures can be illustrated in relation to both ‘Article 6 representatives’ and ‘Article 13 representatives’. No fewer than 29.5 per cent of ‘Article 13 representatives’ and 28.0 per cent of ‘Article 6 representatives’ based in MNCs of German origin with board-level employee representation report being informed ‘before the managerial decision on the issue is finalised’. In brief, the impact of the German system appears to increase the key measure of timeliness by about 8.0 to 9.0 percentage points for both ‘Article 13 representatives’ and ‘Article 6 representatives’.

Trade union policy preferences

The results presented in Table 4.6 essentially replicate the overall pattern of results associated with industrial relations circumstances. The most frequently occurring result for each of the trade union policy preferences is ‘after the managerial decision is finalised, but before implementation’, which is cited by at least 44.7 per cent of EWC representatives in each category. EWC representatives in four of the six categories assign ‘before the managerial decision on the issue is finalised’ as the second most frequent indicator of timeliness. For two single categories, ‘EWC coordinator present’ and ‘up to two plenary meetings’, the information and consultation processes more frequently take place ‘during implementation’ than ‘before the managerial decision on the issue is finalised’. With the single exception of the category ‘three or more meetings’, 23.0 per cent or more of the EWC representatives engaged in information and consultation activities either ‘during’ or ‘after’ implementation, with the consequence that they had little or no opportunity to bring influence to bear on either the content or the implementation of the managerial decision. For these EWC representatives, the Recast has left them floundering in a quest for timely information and consultation procedures.

An analysis of the impact of specific trade union policy preferences reveals that the presence of an EWC coordinator has no marked impact on the timing of information and consultation procedures. Given that EWC representatives report a higher quality of the information and consultation processes when an EWC coordinator is present (see Table 4.4) and there is no impact on the timing of information and consultation procedures from the presence of an EWC coordinator, other factors must underpin the perception of higher quality of information provision and consultation among EWC representatives with a coordinator present.

Table 4.6 When do information exchange and consultation usually take place? Trade union policy preferences

	EWC coordinator present %	No EWC coordinator %	One or two plenary meetings %	Three or more plenary meetings %	Unionised EWC reps %	Non-members %
Before the managerial decision on the issue is finalised	20.4	23.7	19.0	35.2	20.2	23.7
After the managerial decision is finalised, but before implementation	45.2	46.0	45.0	45.0	44.8	44.7
During implementation	20.6	15.4	19.4	12.7	19.3	14.8
After implementation	10.1	11.3	10.4	4.4	10.0	8.2
Don't know	3.8	3.7	6.1	2.8	5.7	8.7
N	868	294	1,277	137	1,224	201

EWC representatives who operate with ‘three or more plenary meetings’ are more likely than any others to report that information exchange and consultation occur ‘before the managerial decision on the issue is finalised’. This result is consistent with the high quality of information and consultation procedures reported by EWC representatives working in conjunction with ‘three or more plenary meetings’ (see Table 4.4). Interpretation of these results is not straightforward. An immediate response would be to argue that frequent plenary meetings facilitate timely information exchange and consultation. If this were the case, however, ‘office holders’, who attend many meetings with management, would also report more timely information exchange and consultation. As Table 4.5 shows, however, this is not the case. While the current evidence cannot confirm the argument, it is possible that a management prepared to agree to three or more plenary meetings per year is also prepared to engage in timely information exchange and consultation as a means of engagement with the EWC. In short, the quality and timeliness of information and consultation procedures in these circumstances are the result of a managerial preparedness to engage with the EWC rather than the imposition of a trade union preference for additional annual plenary meetings.

The final trade union policy preference included in Table 4.6 concerns the unionisation of EWC representatives. No fewer than 68.4 per cent of non-members reported that information exchange and consultation take place either ‘before the managerial decision on the issue is finalised’ or ‘after the managerial decision is finalised, but before implementation’ compared to 65.0 per cent of unionised EWC representatives, suggesting that non-members view the timing of information and consultation procedures to be marginally superior to their unionised counterparts. This is not reflected, however, in non-members viewing the quality of information and consultation arrangements to be markedly better than unionised EWC representatives (see Table 4.4), pointing to a complex relationship between the timing and quality of information and consultation procedures.

