

Chapter 8

Management: seeking a corporate rather than an information and consultation agenda for EWCs

Chapter 2 elaborated the approach of BusinessEurope and managers within MNCs towards EWCs. Within the political sphere, BusinessEurope favours a voluntary approach to transnational information and consultation practices and has successfully minimised the coverage and maximised voluntary aspects when legislation could no longer be politically resisted. Operationally, many managers attempt to integrate EWCs into corporate HR policies, while downplaying the formal information and consultation agenda. Operational HR benefits were apparent shortly after the adoption of the Directive in the form of enhanced employee commitment to corporate objectives, improved transnational managerial communications with employees, and the generation of a spirit of cooperation (Lamers 1998; Nakano 1999). Furthermore, EWCs were used ‘as an agent of change’, thereby facilitating management-led change (Hume-Rothery 2004). Over time, managers introduced an increasingly sophisticated array of HR strategies involving EWCs to extract added value for the MNC. In this context, managers used EWCs as a tool for promoting corporate identity, as integral components of corporate communication systems and as a means of securing leverage between European and local levels of operation within MNCs (Pulignano and Turk 2016; Greer and Hauptmeier 2016; Koutroukis 2004).

Concurrently, managers responsible for EWCs within MNCs acknowledge that they do not meet the information and consultation obligations specified in the legislation, and several cite the reporting requirements of stock exchanges as the reason why they are unable to fulfil these obligations (Pulignano and Turk 2016; Waddington et al. 2016). Managers also concede that EWCs have either no or very little influence on corporate decision-making, particularly when restructuring is under way (Nakano 1999; Hancké 2000; Pulignano and Turk 2016). Chapter 4 confirms these points from the perspective of EWC representatives insofar as the timeliness, quality and utility of information and, in particular, consultation procedures were inadequate, and EWC representatives were unable to influence the content of strategic corporate restructuring decisions.

Three further points are apposite at this juncture. First, work endorsed by the Commission confirms that EWCs are being used by managers to advance an HR agenda intended to extract added value for MNCs and that the quality of information exchange and consultation with EWCs falls short of the standards intended by European level policy-makers (EPEC 2008). These observations were subsequently reiterated by the Commission (2018b). Second, although BusinessEurope has consistently argued in favour of voluntary solutions for transnational information exchange and consultation, it recognises that EWCs improve HR practices in communications,

employee engagement and the introduction of cross-border initiatives (BusinessEurope 2017). In short, managers, European policy-makers within the Commission and BusinessEurope agree that EWCs facilitate the implementation of increasingly wide-ranging corporate HR strategies. Third, while managers responsible for EWCs within MNCs and BusinessEurope are as one on the utility of EWCs as a means of promoting HR strategies, they have different views on the Recast. Managers view the Recast as merely formalising extant arrangements, while allowing sufficient flexibility to pursue corporate HR strategies (Pulignano and Turk 2016; Rüb and Platzer 2015). In contrast, throughout discussions on the revision of the Directive, BusinessEurope consistently argued that the Recast would erect ‘high obstacles to taking decisions quickly’ and constitute a ‘straitjacket’ to negotiations at company level (BusinessEurope 2008).

Based primarily on case studies, a further analytical strand of research concerning management identifies degrees of commitment among managers to EWCs ranging from minimalist to proactive engagement. Furthermore, different degrees of managerial commitment are associated with different points within typologies of EWCs. Symbolic EWCs, for example, were associated with minimalist managerial commitment, which, in turn, may be influenced by the cost of EWCs and their infrastructure (Weston and Martinez Lucio 1998). In contrast, participative EWCs developed in conjunction with proactive managerial approaches (Lecher et al. 2001, 2002). The linkage between managerial commitment to EWCs and their pattern of development was reiterated in different forms in subsequent typologies of EWCs (Weiler 2004; Marginson et al. 2004; Kotthoff 2006; Köhler and González Begega 2010; Stöger 2011), although, within each of these typologies, it was acknowledged that managerial commitment was not the sole factor that determined the stage of development reached by the EWC. Managers adopting more proactive approaches to EWCs were viewed as pursuing added value from EWCs in the form of the HR strategies mentioned above: that is, proactive managers were concerned with shaping the EWC to act in corporate interests. In contrast, managers wishing to curtail the role of the EWC implemented a range of tactics intended to limit the participation of EWC representatives in decision-making. Among the tactics deployed by managers to curtail EWC development were setting limits on the time allotted for meetings, calling infrequent meetings, ‘swamping’ the agenda with a massive volume of detailed paperwork, restricting the information available through the use of confidentiality provisions, limiting the resources available to the EWC and employing a narrow definition of ‘transnational’ (Timming 2007; Kotthoff and Whittall 2014).

This chapter focuses on the perceptions of EWC representatives on managerial approaches to EWCs. It attempts to establish the extent to which managers adopt minimalist or proactive approaches to the EWC, and how the approach of management impacts the perceptions of EWC efficacy among EWC representatives. To this end, the chapter comprises four sections. The first section identifies who attends the EWC on behalf of central management and whether, in the opinion of EWC representatives, these attendees are able and willing to participate as European policy-makers intended. The second section establishes the character of the industrial relations environment at the EWC. The third and fourth sections examine managerial definitions of ‘confidentiality’ and ‘transnational’ respectively as a means of restricting the information and

consultation agenda. The argument advanced by the chapter is that managers restrict the information available to EWCs by a variety of means, which, in turn, impairs the quality of information exchange and consultation that takes place at EWCs.

Management: present, able and willing

The Recast stipulates that ‘consultation means the establishment of dialogue and exchange of views between employee 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’ (Article 2(g)). In practice, this formulation affords management some flexibility in its choice of attendees. The first stage of this section thus establishes the composition of managerial representation at the EWC and examines whether this influences the perceptions of EWC representatives of the quality of information and consultation procedures. The second stage discusses whether EWC representatives think that managerial attendees at the EWC have sufficient information and decision-making authority to fulfil their EWC obligations. The third stage assesses the willingness of management to engage with EWC representatives.

Who represents central management (and does it matter)?

To test whether the managers present at the EWC meeting were from ‘central management or any more appropriate level of management’, the survey asked EWC representatives to report who attended the plenary meeting on behalf of management. Table 8.1 presents the results and demonstrates that 88.1 per cent of EWC representatives state that the European HR managers attend all or most plenary meetings, while 51.7 per cent report the presence of a European finance manager, and 48.4 per cent that of a European operations manager. No fewer than 49.1 per cent of EWC representatives indicated that the CEO attended all or most of the plenary meetings.

Four points arise from these data. First, European managers and/or the CEO are present at 91.3 per cent of EWC plenary meetings: that is, managers from an appropriate level are usually present, but, for 8.7 per cent of EWC representatives, the MNC is not compliant with the legislation, as only national and local managers attend or there is an inconsistent attendance in the representation of central management. It is reasonable to assume that among the MNCs that pursue minimalist strategies towards EWCs are included the MNCs where neither European managers nor the CEO attend the EWC. Second, the predominance of European HR managers confirms the association between the EWC and corporate HR strategies. Insofar as case study research tends to interview HR managers to enunciate the views of management, it corroborates this observation (Contrepois and Jefferys 2010; Pulignano and Turk 2016). Third, in 2007, 33.2 per cent of EWC representatives reported that the CEO ‘led’ the management delegation of the EWC (Waddington 2011: 83). While ‘leading’ the delegation and being present are certainly not the same, it would be expected that, if the CEO was present, s/he would lead the delegation, which, given that the CEO is always present

Table 8.1 Who represents central management at the EWC?*

	Always present %	Mostly present %	Sometimes present %	Rarely present %	Never present %	No such manager in our company %	N
CEO	31.8	16.3	17.3	10.3	23.6	0.8	1 295
MNC/European HR manager	67.8	20.3	7.9	1.7	1.4	0.9	1 314
MNC/European finance manager	29.7	22.0	28.4	6.4	11.4	2.2	1 287
MNC/European operations manager	26.4	22.4	23.4	9.0	13.7	5.2	1 274
National/plant-level managers	18.9	16.0	26.7	10.5	22.8	5.2	1 275

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

according to 31.8 per cent of EWC representatives in 2018, suggests that the data for the CEO are broadly comparable for 2007 and 2018. Fourth, national or plant-level managers are present at all or most plenary meetings according to 34.9 per cent of EWC representatives. This relatively low level of attendance may explain why, in some instances, national and plant managers complain to managers responsible for EWCs within MNCs that some EWC representatives are better informed than them about corporate HR strategies (Pulignano and Turk 2016).

