

Chapter 10

Negotiating with management: moving beyond the information and consultation functions

European policy-makers envisaged the establishment of a multilevel system of transnational industrial relations to accompany and facilitate European integration (Savoini 1995). Discussions throughout the 1960s and 1970s on the form that employee participation in MNCs might take within this multilevel system embraced rights to information, consultation, codetermination and negotiation (Jagodziński 2013: 274). Given that, at the time of their inception, EWCs were the only transnational institutions of employee participation, they were viewed as basic institutions from which institution building and ‘spillover’ effects would advance the development of transnational industrial relations (Ross 1994; Marginson and Sisson 2004: 216–245). Included as part of the envisaged institution building was the possibility of movement beyond the information and consultation functions, as specified in the Directive, to incorporate a negotiations function. More recently, the Commission reiterated this position in arguing that, in adopting a negotiations function, EWCs may contribute to increasing international integration (European Commission 2008e) and that negotiated transnational agreements may contribute to ‘realising the potential of social dialogue’ (European Commission 2012a). To these ends, the Commission has explored the possibility of creating a framework within which transnational negotiations may take place (Ales et al. 2006). This chapter examines the scale, scope and implications of the negotiations function assumed by some EWCs. To introduce the topic, the status of negotiation in founding agreements, reports on EWC practice regarding negotiations, the number of agreements concluded, and the views of the Commission and the social partners are examined.

The Directive and the Recast explicitly specified information exchange and consultation to be the primary purposes of EWCs. A negotiations function is neither mentioned nor precluded in the legislation, the imprecision of the measures being designed to promote institution building (Jagodziński 2007a, 2012b). By 2000, 11 EWC founding agreements (2.4 per cent of the total) made provision for a negotiations function to supplement the information and consultation functions (Carley 2001: 9–11). This proportion had risen to 3.1 per cent by 2010 (Waddington 2011: 167), at which level it remained until 2015 (De Spiegelaere and Jagodziński 2015: 26). In contrast, 9.8 per cent of 71 Article 6 agreements expressly excluded a negotiations function for EWCs (Carley and Marginson 2000), a proportion that had risen to 11.0 per cent by 2015 (De Spiegelaere and Jagodziński 2015: 28). The vast majority of EWC founding agreements thus follow the ambiguity of the legislation and neither explicitly allow nor prohibit a negotiations function.

A discrepancy between the content of agreements and practice is discerned by research. Of 39 EWCs examined in 2004 and 41 examined in 2007, 14 and 8, respectively, reported that a joint text or agreement had been negotiated even though the EWC founding agreement was silent regarding a negotiations function (ORC 2004, 2007). More than a quarter (27.9 per cent) of EWC representatives in 2007 reported that the founding agreement allowed for the negotiation of joint texts and agreements, and no fewer than 83.3 per cent of these EWC representatives indicated that a joint text or agreement had been negotiated (Waddington 2011: 167). Similarly, in 2018, 34.2 per cent of EWC representatives indicated that the EWC was involved in the negotiation of a formal signed agreement with management in the five years prior to the distribution of the survey.¹ On the basis of this evidence, it appears that EWC practice has advanced beyond the formal content of EWC agreements and that some EWC representatives have assumed that the ambiguity of EWC agreements and legislation does not preclude the EWC from adopting a negotiations function.

What is beyond doubt is the growth in the number of agreements with international coverage. By December 2018, the European Commission/International Labour Organization (hereafter Commission/ILO) database recorded 321 such agreements.² This database includes both global framework agreements (GFAs), which are intended to promote fundamental labour standards across all sites operated by MNCs and issues concerned with corporate social responsibility, and transnational company agreements (TCAs), which tend to cover aspects of work and/or relations between employers and workers.³ There is no formal distinction drawn between GFAs and TCAs in the Commission/ILO database. The first TCA was concluded at Danone in 1988; thereafter, it is estimated that the number of TCAs rose from around 50 in 2002 to around 160 by 2018 (European Commission and ILO various). The total of transnational agreements in the database is thus split between GFAs and TCAs. Trade union organisations in the form of global union federations (GUFs) are the primary campaigners for and signatories of GFAs on behalf of labour (Rehfeldt 2015). Both national trade unions and EWCs are signatory to a minority of GFAs (Müller et al. 2013). Attention here, however, is directed towards TCAs, the majority of which are the result of negotiations involving EWCs and ETUFs (Telljohann et al. 2009a, 2009b; Rehfeldt 2015). The

1. The survey question was explicit in asking 'Was your EWC involved in the negotiation of a formal signed agreement with management in the previous five years? By this, we do not mean an agreement on how to run the EWC (EWC agreement), but an agreement on a policy issue (such as a framework agreement or a transnational company agreement).' On three counts, however, these data should be treated with some caution. First, where there were several respondents from the same EWC, there was not a uniform answer as to whether a formal signed agreement had been concluded. Second, although they were the subjects of different questions within the survey, there may have been some confusion between formal signed agreements and joint texts. Third, there is some confusion among representatives between the EWC founding agreements and other agreements and joint texts, leading to an overstatement of the extent of negotiation (Müller et al. 2013).
2. Neither the Commission nor the ILO claim that the database contains all transnational agreements. On the contrary, it is acknowledged that there are likely to be missing cases.
3. The Commission defines a global framework agreement (GFA) as that negotiated by MNCs and global union federations representing workers at the global level by sector of activity. GFAs aim to promote and mentor fundamental labour standards across the worldwide operations of MNCs, in particular in the areas of freedom of association and the right to collective bargaining, but also of good labour relations and decent conditions of work. In contrast, a transnational company agreement (TCA) comprises reciprocal commitments, the scope of which extends to the territory of several states and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives (see European Commission and ILO various).