Table 4.7 How effective are the plenary meetings of the EWC? (2018)

	Very effective %	Effective %	Neither effective nor ineffective %	Ineffective %	Very ineffective %	N
As a source of information	24.3	53.4	16.8	3.1	2.4	1,422
As a check on information provided by management	12.7	43.4	30.5	9.3	4.1	1,392
As a means of consultation	11.9	37.9	26.5	16.5	7.2	1,407
As a means of expressing an opinion on matters within the company	18.5	48.3	22.6	7.6	3.0	1,416
As a means of influencing management decisions	4.2	17.9	36.0	28.5	13.5	1,412

Utility of European Works Councils

Table 4.7 presents data on the efficacy of the plenary meetings of the EWC. Relatively ‘soft’ issues are positioned towards the top of the table, and ‘hard’ issues towards the bottom. Soft and hard in this context refers to whether EWC representatives are passive or active towards management. ‘As a source of information’, for example, is relatively passive insofar as EWC representatives are recipients of information from management, whereas ‘as a means of influencing management decisions’ requires EWC representatives actively to seek amendments to managerial decisions.

Table 4.7 confirms much of what has already been argued in this chapter. The plenary meetings of EWCs tend to be superior on the ‘soft’ issues associated with information compared to their handling of consultation. Similarly, while plenary meetings allow many representatives the opportunity to express an opinion on issues, in the vast majority of cases, they fail ‘as a means of influencing management decisions’: only 22.1 per cent of EWC representatives thought that the EWC plenary meeting was either ‘very effective’ or ‘effective’ in this regard. This proportion rises to 41.7 per cent, however, among EWC representatives who reported that information exchange and consultation takes place ‘before the managerial decision on the issue was finalised’, suggesting that managerial compliance with legislative requirements is a key influence of the quality of engagement among EWC representatives.

The failure of the Recast to enable EWCs to meet the intentions of European policy-makers is further illustrated by Table 4.8, which compares the results for 2018 with those reported in 2007.⁵ The pattern of results reported in Table 4.7 is reproduced for each of the categories presented in Table 4.8 insofar as the ‘softer’ the issue, the higher

5. Several of the categories of EWC representative that appear earlier in this chapter are excluded from Table 4.8 because comparable data are not available for 2007. The comparisons between 2007 and 2018 include only those categories for which data are available for both years.

Table 4.8 How effective is the European Works Council? (2007 and 2018)

	All		Office holders		EWC members		Home country reps		Foreign reps		Unionised EWC reps		Non-members	
	2007	2018	2007	2018	2007	2018	2007	2018	2007	2018	2007	2018	2007	2018
As a source of information	3.7	3.9	3.8	3.9	3.6	3.9	3.7	3.9	3.7	3.9	3.7	3.9	3.7	3.9
As a check on information provided by management	3.3	3.5	3.4	3.5	3.3	3.5	3.2	3.5	3.3	3.5	3.3	3.5	3.3	3.5
As a means of consultation	3.2	3.3	3.3	3.2	3.1	3.3	3.2	3.3	3.3	3.3	3.2	3.3	3.1	3.5
As a means of expressing an opinion on matters within the company	3.6	3.7	3.8	3.8	3.5	3.7	3.7	3.7	3.6	3.7	3.6	3.7	3.6	3.8
As a means of influencing management decisions	2.5	2.7	2.6	2.6	2.5	2.8	2.6	2.7	2.5	2.7	2.4	2.7	2.6	2.9
N	941	1,390-1,420	384	496-507	557	771-789	310	303-310	631	1,086-1,110	876	1,189-1,215	58	199-203

Note: Respondents were asked to indicate their response on a five-point scale: very effective, effective, neither effective nor ineffective, ineffective, and very ineffective. Points on the scale were scored 5 to 1. A score of 4 was thus 'effective'. The scores presented in Table 4.8 are the index scores for different categories of EWC representatives. An index score of four or more indicates that representatives thought their EWC to be effective, while an index score of less than three indicates that representatives considered the EWC to be ineffective.

the index score. The 'hard' issue 'as a means of influencing management decisions' records index scores of 2.4 or 2.9 equivalent to a point between 'ineffective' and 'neither effective nor ineffective' on the scale.

