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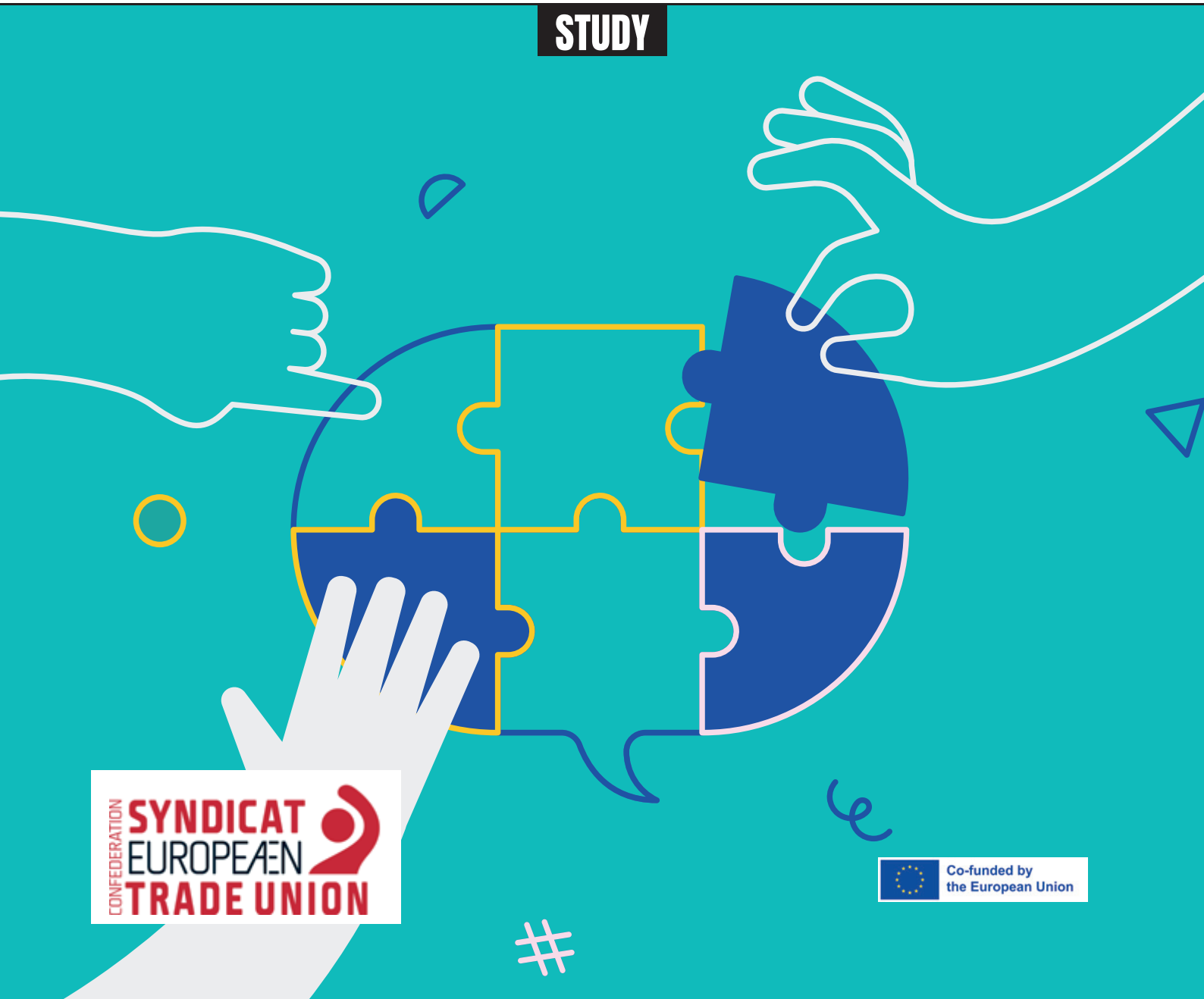
EWCS AND BLER: FINDING A BALANCE

November 2024

STUDY



CONFEDERATION SYNDICAT EUROPEAEN TRADE UNION

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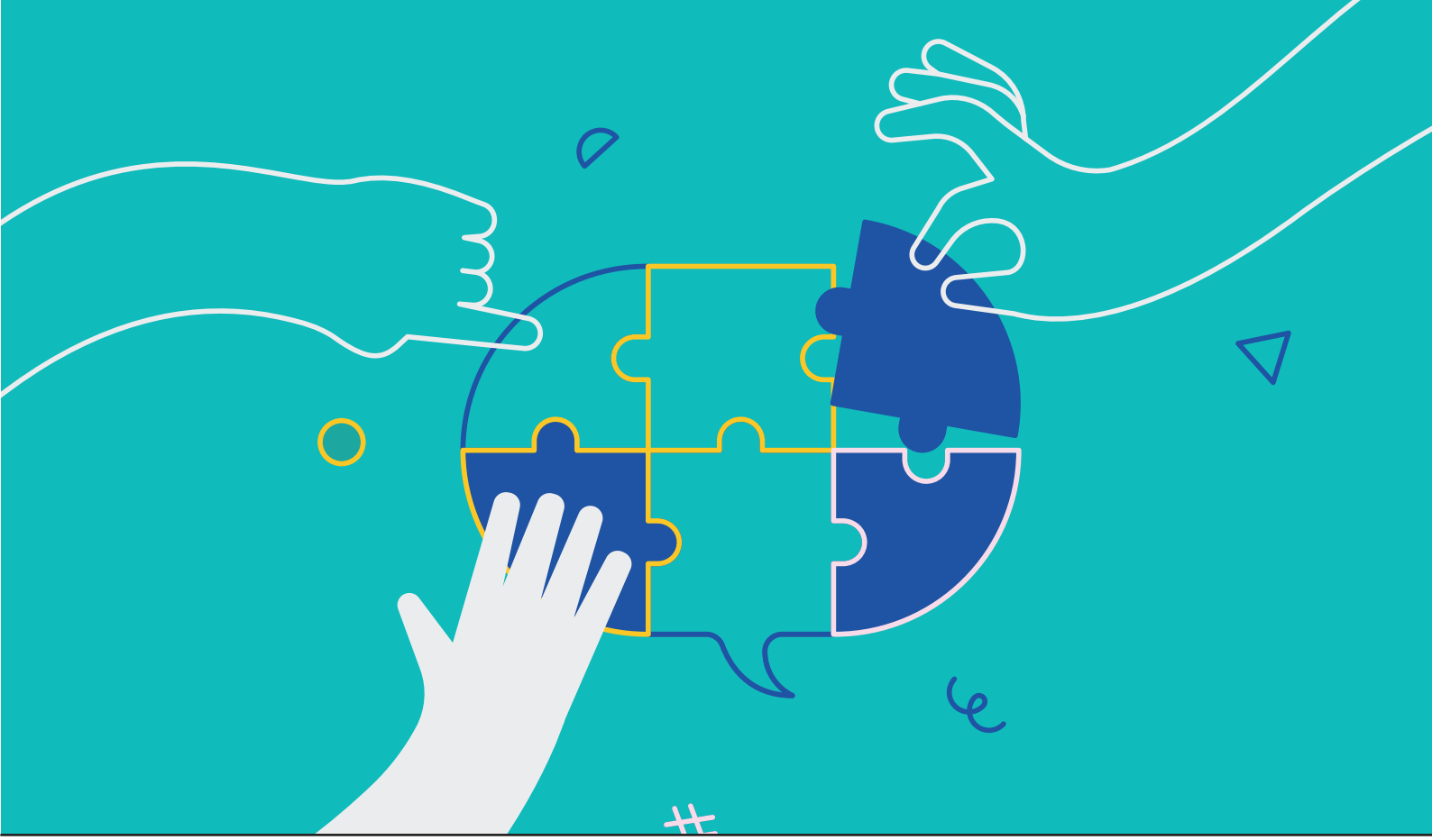


Introduction

When extraordinary events occur, such as restructuring, Brexit, or the COVID crisis, they may have significant consequences for employment and working conditions. Everyday management of the company may also result in policies that have to be assessed by workers' representatives, such as human rights-related subcontracting policies, remuneration-related human resources policies, gender equality and working conditions. Workers' representatives at European level need detailed information and training to analyse the macroeconomic and sectoral trends impacting their company. Such information and training will enable them to play a role in transnational management consultations or request consultations when required or not provided for by company management. However, the information provided by management is sometimes irrelevant and incomplete, or even insufficient. The information may also be complex, and workers' representatives and trade unionists may require objective external support from experts. The objective of this project is to strengthen social dialogue at transnational company level (with trade unions), information-consultation procedures (with EWCs) and workers' participation (including with board-level worker representation).

Syndex, Indewo, Progress Lawyers Network and LBBa provide economic and legal expertise to trade unions, works councils and European Works Council. In agreement with the European Trade Union Confederation and with the support of several European trade union federations, they have investigated the reasons why access to expertise by workers' representatives is difficult. The aim of this project, financed by the EU, is to raise awareness, discuss, and train members of European Works Councils and European trade unions on the need to rebalance social dialogue within companies, including at transnational level.

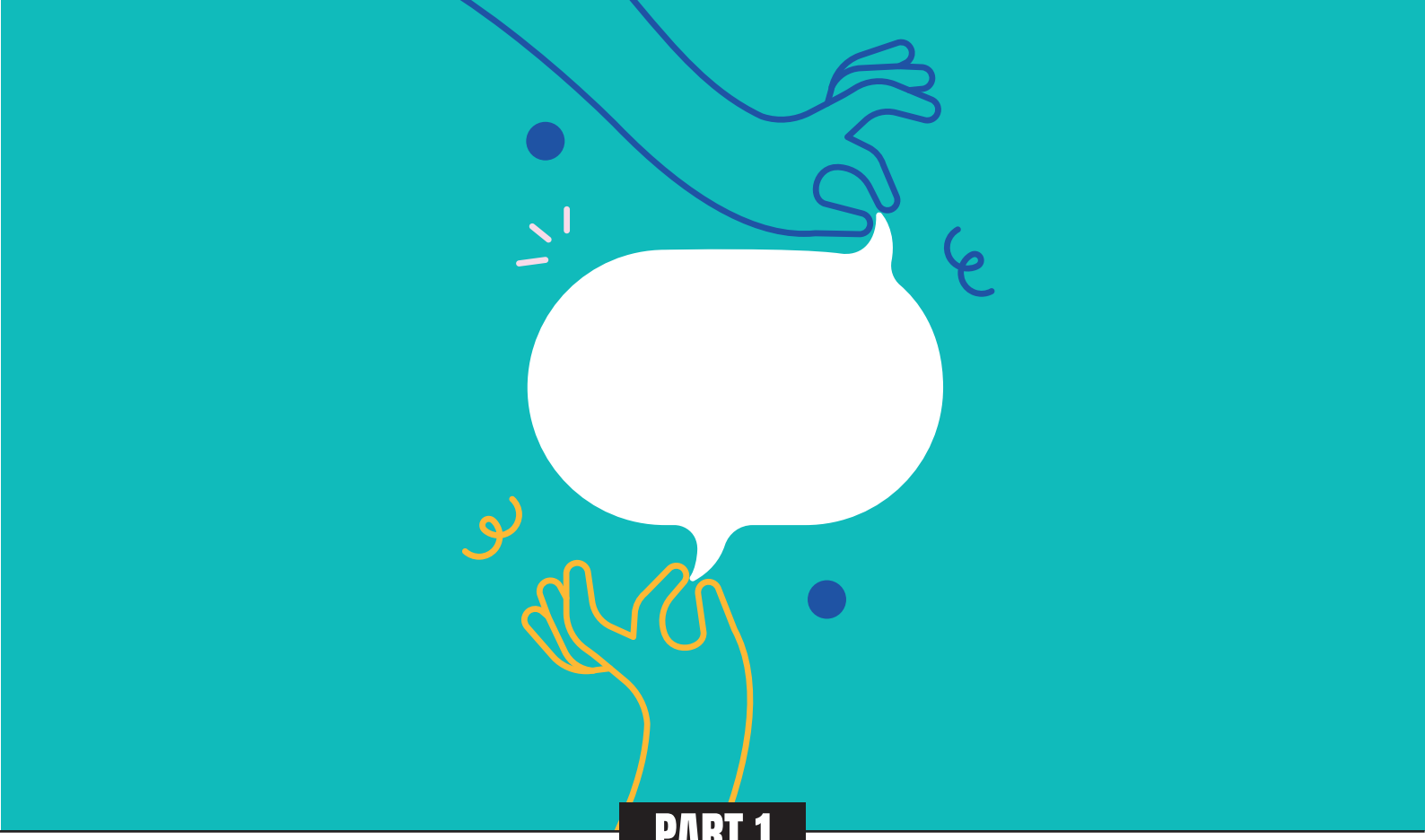
Company management possesses a great deal of information on the company's management decisions, relating to both day-to-day issues (equal pay, workforce turnover, workplace accidents, multitasking, etc.) and restructurings that have been undertaken or chosen (takeover bids, mergers and acquisitions, sale or closure of establishments, collective redundancies, etc.). However, despite workers having the right to information and consultation at national and European level, they are still largely dependent on the goodwill of company management to inform and consult them so that they can

give their opinion on the management choices made by the company.