To facilitate subsequent analysis, the responses reported in Table 8.1 were grouped into five categories:

- CEO present: EWC representatives who report that the CEO is present at all or most meetings;
- MNC managers present: EWC representatives report the absence of the CEO but the presence of a European HR, finance and/or operations manager;
- Only HR manager: EWC representatives report that only the European HR manager is present at all or most EWC meetings;
- Only local managers: EWC representatives report that only national or plant-level managers are present;
- Inconsistent attendance: EWC representatives report that no category of manager listed in Table 8.1 is present at all or most EWC meetings.

On the basis of these categories, Table 8.2 reviews the pattern of managerial attendance in the different country clusters. EWC representatives operating in MNCs based in LMEs are the outliers regarding the presence of the CEO insofar as the CEO attends

Table 8.2 Who represents central management at the EWC (by country cluster)?*

	CEO %	MNC level managers %	Only HR manager %	Only local managers %	Inconsistent attendance %	N
All	48.1	17.3	26.1	1.5	7.0	1 340
EWC representatives based in MNCs with headquarters in:**						
Nordics	60.9	10.9	17.9	2.5	7.9	265
CMEs	48.5	16.7	27.3	1.0	6.5	444
MMEs	48.1	11.4	31.0	1.2	8.4	301
LMEs	29.2	32.6	30.4	1.9	6.0	324

Notes: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

** There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

EWC meetings less frequently (29.2 per cent) compared to the overall attendance reported by 48.1 per cent of EWC representatives. In liberal market economies, MNC-level managers and only HR managers are more likely to attend than elsewhere. As many of these companies have headquarters outside the EU, particularly in the US, this finding confirms case study research showing that regional managers of such MNCs are responsible for the EWC (Hall et al. 2003; Marginson et al. 2004). In contrast, the CEO attends EWC meetings very regularly in Nordic MNCs, where it is relatively rare for management to be represented by only the HR manager.

Table 4.4 showed that EWC representatives viewed information and consultation procedures as being of a higher quality when three or more plenary meetings were convened per year. The survey enquired whether the presence of particular managers was associated with the frequency of plenary meetings. A clear distinction was apparent between the presence of either the CEO or only the HR manager compared to all other categories. Among EWC representatives reporting three or more plenary meetings per year, 40.1 per cent and 34.8 per cent respectively stated that the CEO or only the HR manager was present. These proportions dropped to 15.8 per cent for MNC-level managers, to 6.9 per cent where attendance was inconsistent and to 2.4 per cent for only local managers. These findings again suggest that, where only local managers attend, minimalist strategies towards the EWC are in place.

Regarding the impact of managerial presence on the perceived effectiveness of the plenary meeting, Table 8.3 shows how EWC representatives perceive the effectiveness of the EWC when managers from different categories are present. Irrespective of the composition of managerial attendees, the effectiveness of EWCs declines between information and consultation and, subsequently, between consultation and influencing management decisions. Whereas, in 2007, the presence of the CEO made no marked difference to the perceived effectiveness of the EWC plenary meeting, leading to the suggestion that the presence of the CEO may be no more than symbolic (Waddington 2011: 93–95), in 2018, EWC representatives rated EWC plenary meetings attended by the CEO as being more effective compared to those where other managers were present.

Table 8.3 Management presence and meeting effectiveness*

	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
Effective as a source of information						
CEO	28.5	52.3	16.1	1.8	1.4	662
MNC-level managers	22.1	57.9	13.9	4.6	1.4	237
Only HR manager	21.0	51.1	19.5	4.6	3.8	304
Only local managers	22.8	42.9	21.0	13.3	0.0	26
Inconsistent attendance	14.5	56.0	20.3	2.1	7.1	96
Effective as a means of consultation						
CEO	15.0	37.8	24.8	14.8	7.6	653
MNC-level managers	10.4	37.0	28.8	17.0	6.8	238
Only HR manager	8.2	37.0	27.0	21.0	6.7	298
Only local managers	4.2	20.1	44.2	26.5	5.0	26
Inconsistent attendance	8.6	37.4	26.7	16.2	11.1	95
Effective as a means of influencing management decisions						
CEO	5.2	20.9	36.2	25.5	12.1	655
MNC-level managers	4.2	17.4	38.8	28.3	11.3	235
Only HR manager	1.4	11.6	34.1	34.6	18.2	303
Only local managers	0.0	9.5	40.7	27.6	22.3	26
Inconsistent attendance	5.4	18.3	33.9	27.6	14.8	95

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

This was particularly the case with regard to the plenary meetings as an effective means of influencing management decisions, although, even with the CEO present, only 5.2 per cent of EWC representatives thought that the plenary meeting was very effective.

EWC representatives associate the presence of MNC-level managers with lower effectiveness of the EWC plenary meeting than when the CEO is present, but with higher effectiveness than that resulting from the presence of only HR managers. This result confirms case study evidence showing that EWCs led by HR managers have very little influence on corporate decision-making and primarily serve to advance corporate HR agendas (Marginson et al. 2004). The particularly low levels of effectiveness reported

by representatives who attend meetings populated only by local managers lends further support to the argument that management at such MNCs are minimalist towards the EWC. In summary, to increase the effectiveness of EWC plenary meetings, the presence of the CEO or several MNC-level managers is required. Reliance on only HR managers or local managers is likely to reduce the effectiveness of the plenary meeting.

Are managers able to engage with the EWC?

Of course, the presence or absence of a manager with specific functions does not tell the complete story. At the Toyota EWC, for example, managers outnumbered EWC representatives two to one as a tactic to control the EWC (Hertwig 2015). Similarly, in some, particularly non-EU based, MNCs, there is either no European management or, if present, European managers have insufficient authority to comply with EWC legislation: that is, there is no 'fit' between the European scope of the EWC and that of the MNC (Marginson, et al. 2004). This stage of the analysis thus assesses whether the managers present at the EWC have the information at their disposal and the decision-making authority to comply with the requirements of the EWC legislation.

For the purpose of this assessment, EWC representatives were asked if managers attending the plenary meeting had the necessary information to address the topics raised at the EWC and if they took decisions on these topics. Regarding information, Table 8.4 shows that 75.4 per cent of all EWC representatives agree to some degree that managers present at the plenary meeting have the appropriate information at their disposal, whereas only 7.8 per cent disagreed to some extent with that statement. In general, managers are thus seen to have the information required by EWC representatives. While EWC representatives think that a majority of every category of manager are in possession of the required information, there is considerable variation between the categories of manager. In the case of the CEO, for example, 86.6 per cent of EWC representatives think that the appropriate information is available. This proportion falls to 61.3 per cent where only HR managers are present, to 59.3 per cent where managerial attendance is inconsistent and to 60.7 per cent where only local managers are present. Table 8.4 also shows considerable variation in the information available to managers of MNCs headquartered in different country clusters. In particular, 81.5 per cent of EWC representatives think that managers attending EWCs within MNCs based in coordinated market economies have the necessary information available compared to 65.5 per cent of EWC representatives within MNCs based in liberal market economies. In short, the inadequacy of information at EWCs noted throughout Chapter 4 may, to some extent, arise from the lack of information held by the managers attending the EWC.