database does not suggest that some 160 EWCs have concluded a TCA, as several TCAs have been agreed in specific MNCs. In addition, attention is also focused on joint texts and informal arrangements. Joint texts are written understandings on the subject in question agreed by management, EWCs and ETUFs. The enforcement of joint texts is contentious (Jaspers 2012). Informal arrangements are negotiated between the EWC and management and form the basis for European company regulations on aspects of industrial relations and working conditions, but are not necessarily available in a written form (Müller et al. 2013: 40). The content of many informal arrangements applies to features of the HR agenda pursued by management (see Chapter 8). Reliable data on the number of joint texts are not available. The same is the case for informal arrangements, although a study of such arrangements in metalworking suggests that 26.0 per cent of EWCs operated with agreed informal arrangements in place (Müller et al. 2013: 41).⁴ The key issue for the purposes of this chapter is that TCAs, joint texts and informal arrangements are negotiated outcomes, involve EWCs to some degree and constitute movement beyond the formal transnational information and consultation agenda.

The growth in the number of TCAs, joint texts and informal arrangements, particularly after 2000, was welcomed by the Commission, which viewed the development as institution building towards a European system of industrial relations (European Commission 2008e; Morin n.d.). The initial response from the Commission was to convene a series of ‘study seminars’ and to explore the prospect of establishing a framework within which transnational negotiations could take place. The study seminars were primarily concerned with mapping the concluded agreements, identifying their substantive content and comparing their procedural terms (European Commission 2006a, 2006b). Concurrently, the Commission established a research team to examine the features of a legal framework within which transnational negotiations could take place. While emphasising that it would be necessary to ‘avoid confusion between workers’ involvement and collective bargaining tools and aims’ (Ales et al. 2006: 37), the framework within which transnational negotiations might take place was envisaged as underpinned by law and as specifying the legal status of agreements, the procedure whereby such negotiations take place, the negotiating agents and the conditions for the binding effect of concluded agreements (Ales et al. 2006: 33). Retaining the positive tenor of the initial publications, the Commission subsequently focused on how transnational agreements would contribute to a ‘new articulated industrial relations system’ embracing local and global levels (Morin n.d.) and formalising the monitoring of the number and content of agreements (European Commission 2008f) of which the above-mentioned database is a key element. An Expert Group was established that presented a range of options regarding future initiatives on TCAs. Responding to the Report of the Expert Group (2012), the Commission issued a Staff Working Document that reviewed the options and was intended to promote debate within and between the social partners (European Commission 2012a).

In responding to the Staff Working Document, BusinessEurope embarked on a well-trodden path in arguing that ‘there is no need for EU policy on TCAs’ (BusinessEurope

4. As these authors acknowledge, this study should not be taken as indicative of all EWCs. It is likely that developments in the engineering sector were in advance of those in other sectors (Müller et al. 2013: 40–43).

2012). As with EWCs, BusinessEurope stated that the development of TCAs was best left to voluntary arrangements and that a single EU instrument would not address the challenges associated with TCAs. More specifically, BusinessEurope questioned the Commission's assumption that the absence of a legal framework had discouraged managers from concluding such agreements, argued that most TCAs are 'declarations of intent' rather than legally binding agreements and thus do not require a supporting legal framework, and viewed proposals on a framework within which disputes arising from TCAs could be settled as superfluous because such disputes are rare (BusinessEurope 2012). In short, BusinessEurope rejected any European-wide framework for transnational negotiations.

Research on managerial involvement in transnational negotiations focuses on operational rather than political matters. It appears that MNCs with cooperative systems of industrial relations are the most likely to conclude TCAs (Hadwiger 2014; Müller et al. 2013; Ales 2018). Managers also cite TCAs and joint texts as a means whereby Europe-wide policies for MNCs can be agreed and subsequently implemented (Leonardi 2015; Whittall et al. 2017). Prominent among such policies are those on health and safety, equality, work-life balance and corporate restructuring (Helfen et al. 2012; Eichorst et al. 2011). In addition, managers view TCAs and joint texts as vehicles to promote HR policies designed to encourage employee commitment, facilitate corporate change and promote a corporate identity among employees (Broughton et al. 2020; Teissier 2012). In this regard, TCAs are a further development of managerial approaches to EWCs in seeking corporate added value.