However, thanks to a two-year project called "European Works Councils and Board-Level Employee Representation: How to Rebalance Social Dialogue? Finding a balance!", ways of moving forward and some best practices were identified for rebalancing access to and analysis of financial and non-financial information. Pending a revision of Directive 2009/38/EC in the medium term, it is already possible to use different types of expertise: internal expertise, available from EWC members themselves and trade unionists from national and European trade union federations; external expertise, via specialists in macro and micro-economics, lawyers and legal experts, experts in A.I., etc. Finally, employee representatives who sit on management boards also have an important role to play because, like certain experts, they have direct access to confidential information.

The immediate challenge therefore seems to be to find the best ways of coordinating the various players and their respective prerogatives in order to find effective and operational solutions that strengthen the position of workers, within the framework of social dialogue, for more balanced outcomes.

The project examines how these practices have evolved and seeks to identify best practice in the processes put in place to achieve concrete results. For two years, training for trade unionists, opinion surveys and a legal analysis have been carried out. This booklet reflects the results of this work, which we invite you to discover and use to strengthen the position of workers in social dialogue at company level.



PART 1

European works councils

According to the latest figures, there are currently around 1,200 active EWC (and Societas Europaea works council) bodies. This number is relatively low (ETUI, n.d.). Although the adoption of the 2009 Recast Directive[1] was meant to boost the establishment of new EWCs, the number of newly-created EWC bodies has actually been declining since then (De Spiegelaere, 2016). More than half of eligible multinational companies have not yet established an EWC (Laulom, 2018). Moreover, the number of active EWCs varies significantly by country.

Apart from their low overall numbers, the effectiveness of the bodies themselves is also questionable (Laulom, 2018). Do EWCs genuinely enhance worker participation? Are they capable of giving meaningful effect to the right to information and consultation (e.g. are they being informed and consulted in a timely manner, hence before decisions are taken)? And what about the issue of access to justice?

There is a myriad of factors that play into these concerns. At a micro level, these might include the size of the company and its rate of unionisation, for example. From a broader perspective, the national industrial relations environment may be more or less favourable to the recognition and effectiveness of EWCs – hence why companies having their headquarters in a Member State with a less developed tradition of social dialogue will be less likely to establish an EWC body (European Commission, 2018).

An aspect that cannot be overlooked, however, is the legal environment in which EWCs operate. When critically examining worker representation in EWCs, it is thus of paramount importance to consider the national legal frameworks as well as the specifics of the EWC agreement. In what follows, an overview will be provided of these national frameworks. While case law will be used to highlight specific obstacles or to illustrate certain phenomena, readers should be aware that the number of court rulings is limited.

In an attempt to identify both similarities and differences among Member States, and given the limited scope of the research endeavour, this report will delve deeper into a number of well-defined topics rather than discus-

sing each individual country's entire body of legislation. Discussing both best practices and pitfalls, the report is not intended to be exhaustive, but rather to serve as a guide, from which EWC members, or those in the process of establishing an EWC, can draw inspiration. The report covers the prevailing situation in 2024 and does not therefore discuss the potential amendments of the 2009 Recast Directive following the 2024 Proposal of the European Commission.[2]

1. Establishment

The relatively low number of active EWC bodies (and their questionable effectiveness) may first be explained by looking at the national provisions governing the establishment of such bodies. After all, the domestic legal frameworks are not entirely conducive to the creation of new EWCs.

2. Access to information

Before an EWC can be established, a special negotiating body (SNB) needs to be set up. Its core task, which is described in article 5(3) of the Recast Directive, is to negotiate all details of the EWC agreement with the central management.

Under the regime of the 1994 Directive, workers had difficulty in collecting the information required to set up a special negotiating body, particularly on the company's workforce and its distribution (Laulom, 2015). This led to three lawsuits being brought before the CJEU.[3] All of them addressed the issue of access to information, with the solution found by the Court being eventually incorporated into the Recast Directive. Article 4(4) thus specifies that both the central management and the management of each undertaking belonging to the group must always provide the information required concerning the structure of the undertaking or the group and its workforce in light of upcoming negotiations. This information should, according to Article 4(4), be provided to 'the parties concerned by the application of th[e] Directive'.

From looking at how this right to preliminary information has been transposed into national law, three elements can be distinguished: 1) who is responsible for providing the information, 2) who is entitled to ask for and receive the information, and 3) what is the extent of the information to be provided? However, many countries have not altered the wording of article 4(4) of the Directive in any significant way. The relevant provisions in Belgium, Ireland, Latvia, Slovakia, and Malta, for example, are an exact copy of the article mentioned above.

While in the Czech Republic, Denmark, and Luxembourg, the central management alone has been designated as the responsible party for providing the necessary information, Norway has only imposed that obligation upon the management of each establishment. These restrictions are curtailing the effectiveness of workers' rights as guaranteed in the Recast Directive.

In the countries that have copied the wording of article 4(4), the prerogative of asking for and receiving the information has been assigned to 'the parties concerned'. By not specifying who that entails exactly, the legislation of Belgium, Ireland, Latvia, Slovakia, Spain, Greece, and other Member States fosters legal uncertainty. On the other hand, one could argue that at least these countries leave room for broad interpretation and thus inclusivity. This is not the case where the 'parties concerned' are strictly defined. In Sweden and Denmark, for example, only the employees themselves have the right to ask for and receive the preliminary information. Most countries, however, give this prerogative to both the employees and their representatives. A special situation exists in Luxembourg, where the employees can only request and receive the information if there are no employee representatives. What is remarkable is that none of the Member States have explicitly given trade unions the right to ask for and receive the information.

Regarding the content of the information, most countries stick to the minimum obligation as defined in the Directive. Lithuania has gone further than just requiring 'information concerning the structure of the undertaking or the group and its workforce'. Article 12 of the Lithuanian Law on European Works Councils[4] reads as follows:

> "1. The central management and the management at the next level shall, at the request of the employees' representatives, provide, not later than within 30 days, **information on the structure of the European Union undertaking or group of undertakings in the European Union, the legal status of these undertakings, the representation arrangements, the information on the employees' representatives who will represent the employees of the undertakings or their subsidiaries in the formation of a European Works Council, and the estimates calculated in accordance with the procedure laid down in Article 7 of the present Act**:
>
> 1˚ the total number of employees in the Member States of the European Union undertaking or group of European Union undertakings;
>
> 2˚ the number of employees in each Member State in which a branch of the European Union under-

> taking operates or an undertaking of the group of undertakings of the European Union has its head office;
>
> 3˚ the number of employees in each branch of the European Union undertaking operating in a Member State and/or in each undertaking of the group of undertakings of the European Union having its head office in a Member State.
>
> [...]
>
> 5˚ Information shall be provided to employee representatives free of charge and in writing. It shall be prohibited to refuse to provide information on the grounds that the structure of a European Union undertaking or a group of European Union undertakings or the number of employees is confidential information or that data on the number of employees in the other Member States are not available."

Although article 4(4) of the Recast Directive sought to address the most pressing issue with regard to the establishment of new EWC bodies, it is clear that this goal has not been fully achieved. Legal uncertainty and discrepancies among Member States continue to exist. Workers are still facing legal hurdles that prevent them from creating an EWC.

One of the few, if not the only, Member State that has failed to properly implement article 4(4) of the Recast Directive, is Portugal. Its Law on EWCs[5] does not contain any provisions on the right to preliminary information.

Right of initiative

When all necessary information is gathered, an SNB may be established. The general rule is that an SNB will only be set up either at the central management's own initiative, or at the written request of at least 100 employees (or their representatives), working in at least two undertakings or establishments in at least two different Member States. Such a provision can, for example, be found in §15 (1) of the Community-scale Involvement of Employees Act[6] (Estonia), 19 § of the Act on Cooperation in Finnish and Community-Scale Groups of Undertakings[7] (Finland), article 10 (1) of the Transnational Information and Consultation of Employees Act[8] (Ireland) and article L. 2342-4 of the Labour Code[9] (France).

The establishment of an EWC is not, as such, compulsory in any of the Member States. The only obligation is for the central management to set up a special negotiating body if enough employees request it. However, this will not necessarily lead to the conclusion of an EWC agreement as negotiations may fail. Nevertheless, once the request for the establishment of a SNB has been filed correctly, the employer can no longer avoid the establishment of an EWC.

The question thus arises as to whom the request to set up an SNB should be directed. French case law has clarified that the request should be directed to the controlling undertaking which exercises a dominant influence over the subsidiary located in France. Otherwise, it will be inadmissible.[10]

The question of the admissibility of a request to set up an SNB was also raised in a 2011 Luxembourgish case, in which the claims of the German *Gesamtbetriebsrat* and the Spanish Works Council were dismissed.[11] Both works councils had requested the court to order the company to share information on its business activities and the distribution of its workforce (in line with article L431-51 of the Labour Code[12]). The court, however, concluded that the claimants did not have the capacity to request the establishment of an EWC, as article L432-2 of the Labour Code provides that the request to initiate negotiations must be made in writing by at least 100 employees or their representatives. This condition was considered not to be fulfilled, hence making the request to set up a special negotiating body invalid.

Furthermore, the Berlin labour court ruled that, in accordance with article 5(4) of the Recast Directive, a company should convene an EWC constitutive meeting without delay, even when management has not directly hindered the creation of the SNB, once its actions have had this effect.[13] The mere promise of taking steps to establish an SNB is insufficient; concrete action is required. Negotiations should, in any case, be initiated within six months of the employees' request. If not, the subsidiary requirements will apply, and the group will no longer be able to determine under which national jurisdiction the EWC will be established.

Appointment of SNB members

The rules governing the appointment of SNB members are laid down in article 5(2) of the Recast Directive.

National laws transposing the Directive have largely drawn on existing employee representation structures at national level to ensure that SNB members are appointed in a democratic manner. Three different methods of appointment can be identified among the Member States (European Metalworkers' Federation, 2007).

In the first group of countries, including Austria, Belgium,

Denmark, Germany, Hungary and the Netherlands, SNB members are appointed or elected by means of existing works council structures. However, the laws of Cyprus, the Czech Republic, Finland, France, Greece, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Spain and Sweden provide that SNB members are appointed or elected by the employee representatives (mostly trade unions). In Bulgaria, Estonia, Malta, Norway and Slovenia, all employees may directly elect their SNB members by secret ballot.