The lower segment of Table 8.4 shows that 68.9 per cent of all EWC representatives think that the managers attending the EWC have the authority to implement decisions taken at the EWC. In general terms, most managers present at the plenary meetings have the information and authority to engage with EWC representatives, although representatives are consistently more likely to think that the managers present have the required information than the decision-making authority. Again, however, there is variation by category of manager present in a similar pattern to that exhibited

Table 8.4 Are the managers present able to engage with the EWC?*

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
The managers present at the meetings generally have the necessary information on the topics we are discussing							
All	23.7	51.7	15.1	6.7	1.1	1.7	1 344
By category of manager present							
CEO	34.9	51.7	9.1	2.5	0.7	1.1	663
MNC-level managers	21.5	56.6	14.3	6.5	1.1	0.1	239
Only HR managers	12.7	48.6	23.7	12.1	1.6	1.3	304
Only local managers	4.4	56.3	23.0	12.4	1.5	2.4	26
Inconsistent attendance	5.1	54.2	19.6	13.3	2.6	5.3	97
EWC representatives based in MNCs with headquarters in:**							
Nordics	26.3	46.7	18.9	5.2	1.8	1.1	265
CMEs	20.9	60.6	11.6	3.7	0.8	2.5	445
MMEs	24.3	55.1	8.7	9.0	1.0	1.8	306
LMEs	23.7	41.8	23.1	9.2	1.1	1.2	322
The managers present at the meetings are the managers taking the real decisions on the topics we are discussing							
All	27.4	41.5	14.6	10.9	2.9	2.7	1 344
By category of manager present							
CEO	41.3	46.0	7.9	2.4	1.0	1.5	664
MNC-level managers	21.5	42.7	16.4	13.1	3.9	2.4	239
Only HR managers	13.2	35.1	24.5	21.6	4.3	1.3	304
Only local managers	12.3	37.8	23.0	17.1	7.9	1.8	26
Inconsistent attendance	10.3	38.0	16.8	16.8	7.0	11.1	97
EWC representatives based in MNCs with headquarters in:**							
Nordics	32.0	36.6	16.5	10.5	2.0	2.4	265
CMEs	25.7	50.1	13.3	6.1	1.8	2.9	446
MMEs	28.4	44.1	10.1	11.6	3.2	2.6	307
LMEs	23.7	32.3	19.9	16.4	5.0	2.7	320

Notes: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

** There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

for information. It is no surprise that CEOs are most likely to be viewed as having the authority to take decisions on topics discussed at the EWC. Similarly, only HR managers, only local managers and inconsistent managerial attendance are less likely to be associated with decision-making on the topics discussed at the EWC. That a minority of EWC representatives view the presence of only HR managers as associated with appropriate levels of decision-making authority confirms case study evidence showing HR managers as significantly less likely to have such authority than either the CEO or operational/production managers (Marginson et al. 2004).

Again, there is variation by country cluster within which the MNC is headquartered. EWC representatives working within EWCs based in MNCs headquartered in liberal market economies are the least likely (56.0 per cent) to report that managers attending the EWC take decisions on the topics discussed at the EWC. Breaking these down to country level shows that EWC representatives operating in MNCs based in Spain (60.0 per cent), Denmark (59.2 per cent) and the US (49.8 per cent) are the least likely to think that the managers present at the EWC have the appropriate decision-making authority. The US data confirm the view that European regional management appointed by US-based MNCs tend to have operational but not strategic decision-making authority (Marginson et al. 2004).

Are managers willing to search for agreed solutions with the EWC?

Management attitudes towards national works councils influence the character of engagement between management and the representatives of workers. European Company Survey data, for example, demonstrate that a managerial preparedness to engage with works councils produces value added for the company (van den Berg et al. 2013). These European data confirm German (Fichter et al. 2011), Dutch (van den Berg et al. 2011) and Slovenian (Franca and Pahor 2014) national data. Although employing different formulations to assess managerial engagement, research on EWCs demonstrates that, where managers are positive towards the EWC and attempt to reach compromises with EWC representatives, the institution is likely to function better from the perspective of the EWC representatives than where managers are negative towards the EWC (Kotthoff 2006; Lecher et al. 2001, 2002; Pulignano 2006). This stage of the analysis thus assesses managerial attitudes towards EWCs by examining whether the presence of different categories of managers influences the search for agreed solutions at the EWC and if the intensity of the managerial search for agreed solutions impacts upon how EWC representatives perceive the efficacy of the EWC.

Table 8.5 indicates that 39.3 per cent of all EWC representatives thought that management made efforts at their EWC to find agreed solutions to the matters at hand, whereas 19.5 per cent disagreed to some degree. Given the variation between the different categories of management noted above regarding information and decision-making authority, it is no surprise that the perceived likelihood of managers searching for agreed solutions also varies by managerial category. In particular, EWC representatives think that CEOs and MNC managers are most likely to seek agreed solutions. These two categories of manager are also those thought most likely by EWC representatives to

Table 8.5 Are management willing to try to reach agreed solutions?*

Management make efforts to find agreed solutions with the EWC representatives							
	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	3.8	35.5	38.3	15.5	4.0	2.9	1 327
By category of manager present							
CEO	4.1	42.5	36.2	12.5	2.3	2.4	659
MNC-level managers	9.3	31.0	35.5	16.7	4.4	3.1	236
Only HR manager	0.6	29.9	45.1	16.7	5.6	2.1	298
Only local managers	0.0	27.8	30.7	37.2	4.3	0.0	26
Inconsistent attendance	1.1	25.8	35.6	22.3	9.8	5.5	94
EWC representatives based in MNCs with headquarters in:**							
Nordics	4.6	33.4	43.0	10.5	5.2	3.3	259
CMEs	3.9	39.7	33.3	16.9	2.5	3.7	443
MMEs	1.1	33.1	45.4	14.1	2.7	3.6	303
LMEs	5.8	34.6	32.6	19.9	6.4	0.8	316

Notes: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

** There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

have sufficient information at their disposal and the decision-making authority. It thus appears that information and decision-making authority promote perceived managerial searches for agreed solutions. This is broadly as anticipated, since without information and the authority to make decisions, it would be a rash manager who sought to compromise with EWC representatives.

The managerial willingness to try to reach agreed solutions also varies by the country cluster within which the MNC is headquartered. Representatives working in EWCs within MNCs headquartered in mixed market economies are the least likely (34.2 per cent) to agree to some extent that management make efforts to find agreed solutions. Representatives working in EWCs within MNCs based in liberal market economies thought that managers were the least likely to have the appropriate information available or to have decision-making authority on the matters raised at the EWC. On the question of trying to find agreed solutions, managers based in liberal market economies are comparable with their counterparts in coordinated market economies and the Nordics insofar as similar proportions of EWC representatives agree to some extent with the proposition. EWC representatives operating within MNCs headquartered in liberal market economies, however, are more likely (26.3 per cent) to disagree to some extent that managers try to find agreed solutions than their counterparts in MNCs headquartered in the Nordics (15.7 per cent), mixed market economies (16.8 per cent) and coordinated market economies (19.4 per cent).

Two key points emerge from this analysis. First, there is a hierarchy of engagement among managers with 91.3 per cent of EWC representatives thinking that the appropriate international managers attend the EWC, 75.4 per cent thinking that managers have sufficient information to engage with the EWC, 68.9 per cent thinking that the managers present are those with the appropriate decision-making authority, and 39.3 per cent thinking that management make efforts to find agreed solutions at the EWC. In practice, the more demanding each stage of this hierarchy is for managers, the larger the proportion of managers who fail to meet their obligations according to EWC representatives.

Second, introducing data from the European Company Survey (2009) reveals that managers are consistently less likely to engage with EWCs than with national works councils or their equivalent.¹ Although 39.3 per cent of EWC representatives think that management make efforts to find agreed solutions at the EWC, no fewer than 80.3 per cent of managers make efforts to involve employee representatives in the solving of joint problems within national works councils (Eurofound 2014). Furthermore, when national data are compared in every country, a larger proportion of managers involve employee representatives in the solving of joint problems than are prepared to make efforts to find agreed solutions at the EWC.² It thus appears that management consistently limit the involvement of EWCs by comparison with national works councils or their equivalent.