The adoption of a negotiations function by some EWCs is problematic for trade union organisations, albeit for different reasons than for BusinessEurope. Trade unionists argue that EWCs are not trade union organisations, do not have a mandate to negotiate, do not have a right to strike and are committed to working 'in a spirit of cooperation' (Article 9, Recast). Each of these features is viewed as limiting the capacity to negotiate and is contrary to reaching agreement on contested issues (ETUC 2006). Furthermore, trade unionists argue that the classic dual system of industrial relations, which underpins the introduction of EWCs, is based on the separation of participation arrangements within the company conducted by works councils or their equivalent, and collective bargaining undertaken outside the company by trade unions. From the perspective of trade unionists, allotting a negotiations function to EWCs would blur the separation between participation and collective bargaining, a separation historically also supported by employers' associations, as it kept trade unions out of the workplace (Sisson 1987). Trade union organisations thus reject the assertion that EWCs are 'transnational bodies par excellence' (Ales 2018: 7) that are representative of employees in all circumstances. Instead, trade unionists argue that ETUFs should be primarily responsible for negotiations with MNCs on transnational issues, with EWCs undertaking a secondary or auxiliary role (ETUC 2016b).

To convert these principled positions into practice, the initial response of the ETUFs was to assign responsibility for the ratification of TCAs to standing committees with the brief of handling issues associated with EWCs and MNCs (Pulignano 2010). The intention was to create circumstances whereby only these standing committees of the

ETUFs ratified TCAs (for example, see EMF 2006, 2011). In developing this position, the ETUC and the ETUFs have proposed a *Roadmap on Transnational Company Agreements* (ETUC 2016a) at the centre of which is an optional legal framework for TCAs, which negotiators may opt into, in writing, thereby committing the TCA to its provisions. Among the provisions of the optional legal framework are: assigning to the ETUFs the leading role in negotiations; involving EWCs in the negotiation of the TCA and the monitoring of its operation; including a non-regression clause; and including details of the formal content of the TCA and its scope (ETUC 2016a).⁵ Several of these provisions borrow from the legal framework initially explored by the Commission (Ales et al. 2006) and are intended to articulate ETUFs and EWCs within a system of negotiations. These provisions also constitute an attempt to introduce a legal framework, albeit an optional one, to the conduct of transnational negotiations. As such, the legal approach promoted by the ETUCs and ETUFs contrasts with the voluntary approaches advocated by BusinessEurope, suggesting that the impasse that characterises EWC developments is likely to be perpetuated through TCAs. The key point of differentiation is that the legal framework for TCAs proposed by the ETUC and ETUFs is optional rather than a hard law requirement, thereby allowing managers of MNCs and trade union negotiators to opt in. For BusinessEurope, any mention of any form of legal framework is unacceptable. The next section of this chapter presents the data on the themes introduced here. It illustrates the extent to which a negotiations function has supplemented the information and consultation arrangements formally allowed by the EWC legislation.

Charting the scale and scope of the negotiations function

This section comprises three stages, each of which examines, in turn, the scale of negotiations conducted by EWCs and union involvement, the scope of TCAs, and the extent of satisfaction among EWC representatives with the concluded TCAs. The section argues that joint texts and TCAs are growing in number and cover a wide range of topics. Although trade union organisations are involved in the majority of negotiations, a substantial minority of TCAs are negotiated solely by EWCs.

Scale of negotiations and union involvement

Table 10.1 shows that almost a quarter of EWC representatives reported that their EWC had concluded a joint text with management in the three years prior to the distribution of the survey and more than a third of representatives reported involvement in negotiations on TCAs in the five years prior to the survey. These representatives sat on 166 EWCs in the case of joint texts and on 169 EWCs where the negotiation of a TCA had taken place. Compared to the Commission/ILO database, which reports a total of

5. In addition, the optional legal framework refers to the disclosure of the mandate of the parties to the negotiations, the protection of the workers and trade unionists involved in the negotiations, and the inclusion of a 'more favourable' clause whereby the more favourable of two competing clauses in different agreements is to apply (ETUC 2016b).

Table 10.1 Extent of joint texts and transnational company agreements*

	Concluding a joint text with management (3 years)		Involved in the negotiation of a formal (signed) agreement (5 years)	
	% yes	N	% yes	N
All	23.1	1 345	34.0	1,324
EWC coordinator present	22.7	823	34.8	813
No EWC coordinator	27.6	280	37.0	276
EWC representatives based in MNCs with headquarters in:**				
Nordics	19.9	261	24.7	257
CMEs	24.2	448	33.4	437
MMEs	21.6	305	51.2	299
LMEs	26.3	323	24.2	324

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

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

about 160 TCAs negotiated between 1988 and 2018, with some MNCs having concluded several TCAs, EWC representatives report a more widespread negotiations function.⁶ There is no comparable database to that of the Commission/ILO for joint texts. It is thus not possible to compare the survey results against an accredited source. The 'all' results presented in Table 10.1 demonstrate beyond doubt that substantial minorities of representatives view negotiations as an EWC function to supplement the formal information and consultation arrangements. In this sense, and in a manner consistent with the expectations of functional spillover theories, institution-building based on EWCs has been under way for some time.