For now, it remains unclear whether establishing an SNB in the incorrect manner can have any legal consequences. The question is currently being debated in Germany, where trade union ver.di has filed a complaint with the Berlin labour court against e-commerce fashion retailer Zalando. Here, a Societas Europaea (SE) agreement was concluded containing provisions that lag substantially behind the SE works council standards of comparable companies. Ver.di claims that this was due to a "badly composed SNB, which was made up of mainly employer-friendly representatives". Normally, German SNB members are elected by the works council. However, since Zalando still did not have a works council at the time, the German SNB members could not be elected by that council. Instead, the election process was carried out in a non-transparent fashion, which is why the results of the SNB negotiations could be contested.[14]

SNB negotiations

Article 5(3) of the Recast Directive describes the core task of the SNB: "determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees".

Different employer and employee perspectives will clash during the negotiations. In principle, these will be guided by the will of the parties, and there is full contractual freedom. However, in reality, management is in a position of power. There is a real risk that employers may want to restrict EWC rights, hence trying to conclude an agreement below the legal minimum standards.

In May 2019, a highly-contested EWC agreement was concluded for the French dairy group Lactalis. According to the European tradeunion federation EFFAT, it was "the worst one ever signed". The agreement was approved by only 11 out of 19 SNB members and was signed after the trade unions took legal action before the French courts to force the opening of negotiations. In a similar vein to the Zalando case mentioned above, the Lactalis agreement might be invalidated because the SNB was not correctly established. Central management had refused to grant a mandate to small countries with fewer than 100 employees, as well as to the United Kingdom (due to the impending Brexit). Furthermore, central management also put pressure on the representatives to renounce their right to be assisted by external experts through a highly controversial vote-off. The agreement that was ultimately concluded remains substantially below EU standards and even infringes EU law in some aspects. This example may teach us to keep in mind that, even though the Recast Directive grants the parties extensive freedom to decide on the content of an agreement, there is still a risk for management that a domestic court may set aside any provisions that are in breach of the letter and spirit of the Directive.[15]

Given the fundamentally unequal positions of the contracting parties, some national jurisdictions have outlined how management may act when conducting negotiations. A prime example of this can be found in Italy. On 11 June 2020, the Court of Appeal in Florence ordered the Italian papermaking group Sofidel to set up an EWC. The Italian trade unions had begun the process of creating an EWC in the company in 2015. Five years later, when the unions threatened legal action, shortly before a hearing at the Lucca court, the management decided to convene an SNB meeting by videoconference. The court decided in the employer's favour, ruling that there was nothing in the relevant legislation that prevented the SNB being convened by videoconference. However, the Florence Court of Appeal then reversed the lower court's ruling. In its judgment, the Court of Appeal held that the behaviour of Sofidel, which had made the convening of the SNB meeting conditional on the use of English only, with no interpretation, was anti-union in nature.[16]

Negotiations between management and the SNB can take up to a maximum of three years, from the date of the employees' request to establish an SNB. If no agreement is concluded within that timeframe, the subsidiary requirements will apply (article 7(1) Recast Directive).

Expenses incurred before and after establishing the SNB

Article 5(6) of the Recast Directive clearly states that "[a]ny expenses relating to the negotiations […] shall be borne by the central management so as to enable the special negotiating body to carry out its task in an ap-

propriate manner". Some Member States, such as Cyprus, have further defined this provision by indicating exactly which costs are to be borne by the company. Article 10(5) of the Law on the Establishment of EWCs[17] reads as follows:

> "The costs relating to the negotiations […] shall be borne by the central management, so that the special negotiation body can carry out its task more efficiently. In concrete terms, central management incurs the following expenses:
>
> a) the election or appointment of the members of the special negotiating body;
>
> b) the organisation of the meetings of the special negotiating body, including the costs of interpretation, accommodation, travel, maintenance of its members and the costs of printing and communicating the results; And
>
> (c) an expert from the special negotiating body to assist it in its tasks."

Although the aforementioned provision of the Recast Directive only explicitly pertains to expenses "relating to the negotiations", and thus after the establishment of the SNB, it is commonly accepted that travel and translation expenses for establishing initial contacts with employee representatives in other countries are also to be borne by the company. This has been confirmed by several previous rulings of the German labour court.

Access to experts

Article 5(4) of the Recast Directive provides that SNBs may request assistance from experts of their choice which can include representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

The right to rely on experts may, however, be limited. While article 5(6) of the Recast Directive states that any expenses relating to the negotiations shall be borne by the central management, it also foresees that Member States may limit the funding to cover one expert only. Most Member States have made use of this option. It is only in some Member States, such as Bulgaria, that the law refers to "experts", plural, hence implicitly allowing recourse to more than one expert.

3. Operation

It is not only the establishment of new EWCs, but also their operation afterwards that has been shaped in various ways across the Member States. The effectiveness of the bodies may therefore depend on the national legal framework. Possible hurdles include the information provided being such that it does not allow for meaningful consultation and the poor quality of the consultation procedure itself. The timing of the procedures can also be an issue, in the sense that EWCs are often being consulted after decisions have already been made (De Spiegelaere, Jagodziński, and Waddington, 2022; European Commission, 2018; Laulom, 2018).

In its 2021 own-initiative resolution, the European Parliament addressed some of these issues.[18] The resolution notably "*stresses the importance of ensuring timely and meaningful information and consultation across the EU, before management decisions are made which have a potential impact on workers, employment and working conditions, and about policies or measures, especially those with cross-border implications; emphasises that workers' representatives, including trade unions, must have access to the requisite expertise and support documentation regarding management decisions to assess the implications of these cross-border policies and processes for the workforce and to propose alternatives; stresses that a genuine dialogue on those alternatives must take place between trade unions, workers' representatives and management*".

These suggestions were reiterated in another resolution of 2 February 2023, in which the European Parliament urged the Commission to carry out the long-awaited revision of the 2009 Recast Directive.[19]

Information and consultation

At the heart of the operation of EWCs lies the workers' right to information and consultation. It is therefore important to assess how these concepts have been defined (and potentially limited or expanded) in the national laws transposing the Directive. Before doing so, however, it is important to note that the scope of the right to information and consultation is, in principle, limited to so-called "transnational matters".

Article 1(3) and (4) of the Recast Directive reads as follows:

> "Information and consultation of employees must occur at the relevant level of management and re-

> presentation, according to the subject under discussion. To achieve that, **the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues**.
>
> Matters shall be considered to be transnational where 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."

The question thus arises as to which topics can be considered as transnational, especially since most Member States have not provided a clear definition of the term. French case law clearly illustrates the difficulty of delineating the boundaries of the concept. In a judgment of 21 May 2015, the Versailles Court of Appeal ruled as follows:[20]

> "The issues requiring prior consultation must therefore have an international or European dimension, in terms of their subject matter or effects. In the absence of any foreign element, consultation is not compulsory.
>
> In the present case, the purpose of the decision to make the advances granted payable does not concern the whole group nor two group companies or establishments located in two Member States.
>
> It was taken by a French company, AL Ile de France, in respect of a French company, its subsidiary SNCM.
>
> Finally, it has not been demonstrated that the decision to make the advances payable would be of such a nature, irrespective of the number of Member States concerned, as to be of importance to European workers, in terms of the extent of their potential impact, or that it would involve transfers of activity between Member States within the meaning of Article 3 of the agreement or that it concerns major events of a transnational nature, likely to modify the structure and strategic orientations of the AK AL group or considerably (or seriously) affecting the interests of employees, within the meaning of Article 7.3.2.
>
> While it cannot be ruled out that this decision, which had the immediate effect of forcing SNCM to file for bankruptcy, will have significant economic and social consequences, in the long term, for the group as a whole and therefore for European employees, this is only a hypothesis which, at this stage and in the absence of knowing the outcome of SNCM's receivership proceedings, does not make it possible to hold that the decision taken falls within the scope of the agreement.
>
> In this respect, the first judge correctly pointed out that SNCM's employees represent only 2.5% of the group's total workforce and that the specific nature of its activity as a passenger transport operator by sea is different from that of the group's other companies.
>
> It follows that the failure to consult does not constitute a distinctly unlawful disturbance and that the requests to suspend the decision of 1 October 2014 and to order the company to consult this committee cannot be granted."

In the Véolia-Suez case, however, the same Court of Appeal ruled that since the industrial project in question was likely to have an impact on Suez's international assets, consultation of the EWC was in fact compulsory.[21]

As for the definitions of 'information' and 'consultation', reference can be made to article 2(1)(f) and (g) of the Recast Directive:

> "'information' means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;
>
> 'consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;"

Overall, the definitions of 'information' and 'consultation' are very similar in all Member States. While some

have simply copied the wording of the Directive, others have slightly modified it. Most Member States (e.g. Ireland, Estonia, Croatia, Czech Republic, Spain, Slovakia, Luxembourg, Denmark, Italy and Lithuania) have adopted a somewhat broader definition of 'consultation', by including the right to a detailed response from the central management to the opinions expressed by the EWC. Moreover, the Czech Republic, Slovakia, and Lithuania explicitly refer to negotiations with the management in their respective definitions of 'consultation'.

It may again be observed that the Recast Directive uses broad terms that leave a lot of room for interpretation. One could for example question what it means to provide information and to organise consultation 'in a timely manner'. French, German and Belgian case law have provided some guidance in this area.

In the Renault (Vilvoorde) case, the Versailles Court of Appeal clarified that:[22]

> "If it is **not absolutely necessary** for the consultation to take place prior to the decision to be taken, and in the absence of any provision, to the contrary, precluding such prior consultation, it is necessary to consider whether or not, depending on the circumstances, it corresponds to t**he requirement of timely or, more straightforwardly, useful effect** regarding the expressions of will of the body vested with decision-making power."

Similarly, the court ruled that the merger between Gaz de France and Suez could only take place after the board of directors of Gaz de France had consulted with the EWC and appropriate national representative bodies.[23]

In Germany, the District Court of Cologne found that management had violated the right to consultation by sending a PowerPoint presentation to the EWC just two days before the publication of a redundancy plan, and by not consulting with the EWC on the matter. Nevertheless, the Court refused to issue an injunction to halt the closure of the plant concerned by the mass redundancy.[24]

As early as 1999, a Belgian labour tribunal had clarified that employers are obliged to inform and consult their employees prior to taking an actual decision. A period of eight days between notification of the intention to implement collective redundancy and the actual redundancies themselves indicates that workers have not been adequately consulted.[25]

According to the Brussels Labour Court, an employer is liable to trade unions for damages for having failed to involve them in the information and consultation procedures in a timely manner.[26] In the event of a dispute, it is up to the employer to prove that they have fulfilled their information and consultation obligation.[27]

Questions and ambiguities like these threaten to jeopardise the effectiveness of the information and consultation procedures. In fact, even with the changes made to the Recast Directive, EWCs still primarily operate as information, rather than information and consultation, bodies (De Spiegelaere, Jagodziński, and Waddington, 2022).

To enhance the effectiveness of the established procedures, some countries have introduced additional guarantees in their legislation. In Belgium, for example, article 2, §3 of Collective Agreement No. 101[28] and its accompanying comment provide that "*the arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the Community-scale undertaking or Community-scale group of undertakings to take decisions effectively. To that end, informing and consulting the European Works Council should make it possible for it to give an opinion to the undertaking in a timely fashion, without calling into question the ability of undertakings to adapt. Only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to anticipate and manage change*".

Another example of such a provision can be found in Slovenia, where article 18 of the European Works Councils Act[29] reads as follows:

> "To regulate an information and consultation procedure for employees, a written agreement shall be concluded that stipulates the conditions under which employees' representatives shall have the right to be consulted on information received and the procedure for considering their proposals or problems together with the central management or any more appropriate level of management. This information shall largely concern matters that significantly affect the interests of employees in all undertakings to which the agreement applies."

Article 29 moreover provides that "the central management shall inform and consult the European Works Council at least once per calendar year with regard to the business success and the prospects of the undertaking or group of undertakings in the Member States

and shall provide it with the necessary documentation".

Such best practice can also be seen in Portuguese law, where article 15(5) of the Law on EWCs provides that before the annual EWC meeting, central management should present the EWC with a detailed and documented report on the proposed measures.