The question arising from both the hierarchy of engagement and the managerial downplaying of EWCs compared with national works councils is: does the willingness of management to engage have an impact on the performance of EWCs? Table 8.6 provides an answer to this question in that it shows that managers willing to engage with the EWC are much more likely to provide timely information and consultation, and to make the EWC more effective as a source of information and consultation, while also being more likely to be influenced by the EWC in their decision-making. The scale and consistency of the impact of a willingness among managers to engage with the EWC is marked. Almost 45.0 per cent of EWC representatives who report that information and consultation procedures take place before the managerial decision is finalised 'strongly agree' that management make efforts to find agreed solutions with the EWC compared to fewer than 8.0 per cent who 'strongly disagree' that managers try to find agreed solutions. The 43.7 per cent of EWC representatives who report information and consultation procedures taking place before the decision is finalised as being when management are prepared to engage more than doubles the 20.8 per cent of all EWC representatives reporting information and consultation procedures as taking place within the same time frame (see Table 4.5). The issue, however, is that the 43.7 per cent

1. It should be noted that this comparison is not direct on two principal counts. First, the EWC survey asked whether 'management make efforts to find agreed solutions with the EWC representatives', while the European Company Survey asked whether 'management make sincere efforts to involve the employee representation in the solving of joint problems'. Second, the EWC survey included five options (strongly agree, agree, neutral, disagree and strongly disagree), whereas the European Company Survey included four options (strongly agree, agree, disagree and strongly disagree). A comparison of the two sets of results should thus be treated with caution, although the extent of the difference between the two points to different managerial attitudes to EWCs and national works councils.
2. See Annex 1 at the end of this chapter (p. 215) for detailed results.

Table 8.6 An unwillingness to seek agreed solutions results in ineffective EWCs*

Timing of information and/or consultation procedures						
Management make efforts to find agreed solutions	Before the managerial decision is finalised %	After the managerial decision is finalised, but before implementation %	During implementation %	After implementation %	Don't know %	N
Strongly agree	43.7	29.0	17.7	5.0	4.6	55
Agree	29.5	47.5	15.0	4.7	3.3	454
Neutral	14.3	45.2	22.0	11.1	7.5	506
Disagree	12.8	47.3	16.5	18.8	4.7	206
Strongly disagree	7.5	45.6	32.0	14.9	0.0	56
	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
Effective as a source of information						
Strongly agree	60.7	24.5	9.4	1.6	3.8	56
Agree	34.5	51.8	10.0	1.5	2.3	457
Neutral	19.5	53.4	22.5	3.9	0.7	504
Disagree	8.4	60.8	22.6	5.6	2.7	207
Strongly disagree	11.2	52.0	18.6	7.4	10.8	56
Effective as a means of consultation						
Strongly agree	37.6	36.8	13.7	8.1	3.8	55
Agree	18.3	43.5	21.1	9.9	7.2	452
Neutral	7.7	37.4	31.8	19.8	3.3	493
Disagree	2.5	24.6	33.6	27.8	11.5	205
Strongly disagree	4.3	23.3	18.2	25.2	28.9	56
Effective as a means of influencing management decisions						
Strongly agree	27.9	32.2	18.9	18.2	2.9	54
Agree	6.6	27.0	43.8	14.8	7.8	454
Neutral	0.8	13.3	35.2	37.3	13.4	497
Disagree	0.1	7.6	26.0	41.8	24.5	206
Strongly disagree	1.3	8.5	21.1	24.4	44.8	56

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

of EWC representatives reporting information and consultation procedures as taking place before managerial decisions are finalised and a willingness of management to engage with the EWC constitute only 1.5 per cent of all EWC representatives. An

additional 10.5 per cent of all EWC representatives agree that management wish to find agreed solutions and engage with the EWC before managers finalise their decisions. Similar situations are evident in relation to other indicators of efficacy, with a managerial willingness to engage promoting the effectiveness of EWCs as a source of information, a means of consultation, and as a means of influencing management decisions. The proportion of all EWC representatives reporting their EWC to be very effective on these issues is relatively small: for example, 2.3 per cent of all EWC representatives think EWCs to be very effective as a source of information and strongly agree that management try to find agreed solutions, 1.4 per cent think the same of EWCs as a source of consultation, and only 1.0 per cent take the same view of EWCs as a means of influencing management.

In summary, this section demonstrated a hierarchy of engagement among managers with the proportion of managers engaging with the EWC declining at each ascending level of the hierarchy: presence, appropriate information available, decision-making authority and a willingness to engage with the EWC. Consistent with the integration of EWCs into corporate HR strategies, HR managers are the most likely to attend the EWC on behalf of management but are among the least likely to have the required information at their disposal and decision-making authority regarding the topics raised at the EWC. Managers are less willing to engage with EWCs than national works councils, and the unwillingness of a majority of managers to engage fully with the EWC impacts negatively on the timeliness of information and consultation procedures and on the efficacy of EWCs as a source of information and consultation and as a means of influencing managerial decision-making. If a greater proportion of managers engaged fully with EWCs, the information and consultation functions of the institution could be markedly improved.

Industrial relations environment

A vast array of evidence on national works councils (Rogers and Streeck 1995; Baccaro and Howell 2017) and EWCs (Telljohann et al. 2005b; Kotthoff and Whittall 2014) shows that relations between management and employee representatives may vary from cooperative to adversarial. Furthermore, while recognising considerable internal differences, variations in the extent of cooperation or adversarialism between national systems of industrial relations are acknowledged (Hall and Soskice 2001; Crouch 1993; Coates 2000), as is variation in the extent to which trade unions historically secured a workplace presence (Sisson 1987). The nature and extent of either cooperation or adversarialism between management and EWC representatives may explain the variation in managerial engagement with the EWC noted above. The Directive and Recast assume cooperation between the parties insofar as, once an EWC is established, compliance with the terms of the legislation is expected to follow. The Recast, for example, is explicit in stating that '[t]he central management and the European Works Council shall work in a spirit of cooperation' (Article 9). This expectation has led to the suggestion that 'the architects of the EWC Directive were perhaps naïve in their vision that workers' and employers' representatives would happily come together in a spirit of cooperation' (Timming 2007: 259). This section explores the extent of cooperation

Table 8.7 Industrial relations environment within the EWC*

The relationship between management and EWC employee representatives can best be described as hostile

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	1.0	6.0	17.1	49.4	24.9	1.7	1 327
EWC representatives based in MNCs with headquarters in:**							
Nordics	1.0	2.6	19.3	43.1	32.1	1.9	259
CMEs	1.1	3.0	17.8	52.3	23.5	2.3	443
MMEs	1.0	6.8	13.7	55.4	20.9	2.2	304
LMEs	1.0	11.6	18.4	44.3	24.7	0.0	315

Notes: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

** There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

or adversarialism present within EWCs and how this impinges on perceptions among EWC representatives of managerial attitudes towards the EWC.

Table 8.7 shows the overall industrial relations environment within the EWC from the perspective of the EWC representatives. From the outset, it is clear that the majority (74.3 per cent) of EWC representatives do not think that relations with management are hostile, while only 7.0 per cent take the contrary view. Furthermore, when the MNCs are disaggregated by country cluster, the aggregate pattern is generally reproduced, albeit with somewhat more hostility within MNCs based in LMEs and less hostility within MNCs based in CMEs and the Nordic countries. The higher levels of hostility between managers and EWC representatives in LMEs are primarily a result of the hostility reported in MNCs of US origin where 12.2 per cent of EWC representatives agree to some extent that relations are hostile. Hostile relations between management and EWC representatives in general, however, are unlikely to explain why the majority of managers are unwilling to engage fully with EWCs. Although there are exceptions, it should also be acknowledged that the extent of hostility reported by EWC representatives is similar to that reported by employee representatives serving on national works councils.³ This similarity is likely to underpin 'home country effects' reported in many EWC case studies (Lecher et al. 2002; Weiler 2004).

To examine relations between management and EWC representatives in greater depth, the survey asked EWC representatives to report on management's attitude towards their involvement in the EWC. In a manner broadly consistent with the data presented in Table 8.7, Table 8.8 shows that, in 2018, managers who discourage or oppose

3. The European Company Survey excluded a 'neutral' option, but no fewer than 90.5 per cent of respondents either 'disagreed' or 'strongly disagreed' with the statement 'the relationship between management and employee representation can best be described as hostile'. In addition, the European Company Survey reports a relative absence of hostility in Austria, Finland, Germany, the Netherlands and Sweden, above-average hostility in Belgium, France, Spain and the UK. In no country, however, do 20.0 per cent of respondents view relations between management and employee representatives as hostile (Eurofound 2014).