Advocates of the Recast will, no doubt, point out that the results for 2018 are a marginal improvement on those for 2007. In 30 of the 35 entries in Table 4.8, there is an improvement in the index scores between 2007 and 2018, although in only six instances was the improvement greater than 0.2 of an index point. In four of the 35 entries, no improvement is reported to have occurred between 2007 and 2018, while, in one instance, the situation deteriorated, according to EWC representatives. In short, the advances expected by European policy-makers from the adoption of the Recast are, at best, marginal, and have failed to substantially increase the utility of EWCs for representatives.

European Works Councils and corporate restructuring

The Commission acknowledged that transnational corporate restructuring would intensify as companies adjusted to the European single market and integrated this into the case for the Directive insofar as EWCs were viewed as the means whereby worker representatives could influence the terms of corporate restructuring. The expectation that rates of corporate restructuring would rise was illustrated by the 2007 survey when 80.2 per cent of EWC representatives reported restructuring as having taken place within the three years prior to the survey. By 2018, this proportion had risen to over 90.0 per cent of EWC representatives who, on average, had experienced 3.2 restructuring events in the three years prior to the survey, confirming the persistence of high rates of corporate restructuring. The role of EWCs in transnational corporate restructuring envisaged by the Commission was not realised in practice before 2007. Many of the early legal proceedings brought by EWCs, for example, concerned their exclusion from information and consultation procedures during corporate restructuring (Waddington 2011: 102). Similarly, in 2007, only 17.6 per cent of EWC representatives were informed and 13.1 per cent consulted before the decision to restructure was finalised by management, while no fewer than 32.6 per cent of EWC representatives were not consulted at all regarding the restructuring events that took place in the MNC (Waddington 2011: 103).

In recognition of the limitations of the Directive in relation to transnational corporate restructuring, European policy-makers attempted to strengthen the situation of EWCs by including in the Preamble details on the need to respond to corporate restructuring (recitals 14, 29, 37 and 41) and in the Recast a requirement for in-depth assessments, an adaptation clause to promote continuity of EWC practice when restructuring takes place, and more specified definitions of information and consultation. The purpose of this section is to establish whether the situation has improved since 2007 from the perspective of EWC representatives. The analysis proceeds in three stages. The first stage assesses the treatment of corporate restructuring events at plenary meetings of the EWC, while the second examines the extent to which corporate restructuring stimulates the calling of extraordinary meetings, and, if they

are called, the capacity of EWC representatives to exert an influence on managerial decision-making at such meetings. A third stage examines access to expert advice during corporate restructuring.

Corporate restructuring and the plenary meeting

The extent and persistence of transnational corporate restructuring has resulted in it becoming a key agenda item for EWC plenary meetings. European policy-makers anticipated this development through the inclusion of a range of agenda items associated with corporate restructuring in the subsidiary requirements. Table 4.9 extracts these agenda items and tabulates them against a range of restructuring events included in the 2018 survey.⁶ Respondents were asked to indicate whether the MNC had been involved in each restructuring event within the past three years and which was the most recent event. Table 4.9 draws on responses from EWC representatives who indicated that the event was the most recent within the MNC. Responses from EWC representatives that had not experienced any form of restructuring during the three years prior to the survey are also reported.