The presence of an EWC coordinator appears to restrict the negotiation of joint texts and TCAs. This finding raises two points. First, EWC coordinators are generally union members and represent the ETUF within the EWC. Lower rates of negotiation of joint texts and TCAs in the presence of EWC coordinators thus suggest that ETUF policies opposing an independent negotiations function for EWCs are sustained by ETUF representatives coordinating EWCs. In the absence of this opposition, management tend to conclude more TCAs and, particularly, joint texts. Second, when negotiations take place in the absence of an EWC coordinator, as reported by 37.0 per cent of EWC representatives, there are likely to be fewer opportunities for articulation between the EWC and the ETUF and, consequently, limited access to the ratification procedure of the ETUF standing committees.

A key point to emerge from the data disaggregated by the country clusters of the MNC in Table 10.1 is that the range of EWC representatives who report the presence of a joint text is relatively narrow (+/- three percentage points) compared to that for TCAs (plus 17 percentage points to minus 10 percentage points). There would thus appear to

6. See footnote 1 above for the qualifications regarding these data.

be more of a consensus between clusters on joint texts than on TCAs. The two country clusters recording the smallest proportions of EWC representatives who indicate the presence of TCAs are the Nordics and the liberal market economies. Both of these country clusters are characterised by single channel systems of representation in which the negotiations function, whether inside or outside the company, is exclusively the domain of trade unions. For management and workers' representatives, the tendency is thus to view trade unions as the institution through which negotiations are conducted rather than EWCs. The liberal market economies cluster is the only one where a greater proportion of EWC representatives report the negotiation of a joint text than report a TCA. This may be a result of the large number of UK- and US-based MNCs in the cluster where management are more comfortable with the less binding joint texts than TCAs and are more interested in limiting trade union involvement.

The relatively large proportions of representatives with TCAs sitting on EWCs in MNCs based in coordinated market economies and, particularly, mixed market economies are consistent with earlier findings demonstrating that TCAs are concentrated in French- and German-owned MNCs (Rehfeldt 2013, 2015; Rüb et al. 2011). Many of the countries in these two clusters operate dual channel systems of representation in which works councils engage in negotiations, as distinct from collective bargaining, with management within the company (Müller-Jentsch 1995). In France, trade unions have a legal monopoly over collective bargaining, leading managers to opt for trade union involvement (Tchobanian 1995; Rehfeldt 2015). In these contexts, negotiations conducted by EWCs are an extension of national practice. The extent of union involvement in national practice is likely to differ depending on the extent of unionisation among works council representatives and the constitutional arrangements for the selection of works councillors, particularly union involvement therein. As the selection of EWC representatives is a matter for Member States to address by reference to national practice, it is likely that union involvement in transnational negotiations will also vary. It is this topic that the presentation will now discuss.

To evaluate the extent of trade union and EWC involvement in TCA negotiations, the EWC representatives who reported that their EWC was involved in such a negotiation were asked about the role of the trade unions in that process. They could choose between four options: where the EWC took part in the negotiation with the involvement of a ETUF; where the EWC took part with the involvement of a national trade union; where the EWC negotiated without the involvement of a trade union; and where the EWC representatives did not know about trade union involvement in the negotiations. As it is conceivable that both an ETUF and a national union were involved in the same negotiations, the respondents could indicate more than one answer. Of those respondents who had been involved in a TCA negotiation, 40.2 per cent reported that the ETUF was involved, 28.6 per cent indicated that a national union was involved, 21.1 per cent revealed that only the EWC was involved and trade unions were absent, and 15.7 per cent did not know which parties were involved in the negotiations. Table 10.2 groups these answers into three categories: a trade union was involved in the negotiation (63.2 per cent of EWC representatives with a TCA), no trade union was involved in the negotiation (21.1 per cent), and the EWC representative does not know the answer to the question (15.7 per cent).

Table 10.2 Trade union involvement in negotiations*

Transnational company agreements:				
	Trade union involved %	No trade union involvement %	Don't know %	N
Total	63.2	21.1	15.7	406
EWC coordinator present	73.1	14.8	12.1	274
No EWC coordinator	56.6	28.2	15.2	80
Percentage of unionists serving as EWC representatives				
0–69%	51.5	31.6	16.9	61
70–99%	69.4	26.5	4.1	70
100%	80.2	8.2	11.7	145
EWC representatives based in MNCs with headquarters in:**				
Nordics	64.6	13.7	21.7	56
CMEs	57.3	28.8	13.8	136
MMEs	65.2	19.8	14.9	132
LMEs	66.5	17.8	15.7	80

Notes: * These responses are only from 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.

The 21.1 per cent of EWC representatives who report that a TCA was negotiated without the involvement of a trade union organisation substantiates trade union concerns that their exclusion may result in agreements that may impinge on collective bargaining arrangements or terms and conditions negotiated elsewhere. It is very likely that a substantial proportion of TCAs concluded exclusively by EWCs have not been subject to ratification by an ETUF standing committee. It is noteworthy, however, that the proportion of EWC representatives reporting the conclusion of a TCA without union involvement is markedly lower than the 48.6 per cent of TCAs that were signed by EWCs without union involvement in 2013 (Rehfeldt 2015).⁷ Although the measures utilised in the two studies differ, Rehfeldt uses TCAs and their signatories in the 2013 study, whereas the 2018 survey relies on EWC representatives involved in or reporting TCA negotiations, the 2018 data suggest that greater union control over TCAs had been achieved between 2013 and 2018.