Table 8.8 What is the view of management towards EWC involvement?*

	2007 Central management %	2007 Local management %	2018 Central management %	2018 Local management %
Encourage and make facilities available	31.6	33.1	28.3	28.4
Encourage and make some facilities available	26.1	18.2	26.9	21.7
Remain neutral	36.7	41.5	37.5	41.4
Discourage	4.6	5.5	3.3	5.0
Oppose and withhold facilities	1.0	1.7	0.5	1.4
Don't know	1.5	1.4	3.5	2.2
N	927	928	1 346	1 348

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting for 2018.

the involvement of representatives in EWCs are very much in the minority: central management, 3.8 per cent; local management, 6.4 per cent. Although the wording of the questions differed slightly between the 2007 and 2018 surveys, the results are broadly comparable, confirming no change in managerial attitudes towards EWCs over, at least, the past decade. Central management encouraged more than half of EWC representatives to be involved, and local management encouraged about half in 2007. Management have thus remained broadly supportive of, or neutral towards, EWC involvement since 2007. The lower levels of encouragement among local managers may be connected to their belief that EWC involvement means that some representatives have more knowledge than local management about corporate strategy, which may place local management at a tactical advantage (Pulignano and Turk 2016). It is also noteworthy that a higher proportion of central managers encourage EWC involvement and make facilities available to EWCs (55.2 per cent) than are prepared to seek agreed solutions with EWCs (39.3 per cent), suggesting that an element of managerial encouragement is pragmatic and is not accompanied by practical measures.

Disaggregating the 2018 results by the country cluster in which the MNC's headquarters is located reveals no significant differences in the attitude towards the involvement of representatives in the EWC. While specific country outliers in Spain and the US are evident, the extent of central management opposition to the representatives' involvement in the EWC rises to only 10.9 and 7.1 per cent, respectively. To examine the attitude of local management, the point of reference is the EWC representatives' country of origin. Within each of the country clusters, managers were unlikely to discourage or oppose involvement in the EWC: CMEs, 3.5 per cent of EWC representatives reported management discouragement or opposition to EWC involvement; Nordics, 7.8 per cent; MMEs, 6.4 per cent; LMEs, 7.9 per cent; and EMEs, 13.5 per cent. Particularly high numbers of managers discouraged or opposed EWC involvement in Czechia (30.7 per cent), Norway (25.5 per cent) and Poland (13.3 per cent). While the Norwegian result remains a puzzle, the relatively high opposition in Czechia and Poland may be linked to the neoliberal management style adopted within many MNCs that have inwardly invested in these countries (Bohle and Greskovits 2012).

Table 8.9 Are EWC representatives treated unfavourably because of their position?*

	As an EWC representative, I am treated worse because of my position %	As an EWC representative, I might lose my job because of my work %
Strongly agree	2.8	1.1
Agree	4.8	3.7
Neutral	14.2	9.7
Disagree	35.6	34.0
Strongly disagree	40.1	47.7
Don't know/no answer	2.4	3.7
N	1 373	1 370

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting for 2018.

A final approach to the assessment of managerial attitudes towards EWC representatives asked whether the representatives are treated unfavourably because of their involvement in the EWC. Again, Table 8.9 shows that a minority of EWC representatives report that they are treated worse and that they might lose their job because of their position on the EWC. While the presence of even these small minorities runs counter to the spirit and intention of the legislation, it is apparent that very few representatives are treated unfavourably because of their involvement in EWCs. Furthermore, the EWC results are comparable with those reported from the European Company Survey, where 8.3 per cent of respondents state that they were treated worse and 8.0 per cent thought that their job was under threat because of their involvement in national works councils (Telljohann et al. 2009b).

To summarise, this section has shown that EWC representatives rarely report hostile relations with management. On the contrary, the majority of managers tend to support the involvement of representatives in EWCs and very infrequently treat EWC representatives unfavourably as a result of this involvement. In combination, these findings suggest that the widespread absence of managerial engagement with the EWC is not the result of extensive explicit managerial hostility to the institution.

Contesting confidentiality

In practice, the definition of ‘confidentiality’ has been contested within national works councils and EWCs since their inception (Guillebaud 1928: 152–188; Timming 2006). ‘Confidentiality’ has been defined by a management HR specialist as one of the three principal issues that prevent EWCs from realising their potential (Hume-Rothery 2004: 86–90).⁴ Tension between the parties and within the defined roles of the parties is clear-cut. The EWC legislation, for example, places an obligation on central management to

4. The other two items identified by Hume-Rothery as preventing EWCs from realising their potential were consultation and codetermination.

inform and consult EWC representatives on issues pertinent to the strategic intent of the MNC. On some issues, however, managers feel constrained by stock market regulations, which require them to inform the shareholders before employee representatives (European Commission 2016a; Pulignano and Turk 2016: 28–31). In practice, stock market regulations protect the interests of one group of stakeholders, shareholders, whereas those of a second group, employees, are disregarded. Stock market regulations thus protect the interests of outsiders, while EWC legislation is designed to protect the interests of insiders (Jagodziński and Stoop 2021). Stock market regulations are thus incompatible and inconsistent with the intent of the EWC legislation. Similarly, in order to exert an influence over strategic corporate decision-making, EWC representatives require information and consultation procedures to take place before managerial decisions have been finalised. If management release information before completing their decision-making process, the information received by EWC representatives is likely to be sensitive. The tension implicit in the situation of the EWC representatives is that EWC legislation confers on them a right and a duty to report back to those they represent on the topics discussed at the EWC. Furthermore, the purpose of reporting back is to ascertain the views of workers represented by the EWC representatives. To ascertain these views necessarily means discussing in some detail the topics raised at the EWC, which may be counter to the managerial preference for confidentiality.

In recognition of the tension between the parties on the issue of confidentiality and the contradictions that may arise from the situation of the parties, the Directive and Recast attempted to clarify the practicalities of the situation in stating that ‘members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence’ (Recast, Article 8(1)). Article 8(2) of the Recast adds another level of security to management in that central management ‘is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them’. For both of these Articles, the Recast states that the national transpositions should specify how these rules apply, although, in several countries, this specification has not been implemented while, in others, judicial control is conducted *post factum* with very few possibilities for summary proceedings (Laulom and Dorssement 2015). While not affording *carte blanche* to management, these articles assign to management the initial decision on what is and is not deemed confidential, although what constitutes ‘objective criteria’ remains open to debate. The prerogative assigned to management in deeming material to be confidential, the lack of clarity regarding ‘objective criteria’ and the reliance on national transpositions of the legislation underpin point 9 of the reform agenda proposed by the ETUC (see Appendix B). This point requires a precise specification of the justifiable reasons for withholding information, the time frame over which management may do so and the grounds on which the right of EWC representatives to share information with those they represent can be restricted.

Confidentiality provisions are about the creation of a secure space for protected discussion between management and the EWC (Jagodziński and Stoop 2020). The tension implicit in the practical application of confidentiality provisions coupled with the contestation between the parties raises three specific, but linked, issues. First, to

what extent do management withhold information from the EWC on the grounds that they deem it so sensitive that its release would damage corporate interests? Second, to what extent do management release information to EWC representatives labelled as confidential on the condition that EWC representatives do not share the information with those they represent? Third, if, as implied by point 9 of the ETUC's reform agenda (see Appendix B), EWC representatives are dissatisfied with the practices associated with confidentiality, to what extent do they challenge managerial prerogative on the application of confidentiality? This point is also linked to issues associated with access to justice (Hoffmann and Jagodziński 2021), discussed in more detail in Chapter 9. Each of these issues will be addressed in a separate stage of this section.

Do management withhold information on the grounds of confidentiality?

Table 8.10 shows the extent to which EWC representatives report that management refuse to disclose information on the grounds of confidentiality. No fewer than 39.6 per cent of all EWC representatives agree to some degree that management often refuse to release information on the grounds of confidentiality, 24.5 per cent are neutral on the question and 33.3 per cent disagree to some extent. Given that the question assumes that EWC representatives have asked for the information that management refuse to disclose, it is apparent from the perspective of the EWC representatives that confidentiality is used by management as a means of restricting the amount of information released to the EWC. The extent of this refusal to disclose information while citing its confidentiality may also contribute to an explanation of why so few managers engage in information and consultation procedures before corporate decisions are finalised: that is, management deem information confidential until the managerial decision is finalised (Kerckhofs 2015; Meylemans and De Spiegelaere 2019).