Article 35(5) of the Romanian Law on the Establishment, Organisation and Functioning of the EWC[30] explicitly provides that the central management shall communicate the date of the meeting of the European Works Council at least fifteen days before it is held. Although this provision provides a clear rule on when the date of the EWC meeting should be communicated, the fifteen-day is rather short notice, making it almost impossible for EWC members to properly prepare. Article 37 of the Law furthermore specifies that management should prepare a report for the EWC meeting, and that the EWC may deliver an opinion on that report at the end of the meeting or within a reasonable timeframe, but not later than ten days after the meeting.

The Bulgarian Labour Code gives employee representatives the right to request meetings with the employer when they consider it appropriate to advise the employer on issues or concerns reported by employees.

The Amcor EWC agreement is a good illustration of how not only legislation, but also the EWC agreement itself, can enhance the workers' right to information and consultation. The Amcor agreement was amended in 2016 to include a better organised consultation process. Since then, the agreement has provided that, for each measure, two meetings with management should be organised, as well as a meeting between workers' representatives and an expert to assess the situation and/or prepare for any relevant consultation. It also contained a better definition of training rights and implemented an economic committee within the EWC. As a result of the adoption of this amendment, the EWC decided to withdraw all pending legal proceedings. This case therefore also illustrates how litigation can be used as negotiating leverage.

It goes without saying that the proper functioning of EWC bodies requires for full, relevant, comprehensible information to be provided. It may be noted, in this regard, that none of the national laws transposing the Directive have further specified the content of the information that is to be provided. Most Member States stick to the exact wording of the Directive.

Confidentiality and secrecy

There is, however, one important exception to the obligation to provide information. In order to protect a company's legitimate interests when discussing company secrets or company-specific information, article 8 of the Directive covers the topic of confidentiality. From a workers' rights perspective, the confidentiality clause can obviously be seen as restricting the right to information. After all, the EWC is an internal body of the company (and thus not a third party), the members of which have a fundamental right to be informed and consulted on transnational matters. Company management may use the pretext of confidentiality to arbitrarily limit the further dissemination of information (article 8 (1)), or choose not to disclose information at all (article 8 (2)). It is hence of paramount importance to assess the ways in which article 8 has been transposed into national legislation, and whether safeguards have been incorporated to protect the rights of workers (Jagodziński & Stoop, 2021; Laulom & Dorssemont, 2015; Meylemans & De Spiegelaere, 2020).

Article 8(1) of the Directive stipulates 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*". This provision gives management a general right to impose a duty of confidentiality, but does not clarify which information can be labelled as confidential and to whom the information cannot be revealed. Hence, some Member States have further regulated the matter when transposing the Directive into national law.

Finland, for example, has explicitly listed the types of information that may be marked confidential. Good examples of national laws that restrict the right to confidentiality, and thus enhance the workers' right to information, include Croatia, Austria, Germany, Estonia, Hungary, Slovenia, Ireland, Luxembourg, and Sweden. All of these Member States have, to some extent, reduced the number of third parties to whom confidential information may not be disclosed. Hence, EWC members are not bound by the obligation to maintain the confidentiality of information in their contacts with (at least one of) the following parties: 1) other EWC members, 2) other workers' representatives, 3) experts and/or translators, 4) supervisory board members. In the Netherlands, it is up to the management to determine whether there are parties with respect to whom EWC members are not required to observe confidentiality (article 11 (7) of the Dutch European Works Councils Act[31]). Other Member

States, however, merely mention the possibility for central management to impose a duty of confidentiality without further regulating it. This is the case in countries such as Iceland, Denmark, and Slovakia.

If confidentiality applies, it must be respected at all times. Under article 10(2) of the Recast Directive, EWC members are obliged to brief the national employee representatives or the entire workforce on the content and outcome of the information and consultation procedure, without disclosing any confidential information. All Member States but one have transposed this obligation into their national legislation; only the Czech Republic has failed to do so. Few Member States have further elaborated on the reporting duty and hence added to the minimum obligation under the Directive. Article 47 of Belgian Collective Agreement No. 101 notably reads as follows:

> "**The necessary time and means shall be granted** to the members of the European Works Council and the employees' representatives of the technical production units as a whole located in Belgium, which are covered by the scope of the European Works Council, **to enable the members of the European Works Council to inform the employees' representatives of the technical production units as a whole of the content and outcome of the information and consultation procedure carried out within the European Works Council.**"

Furthermore, in Lithuania, it is explicitly foreseen that the EWC and select committee report back at least once a year.

It has been mentioned above that management may also have the right to withhold information from the EWC members. This far-reaching right to secrecy exists when the nature of the information, based on objective criteria, could seriously harm the functioning of the undertakings concerned or would be prejudicial to them (article 8 (2) of the Directive). Here too, some national laws transposing the Directive have added to this provision in an attempt to limit its far-reaching effects upon workers' right to information. § 38(6) of the Estonian Community-scale Involvement of Employees Act, for example, provides the following:

> "The central management may refuse to provide information if, based on objective criteria, disclosing information of such nature significantly harms or may harm the functioning of an undertaking. This right does not extend to the information on the number of employees. **If provision of information is refused, the central management shall be required to give, based on objective criteria, a justification as to why disclosure of the information significantly harms or may harm the functioning of the undertaking.**"

A similar obligation for management to justify the exercise of its right to secrecy may be found in Ireland, where section 15 (3) of the Transnational Information and Consultation of Employees Act reads as follows:

> "The central management may withhold from a Special Negotiating Body, European Employees' Forum, European Works Council or in connection with an information and consultation procedure, information that it claims is commercially sensitive—
>
> (a) **where it can show that the disclosure would be likely to prejudice significantly and adversely the economic or financial position of an undertaking or group of undertakings or breach statutory or regulatory rules**, or
>
> (b) where the information is of a kind that meets objective standards for determining that it should be withheld agreed between the central management and the Special Negotiating Body, European Employees' Forum, European Works Council or the employees' representatives to an information and consultation procedure."

Confidentiality and secrecy are thus the exceptions to the rule, which is why management may only invoke these rights in accordance with national legislation. However, only a few transposing laws hold management accountable for abuses of these rights. Some Member States do have a form of judicial review or an administrative procedure, in which the EWC may challenge its imposed duty of confidentiality or the management's right to secrecy.

In Ireland, for example, "*disputes between the central management and employees (or their representatives) employed in the State concerning the withholding by the central management of commercially sensitive information or as to whether information disclosed by the central management in confidence to employees' representatives is of a kind that, pursuant to section 15, may not be revealed, may be referred by either the central management or employees' representatives to an independent arbitrator appointed by the Minister under regulations made for the purposes of this section*" (section 20 (1) of the Transnational Information and Consultation of Employees Act). The regulations in question, however, have not yet been adopted.

Similarly, article L433-4 of the Luxembourgish Labour Code furthermore provides that "*in the event of a dispute, the matter may be referred to an arbitration committee composed of a representative of the central management, a representative of the workers involved in the information and consultation procedure under this Title and chaired by the Director of the Labor Inspectorate or his delegate. Its decision shall not be subject to appeal*".

In Norway, the so-called Industrial Democracy Committee is competent to adjudicate disputes regarding the scope of the obligation to observe imposed confidentiality or the scope of the management's duty to provide information (§ 10 of the Agreement regarding European Works Councils or Equivalent Forms of Cooperation[32]).

The same competence has been granted to the courts in Estonia, the Czech Republic, Lithuania, and the Netherlands (§ 39 of the Estonian Community-scale Involvement of Employees Act, § 276 (5) of the Czech Labour Code[33], article 12 (6) of the Lithuanian Law on European Works Councils, and article 5 (2) of the Dutch European Works Councils Act, respectively).

A specific situation exists in Malta, where in the event of a dispute between central or local management and a recipient of the information, they may refer the dispute to the industrial tribunal for a ruling on the nature of the information or document at issue. If the tribunal decides that the disclosure of the information would not, based on objective criteria, be likely to seriously harm the company or its operations, it can order management to disclose the information. In this case, the tribunal will specify 1) the information or document to be disclosed, 2) the recipient(s) to whom the information or document is to be disclosed, 3) the conditions under which the information or document must be disclosed, and 4) the date by which the information or document must be disclosed.

However, sanctions are almost never available as a remedy. France is the only Member State in which management can be punished for abusing the right to secrecy. While there are sometimes provisions aimed at curbing such abuse, they never provide for any sanctions for companies that do not comply with the rules. The Lithuanian Law on European Works Councils, for example, provides that "*it shall be prohibited to refuse to provide information on the grounds that the structure or number of employees of the European Union-scale undertaking or the European Union-scale group of undertakings constitutes confidential information*" (article 15 (5)). A similar provision exists in Poland.

In a case brought before the Antwerp Labour Court, an EWC member challenged the confidential character of two documents that he had received from his employer ahead of an extraordinary EWC meeting.[34] The chairperson began their assessment of the merits by stating that the interests of the claimant should be weighed against those of the company. Hence, the judgment first dealt with the question of whether the confidentiality of the documents could harm the interests of the European employee representation. According to the chairperson, this was not the case, as the claimant was not prevented from thoroughly preparing for the extraordinary meeting. There were other opportunities to access the necessary information, but the claimant had not taken advantage of them. On the other hand, the Labour Court considered that disclosure of the information contained in the documents before the extraordinary meeting could, among other things, lead to social unrest, hence causing harm to the company. The claim was therefore considered admissible but unfounded. This example therefore clearly illustrates the many difficulties that workers face when trying to enforce their rights and challenge abuses.

Management is thus rarely held accountable when breaching the rules on confidentiality or secrecy. However, in no fewer than 15 Member States, EWC members risk incurring sanctions if they fail to comply with their obligation not to disclose confidential information. The sanctions in the different Member States vary from financial penalties and civil damages to criminal sanctions up to and including imprisonment. By way of example, article L454-4 (3) of the Luxembourgish Labour Code stipulates:

> "Without prejudice to the provisions of Article 309 of the Criminal Code, the persons listed in paragraphs 1 and 2 who reveal information whose disclosure is prohibited by this article shall be subject to the penalties provided for in Article 458 of the same Code."

The articles referred to in the above provision provide for a term of imprisonment of between eight days and six months and a fine of €500 to €5,000 for EWC members that breach the obligation of confidentiality.

In its 2023 resolution, the European Parliament explicitly acknowledged the issues addressed above. The Parliament:

> "Highlights the fact that the Member States' implementation of confidentiality provisions is fragmented due to the lack of a clear definition and therefore calls for a clear definition of confidential

information; stresses in this context that further efforts by Member State are needed in order to specify and clarify precisely the conditions under which the central management is not required to pass on information which could be harmful; reiterates its call to prevent the abuse of confidentiality rules as a means to limit access to information and effective participation, and calls on the Commission in the context of the revision of Directive 2009/38/EC to require Member States to clearly define in what cases confidentiality is justified in order to restrict the access to information;"

Expertise and training

To ensure the proper functioning of EWCs, article 10 of the Recast Directive regulates the role and protection of employee representatives. A topic of particular importance in this regard is that of expertise and training. The effectiveness of the right to information and consultation can, after all, only be guaranteed insofar as the EWC members are duly aware of what those rights entail; or, in other words, better informed EWC members can contribute more constructively to the information and consultation process. Meaningful information and consultation thus requires that EWC members have some notion of the economic and legal framework in which they are operating.

After all, EWC members are expected to:[35]

- Understand all the information they are given on the development of activities in a large multinational company;
- Analyse project content and strategic developments presented by top management;
- Assess the likely impact of any measures liable to seriously affect workers' interests;
- Team up with representatives from other countries with different languages, backgrounds and cultures to agree on joint positions and opinions which they can submit to top-level management;
- Develop a social dialogue with management;
- Initiate proceedings when their rights have been violated;
- …

These objectives can be achieved either by offering training to the EWC members themselves, or by relying on the external knowledge of experts and advisors. Moreover, a duty to report back to national employee representatives or to the entire workforce has been introduced to enhance the effectiveness of the rights to information and consultation (Cremers & Lorber, 2015; European Commission, 2018).