The presence of an EWC coordinator and higher rates of unionisation among the EWC representatives are associated with greater union involvement in the negotiation of TCAs. When an EWC coordinator is present, for example, almost three-quarters of EWC representatives report that a trade union was involved in the negotiations, suggesting that the ratification procedure required by the ETUFs would also be in place. Even in

7. Rehfeldt (2015) refers to European framework agreements rather than TCAs but defines them in the same way as TCAs are defined here as a means of distinguishing them from global framework agreements.

the absence of an EWC coordinator, more than half of the EWC representatives report union involvement in the negotiations. It is noteworthy, however, that a minority of representatives report the presence of an EWC coordinator but no involvement of a trade union in negotiations, suggesting limits to the link between some coordinators and ETUFs, limitations to the monitoring procedures of some ETUFs, or decisions within the EWC to exclude trade union organisations from negotiations. There is a direct relationship between higher rates of unionisation among EWC representatives and union involvement in the negotiation of TCAs. In totally unionised EWCs, only 8.2 per cent of EWC representatives report TCAs negotiated by the EWC without union involvement compared to 80.2 per cent of EWC representatives reporting union involvement. In contrast, where the EWC is not 70.0 per cent unionised, a half of EWC representatives report TCAs negotiated with union involvement, while almost a third report TCAs negotiated only by the EWC. From the union perspective, these data substantiate the policies of ensuring that each EWC operates with a coordinator and that union members should sit on EWCs. The data also illustrate the dangers for trade unions from a negotiations function assumed by EWCs, especially where unionisation is very low; for example, in many industries within private-sector services, there is a possibility of TCAs being agreed, which may impinge on collective bargaining without union involvement. The legal status and enforcement of such TCAs at a national level, however, remains a topic of debate (Jagodziński 2012a, 2012b; Sobczak 2012; Van Hoek and Hendrickx 2009).

Turning to the country cluster of the MNCs shows that the outliers are EWCs based in MNCs within coordinated market economies where the extent of trade union involvement in negotiation is relatively low and EWCs are reported by representatives as the most likely to negotiate a TCA without union involvement. This result reflects national practices where dual systems of workplace participation are in operation. Negotiations conducted by Austrian, Dutch and German works councils on issues separate from collective bargaining and excluding direct trade union involvement, for example, are commonplace (Traxler 1998; Visser 1995; Müller-Jentsch 1995). As the data indicate, however, some works councillors from these countries are prepared to engage with trade unions for transnational-level negotiations in contrast to the predominant approach at national level (see also Müller et al. 2013). In the largely single channel systems that characterise many countries within the Nordic and liberal market economy clusters, the proportion of EWC representatives reporting TCAs negotiated by EWCs without trade union involvement is relatively low, but is not non-existent, suggesting that EWCs retain a degree of independence from unions in such circumstances. The legal monopoly for collective bargaining held by trade unions in France is likely to underpin the relatively high union involvement in TCAs in mixed market economies: that is, many French managers of MNCs opt to replicate national arrangements in involving trade unions in transnational negotiations (Rehfeldt 2015). It is clear from these data that attempts by trade union organisations to establish a uniform approach to trade union involvement in transnational negotiations will be extremely difficult without a supportive legal framework, as national traditions and practices are likely to influence EWC practice.

Scope of TCAs

Many studies demonstrate the broad range of topics covered by TCAs (Broughton et al. 2020; Telljohann et al. 2009b). In addition to asking whether a trade union organisation was involved in the negotiation of TCAs in the previous five years, the questionnaire thus asked EWCs representatives to identify the scope of the concluded TCAs. Respondents could tick as many boxes as were appropriate from a list, which included ‘other’. As is apparent from Table 10.3, more than a quarter of EWC representatives ticked the ‘other’ box, suggesting that the list of topics provided in the questionnaire did not specify all the pertinent topics.

The first data column of Table 10.3 illustrates the scope of the topics included in TCAs and the proportion of EWC representatives reporting that a specific topic was included in the TCA concluded by the EWC on which they sit. The range of topics reported by EWC representatives as the subject matter of TCAs is an indicator of the extent of institution building initiated by the establishment of EWCs. The prevalence of transnational restructuring and health and safety in TCAs reported by EWC representatives in 2018 replicates previous analyses of the content of TCAs (Telljohann et al. 2009b: 23–29) and confirms the centrality of these issues within transnational operations.