EWC representatives thought that managers in MNCs headquartered in mixed market economies were the most likely (42.9 per cent) to withhold information on the grounds of confidentiality compared to their counterparts in liberal market economies (41.1 per cent), coordinated market economies (37.4 per cent) and the Nordics (37.1 per cent). In short, managers use confidentiality as a means of withholding information to different degrees dependent on the location of the headquarters of the MNC.

A further point is apposite here. Although the form of the question differed, in 2007, one third of EWC representatives reported that management had refused them information and cited confidentiality as the reason for this refusal, and two thirds of those who were refused information thought that the refusal was not justified.⁵ There would thus appear to be no significant change between 2007 and 2018 in the extent to which management deem information confidential as a justification of its refusal to disclose information.

5. In 2007, the survey asked whether 'your EWC has been refused information on the grounds of confidentiality?' and 'in your opinion, were management justified in withholding the information?'

Table 8.10 Do management withhold information on the grounds of confidentiality?*

Management often refuse to disclose information on the grounds of confidentiality

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	13.9	25.7	24.5	25.8	7.5	2.7	1 424
EWC representatives based in MNCs with headquarters in:**							
Nordics	16.1	21.0	20.4	29.9	11.3	1.3	280
CMEs	12.2	25.2	25.4	26.8	5.6	4.6	473
MMEs	12.2	30.7	26.8	22.8	4.8	2.8	322
LMEs	15.7	25.4	24.5	23.5	9.3	1.6	342

Notes: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

** There were very few responses from EWC representatives based in MNCs with headquarters in EMEs, hence this category is excluded from the table.

Deeming information confidential

Management may deem information confidential while also releasing it to the EWC. In these circumstances, management assume that EWC representatives will not share the confidential information more widely. A survey endorsed by the Commission found that 15 per cent of employers agreed that the release of information to the EWC had led to breaches of confidentiality (European Commission 2016a). A study involving BusinessEurope, however, reported that, while managers responsible for EWCs within MNCs were concerned about confidentiality, particularly regarding the timing of the release of information, they did not think the issue was problematic, and argued that it could be handled within the EWC in a manner similar to arrangements within national institutions of workplace labour representation (Pulignano and Turk 2016: 28–32). No case has been brought to court against an employee representative on the grounds that confidentiality was breached. In contrast, managerial abuse of confidentiality was apparent at Air France where management used confidentiality as a check on the loyalty to the company of the EWC representatives (Stoop 1999: 55). Confidentiality also reached the courts when management at Oracle labelled information about planned redundancies that was in the public domain confidential, thus prohibiting EWC representatives from communicating more widely on the planned redundancies. The Central Arbitration Committee of the UK adjudicated that management at Oracle had used confidentiality excessively (CAC 2018a).

The previous stage noted that confidentiality may be cited as a reason for the non-release of information, thereby depriving EWC representatives of the information required to make a considered decision. In addition, the excessive managerial use of confidentiality when linked to the release of information may restrict the capacity of EWC representatives to communicate with those they represent, thereby impairing their capacity to report back, a legal obligation for EWC representatives.

Table 8.11 I am limited in reporting back due to managerial confidentiality provisions*

I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	9.0	24.9	22.8	29.8	11.3	2.3	1 424
EWC representatives from:							
Nordics	3.4	22.4	24.7	30.6	16.3	2.7	199
CMEs	5.2	20.5	22.0	32.8	17.2	2.3	530
MMEs	12.5	29.5	21.6	30.3	3.7	2.4	312
LMEs	15.4	26.5	22.8	21.6	12.8	0.9	130
EMEs	6.6	25.1	27.5	30.2	6.3	4.3	253

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

Table 8.11 illustrates the extent to which the managerial use of confidentiality restricts reporting back. Among all EWC representatives, 33.9 per cent agree to some extent that they are limited in talking about their EWC work with those they represent due to the managerial use of confidentiality, 22.8 per cent express neither a positive nor a negative view, and 41.2 per cent disagree to some extent. It is noteworthy that EWC representatives from liberal market economies and mixed market economies are more likely than their counterparts from elsewhere to feel limited in reporting back due to concerns about confidentiality, suggesting, at least, different expectations among EWC representatives regarding confidentiality and/or differences in the perception of national confidentiality regimes.

Table 8.12 extends this analysis by considering how the application of confidentiality impinges on the timing of information and consultation procedures and whether perceived managerial hostility is associated with the use of confidentiality provisions. Regarding the timing of information and consultation procedures, it is clear that EWC representatives provided with information and consultation before the managerial decision is finalised are not overwhelmingly limited in talking with those they represent due to confidentiality constraints: 53.0 per cent disagree to some extent that they are constrained, whereas 29.9 per cent are constrained because of confidentiality restrictions. This finding runs counter to some case study evidence, which expects more constraints on the sharing of information the earlier that information and consultation procedures take place (Kerckhofs 2015). The survey findings, however, confirm other case study evidence demonstrating that EWC representatives in receipt of detailed information at an early stage were not met with particularly demanding confidentiality provisions (Meylemans and De Spiegelaere 2019). Furthermore, the proportion of EWC representatives who feel limited to some degree in talking with those they represent tends to increase the later that information and consultation procedures take place: before management finalise the decision, 29.9 per cent; after finalisation but before implementation, 35.2 per cent; during implementation, 37.1 per cent; and after

Table 8.12 What happens when managers deem information confidential?*

I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
By timing of information and consultation procedures							
Before the managerial decision is finalised	6.2	23.7	15.1	37.0	16.0	2.1	288
After the managerial decision is finalised, but before implementation	10.0	25.2	27.1	27.1	9.6	1.1	626
During implementation	11.2	25.9	16.9	33.1	12.3	0.7	271
After implementation	7.6	32.6	21.5	25.1	11.0	2.3	137
Don't know	7.5	12.4	32.8	25.0	6.4	16.0	94
The relationship between management and the EWC is hostile							
Strongly agree	10.0	13.5	14.9	34.4	27.3	0.0	16
Agree	27.6	28.0	24.5	12.1	7.0	0.9	69
Neutral	12.6	30.0	27.4	21.3	7.8	1.0	243
Disagree	7.0	25.6	24.1	33.2	8.9	1.4	629
Strongly disagree	6.6	19.2	16.0	36.7	19.0	2.6	337

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

implementation, 40.2 per cent. Clearly, more research is required to explain the pattern observed. Suffice it to say, at this point, that the early provision of information and consultation may occur in EWCs where trust between the parties has been established and such trust underpins the application of confidentiality provisions. In contrast, where trust is absent, management engage in information exchange and consultation at a time that prevents the EWC from influencing the outcome of strategic corporate decision-making and imposes confidentiality restrictions to place further limits on the involvement of worker representatives at all levels of the decision-making process.

Although many factors influence the extent of trust between the parties at EWCs, trust is unlikely to be wide-ranging where there is hostility between the parties. The lower segment of Table 8.12 examines the impact of perceived hostility between the parties at the EWC and the managerial use of confidentiality. The relationship is straightforward: the greater the hostility, the greater the likelihood that EWC representatives feel limited in talking about their EWC work with those they represent. While this result confirms that management use confidentiality to limit the effectiveness of the EWC, it also supports point 9 of the ETUC's reform agenda requiring greater specificity and objectivity on the practical use of labelling material confidential.

Do EWC representatives challenge managerial prerogative on confidentiality?

Given the extent to which management withhold information by deeming it confidential, the variations between the country clusters on a range of issues concerned with confidentiality and the impact of hostile relations within the EWC on the application of confidentiality, the question arises as to whether EWC representatives challenge managerial prerogative on confidentiality. Case study evidence shows that, by challenging management, EWC representatives can force more information to be released from the bounds of confidentiality, although, under challenge, management tend to refuse to release information earlier (Meylemans and De Spiegelaere 2019). The same research also suggested that the presence of an EWC coordinator may promote the extent of the challenge to managerial prerogative.