According to article 10(4) of the Directive, both SNB and EWC members are entitled to training without loss of wages. This provision has been introduced in the legislation of all Member States and therefore causes few challenges at national level. Only a handful of minor issues of interpretation remain.

The national provisions on recourse to external experts and advisors are slightly less uniform. In the Recast Directive, article 5(4) provides that "*for the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body*". In Norway and Sweden, the possibility of relying on European trade unions or employee representatives is not explicitly mentioned in the respective laws transposing the Directive. The fifth paragraph of the subsidiary requirements furthermore states that "*the European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks*". Although the core idea of this provision has been transposed in all Member States, the wording used varies. Belgian Collective Agreement No. 101, for example, cross-references the cooperation protocol, which is said to lay down the practical arrangements for the presence of experts at the EWC and select committee meetings. In Slovenia too, it is foreseen that the rules of procedure may provide for experts to assist the EWC and its committees.

4. Access to justice and enforcement procedures

It goes without saying that the effectiveness of the fundamental right to information and consultation depends largely on the extent to which it can be enforced in the courts. This chapter will therefore shed light on the procedural rules of enforcement and discuss several aspects of the national enforcement frameworks.

However, what first becomes apparent is the rather few cases in this area at both national and EU level. France and Germany are the only Member States in which litigation by EWCs is more commonplace.

On the one hand, this lack of litigation over implementation of the Directive could indicate that the Directive itself is not giving rise to issues that cannot be resolved through mere interpretation. However, the more likely

explanation is that it is a reflection of poor access to justice (European Commission, 2018).

Legal status and capacity to take legal action

Article 10(1) of the Recast Directive reads as follows:

> "Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall have **the means required to apply the rights arising from this Directive,** to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings."

First and foremost, this provision entails that the institutional means in place should be of such nature as to allow EWCs to enforce their rights, potentially through litigation. Article 11(2) reiterates this by establishing that "*Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced*". It is therefore of paramount importance to assess the national frameworks regulating the legal status of EWCs and their capacity to take legal action. The existing solutions are not mutually exclusive and may even be complementary in certain Member States.

1) Only a handful of Member States confer full legal personality on EWCs (and SNBs). This is the case in Austria, Romania, France, and Sweden. In the latter, for example, section 53 of the Law on European Works Councils[36] reads as follows:

> "The Special Negotiating Body and a European Works Council may acquire rights and assume obligations as well as bring an action before courts and other authorities."

Article L. 2343-7 of the French Labour Code explicitly provides that:

> "The European Works Council shall have legal personality."

In other words, EWC members may initiate judicial proceedings on behalf of the EWC itself. However, it should be noted that this is not necessarily the most ideal scenario from a workers' rights perspective. After all, the flipside of having legal personality, and thus the capacity to take legal action, is that the EWC itself can be sued as a distinct legal entity. This can obviously lead to adverse scenarios.

2) Other countries have opted for an intermediate solution, defining the capacity to take legal action as a set of rights and powers granted by domestic law to EWCs and SNBs. As such, the latter bodies have the capacity to be represented in proceedings as well as to acquire rights and obligations as collective organs, yet without having formal legal personality. This is the situation in Lithuania, the Netherlands, Norway, Latvia, Slovakia, Czech Republic, Germany, Iceland, Ireland, Cyprus, and Spain. While some Member States grant a general 'functional legal personality' to EWCs, others have limited the situations in which EWCs may take collective legal action.

3) It may also be the case that individual EWC members have the capacity to initiate proceedings, either in place of the EWC as a collective body, or alongside it. This is the case in Denmark, Estonia, Greece, Iceland, Italy, and Sweden, among others. In Estonia, for example, §§ 39, 79, and 82 of the Community-Scale Involvement of Employees Act explicitly grant individual employee representatives the right of recourse to courts. Furthermore, article 5 of the Dutch European Works Councils Act provides that individual employee representatives (as 'interested parties') may bring a case before the Amsterdam Court of Appeal to challenge breaches of the Act or the EWC agreement, unless the breach concerns a right enshrined in article 4 of the Act. The latter provision deals with the right to retain entitlement to wages during the performance of EWC duties, the duty of confidentiality, the obligation to brief the national employee representatives or the entire workforce, and so on. In Luxembourg and Ireland too, access to justice by EWCs is guaranteed by explicitly granting individual employee representatives the right to seek legal redress. Again, the capacity to take legal action may be either general or limited to a restricted list of situations.

4) In a small number of Member States, trade unions can initiate court proceedings in case of violations of EWC rights. A proper mandate may be required, such as in France for example. Moreover, trade unions have the right to litigate for the protection of collective agreements. This is the case in Belgium and Spain, among others.

5) Lastly, there are situations in which EWCs have neither full legal personality nor any of its functional basic rights that allow them to go to court. Although this does not mean that EWCs have no access to jus-

tice whatsoever, it does expose the lack of a clear and transparent legal framework. This obviously hinders EWC members from effectively enforcing their rights. The same applies to Member States where the legal framework is ambiguous and thus confusing. In Finland, for example, it seems that only EWCs established by means of the subsidiary requirements can take legal action collectively. Poor implementations can also, for example, be found in Portugal, Croatia, and Malta.

Costs of legal proceedings

While the statutory means available to EWCs determine whether or not they can take legal action, article 10(1) of the Recast Directive should be interpreted so as to also include financial resources. Statutory and financial means are, after all, two sides of the same coin. While an EWC may well be legally equipped to take legal action, it might not be able to do so if it is required to bear the full costs of the proceedings. These costs may be subdivided into three categories: 1) costs of legal assistance, 2) procedural costs, such as court fees, and 3) an award of legal expenses to the opposing party if they win. This is why the issue of financing needs to be addressed in order to obtain a comprehensive overview of EWCs' access to justice (European Commission, 2018).

Some Member States have introduced a statutory exemption from court fees for EWCs taking legal action. This straightforward solution has, for example, been implemented in the Netherlands, where article 5 (1) of the European Works Councils Act provides that "[…] *a special negotiating body or its members and a European Works Council established under this Act cannot be ordered to pay the costs of these proceedings*". A similar provision can be found in Spain and Bulgaria. In Sweden too, EWCs are not liable for court fees (Jagodziński & Lorber, 2015). Although the costs of proceedings are not limited to court fees, providing an exemption from the latter may significantly increase EWCs' access to justice.

However, most national laws transposing the Directive do not contain any specific provisions on procedural costs. The question of financing must therefore be answered by looking at the general provisions implementing article 10(1) of the Recast Directive. As the article in question does not specify how the means are to be provided, different solutions and interpretations can be found in the various Member States.

Phrasing that is more or less similar to that of article 10(1) can be found in the laws of Belgium, Slovenia, Finland, Hungary, Denmark, Ireland, Lithuania, the Netherlands, Germany, and Slovakia. In these countries, the costs of legal proceedings can be considered as falling under the operating expenses that are to be borne by the company. Sometimes, this is explicitly confirmed in the legislation. In Hungary, for example, section 20 (2) of the transposing law[37] reads as follows: "*The members of the European Works Council shall jointly represent, without prejudice to the powers of other employee representation and participation organisations, the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings and shall have the means to exercise the rights conferred on the European Works Council,* ***including: the initiation of disputes concerning infringements of the right to information and consultation of workers***". The Dutch EWC Act also explicitly provides that "*the costs reasonably necessary for the fulfilment of the task of the European Works Council and the select committee shall be borne by the Community company or the parent company. [This] also applies to legal proceedings, provided, however, that the Community company or the parent company has been informed in advance of the costs to be incurred.*" The question may then arise what happens when time pressure makes it impossible to inform management in advance.

Where some national legal frameworks prescribe that the company should only provide the necessary means, it is for the EWC to prove the necessity of the legal expenses (Szyszka, n.d.). Here, too, it is clear that practical issues could arise in this regard. Hence, pragmatic solutions are required. The Belgian practice of cooperation with trade unions is a great illustration of this. After all, the trade union representatives have a statutory right to represent EWCs in court proceedings and can do so at the expense of the union. A similar approach may be found in Denmark, where trade unions can support individual EWC members in a legal dispute (Jagodziński & Lorber, 2015).

It may also be the case that the transposing law requires the agreement to specify the financial means to be allocated to the EWC. This is the case in the Czech Republic, Latvia, Luxembourg, Estonia, and Finland. When the arrangements regarding financial resources are left to the contracting parties, they are obviously free to include provisions on the legal expenses.

However, case law continues to evolve in some countries. On 30 August 2024, the Vienna Labour and Social Court ruled that a European works council is entitled to full reimbursement of all legal costs incurred in the course of taking legal action in the area of employment law. The costs involved amounted to €100,000 and covered all legal fees, interest on arrears and other addi-

tional costs incurred by the EWC (the case went all the way to the Supreme Court).

Remedies

Recital 36 of the 2009 Recast Directive reiterates a general principle of EU law with regard to sanctioning mechanisms:

> "In accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive."

Sanctions play a fundamental role in the national enforcement frameworks. All the more so given that it is only when the sanctions in place are effective, dissuasive, and proportionate, that it is possible to effectively enforce the Directive. As the Directive itself offers few guidelines as to how the sanctioning mechanism should be shaped, there is great variety in the respective legal frameworks in the Member States.

A violation of EWC rights may hence be qualified in various ways. Overall, three approaches can be identified among the Member States (European Commission, 2018; Jagodziński & Lorber, 2015; Jagodziński, 2014). In countries such as Ireland, Lithuania, Austria, Cyprus, Malta, Czech Republic, and Slovakia, violations of EWC rights are considered to be administrative or labour offences. Countries such as Belgium, Luxembourg, France, Poland, Germany, and Estonia classify certain infringements of EWC rights as criminal offences. A third set of countries, which include Sweden and Denmark, treat violations of EWC legislation as violations of collective agreements. It seems clear that the specific area of law under which these infringements are classified greatly determines the severity of the corresponding sanctions.

As very few EWCs (or EWC members) go to court, sanctions have a primarily preventive purpose, which is why they need to be significant (Szyszka, n.d.). Most Member States only impose financial penalties for corporate infringements of EWC laws, with the level of such fines varying greatly. Fines can be as low as €4 per worker in Poland or €30 per worker in Lithuania, or as high as €100,000 in Slovakia and Slovenia. Moreover, in some Member States (such as Slovenia and Belgium) the level of sanctions depends on whether the breach in question concerns the establishment or the operation of the EWC (European Commission, 2018; Jagodziński & Lorber, 2015). In a number of national transposing laws, the range of sanctions also includes imprisonment. This is most notably the case in Belgium, Denmark, Ireland, France, Greece, Poland, Cyprus, Luxembourg, and Germany.

In countries such as Germany and Austria, sanctions can only be imposed following a complaint by the victim. The Austrian Labour Constitution Act provides that offences are prosecuted and punished only if the victim of the offence lodges a complaint with the competent district administrative authority within six weeks of becoming aware of the offence and its perpetrator.

Two particularly effective remedies, which are not sanctions as such, are summary proceedings and injunctions (Jagodziński, 2014). Injunctions are court orders compelling the person to whom it is addressed to perform, or refrain from performing, a particular act and are aimed at preventing further damage that would otherwise occur if the violation continued. Summary proceedings, on the other hand, are a simplified procedure or trial in which a case is heard without formalities before a judge instead of a full hearing, thereby enabling it to be disposed of more rapidly than a regular trial.

The possibility of recourse to summary proceedings allows parties to obtain a court decision within a timeframe ranging from hours (such as in France) to approximately two weeks (such as in Italy and Hungary). In some Member States, such as in Bulgaria, the summary proceedings are accompanied by the option of issuing an immediate order obliging management to stop or rectify its infringement.