It is apparent that restructuring generally does not necessarily enhance the quality of information exchange and consultation insofar as the average index score for ‘no restructuring’ is comparable with those reported when restructuring had taken place. The quality of the information and consultation processes for the specific agenda item associated with the restructuring event, however, tends to be high. If the restructuring event is a ‘merger or acquisition’, for example, the index score for ‘mergers, takeovers and company acquisitions’ peaks. The same situation applies to ‘plant closure’ and ‘transfer of production or production lines’. ‘Sale of part of the MNC’ is also associated with a relatively high index score for ‘closure or cutbacks’. The exception to this schema is ‘mass redundancies’, which is associated with the lowest index score for ‘employment forecasts’. The quality of information exchange and consultation on ‘employment forecasts’ associated with ‘no restructuring’ is higher than that generated by any of the restructuring events. This result remains a puzzle given that, in addition to ‘mass redundancies’, several of the restructuring events would be expected to generate concern for employment levels among EWC representatives.

Interpretation of the data presented in Table 4.9 is open to question. At least two very different, but not necessarily mutually exclusive, interpretations are available. The first is that management are more likely to engage in higher quality information exchange and consultation as a means of promoting commitment to the restructuring event among EWC representatives. Alternatively, the data are also consistent with the view that restructuring encourages EWC representatives to strive for higher quality information provision and consultation on the event at hand. The data presented here are insufficient to reach a conclusion on these alternatives, although it is noteworthy

6. In addition to the five restructuring events listed in Table 4.9, the questionnaire also included the option ‘change in multinational company human resources strategy’. This option is excluded from the current analysis, as it does not appear in the subsidiary requirements agenda.

Table 4.9 Restructuring and the quality of information provision

	No restructuring	Merger or acquisition	Mass redundancies	Plant closure	Transfer of production or production lines	Sale of part of the MNC
Changes to working methods	3.0	2.7	2.7	2.8	2.8	2.7
Closure of or cutbacks in plants/workplaces	2.9	3.1	3.1	3.2	3.0	3.1
Mergers, takeovers and company acquisitions	2.6	3.2	2.8	2.9	2.9	2.8
Introduction of new technology or processes	3.0	2.9	2.7	2.9	3.0	2.9
Reorganisation of production lines	2.3	2.4	2.3	2.4	2.6	2.2
Relocation of production	2.5	2.6	2.5	2.7	2.8	2.4
Employment forecasts	2.8	2.6	2.4	2.5	2.5	2.4
Average index score	2.7	2.8	2.6	2.8	2.8	2.7
N	126-135	350-366	215-222	194-199	225-230	238-246

Note: The index data were calculated by treating 'not raised' as one point, 'raised, but useless information' as two points, 'useful information, but no consultation' as three points, and 'useful information and consultation' as four points.

that, even where a restructuring event takes places, the index scores range between 2.2 and 3.2 corresponding to 'useful information, but no consultation', which is a long way short of the expectations for consultation among European policy-makers.

In recognition of the inadequacies of practices arising from the Directive, the Recast specifically introduced a provision allowing for in-depth assessments of changes proposed by management. The 2018 survey asked whether the information presented by management on the most recent restructuring event allowed EWC representatives to conduct an in-depth assessment as required by the Recast. Fewer than half (48.4 per cent) of EWC representatives indicated that this was the case. The terms of the Recast are thus not being met in practice for a majority of EWC representatives. Industrial relations circumstances impinge upon the perception of whether the quality of information was sufficient as a basis to conduct in-depth assessments in that 'reps from EU-based MNCs', 'Article 6 reps', 'home country reps' and 'office holders' were more likely to report information of sufficient quality than their paired counterparts.⁷ Similarly, among the trade union policy preferences, EWC representatives with 'three or more plenary meetings' or an 'EWC coordinator present' are more likely to report that information allowed an in-depth assessment of the matter at hand, but, in the best

7. The proportions of EWC representatives reporting that information was sufficient to allow for in-depth assessments are: 'representatives from EU-based MNCs', 48.9 per cent; 'representatives from non-EU-based MNCs', 44.2 per cent; 'Article 6 representatives', 49.9 per cent; 'Article 13 representatives', 44.6 per cent; 'home country representatives', 52.2 per cent; foreign representatives', 46.5 per cent; 'office holders', 50.2 per cent; and 'EWC members', 45.7 per cent. There were no marked differences between 'representatives from dual channel systems' and 'representatives from single channel systems' or between 'unionised EWC representatives' and 'non-unionised EWC representatives'.

case of ‘three or more plenary meetings’, 56.2 per cent of EWC representatives reported this to be the case.⁸ In short, for substantial numbers of EWC representatives, the terms of the Recast are not being enacted in practice, irrespective of industrial relations circumstances or trade union preferences.