Table 8.13 examines the extent to which EWC representatives challenge managerial prerogative on confidentiality and whether this challenge varies in different circumstances. From the outset, it is apparent that 46.8 per cent of EWC representatives agree that they often challenge management over confidentiality, whereas 22.0 per cent disagree to some extent with that statement. As is anticipated, office holders are more likely (52.1 per cent) than EWC members (43.9 per cent) to challenge managerial prerogative on confidentiality. More surprising is that office holders are also more likely (23.4 per cent) than EWC members (20.5 per cent) to disagree with the statement, indicating variation between EWCs on challenging managerial prerogative. Confirming the case study evidence (Meylemans and De Spiegelaere 2019), the presence of an EWC coordinator promotes challenges to managerial prerogative on confidentiality. Office holders, however, report more frequent challenges to confidentiality than EWC representatives in the presence of an EWC coordinator, suggesting that some of the challenges made by office holders are tabled at meetings where EWC members are absent, such as at select committee meetings.

Table 8.13 also shows whether EWC representatives challenge managerial prerogative on confidentiality when they perceive information as being withheld and when confidentiality limits reporting back by EWC representatives to those they represent. There is a strong relationship between the perception among EWC representatives that management withhold information and the extent to which EWC representatives challenge management. No fewer than 70.9 per cent of EWC representatives who strongly agree that management withhold information often challenge management, and 60.8 per cent of EWC representatives who agree with the statement also often challenge management. Even where EWC representatives do not think that management withhold information, around 30.1 per cent of EWC representatives report often challenging management on what information is confidential, thus confirming the extent to which confidentiality is used by management and contested within EWCs. Similarly, when EWC representatives strongly agree (83.2 per cent) or agree (69.0 per cent) that they feel limited in reporting back, they often challenge management on what information is confidential. In short, when EWC representatives think that management are using confidentiality to restrict their activities within the EWC, they are more likely to challenge managerial prerogative.

Table 8.13 Do EWC representatives challenge managerial prerogative?*

The employee representatives often challenge management over what information is confidential

	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	13.0	33.8	26.8	17.4	4.6	4.5	1 424
Office holders	13.4	38.7	21.7	18.7	5.7	2.0	506
EWC members	13.0	30.9	29.5	16.1	4.4	6.2	793
EWC coordinator present	14.2	35.1	24.2	17.4	4.8	4.3	864
No coordinator	10.7	30.9	27.6	21.0	5.6	4.1	293
When information is withheld							
Strongly agree	39.7	31.2	11.3	7.9	6.4	3.6	185
Agree	16.3	44.5	25.7	11.1	0.9	1.5	363
Neutral	6.4	35.8	41.3	10.9	1.6	4.1	335
Disagree	3.6	28.2	25.5	34.1	4.9	3.7	380
Strongly disagree	10.6	19.5	22.6	19.5	24.7	3.1	111
When EWC representatives feel limited in talking with those they represent							
Strongly agree	45.7	37.5	4.5	8.2	4.0	0.1	116
Agree	16.2	52.8	21.9	6.9	1.6	0.6	343
Neutral	8.0	32.0	48.1	8.3	1.4	2.2	326
Disagree	6.4	24.9	25.7	34.3	2.6	6.1	426
Strongly disagree	8.2	22.5	18.5	22.1	23.3	5.4	41

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

In summary, substantial minorities of EWC representatives think that managers often refuse to provide information on the grounds of confidentiality and that they are limited in reporting back because of confidentiality concerns. When relations at the EWC are hostile, these proportions increase. Contrary to expectations, the earlier that management release information, the fewer EWC representatives indicate limits on reporting back. EWC representatives contest the application of confidentiality provisions throughout, suggesting that the greater precision attached to confidentiality proposed by the ETUC would promote more effective EWCs. These findings confirm the centrality of confidentiality as an issue that can be used by managers to undermine the objectives of EWC legislation by denying access to information and the transition of information to those represented by the EWC. These findings also highlight the need for precise definitions of 'confidentiality' and readily applicable, efficient and quick systems of appeal when confidentiality is misused. Such precision and appeals procedures are not in place in the majority of Member States (Hoffmann and Jagodziński 2021), and sanctions for managerial abuses of confidentiality are rare (Jagodziński and Stoop 2021).

What are 'transnational' issues?

Although the matters discussed at EWCs are supposed to be transnational in character, it was only in the subsidiary requirements of the Directive that the competence of EWCs was 'limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States' (point 1(a)). Unsurprisingly, this definition failed to eliminate debate regarding the definition of 'transnational', as the criterion of two countries was often a constraint and the requirement of relevance for the entire company lacked clarity (Jagodziński et al. 2008; Picard 2010). The 2007 survey, for example, reported that 40.1 per cent of EWC representatives thought management excluded an issue from the EWC agenda because it was deemed to be national, while 45.5 per cent had encountered no such exclusion.⁶ Among the 40.1 per cent of EWC representatives who thought management had excluded an issue from the agenda, no fewer than 67.0 per cent did not think that management were justified in excluding the matter. Furthermore, a range of studies showed that EWC representatives also used the EWC as a vehicle to raise local issues with central management, particularly where rudimentary information and consultation arrangements existed locally (Huzzard and Docherty 2005; EPEC 2008). The definition of 'transnational' was thus contested when the Directive was in force, with some cases reaching court, including those at Forbo (2004) and British Airways (2006) (EWCdb).

In recognition of the failure of the Directive to clarify the situation, the Recast stated that 'matters shall be considered to be transnational when they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States' (Article 1(4)). In addition, recital 16 to the Recast states that:

The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.

Moreover, Article 1(3) states that 'the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues'. As a consequence of these revisions, more EWC agreements included specific definitions of 'transnational' (De Spiegelaere 2016), although research on the transposition of the Recast demonstrated that material from the recitals was excluded in the vast majority

6. In 2007, the questions initially asked if management had excluded an issue from the agenda of the EWC by deeming it national. Possible responses were 'yes', 'no' and 'don't know'. Among the EWC representatives, 16.4 per cent responded 'don't know'. The survey then asked those who had responded 'yes' to the initial question if they thought that management were justified in excluding the issue from the agenda.

of national legislation (Laulom and Dorssemont 2015), prompting the ETUC to include in its reform agenda point 8 requesting that the material from the recitals be included in the legislation (see Appendix B). A study of the impact of the Recast endorsed by the Commission, however, reported that most EWCs focused primarily on transnational issues (European Commission 2016a), although cases continued to reach the courts, including those at Tenneco (2014) and Vesuvius (2019) (EWCdb). The Commission subsequently explained the continued appearance of national issues on the agenda of EWCs by reference to most EWC representatives simultaneously holding positions of national representation, with the result that they raise pressing national issues (2018b: 24).

The 2018 survey asked EWC representatives to report if there were frequent discussions with management on whether issues were transnational. As is apparent from Table 8.14, 37.7 per cent of EWC representatives think that there are frequent discussions with management about the term ‘transnational’, while 24.6 per cent disagree to some extent with that statement. While the questions in the two surveys were different, it is clear that substantial minorities of EWC representatives regard the practical application of the term ‘transnational’ as problematic before and after the adoption of the Recast.

A possible explanation for frequent discussions about the term ‘transnational’ is that management try to restrict the definition of the term and are not prepared to reach an agreed solution on the matter with EWC representatives. Table 8.14 shows that this may explain some of the frequency of discussions on the term ‘transnational’ insofar as the more EWC representatives think that management try to find agreed solutions, the fewer EWC representatives report that there are frequent discussions over what is transnational. A second possible explanation is that EWC representatives with a national or local identity pursue issues that are not transnational at the EWC, thereby promoting frequent discussions. Table 8.14 shows that this is not the case: EWC representatives who exhibit some form of European identity are more likely to be engaged in frequent discussions on whether issues are transnational than their counterparts with a national or local orientation. Again, this points to management employing restricted definitions of ‘transnational’, which European-oriented EWC representatives challenge. Knowledge of the EWC agreement among EWC representatives is at the heart of a third explanation of the frequency of discussions on the term ‘transnational’. In practice, do EWC representatives have sufficient knowledge to challenge management on their use of the term? Table 8.14 shows that, where EWC representatives claim more knowledge of the legislation, the greater the likelihood of frequent discussions about what constitutes a transnational issue, again confirming the centrality of training and knowledge among representatives for the functioning of EWCs.