In the aforementioned 2008 Gaz de France / Suez case, the merger between the two companies, which was decided in disregard of the employees' rights to be consulted, was initially suspended by the French courts by means of an injunction, and finally declared null and void after accepting that there had been a violation of the right to consultation.[38]

Similarly, in the Renault (Vilvoorde) case, the decision to close the Vilvoorde site was considered unlawful and therefore null and void by the French and Belgian courts.

These cases clearly illustrate how summary proceedings and the possibility of injunctions touch upon the core of meaningful guarantees for the employees' fundamental right to information and consultation before

final decisions can be made or measures implemented.

Nevertheless, only a few Member States provide for a possibility of court injunctions as a safeguard to guarantee EWC rights. This is most notably the case in Belgium, Bulgaria, Estonia, Finland, France, Spain, Lithuania, Germany, and Ireland. In Lithuania, however, article 12(6) of the Law on EWCs[39] reads as follows:

> "In the event of a refusal by the central management or the next level of management to provide the information referred to in this Article, or in the event of a dispute as to the correctness of the information provided, the representatives of the staff members may bring an action before the court within 30 days of the date on which the information was received or of the expiry of the time limit within which it was due to have been provided. If the court finds that the refusal to provide information is unjustified or that incorrect information has been provided, the central management or the next level management which refused to provide the information or which provided the incorrect information shall be obliged to provide the correct information within a reasonable time period."

Hence, even if an injunction is issued, management is only required to comply within a 'reasonable period', which reduces the impact of the injunction as a remedy aimed at halting a violation or preventing damage.

Sometimes injunctions are only available in specific circumstances. In Cyprus, for example, court orders are only possible in situations in which management unlawfully classified information as confidential.

The European Parliament adequately identifies the issues regarding remedies in its 2023 resolution, where it:

> "Is concerned about the fragmented and insufficient compliance with Directive 2009/38/EC across the Union and stresses the need to ensure proper, effective and timely compliance, implementation and enforcement of the Directive for the benefit of workers throughout the Union;
>
> Calls in this regard for reinforced rules and procedures and other measures, such as introducing in Directive 2009/38/EC a right to request a preliminary injunction in national courts or other competent authorities for a temporary suspension of the implementation of management decisions until the procedure for informing and consulting the EWC has taken place at the relevant level of management and representation and in such a way as to enable a reasoned response from the management in accordance with that Directive;
>
> Regrets that in many Member States penalties for non-compliance are not effective, dissuasive or proportionate as required by Directive 2009/38/EC; stresses that the provisions governing Member State penalties needs to be strengthened in order to improve compliance with Directive 2009/38/EC, while at the same time ensuring that it does not create a burden to the business; reiterates its call on the Commission to revise the Directive 2009/38/EC with a view to introducing effective, dissuasive and proportionate penalties in order to secure compliance;"

1 Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast).
2 European Commission. (2024). Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights. COM(2024) 14 final.
3 CJEU 29 March 2001, Bofrost, C-62/99; CJEU 13 January 2004, Kühne & Nagel, C-440/00; CJEU 15 July 2004, Anker, C-349/01.
4 Law on European Works Councils, 19 February 2004, no. IX-2031.
5 Law on European Works Councils, 3 September 2009, no. 96/2009.
6 Community-scale Involvement of Employees Act, 12 January 2005.
7 Act on Cooperation in Finnish and Community-Scale Groups of Undertakings, no. 335/2007.
8 Transnational Information and Consultation of Employees Act, no. 20/1996.
9 Code du Travail.
10 TGI Bobigny, 25 octobre 2001, n° 99/01870.
11 Tribunal de travail (Luxembourg), 10 June 2011, no. 2594/2011.
12 Labour Code, Book IV, Title III: European Works Council or cross-border information and consultation procedure for "employees".
13 Berlin labour court, 15 July 2016.
14 https://handel.verdi.de/unternehmen/w-z/zalando/++co++298b3be2-789b-11e5-a054-525400ed87ba.
15 https://ewcdb.eu/node/242102; https://www.ewc-news.com/en022019.htm#8.2.
16 https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/videoconferencing-and-social-dialogue.
17 Law on the Establishment of European Works Councils, no. 106 (I) / 2011.
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20 CA Versailles, 21 mai 2015, Transdev, n° 14/08628.
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22 CA Versailles, 7 mai 1997, n° 2780/97.
23 TGI Paris, 21 novembre 2006; CA Paris, 21 novembre 2006; Cass. soc., 16 janvier 2008, n° 07-10.597, Gaz de France.
24 Cologne District Court, 2011, Visteon EWC case against the closure of the Cadix plant.
25 Verviers Labour Tribunal, 30 June 1999.
26 Brussels Labour Court, 22 September 2006.
27 Nijvel Labor Tribunal, 25 April 2003.
28 Collective Agreement No. 101 of 21 December 2010 on the information and consultation of employees in community-scale undertakings and community-scale groups of undertakings.
29 European Works Councils Act, 14 June 2011, no. 300-01/11-8/10.
30 Law on the Establishment, Organisation and Functioning of the European Works Council, 5 July 2005, no. 217.
31 Law of 23 January 1997 implementing Directive No 94/45/EC of the Council of the European Union of 22 September 1994 on the establishment of a European Works Council or of a procedure in undertakings or groups of companies with a Community dimension for the purpose of information and consultation of employees.
32 Supplementary Agreement VIII – Agreement regarding European Works Councils or Equivalent Forms of Cooperation, 23 August 2011.
33 Labour Code, Part Twelve: Information and discussion, powers of the trade union, employees' council and representatives in the field of safety and health at work.
34 Voorz. Arbrb. Antwerpen (KG) (Belgium) 15 April 2008, no. KG 08/9/C.
35 https://www.etuc.org/sites/default/files/Info_sheet_3_FINAL_-_EN_1.pdf.
36 Law on European Works Councils, 20 April 2011, no. 2011:427.
37 Law on the Establishment of a European Works Council and a Procedure on Informing and Consulting Employees, no. XXI 2003.
38 Cass. soc., 16 janvier 2008, n° 07-10.597, Gaz de France.
39 Law on European Works Councils, 19 February 2004, no. IX-2031.

PART 2

Board-level employee representation

The concept of board-level employee representation (BLER) may be considered as a second way of shaping industrial democracy. It refers to an indirect form of participation, where the employees of a company elect or appoint representatives to the strategic decision-making body of that company, regardless of its structure. The elected or appointed employees have the right to vote and represent the collective interests of all the company's employees (Conchon, 2011; Munkholm, 2018; Schulten & Zagelmeyer, 1998). The content of the right to BLER varies considerably among the Member States. The following will provide a brief outline of the main trends and differences.

1. Statutory right

EU law leaves the regulation of BLER to the Member States. However, it should first of all be noted that not all Member States have recognised a statutory right to BLER. In Belgium, Bulgaria, Cyprus, Estonia, Iceland, Italy, Latvia, Lithuania, Malta, and Romania, there is no legal framework for BLER. This implies that BLER arrangements in these countries are the result of voluntary agreements or choices at company level. In Belgium, there are specific provisions providing for BLER in a very small number of publicly owned companies (such as the state railway and some universities).

2. Thresholds

In countries in which the right to BLER is legally enshrined, there are various thresholds for the right to be activated.

First, the type of company may determine whether or not a right to BLER exists. A distinction can be made between private and state-owned companies. In Ireland, as well as in Greece, Poland, Portugal, and Spain, mandatory BLER is limited to state-owned companies. The right may also be connected to the liability structure of the (private) company in question. This is the case in France, Luxembourg and Slovakia, where BLER only applies to public limited companies. In Austria and Croatia, the right varies according to whether the company is a public limited liability or limited liability company. The right can also vary according to the type of

industry (such as for the iron industry in Luxembourg, the metal industry in Spain, and the iron, coal and steel industry in Germany) and additional thresholds may apply. In the Netherlands, for example, the company in question must have a set amount of capital in order for the right to BLER to be triggered. The same goes for Slovenia, where the sales turnover or asset value has to be of a certain level.

Furthermore, the size of the workforce can be a determining factor for the right to BLER, as Member States may introduce requirements with regard to the number of employees. The number may be as low as 25-50 in countries such as Norway, Sweden, Denmark, Slovakia and Slovenia. In the Netherlands, Finland, and Hungary, the threshold is slightly higher and varies between 100 to 300 employees. Austria and Croatia have the same threshold for limited liability companies. A final set of Member States requires that companies have over 500 employees in order for the right to BLER to be activated. This is notably the case in Luxembourg, Czech Republic, and France. In Spain, the right to BLER applies only to state-owned companies with at least 1,000 employees. Employees of state-owned companies in France, Greece, Portugal, Poland, Czech Republic, Ireland, Luxembourg, and Slovakia, on the other hand, have a right to BLER regardless of the size of the workforce.

Lastly, a particular situation prevails in Denmark, Norway, Sweden, and Finland, in which the right to BLER is only triggered once requested by the employees or local trade unions.

3. Characteristics of the board

Depending on the system of corporate governance in place, employee representatives could either sit on a supervisory board or a board of directors. There are three distinct broadly-defined systems. Dualistic systems, such as in Denmark, Austria, Germany, Poland, and the Netherlands, use a management structure in which a supervisory board monitors and controls the performance of the management board in charge of running the company. In monistic systems, on the other hand, a single institution (the board of directors) is responsible for the management of the company. There is no formal distinction, as such, between supervisory and management functions. Countries like Ireland, Luxembourg, Spain, Belgium, and Sweden fall under this category. In Finland (and to a lesser extent Norway), among others, a combination of characteristics of both systems can be found, hence creating a mixed system of corporate governance.

When it comes to the composition of the board in question, the number of employee representatives varies significantly between the Member States. The strength of the representation ranges from a single representative to half of the board. Non-escalating systems require that a fixed number of employee representatives have a seat on the board. Greek and Croatian workers in eligible companies are represented by one member only. In Spain, the eligible trade unions can each appoint one member, thus resulting in two or three seats. In Finland, the employee representation generally makes up 1/5 of the board, with a maximum of 4 seats, unless the parties have agreed upon an alternative distribution. The Czech Republic, Ireland, Luxembourg, Austria, and the Netherlands have a system in which 1/3 of the board consists of employee representatives. Sometimes, the legislation fixes a minimum and maximum number of representatives along with a method to determine the actual number. This can be seen in Denmark, Hungary, Slovakia, and Slovenia. Moreover, in the latter country, an alternative right exists in companies with more than 500 employees: the employees are additionally entitled to elect one member of the management board or one executive member of the board of directors.

Another group of Member States make use of a so-called escalating system, where the number of employee representatives depends on the company size. In French state-owned companies, the threshold is set at 200 employees, with two members and up to 1/3 of board members for the smaller companies, and 1/3 of board members for the larger ones. For privately owned companies, the threshold is set at 1,000 employees (5,000 worldwide). In boards with 12 seats or less, the employees have one seat, and on boards with 13 seats or more, they have two. Representation rights in all boards can be negotiated, with a fixed maximum of seats. Germany also uses an escalating system with several steps, where a distinction is made between companies with 500-2,000 employees, and those with more than 2,000 employees. In Luxembourgish state-owned companies, the employees may elect one board member per 100 employees, with a minimum of three seats and a maximum of 1/3 of the board. A similar system exists in Norway, where the employees may elect up to 1/3 of the board depending on the size of the company. In Swedish companies, the employees can elect two (in companies with less than 1,000 employees) or three (in companies with over 1,000 employees that are operating in several industries) members and up to half of the board, and an equal amount of deputy representatives can attend board meetings in an advisory capacity.

From a workers' rights perspective it is interesting to see that, regardless of the strength of the employee representation (and thus even in countries where employee representatives can make up half of the board), those on the employee side will never be able to prevent a board decision from being taken if the shareholder side speaks with a single voice. After all, the chairman, who always belongs to the shareholder side, has a casting voice in the event of a tie.