Corporate restructuring and extraordinary meetings

The subsidiary requirements of the Directive and Recast make provision for the calling of meetings to supplement the plenary meeting in exceptional circumstances that are largely defined by reference to restructuring events.⁹ While transnational restructuring has been shown above to be far from an exceptional circumstance, by 2015, 86 per cent of EWC agreements allowed for some form of extraordinary meeting to be called in exceptional circumstances, although 35 per cent of these agreements required managerial agreement before such a meeting was convened (De Spiegelaere and Jagodziński 2015: 34). In most EWCs, extraordinary meetings may thus be convened to supplement the plenary meeting.

Taking the most recent restructuring event as the point of reference, the 2018 survey asked if an extraordinary meeting had been convened to discuss the restructuring event.¹⁰ Fewer than half of the EWC representatives (46.9 per cent) reported that an extraordinary meeting had been called to discuss restructuring and 42.1 per cent indicated that no such meeting had been convened.¹¹ Furthermore, of those who reported that no extraordinary meeting had been convened, only 16.4 per cent indicated that they had requested such a meeting. Over 80.0 per cent of EWC representatives reporting that no extraordinary meeting had been convened either had not called for such a meeting or were unaware whether a call for a meeting had been made. While the terms of the EWC agreement may have enabled some managers to reject initiatives from EWC representatives to convene an extraordinary meeting, the coverage of agreements with a clause that requires managerial agreement to convene an extraordinary meeting is insufficient to explain why EWC representatives did not call more extraordinary meetings. One explanation may be that the matter was handled to the satisfaction of EWC representatives at the plenary meeting. The data presented in the previous stage of the analysis of restructuring, however, indicate that this is unlikely to be the case for many EWC representatives. Among alternative explanations are that EWC representatives rely on initiatives taken within other institutions of labour representation in the MNC; are satisfied by management through other means, such as at a select committee meeting or through communication other than at a meeting; have no confidence in the EWC as an institution within which restructuring may be

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8. The proportions of EWC representatives reporting that information was sufficient to allow for in-depth assessments are: ‘three or more plenary meetings’, 56.2 per cent; ‘one or two plenary meetings’, 46.6 per cent; ‘EWC coordinator present’, 50.6 per cent; and ‘no EWC coordinator’, 47.0 per cent.
 9. Point 3 of the subsidiary requirements of the Recast, for example, mentions ‘relocations, the closure of establishments or undertakings or collective redundancies’ to illustrate exceptional circumstances.
 10. The option ‘change in multinational company human resources strategy’ is included together with the five restructuring events listed in Table 4.9 in this analysis.
 11. The remaining EWC representatives (11.9 per cent) did not know whether an extraordinary meeting had been convened.

handled; or assume that nothing can be done within the EWC to alter the content of the management decision. Whichever of these or other explanations underpin the current situation, it is apparent that a significant proportion of EWC representatives fail to call for an extraordinary meeting when faced by corporate restructuring.

The responses of those EWC representatives who were involved in extraordinary meetings reveal further limitations in the handling of corporate restructuring by these means. Again, taking the most recent restructuring event as the point of reference, only 26.1 per cent of EWC representatives who participated in an extraordinary meeting reported that the meeting had been convened 'before the decision was finalised on the issue'. These EWC representatives thus had the potential to influence the content of the restructuring decision. In contrast, 45.8 per cent of EWC representatives reported the extraordinary meeting as taking place 'after the decision was finalised, but before implementation', 23.2 per cent 'during the implementation process', and 3.0 per cent 'after implementation'.¹² The vast majority of the EWC representatives who were fortunate to participate in an extraordinary meeting were thus unable to influence the content of the management decision regarding restructuring, although they had the potential to influence the implementation of the restructuring decision.