Similarly to ‘confidentiality’, ‘transnational’ is a contested term within EWCs, and control over what is deemed transnational influences the information and consultation process. The vague definition of ‘transnational’ included in the Recast was often transposed into national legislation verbatim (Jagodźński 2009) and thus has failed to reduce the proportion of EWC representatives engaging in discussions about the term. The evidence presented here suggests that management define the term ‘transnational’ in order to restrict the scope of the EWC agenda. It remains an open question whether

Table 8.14 Are discussions on whether issues are 'transnational' frequent?*

There are frequent discussions with management on whether or not an issue is transnational							
	Strongly agree %	Agree %	Neutral %	Disagree %	Strongly disagree %	Don't know/not applicable %	N
All	0.7	29.0	27.6	20.5	4.1	10.3	1 294
Management make efforts to find agreed solutions with the EWC representatives							
Strongly agree	13.3	12.4	17.5	24.9	18.9	12.9	55
Agree	3.1	30.1	31.6	23.1	3.9	8.2	450
Neutral	10.6	26.4	31.2	20.2	3.0	8.6	487
Disagree	13.9	37.1	19.2	15.9	4.3	9.6	198
Strongly disagree	18.4	38.6	18.6	11.8	1.5	11.1	55
By identification of EWC representative							
No European identity	6.7	27.8	28.1	22.3	3.7	11.5	998
European identity	15.7	33.0	26.8	14.2	5.5	4.8	273
I have a very good knowledge of the content of the EWC Directive							
Strongly agree	23.8	27.4	22.3	18.7	7.8	0.0	118
Agree	9.5	37.3	25.5	21.4	2.6	3.7	438
Neutral	6.5	26.3	39.7	18.4	4.4	4.8	395
Disagree	6.2	25.8	20.2	25.8	3.0	19.0	261
Strongly disagree	4.5	3.4	25.4	13.2	15.9	37.7	47

Note: * These responses are only from those EWC representatives who had attended at least one EWC meeting.

the incorporation of the materials from the recitals into the legislation, as proposed by the ETUC, is sufficient to clarify the operationalisation of the term 'transnational'.

Conclusion

Chapter 4 demonstrated that the timeliness, quality and utility of information and consultation procedures at EWCs is inadequate from the perspective of EWC representatives. This chapter examined whether the activities of management contribute to the perceived shortfall in information provision. Six wide-ranging points emerge from the analysis. First, there is a hierarchy of engagement with EWCs among managers, with the proportion of managers declining at each ascending level of the hierarchy: presence, appropriate information available, decision-making authority and a willingness to engage with the EWC. Second, the unwillingness of the majority of managers to engage with the EWC diminishes the timeliness of information and consultation procedures, the efficacy of EWCs as a source of information and consultation, and the utility of EWCs as a means of influencing managerial decision-making. Third, European HR managers are the most likely to be present at EWC plenary meetings, but are among

the least likely cohort of managers to have at their disposal the information required by EWC representatives or to have the appropriate level of decision-making authority. Fourth, the unwillingness of the majority of managers to engage with EWCs is not the result of hostility towards EWCs among managers. Fifth, managers use definitions of ‘confidentiality’ and ‘transnational’ to restrict the scope of the EWC agenda. The managerial definition of ‘confidentiality’ coupled with management’s withholding of information also impairs the capacity of a substantial minority of EWC representatives to report back on the events of the EWC to those they represent. In exercising control over the practical definitions of ‘confidentiality’ and ‘transnational’, managers have a means whereby they can exert undue influence on the operation of EWC legislation. Sixth, there is variation within each of the five above-mentioned points dependent upon the country cluster within which the MNC is headquartered. In particular, managers attending EWCs in MNCs headquartered in liberal market economies are viewed by EWC representatives as the least likely to have the appropriate information available or to take any decisions on matters raised at the EWC.

The Commission, BusinessEurope and managers responsible for EWCs within MNCs agree that EWCs have been successfully absorbed into strategic corporate HR strategies (European Commission 2018b; BusinessEurope 2017; Pulignano and Turk 2016). This is likely to explain the predominance of HR managers among managerial attendees at EWCs and confirms a key managerial policy objective: to shape EWCs to meet the requirements of corporate HR strategies. Furthermore, the priority assigned to stock market regulations rather than the information and consultation requirements of the Recast highlights a second managerial priority in the context of EWCs: the interests of employees are downplayed compared to those of shareholders. The data presented in this chapter are consistent with this managerial pattern of prioritisation insofar as the majority of managers do not comply with the information and consultation requirements of the EWC legislation and use a variety of tactics to restrict the flow of information to EWCs. It thus appears that many managers have successfully introduced an alternative agenda on EWCs comprising corporate HR strategies and emphasising the priorities of shareholders while downplaying the information and consultation agenda at the core of the EWC legislation. In short, the majority of managers are not hostile to EWCs, but they want EWCs to add value in HR terms rather than by means of an information and consultation agenda. In so doing, they limit the legal entitlement of workers to transnational information and consultation.

The managerial restriction of information available to EWCs presents a significant challenge to European policy-makers and trade union organisations. For European policy-makers, the adequacy of the requirement that the ‘[i]nformation and consultation of employees must occur at the relevant level of management’ (Recast, Article 1(3)) is brought into question. On the understanding that legislation cannot guarantee a managerial willingness to engage with the EWC, it should at least ensure that the managers present have the appropriate information at their disposal and decision-making authority rather than simply being at ‘the relevant level’. It is also apparent that, in practice, the revised definitions of ‘confidentiality’ and ‘transnational’ have failed to clarify the situation. The two issues remain contested, and the current arrangements allow management to restrict the information available to the EWC from the perspective

of the EWC representatives. The most fundamental challenge faced by European policy-makers arising from the evidence presented in this chapter, however, is ensuring that managers prioritise and comply with the information and consultation agenda of the EWC legislation rather than downplay it by comparison with corporate HR strategies and the interests of shareholders. While Chapter 9 examines the issue of enforcement, it is apparent, at this point, that ‘sanctions that are effective, dissuasive and proportionate’ (Recast, recital 36) have proved insufficient to ensure managerial compliance with EWC regulations. For European policy-makers, the issue is to implement a system of checks and balances included within which are transparent definitions of terms and an end to arrangements whereby managers hold all the keys regarding the operation of confidentiality provisions and the nature of transnational issues.

The findings presented in this chapter also indicate the breadth of the challenge faced by trade union organisations in ensuring that information exchange and consultation take place at an appropriate standard. The findings confirm that management withhold information from EWCs, which contributes to the failure of many EWC representatives in fulfilling their duties and responsibilities. This withholding of information no doubt contributes to the poor quality of the information and consultation processes (see Chapter 4). While the introduction of legislation consistent with points 8 and 9 of the reform agenda of the ETUC may improve the situation regarding the definitions of ‘confidentiality’ and ‘transnational’ (see Appendix B), this reform alone is unlikely to lead to the required overall improvements in the quality of information and consultation procedures. The ETUC proposal to enforce managerial compliance detailed in point 1 of the reform agenda (see Appendix B) involves widening the range of sanctions and including these in the legislation rather than as a recital, thus improving the access to justice. This brings the analysis to the issue of enforcement, which is the subject of Chapter 9.

Annex 1

The detailed results for the 'strongly agree' and 'agree' categories for the two surveys are as follows:

	EWC survey (2018) Management make efforts to find agreed solution with the EWC representatives	ECS survey (2009) Management make sincere efforts to involve the employee representation in the solving of joint problems
	Strongly agree and agree %	Strongly agree and agree %
Total	38.5	80.3
Country of company/MNC headquarters		Country of origin
Austria	51.9	84.4
Belgium	53.6	81.4
Denmark	26.9	86.1
Finland	33.0	82.9
France	37.5	77.2
Germany	42.9	82.3
Italy	31.2	75.9
Netherlands	40.4	81.1
Spain	9.0	69.3
Sweden	38.0	78.2
UK	49.9	76.5
Other EEA	55.0	80.2

Source: Eurofound 2014.