4. Methods of election or appointment

Differences may be observed with regard to the election or appointment of employee representatives to the board. In countries such as Norway, Denmark, Finland, Spain, France, Greece, and Ireland, a nomination by the trade unions, works councils, or employees themselves is followed by a general election among all employees. Most countries, however, do not use the system of general elections. Hence, the nominated candidates are elected by the general meeting. This is the case in the Netherlands, Hungary, and Germany. It may also be the case that no election is required at all. Works councils or trade unions may thus directly appoint representatives to the board in Sweden, Slovenia, Croatia, France, Spain, and the Luxembourgish iron industry. Mixed systems exist as well, such as in France, Portugal, Croatia, Slovakia, and Germany. In the Czech Republic, the employer determines the rules for electing or appointing candidates.

There is also some variation between the profiles of employees who may be elected or appointed as representatives. In most countries, the representatives must at least be employees of the company. This is the case in Slovenia, Sweden, Norway, Portugal, Croatia, France, Greece, Slovakia, Czech Republic, Denmark, Hungary, Ireland, and Luxembourg. In Austria, the representatives must also be members of the works council. In Germany, as well as in Luxembourg's iron and steel industry, external trade union representatives may be appointed to the board. A stand-alone system exists in the Netherlands, as the representatives may have no ties with the company's employees at all. Employees of the company as well as trade union officials who are involved in collective bargaining with the company can therefore never have a seat on the board.

PART 3

Learning from practices and cases studies

1. Asahi Breweries Europe Group (« ABEG »)

Case study	This case shows the importance of access to regular economic expertise.

Sector and ETUFs	Drinks sector	EFFAT
Headquarters country and country legislation applicable to EWC if different	Czech Republic	Germany
Number of employees	~ 10,000	
Number of countries of operation in EU	7	

EWC agreement clause on expertise or summary	According to Article 4 of the agreement, the EWC can be assisted by experts of its choice, insofar as this is necessary for the accomplishment of its tasks. The article also mentions the maximum budget for expertise. In exceptional cases, where additional expert assistance is required, reasonable additional costs could be covered.
Legal expert	Unspecified
Economic expert	Unspecified
Trade union expert / coordinator	Unspecified
Other experts	Unspecified

Main reasons for case selection / focus of the case study	This case shows how external expertise is useful for EWC members not only in exceptional circumstances, but also for its normal, regular business over the years.
Facts/ Background / Findings	The EWC has had access to an economic expert since the restructuring of the company in 2015. Since then, the EWC has access to regular, yearly economic expertise. The expert assesses the company's economic activity and operations at both European and country level. The expert also provides insight each year on the company's economic environment, the status of competitors and an overview of the situation in the different markets. Interestingly, the agreement does not limit the number of experts, only the budget allocated. It opens the possibility of inviting several trade union experts.
Lessons learned or best practice	Regular expertise is also important to gain an understanding of the company in the long run. It is an opportunity for the workers' representatives to gain a better understanding of their company's business activity and prepare topics that they want to discuss with management in advance, independently of any management presentations.

Opinion of workers' representatives	"*It is important to learn about the state of business activity. The expertise allows the EWC to get a better understanding of the economic activity of the company, but also the economic environment in which it operates. It is also useful for understanding the rationale behind management decisions so that management can be questioned. Over the year, we gain a more acute sense of the cross-border aspect of our company's business, which helps EWC members to work together as a platform.*" Irma Bakker, EWC Secretary

2. Crédit agricole

Case study	This case shows how an EWC could, with the support of an economic expert, help the local workers' representatives in setting up an advantageous plan to support staff redundancies in the case of a closure

Sector and ETUFs	SERVICES	UNI EUROPA
Headquarters country and country legislation applicable to EWC if different	France	
Number of employees	140,000	
Number of countries of operation in EU	18	

EWC agreement clause on expertise or summary	According to Article 4.5 of the agreement, the Group Committee's (central works council) accounting expert can participate in the European Works Council once a year during a regular plenary meeting. The guidelines for requesting this expert, the scope of his/her mission and the cost of his/her participation are defined and negotiated annually with the Secretary, based on the advice of a majority of members of the employee and managerial delegations. Article 7 provides that any expert that participates in meetings is subject to an obligation of confidentiality with regards to any information provided to him/her expressly identified as confidential. This obligation continues beyond the end of the expert's appointment.
Legal expert	Unspecified
Economic expert	See EWC agreement clause on expertise that sets out specifications on accounting expertise.
Trade union expert / coordinator	According to Article 2.2.3, UNI Europa can appoint one of its members to represent it at plenary meetings. The appointed representative can attend plenary meetings at the invitation of the Secretary, has access to the same information as the EWC members and is subject to the same confidentiality obligations
Other experts	According to Article 4.5.2, during the annual regular meeting or a special meeting, and for as long as it is necessary to accomplish its tasks, both the full and select employee delegation can be attended or advised by internal experts recognized for their expertise on the issues to be reviewed, and who are jointly chosen by the managerial delegation and the Secretary when creating the agenda, or in case of a disagreement, by an outside expert over the policy concerning experts, as part of the definition of a selected mission of a common agreement between the managerial delegation and the Secretary.

Main reasons for case selection / focus of the case study	It is the task of national social partners to negotiate the terms of redundancy in case of the closure of a site. Nevertheless, when there is no workers' representation or trade union, the EWC (or the steering committee) serves as leverage to encourage local negotiations with a representative body of workers
Facts/ Background / Findings	In 2012, the European Works Council had to manage an information and consultation procedure concerning the closure of several CACIB Group investment banking sites and offices in Eastern Europe. On this occasion, the principle of subsidiarity was applied: in other words, in the absence of trade union representatives on these sites, the steering committee of the EWC supported and assisted the employee representatives in these offices in their request for a support plan for the redundancies. The work carried out jointly by the economic expert and the EWC made it possible to convince CACIB's management to draw up a real support plan for the redundancies, with a social package in line with the practices of the Crédit Agricole S.A. Group. On other occasions when subsidiaries were closed or sold, the Crédit Agricole EWC also used its right to consultation to make local and general management (Crédit Agricole SA in Paris) aware of their commitment to proposing a redundancy plan in line with Group practices.
Lessons learned or best practice	The EWC is an important tool to support local social dialogue, especially when the infrastructure to support it is sometimes lacking, and helps the economic expert to understand the local economic context. In this case, the EWC operates on the principle of subsidiarity. When there are no trade unions or legitimate employee representatives elected by the employees of the subsidiary, the EWC negotiates in their place. As a result, the Polish subsidiary was required to evolve to make room for workers' representatives and a union in the company.

Opinion of workers' representatives	"In addition to the annual expertise, our agreement gives us the ability to organise a field study trip every year in one or more countries in Europe in which Credit Agricole operates. Going out on the field is essential in order to meet the employees, trade unions, as well as the local management of the local subsidiaries, so that we can fully play our role in raising awareness among Central Management on the issues in the countries concerned. Moreover, the EWC's activities need to be supported via effective communication to all employees to keep them informed of its activities each year. An agreement on financial resources is therefore essential to allow the EWC to work independently. It is also important to keep the body alive as a collective by regularly mobilizing the EWC's workers' representatives and involving them in social, economic, interpersonal and communication work to form a close-knit team. Sufficient delegation time is also essential" (Pascal Fesquet, EWC Secretary).

3. Clariane (ex-Korian)

Case study	This case highlights the pivotal role played by a trade union expert in the bargaining process for a Transnational Company Agreement at European level.

Sector and ETUFs	Care sector	EPSU
Headquarters country and country legislation applicable to EWC if different	France	
Number of employees	104,000 (2019)	
Number of countries of operation in EU	6 (2023), 7 including UK which is covered by the agreement.	

EWC agreement clause on expertise or summary	Article 5.5.2 provides that the Societas Europaea Works Council (SEWC) and the Executive Committee may receive assistance from experts of their choosing, within the framework of an annual budget defined by Central Management, in meetings dealing with matters in which they do not have the necessary expertise, in particular in matters of an accounting, financial, legal and economic nature. All travel and accommodations costs will be covered by Korian. According to Article 5.2, experts appointed by the SEWC are entitled to attend preparatory meetings held by the Executive Board. According to Article 5.4.2, experts may be invited to attend Permanent Working Group meetings after consultation between Central Management and the Executive Committee. On the issue of confidentiality, Article 7 provides that experts are prohibited from disclosing to third parties any information expressly communicated to them in confidence.
Legal expert	See aforementioned Article 5.5.2.
Economic expert	See aforementioned Article 5.5.2.
Trade union expert / coordinator	Article 5.5.1 provides that the SEWC and the Executive Committee shall be assisted on a permanent basis by a member of the EPSU Secretariat or a Trade Union Officer from an EPSU-affiliated organisation. The EPSU representative attends all EWC and Executive Committee meetings, assists SEWC members and facilitates discussions between parties. All travel and accommodations costs will be covered by Korian. According to Article 5.2, the EPSU representative is entitled to attend preparatory meetings held by the Executive Board. According to Article 5.4.2, EPSU representatives may be invited to attend Permanent Working Group meetings after consultation between Central Management and the Executive Committee. On the issue of confidentiality, Article 7 provides that EPSU representatives are prohibited from disclosing to third parties any information expressly communicated to them in confidence.
Other experts	

Main reasons for case selection / focus of the case study	The EWC and SEWC do not have the right to negotiate transnational agreements; trade unions do. Nevertheless, as the main transnational worker representative body, the SEWC should be involved in the bargaining process to ensure a successful outcome.
Facts/ Background / Findings	The "Clariane European Charter on the Fundamental Principles of Social Dialogue" was signed in 2023. The Charter sets out a series of principles and stresses the value of social dialogue and collective bargaining. Negotiated by the EPSU union expert, with the full participation of the SEWC's members, (who also signed the charter), it is the first of its kind in the sector, setting a new standard.
Lessons learned or best practice	This case is an illustration of best practice in terms of negotiations. While the European Federation of Public Service Unions (EPSU) had the mandate to negotiate the agreement, the union expert led the bargaining process while fully involving the workers' representatives, including non-unionised members (there is a low rate of unionisation within the sector in Europe). By providing guidance and good communication and ensuring better coordination among members, the union expert could strengthen the SEWC within the bargaining process, thereby leading to a positive outcome.

Opinion of workers' representatives	"As trade union expert, the EPSU has played a very active role in EWC negotiations within Korian (now Clariane), including for renegotiations during the transformation to an SE works council, and negotiations for the transnational agreement on social dialogue ethics. Maintaining close cooperation with the representative national federations and with SNB/EWC/SEWC delegates was crucial to the success of these negotiations and to establishing a functioning works council within a tough, but growing, important sector." The EPSU Coordinator.

4. Coca-Cola Hellenic Bottling Co

Case study	This case study shows that a general expert available on a permanent basis, in coordination with a trade union expert, can support the EWC and have a greater impact on a company's future.

Sector and ETUFs	Food and drink	EFFAT
Headquarters country and country legislation applicable to EWC if different	Greece / Switzerland	Greece
Number of employees	15,000. Largest countries of operations are Italy, Poland and Romania, with approx. 2,000 employees each.	
Number of countries of operation in EU	12	

EWC agreement clause on expertise or summary	The experts are chosen by the select committee, with management informed at least two weeks in advance. Experts are required to sign a Non-Disclosure Agreement. According to Art. 6, the experts' costs will be covered for one EFFAT representative and one external consultant, as well as reasonable fees for the latter.
Legal expert	Permanent expert is always available.
Economic expert	Permanent expert is always available.
Trade union expert / coordinator	YES, permanent trade union expert available.
Other experts	No

Main reasons for case selection / focus of the case study	The permanent expert brings a legal background and economic knowledge relevant to the sector. These skills enable the European Works Council (EWC) to carry out its tasks more effectively, ensuring it is always prepared for future company strategies and potential legal challenges.
Facts/ Background / Findings	This EWC has existed since 2003. The EWC agreement was renegotiated in 2011. This company has undergone numerous transformations and has become increasingly socially sustainable over the years.
Lessons learned or best practice	There is continuous dialogue with the senior leadership team at the highest levels, and the CEO regards the European Works Council as a key partner.