Corporate restructuring and access to experts

The Directive (point 6, Annex) and the Recast (point 5, Annex I) provide for the EWC or the select committee to seek the assistance of experts of their choice in performing their duties and responsibilities. In this context, the expertise of the expert is not defined: an expert may be an EWC coordinator or an individual with a specific skill, for example in law or corporate finance. In the absence of a precise definition of an expert, 92 per cent of EWC agreements provide for access to external expert support (De Spiegelaere and Jagodziński 2015: 41). The majority of these agreements give EWC representatives sole responsibility to select the expert (64 per cent), while joint EWC representatives/management responsibility is mentioned in 23 per cent of agreements.¹³

In the majority of restructuring cases, it should thus be straightforward for EWC representatives to seek and make use of specialist expertise to assist in the handling of technical issues associated with corporate restructuring. The 2018 survey asked EWC representatives to state whether an expert who was not the EWC coordinator had been appointed in connection with the most recent restructuring event in which the MNC had been involved. On this basis, 26.9 per cent of EWC representatives reported that such an expert had been appointed, 54.3 per cent reported no such appointment, and 18.7 per cent did not know. Fewer EWC representatives thus called on the services of an expert than EWC agreements suggest was possible. Of course, this result is not necessarily problematic, as the restructuring event could have been dealt with satisfactorily by the EWC

12. In addition, 1.9 per cent of EWC representatives reported that they did not know when the extraordinary meeting had taken place.

13. In 11 per cent of cases, responsibility for selecting the expert was not specified, and, in 1.0 per cent of cases, responsibility lies solely with management (De Spiegelaere and Jagodziński 2015: 41).

without access to an expert, or, more likely in the light of the above results, information from management was provided too late for advice from an expert to be useful.

There is very little variation among EWC representatives regarding the frequency at which experts are sought: 26.6 per cent of representatives serving on an Article 6 EWC reported accessing the services of an expert compared to 27.5 per cent of their counterparts working in conjunction with a voluntary agreement concluded under Article 13 of the Directive. Similarly, EWC representatives with an EWC coordinator (29.8 per cent) and office holders (31.8 per cent) are more likely to report seeking support from an expert. The most significant variation, however, is apparent in those EWCs with advanced practices: no fewer than 38.2 per cent of EWC representatives who operate with three or more plenary meetings per year report receiving support from an expert, whereas 40.7 per cent of EWC representatives in receipt of information from management before management finalises decision-making sought advice from an expert. The extent of this variation and the greater access to experts among EWC representatives based in EWCs with advanced practices again suggests that it is only in a very small minority of EWCs that the practices intended by European policy-makers are being implemented.

In short, neither plenary meetings nor extraordinary meetings are fora at which information exchange and consultation on corporate restructuring allow the vast majority of EWC representatives to influence the content of managerial decision-making. Similarly, very few EWC representatives gain access to advice from experts during restructuring. EWC arrangements in a policy area deemed central to their purpose by the Commission are thus inadequate. The Recast and its national transpositions have not fulfilled the expectations of European policy-makers in that the general quality of information is insufficient as a basis on which in-depth assessments can be conducted.

Conclusions

This chapter demonstrates that the quality of information and consultation procedures at EWCs is inadequate from the perspective of EWC representatives. In particular, most EWCs are institutions engaged in the provision of information, which itself is often qualified, rather than information exchange *and* consultation. The timeliness of information and consultation procedures compounds the limitations of EWCs in that almost 80.0 per cent of EWC representatives are unable to influence the content of managerial decision-making. For most representatives, these shortcomings in the quality and timeliness of information and consultation procedures at EWCs contribute to their failure as institutions that influence management. Neither the plenary nor the extraordinary meeting is a satisfactory location at which the vast majority of EWC representatives could reliably address the challenges of corporate restructuring. On these four counts, the performance of EWCs falls well short of the objectives and expectations of European policy-makers.