Chapter 4 showed that prominent items on the agendas of EWCs are health and safety, transnational restructuring and anticipation of change. EWC representatives regard the information and consultation practices associated with these topics to be inadequate, particularly in the case of transnational restructuring. It is thus no surprise that representatives attempt to address the limitations of the legal framework for EWC information and consultation practices by means of more formal TCAs. More EWC representatives mention health and safety as the subject of TCAs than any other topic. This lends further support to the argument outlined in Chapter 4 that health and safety is a matter subject to European legal regulation, and it is thus apposite that MNC-wide policies be applied, whether by information exchange and consultation or by negotiation. Both procedural and substantive TCAs have been concluded on transnational restructuring and anticipation of change as a means of addressing the shortcomings of the legal framework. Procedural TCAs on these topics tend to focus on the timing of information and consultation procedures when restructuring is envisaged (Broughton et al. 2020; Rehfeldt 2015). The timing of information and consultation procedures in such circumstances is supposed to be regulated by EWC legislation. The inclusion of formal agreed terms in TCAs on the timing of information and consultation procedures is an indicator of the inadequacy of the EWC regulations and the perceived need among EWC representatives to supplement EWC regulations. However, the extent to which procedural TCAs can improve the position of EWC representatives in relation to management is open to question (Jaspers 2012). Substantive TCAs specify binding terms in cases of restructuring, work organisation, corporate relocations, plant closures and redundancies (Telljohann et al. 2009b; Müller et al. 2013). These topics are very similar to those of the subsidiary requirements agenda (see Chapter 4). Substantive TCAs on restructuring are thus also attempts to mitigate the limitations of the EWC regulations by means of a formal agreement. The extent to which such agreements mitigate the limitations of the EWC regulations is unclear. In a sense, substantive TCAs

Table 10.3 Content of TCAs and trade union involvement*

N=450

Topic	EWC reps reporting topic included in TCA %	EWC reps reporting trade union involved in negotiations %	EWC reps reporting only EWC involvement %	Don't know %
Health and safety	42.8	66.8**	15.8**	17.4**
Corporate social responsibility	37.7	64.3	23.5	12.2
Transnational restructuring	33.8	67.5	20.8	11.7
Equal opportunities	32.0	65.7	17.8	16.4
Data protection	26.5	69.8	13.0	17.3
Training and development	24.8	79.6	9.0	11.4
Staff mobility	24.6	62.5	34.6	2.9
Human resource management	21.6	57.6	26.8	15.6
Trade union issues	19.4	83.5	10.6	6.0
Anticipation of change	14.9	82.5	1.6	15.9
Subcontracting	11.5	68.3	25.0	6.7
Remuneration issues	11.0	45.2	37.7	17.2
Other	28.9	61.7	21.2	17.1

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

** These data express the proportion of EWC representatives who reported trade union involvement, EWC involvement or did not know who negotiated the TCA on the topic in question.

may be regarded as alternatives to the renegotiation of EWC founding agreements, as they may broaden the scope of EWC practice without modifying the underpinning regulation.

Chapters 2 and 8 demonstrated that managerial objectives for EWCs include the pursuit of a corporate HR agenda to which information and consultation arrangements are secondary and the introduction of uniform practices throughout MNCs to accommodate the increasing European integration of operations. It is thus no surprise that EWC representatives report corporate social responsibility (37.7 per cent) and HRM (21.6 per cent) as featuring in TCAs. The appearance of these items within TCAs confirms that managers are also concerned to formalise aspects of a corporate agenda by means of agreements. Agreements on these topics have been concluded following managerial initiatives (ETUC and BusinessEurope n.d.: 6–11). TCAs on equal opportunities, data protection, training and development and, in certain circumstances, staff mobility reflect the extent to which some MNCs have moved towards establishing uniform European standards, thereby simplifying relations between sites. If, for example, a uniform training and development system is in place within an MNC, employees at the same level within that system may be transferable within the MNC.

Two further points are apposite regarding the first data column of Table 10.3. First, in the absence of any regulatory underpinning to the involvement of trade union organisations in the day-to-day operations of EWCs, the appearance of trade union issues in TCAs indicates attempts to formalise involvement. Second, while there is considerable variation in the content of TCAs on subcontracting and remuneration, the inclusion of these issues in some TCAs is indicative of the proximity of the content of TCAs to collective bargaining. Many national collective agreements at sectoral and company level, for example, deal with subcontracting and remuneration. The appearance of these issues in TCAs substantiates concerns expressed within trade union organisations that the exclusive right to collective bargaining held by trade unions can be placed in jeopardy by some TCAs.

The final three columns of Table 10.3 specify EWC representatives' perceptions of the involvement of trade unions and EWCs in the TCAs concluded. The data were thus designed to establish whether there are patterns of trade union inclusion or exclusion in the negotiation of TCAs by topic. In practice, there are no obvious variations. For the majority of the topics, trade unions were involved in between 60.0 per cent and 70.0 per cent of the negotiations. Even on issues likely to be drawn from a managerial agenda, HRM for example, trade union involvement was almost within these parameters. 'Anticipation of change' and 'trade union issues' were the principal exceptions to this situation. Very few EWC representatives cited 'anticipation of change' as the subject matter for a TCA, suggesting that the result may be a statistical aberration. The involvement of trade unions in the negotiation of TCAs on the related topic of transnational restructuring, for example, was within the 60/70 per cent parameters. The active involvement of trade unions in the negotiation of TCAs on 'trade union issues' is anticipated as trade union attempts to formalise their EWC involvement in the absence of supportive legislation.