Has the situation improved between 2007 and 2018 as European policy-makers intended? The quality of information and consultation procedures has improved, albeit from a

very low baseline. The 2007 and 2018 surveys did not include comparable questions on timeliness, and so the validity of a comparison between the two dates is compromised. It is noteworthy, however, that, in 2018, only 20.8 per cent of EWC representatives considered themselves in a position to influence the content of managerial decisions in that information exchange and consultation took place before the decision was finalised by management. EWCs were not effective ‘as a means of influencing management decisions’ in both 2007 and 2018, thus highlighting the limitations of the institution. Although the questions differed between the 2007 and 2018 surveys, it is apparent that in neither year did EWCs allow the majority of representatives to intervene to any great effect in corporate restructuring decisions. In all, improvements were reported between 2007 and 2018, but they are qualified.

An interpretation of the improvements in the quality of information and consultation procedures between 2007 and 2018 is far from straightforward. Advocates of the impact of the Recast will no doubt attribute the improvement in the quality of information and consultation procedures to the definitions of information and consultation and other measures included in the Recast. To substantiate this position, however, it is necessary to explain why the improvements in the quality of information and consultation procedures do not allow the conduct of in-depth assessments for the majority of EWC representatives; why these improvements do not work through to the utility of EWCs and their role in corporate restructuring; and why ‘Article 13 representatives’, whose practice was not subject to legislative change, report a higher quality of information and consultation procedures than their counterparts whose practice was subject to legislation. Similarly, the results reported by ‘Article 13 representatives’ and the general improvement in the quality of information exchange and consultation on both the subsidiary requirements and extension agendas are consistent with an argument that learning effects rather than legislative change underpin the development of the institution until 2018. For proponents of this position, the absence of any improvement in the utility of EWCs and in their role in corporate restructuring are problematic, as this absence suggests that learning effects are restricted solely to the perceived quality of information and consultation procedures rather than more wide-ranging practices.

Although the survey results are from the perspective of EWC representatives, they allow comment on the position of the parties to EWCs: management, trade union organisations and European policy-makers. Almost half (49.4 per cent) of the EWC representatives who reported that transnational restructuring had taken place in the three years prior to the survey indicated that ‘change in multinational company human resources strategy’ was one of the forms of restructuring that had affected them. It is also evident that managers are using EWCs to develop HRM strategies within MNCs. This is marked in the survey evidence by growth in the coverage and quality of information exchange and consultation on ‘wages and grading systems’ and ‘profit sharing/financial participation’. These findings confirm a longstanding pattern of development (Lamers 1998). In addition, managers are using EWCs to discuss the ‘performance of different plants’, presumably as a means of conducting coercive comparisons to promote productivity growth and other improvements. EWC representatives thus confirm the position of BusinessEurope (2017) and managers responsible for EWCs

(Pulignano and Turk 2016: 63–78), who report that EWCs are useful managerial tools. Chapter 8 develops this argument in greater detail.

The data presented here are also open to the interpretation that managers release information of inadequate quality in an untimely manner and are unlikely to engage in consultation. A majority of managers responsible for EWCs within MNCs confirm that this is the case, particularly regarding timeliness (Pulignano and Turk 2016: 19–28). There are points of mitigation, however, regarding this argument. First, several agenda items are cited more frequently in EWC founding agreements than they appear as ‘useful information and consultation’ at the EWC plenary meeting. Similarly, almost 40 per cent of EWC representatives were not in receipt of useful information on ‘employment forecasts’ in the three years prior to the distribution of the 2018 survey. These instances suggest that some EWC representatives are either failing or choosing not to enforce the agreement on which the EWC operates or are declining to ask for information on key strategic issues included in the subsidiary requirements. Second, it is apparent that many EWC representatives do not call for extraordinary meetings even though the EWC agreement makes provision for such meetings. When asked to describe the situation in the EWC, for example, 22.2 per cent of EWC representatives described practice as being ‘below the standards set out in the EWC agreement’.¹⁴ In short, many managers do not comply with the terms of the legislation or EWC agreement, but, in some instances, it would appear that they are not pressed to do so by EWC representatives. This point is further developed in Chapter 9 in the context of the enforcement of EWC regulations.