Satisfaction with the TCA

This stage of the analysis examines the satisfaction of the EWC representatives with TCAs. In the absence of a European legal framework, there is a debate on the utility of TCAs. Although rare, extant studies of the utility of TCAs illustrate differences between EWC representatives. Representatives from the home country of the MNCs tended to downplay the utility of the TCAs signed in Volkswagen and ArcelorMittal, regarding them as largely symbolic, as they committed management to social dialogue, which was already the norm (Whittall et al. 2017; Teissier 2012). In contrast, foreign EWC representatives viewed these TCAs more positively, as they provided opportunities to develop social dialogue at local level beyond current practices. Similar arguments were made for the New Member States (NMSs) where industrial relations practices are not as wide-ranging and TCAs constitute a means whereby practices regarded as the 'norm' in Western Europe may be extended in coverage to CEE (Adamczyk and Surdykowska 2012). Extant studies also show that satisfaction among EWC representatives with a TCA may depend on the extent of trade union involvement in the negotiation process. The guidelines developed by trade union organisations are intended to ensure the quality of TCAs and clear mandating procedures, and have led some to suggest that union-led

Table 10.4 In general, how satisfied are you with the formal agreement(s) concluded in your MNC?

	Very satisfied %	Satisfied %	Neither satisfied nor dissatisfied %	Dissatisfied %	Very dissatisfied %	N
All	9.6	49.8	34.1	5.2	1.3	399
Trade union was involved	9.1	56.9	26.9	5.1	2.0	252
Trade union was not involved	9.2	39.4	48.3	3.1	0.0	79
Don't know	12.8	33.7	45.1	8.4	0.0	65
EWC representatives from:						
Nordics	14.5	47.0	36.4	2.1	0.0	45
CMEs	11.9	50.1	29.2	7.8	1.0	153
MMEs	5.8	48.9	39.5	4.5	1.3	92
LMEs	10.6	57.7	26.5	2.6	2.6	36
EMEs	11.3	40.8	40.0	6.9	1.1	73
Foreign reps	11.7	47.9	33.2	6.2	1.0	333
Home country reps	9.7	57.7	27.9	3.3	1.4	104

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

negotiations resulted in more detailed and precise agreements with a greater chance of enforcement through union channels at national level (Gennard 2009; Guarriello 2019). Table 10.4 presents the survey results on these themes.

The 'all' data of Table 10.4 show that there is general, but far from overwhelming, satisfaction with the TCAs that have been negotiated: almost 60.0 per cent of EWC representatives are satisfied to some degree with the TCA, and more than a third are indifferent. Dissatisfaction with TCAs, however, is marginal. Such a distribution of views should perhaps be expected on what is a negotiated settlement involving a degree of compromise and what is regarded by management within some companies as a success of social dialogue. With some variation, the broad pattern of results illustrated by the 'all' data is reproduced among the different cohorts of EWC representatives shown in Table 10.4.

Trade union involvement in negotiating a TCA raises satisfaction among EWC representatives with the TCA, largely as a result of a decline in the extent of indifference. Although the absence of union involvement in the negotiation of a TCA leads to lower levels of satisfaction among EWC representatives, it does not increase the extent of dissatisfaction. These results confirm arguments that union involvement in the negotiation of TCAs is a source of satisfaction among EWC representatives (Gennard 2009; Guarriello 2019), but do not allow comment as to whether it is the precision of union-negotiated TCAs or union enforcement of the TCA that underpins increased satisfaction.

With regard to the country of origin of the EWC representatives, it is to be anticipated that representatives from emerging market economies would be most satisfied with TCAs, as such agreements are likely to raise the floor of rights and practices for workers in the New Member States (Adamczyk and Surdykowska 2012). This expectation is not realised. On the contrary, EWC representatives from emerging market economies express the least satisfaction with TCAs compared to their counterparts from the other country clusters. This situation may reflect a sense of disappointment with the content of TCAs among EWC representatives from emerging market economies. If expectations are high that TCAs will prove helpful in improving workplace relations with management and in developing systems of industrial relations but their content is insufficient to improve these situations, EWC representatives from emerging market economies may be disappointed with TCAs. EWC representatives from liberal market economies are the most satisfied with TCAs, suggesting that TCAs represent an opportunity to raise the profile of social dialogue for these representatives. This argument would have been supported had foreign representatives been markedly more satisfied than their home country counterparts with TCAs, as observed in some case studies (Whittall et al. 2017; Teissier 2012). The data do not support this argument. More than two thirds of home country representatives are satisfied to some extent with TCAs compared to 60.6 per cent of foreign representatives. Where a TCA has been negotiated, it is likely that some home country representatives were involved in the negotiation. It is thus possible that the higher rates of satisfaction among home country representatives arise from their involvement in, and identification with, the negotiations. The survey data do not allow examination of this proposition.