The survey evidence endorses the basic tenet of the trade union position: the quality of information and consultation procedures is inadequate, and information is often made available too late. Point 1 of the ETUC reform agenda (see Appendix B) is endorsed by the data insofar as extant EWC practice shows that the opinions of the EWC representatives during consultation may be taken into account by some managers, but that this is not always the case. This situation underpins trade union support for reform if EWC practice is to be commensurate with the stated expectations of European policymakers. Among the trade union policy preferences, the presence of an EWC coordinator and the holding of more frequent plenary meetings are associated with a higher quality of information exchange and consultation. A question hangs over the latter, however, as the increased frequency of office holders attending meetings with management is not associated with improvements in information and consultation provision. The higher quality of information and consultation procedures at EWCs with three or more plenary meetings may thus be a consequence of managerial strategy rather than the frequency of contact with managers. Throughout, the quality of information exchange and consultation on agenda items drawn from the subsidiary requirements is superior to that on items from the extension agenda, supporting the idea of including more items in the subsidiary requirements, as argued by the ETUC (Appendix B, point 10). The quality of information and consultation procedures reported by ‘Article 13 representatives’ is

14. The question asked EWC representatives to comment on whether there was a divergence between EWC practice and the founding agreement. In addition to the 22.2 per cent of EWC representatives who reported practice was inferior to the agreement, 9.0 per cent thought EWC practice was better than the agreement, 47.2 per cent thought it was consistent with the agreement, and 21.6 per cent did not have an answer to the question.

superior to that reported by representatives operating in EWCs bound by legislation, suggesting that there is more to the quality of information and consultation provision than legislative underpinning.

The findings presented in this chapter make difficult reading for European policy-makers. The quality, timeliness and utility of information exchange and consultation at EWCs is far from satisfactory. Furthermore, most representatives are unable to use EWCs as a vehicle through which to bring influence to bear on corporate restructuring. Even if the indefensible assumption is made that no learning effects influence the development of EWCs, the best that can be argued is that the Recast has had a marginal impact on the quality of information and consultation procedures, has had no effects on the utility of EWCs or on the capacity of EWC representatives to influence the content of corporate restructuring decisions, and has not allowed most EWC representatives to conduct in-depth assessments. The most positive assessment of the Recast is that it brought legislation into line with practice. Therefore, the policy challenge for European level policy-makers is to introduce legislation that leads to improvements in practice. These results thus confirm the reviews of the operation of the Recast that have been conducted by academics (Voss 2016; Waddington et al. 2016), that have been the subject of reports endorsed by the Commission (European Commission 2010b) and studies supported by BusinessEurope (Pulignano and Turk 2016), that have been undertaken as part of studies of the legislation (Jagodziński 2010a) and of EWC founding agreements (De Spiegelaere and Waddington 2017), and that have been carried out in connection with studies published by the Commission (2018a, 2018b). Put simply, the Recast has failed to deliver on its objectives and on the expectations of European-level policy-makers.

The questions raised by the survey and these other research findings centre on the issues of compliance and enforcement. With regard to each of the issues associated with information and consultation provision examined by this chapter, minorities of EWC representatives are satisfied with the current arrangements. The challenge for European policy-makers is to raise these percentages so that the majority of EWC representatives report positively on these issues: in other words, how can the legislation be enforced more effectively so as to ensure a wider range of compliance? A further challenge for European policy-makers is to raise levels of compliance while also promoting processes of internal development. The wide range of practices adopted and forms taken by EWCs demonstrate the flexibility of the institution that European policy-makers were intent on injecting into the legislation. Limitations in the quality, timing and utility of information and consultation procedures and the exclusion of EWC representatives from decisions regarding transnational corporate restructuring highlight deficiencies in enforcement.