Conclusions

EWC representatives report a growing number of joint texts and TCAs covering a wide range of issues. Although trade unions are reported as being involved in the negotiation of TCAs by almost two-thirds of EWC representatives, more than 20.0 per cent of representatives indicate that such agreements are negotiated by EWCs alone. The composition of EWC representation influences the extent to which EWCs act as sole negotiating agents insofar as the presence of a coordinator and high rates of unionisation among the representatives are associated with greater union involvement in the negotiation of TCAs. There is no marked variation in union involvement by the subject matter of the TCA, although EWC representatives are more satisfied with TCAs negotiated with trade union involvement than those negotiated by EWCs alone.

The implications of these findings for policy-makers are challenging. For BusinessEurope, the situation is clear-cut. BusinessEurope does not oppose TCAs *per se* but expresses outright opposition to any framework within which transnational negotiations might take place and a preference for voluntary arrangements on a company-by-company basis irrespective of the number of joint texts and TCAs negotiated (2012). This preference reflects the current situation. BusinessEurope, however, acknowledges that TCAs may lead to win-win situations allowing ‘collaborative solutions to overcome difficulties’, the implementation of policies and actions of common interest, and better planning for business developments (ETUC and BusinessEurope n.d.: 18).

For the Commission, the growing number of joint texts and TCAs is a welcome spillover from the establishment of EWCs, achieved without any formal intervention. The formal information and consultation rights afforded to EWCs by the legislation can be supplemented by a transnational negotiations function in practice. The Commission acknowledges that these developments facilitate European integration, foster social dialogue, and facilitate dealing with restructuring, works reorganisation and employment issues by enhancing trust and cooperation between the social partners (2008e; 2012). These developments, however, place European policy-makers in a similar quandary regarding transnational negotiations as the one they find themselves in regarding EWCs: namely, the framework for future development is lacking. On behalf of the Commission, the different features of a prospective legal framework within which transnational negotiations can take place have been identified and subsequently refined (Ales et al. 2006; Expert Group 2012). Initiatives concerned with transnational negotiations were referenced in the Social Agenda for 2005–2010, which envisaged the drawing-up of a European framework for negotiations involved in ‘transnational collective bargaining’ (European Commission 2005a). Endorsement of this proposal was immediately forthcoming from the EESC (2005) and the European Parliament (P6_TA(2005)0210), which later consolidated its position during 2013 in a resolution on cross-border collective bargaining and transnational social dialogue (2012/2292(INI)). Thereafter, apart from attempting to stimulate debate between, and elicit opinions from, the social partners (European Commission 2012a), the Commission has failed to act on the initiative that it set in train: in practice, once again favouring the unclear *status quo* expressed by BusinessEurope. This ‘no-action’ position, however, is further evidence of a lack of commitment within the Commission to ensure legal certainty, declared as one of the objectives of the Recast (recitals 7, 21 and 37).

The presence of single and dual channel systems and variants thereof within Member States results in a range of national workplace practices regarding negotiations. On the assumption that trade union organisations are involved in transnational negotiations and a separation is maintained between such negotiations and collective bargaining, there is no opposition ‘in principle’ to the development of a transnational negotiations function from within trade union organisations. The policy question is: how should the development of transnational negotiations be managed? To accommodate the initial growth in the number of joint texts and TCAs, and the increasing range of their subject matter, the ETUFs assigned to extant standing committees with responsibilities for EWCs and MNCs the brief of monitoring the responsibility of ratifying TCAs. The ETUFs thus established a procedural means of handling transnational negotiations. Compared to earlier data, it would appear that the proportion of TCAs negotiated solely by EWCs without union involvement has declined. More than 60.0 per cent of EWC representatives reporting the negotiation of a TCA during the five years prior to the distribution of the survey indicated that the agreement was concluded with trade union involvement. It seems likely that these TCAs would be submitted to the ETUF standing committee procedure. Furthermore, data presented here show that the presence of EWC coordinators and high rates of unionisation promote union involvement in transnational negotiations. More problematic for trade union organisations are the 21.1 per cent of EWC representatives who report that transnational negotiations were conducted solely by EWCs without trade union involvement. Although coordinators present at some of

the EWCs that conducted independent negotiations may have submitted the result of the negotiations to the ETUF for scrutiny, this procedure is unlikely to be universal. Furthermore, it seems likely that the scope of TCAs will continue to expand. In these circumstances, differences between transnational negotiations and collective bargaining and between transnational and national agreements may be blurred, particularly in the areas of remuneration and subcontracting.

The ETUC has also expressed concerns about the enforcement of terms settled through transnational negotiations (ETUC 2016a, 2016b). For the ETUC and ETUFs, a resolution to the ratification and enforcement issues is the establishment of the optional legal framework outlined earlier in this chapter. While such a framework is not a hard law measure intended to generate fairly uniform results, as it requires the parties to opt in, it constitutes a step away from the voluntary procedures preferred by BusinessEurope. The debate on the future development of transnational negotiations has thus reached an impasse similar to that on EWCs: BusinessEurope wishes to retain voluntary arrangements, while the ETUC and ETUFs wish to implement a framework within which transnational negotiations can be conducted and the results enforced. Concurrently, the Commission is ‘sitting on its hands’, resisting the views expressed by the European Parliament and EESC, and ignoring evidence on the policy issues associated with transnational negotiations, even though much of this evidence was generated at its own behest.