Opinion of workers' representatives	"The expert is our "guardian angel" - together with the EFFAT coordinator, they form a team that allows us to perform our duties and work as one team" (a member of the EWC).

5. Delivery Hero

Case study	This case highlights the link between access to expertise and independence of the SE WC or EWC

Sector and ETUFs	Food delivery	ETF
Headquarters country and country legislation applicable to EWC if different	Germany	Germany
Number of employees	47,981	
Number of countries of operation in EU	18	

SE WC agreement clause on expertise or summary	According to Article 17 of the agreement, the WC or the Executive Committee may request support from experts of their choice where this is necessary for the proper fulfilment of their responsibilities. Article 18 on Costs and Material Expenses provides that the Works Council and/or the Executive Committee must, in good time in advance, come to an agreement with the company on the accruing costs of commissioning experts or advisors. In reference to Article 19.3, the obligation of confidentiality imposed on the WC and EC does not apply to experts consulted within the framework of their activities.
Legal expert	Unspecified
Economic expert	Unspecified
Trade union expert / coordinator	According to the Article 17 referenced above, representatives of trade unions may act as expert advisors.
Other experts	See above

Main reasons for case selection / focus of the case study	This case shows the difficulty of getting access to independent expertise for SE WCs and EWCs.
Facts/ Background / Findings	Although in existence for several years, the SE WC has never had access to external expertise. Indeed, the SE WC, according to its own members, continues to be dependent on information from management only. It is also difficult for members to obtain good insight on the organization and the practices of other SE WCs and EWCs. Training of members has also, up to now, been provided by management. Nevertheless, a union expert from ETF has recently been appointed who will be instrumental in providing guidance.
Lessons learned or best practice	Having access to independent expertise is important for encouraging the independence of the SE Works Council.

Opinion of workers' representatives	"The SE WC has never had access to expertise. While we have a good relationship with management, we need to start the process to request an expert. We have an independence problem, and we need a benchmark for how EWCs function." An EWC member

6. Groupe Anonymous

Case study	The Group EWC (Forum) agreement includes a clause on dispute resolution, although the process does not specifically provide for the use of experts. However, trade union experts and other external experts have access to meetings (access may be limited to the topic being discussed at the meeting concerned) and confidential information. The agreement identifies workers and management as internal experts. Expert skills are also required to become a member of the EWC (Forum) for both workers' representatives and management.

Sector and ETUFs	Transport and logistics	ETF and UNI Europa
Headquarters country and country legislation applicable to EWC if different	Bonn, Germany	German legislation
Number of employees		
Number of countries of operation in EU	30 countries in E.U. and EEA.	

EWC agreement clause on expertise or summary	The agreement states that both management and workers are entitled to use their own experts for meetings. External experts are bound by confidentiality rules, thereby permitting access to confidential information, but cannot share such information. In exceptional circumstances, workers have the right to be advised by an expert of their choosing for a specific item on the agenda without the consent of management. The opposite also applies. All relevant documents related to the joint Forum can be viewed and downloaded via an electronic database ("eShare"). The eShare forum is password-protected and can be accessed via the internet. External experts or accredited trade union officials can also log in.
Legal expert	Not specified, but remediation process (see explanation below) may lead to Court action with the support of lawyers whose fees will be paid by the company.
Economic expert	Not specified.
Trade union expert / coordinator	Yes: two. ETF and UNI Europa are entitled to appoint one representative each for Forum meetings.
Other experts	Workers and management (as described below).

Main reasons for case selection / focus of the case study	Expertise is a requirement for eligibility of workers wishing to join the EWC (Forum). Article 2.2 requires that workers have "sufficient expertise as regards the situation of the undertaking and its employees, and shall have a commitment to the undertaking." Similarly, management must be in a "managerial position and must have the necessary expertise as regards transnational issues and corporate policies". The agreement anticipates the possibility of recourse to the courts, which implies the use of the services of one or more lawyers. However, a conciliation process has been put in place.
Facts/ Background / Findings	Dispute resolution clause before court action (Article 12 of the Agreement): Step one: The Select Committee monitors adherence to the Agreement and acts as intermediary in the event of any dispute. Step two: The Select Committee resolves disagreements relating to the content, interpretation or application of the Agreement. Step three: Where it is not possible to settle a dispute in this manner, each of the two subgroups of the Forum (Workers and employer) have the right to request that the matter be settled before the courts. The costs involved will be borne by the company.
Lessons learned or best practice	Recourse to a dispute resolution process is positive because it can avoid litigation in courts, which is often lengthy and uncertain as to the outcome. However, it is essential that the employee representatives taking part in the conciliation process can be accompanied by experts of their choosing.

7. H&M

Case study	Renegotiation of an old agreement by a new EWC

Sector and ETUFs	Retail	UNI Europe Commerce
Headquarters country and country legislation applicable to EWC if different	Stockholm, Sweden	Swedish legislation
Number of employees	Approx. 78,000 (2022), of which 16,500 in Germany and 12,000 in Sweden	
Number of countries of operation in EU	28	

EWC agreement clause on expertise or summary	Article 8 The EWC should, insofar as possible, consult internal experts within the Company in matters relating to the EWC. The EWC must obtain the Group Management's approval prior to consulting an internal expert and the Group Management may request the internal expert to sign a confidentiality agreement prior to granting access to confidential information. However, where necessary for the EWC to carry out its tasks as set forth in this Agreement, the EWC is entitled to consult one (1) external expert. The costs of an external expert are subject to prior approval by the Group Management. Before being given access to confidential information, the external expert must sign a confidentiality agreement provided by the Company.
Legal expert	Not explicitly specified, but general clause on experts (see above). The trade union expert shall, moreover, advise the EWC on legal matters (see below).
Economic expert	Yes, see above.
Trade union expert / coordinator	Yes Article 9 One coordinator seat on the EWC is reserved for a Swedish trade union affiliated with UNI Europa. The purpose of a coordinator (the "Coordinator") is to provide guidance and support to the EWC in relation to Swedish legislation and practice. The Coordinator supports dialogue between the Company and the EWC, including preparation and organisational coordination. The Coordinator attends the EWC and Committee meetings but has no right to vote. The Coordinator and his or her organisation is bound by all rules of confidentiality and professional secrecy under applicable laws and section 11 of this Agreement. The Company covers any additional costs for the Coordinator for accommodation and meals. However, salary, daily allowances and travel costs will not be paid by the Company.
Other experts	None

Main reasons for case selection / focus of the case study	This case demonstrates that external expertise can be of great support to EWC members when conducting negotiations with management.
Facts/ Background / Findings	After re-electing the EWC, the new members decided to terminate the old agreement and negotiate a new one. The expert was proposed by UNI Europa. The starting point was a training session for the EWC delivered by the expert, reminding them of the basics of European and national legislation. The session included a workshop, during which the group identified core and non-core issues. The expert advised the group to focus on core issues during the negotiations, such as composition, resources (training, time credit, computers), number of meetings, and the information and consultation procedure. Together with the expert, the delegates prepared a document for each round of negotiations, summarising the EWC's requests on the core issues, explaining why they were important or useful, and citing other agreements with similar terms and provisions. Following the expert's advice, controversial issues were deferred to later stages of negotiations, making it more difficult for the employer to "derail" negotiations after agreeing on a substantial part of the new agreement. Some "red lines" were defined and communicated to management during negotiations (but not too early), such as no virtual meetings, involvement of representatives, and training.
Lessons learned or best practice	Some practices that have proven useful: • Focus on core issues and postponement of non-core issues • Timing of issues according to their importance and level of controversy • Thorough preparation for each meeting • Regular exchange between the EWC Select Committee, the trade union expert from Handels, and the external expert Possible improvements: • The expert did not participate in meetings with management, which sometimes made it challenging to respond to management's proposals in a timely manner and to intervene on critical issues

Opinion of workers' representatives	"*During the entire EWC negotiation process. our expert, selected with the help of UNI Europa, proved to be a very important support for us in the Select Committee. It would not have been possible to come so far in such a short time without his help. He has not just helped us with his expertise but also to challenge our priorities, which was key to actually getting somewhere in the negotiations. After this, he helped us understand the value of the documents provided by management regarding a restructuring plan. He provided us with an overview of the plan which enabled us to analyse the real impact on employment in our company.*" Robin Olofsson, EWC Chairman (worker representative).

8. IAG

Case study	This case demonstrates the importance of careful drafting of the clause on expertise when negotiating the EWC agreement to retain maximum flexibility in the future choice of experts.

Sector and ETUFs	Transport (air)	ETF
Headquarters country and country legislation applicable to EWC if different	Spain	Spain
Number of employees	In 2023, 68,000 in Europe (of which 37,500 in the UK not covered by the agreement)	
Number of countries of operation in EU	22	

EWC agreement clause on expertise or summary	Article 9 of the EWC agreement stipulates that "the EWC or the Select Committee may be assisted by experts of its choice". "Experts will be entitled to participate in any meeting of the EWC and its institutions including joint meetings of the EWC with Management". The agreement limits the Company to paying for only one expert. All experts have to enter into confidentially agreements with Management.
Legal expert	Not specified.
Economic expert	Not specified.
Trade union expert / coordinator	Not specified.
Other experts	Not specified.

Main reasons for case selection / focus of the case study	This case study demonstrates that the clause on experts should not be limited to just one expert. SNB/ EWC negotiators may distinguish between the number of experts and the issue of payment.
Facts/ Background / Findings	The EWC members were faced with a decision by management to a) implement job cuts in two countries without first undertaking an information &consultation process with the EWC and b) remove the U.K. from the geographical scope of the agreement and consequently the British representatives, in the wake of Brexit. In response to this, the EWC qualified 3 British representatives as "experts" to keep them on the board of the EWC for issues that affected them. The EWC also rotated between the economic and legal experts to ensure payment of a lawyer. It was therefore able to initiate litigation against the company, at the company's expense, for breaching the information &consultation rights of workers' representatives.
Lessons learned or best practice	Although only one expert could be hired at a time at the company's expense, other experts may play a role at specific times. Different experts could therefore be used strategically at different times to ensure the best support for the EWC members. Economic, legal and trade union expertise all complement each other but require guidance and coordination from the Steering Committee.

Opinion of workers' representatives	"An EWC can be stronger thanks to the support of economic, legal and trade union experts. Each of them is needed in their respective area of expertise. The EWC steering group should ensure proper coordination" (co-chair of the EWC)

9. PMI (Philip Morris International)

Case study	This case highlights the positive role of trade union expertise in the EWC to facilitate and promote social dialogue in all countries covered by the EWC agreement.

Sector and ETUFs	Tobacco	EFFAT
Headquarters country and country legislation applicable to EWC if different	Switzerland	German law.
Number of employees	31 EWC members in E.U. and EEA.	
Number of countries of operation in EU	10	

EWC agreement clause on expertise or summary	The clause in the agreement on external expertise established the right to an external expert. However, payment of any experts has to be determined via negotiation between management and worker spokespersons.
Legal expert	Not specified.
Economic expert	Not specified.
Trade union expert / coordinator	In addition to the employee representatives, up to four "Union Representatives" are selected. Union officials who become "Union Representatives" to the EWC are nominated by the EFFAT and selected by the EWC member. EFFAT was vice chair from 1996 until 2023 and trade union coordinator.
Other experts	An agreement on the protection of data privacy was concluded with the support of an external expert on this topic.

Main reasons for case selection / focus of the case study	It is up to the national social partner (works councils, trade unions) to deal with national day-to-day business. However, if such dialogue/bargaining is not working well and unions and works councils are not satisfied, it is then the first item on the agenda of the next meeting of the EWC or Select Committee.
Facts/ Background / Findings	The EWC was competent to assist the local/national works councils and unions to improve local/national social dialogue, to promote stress prevention and reduction (several sessions were dedicated just this subject), to secure better basic wages, like in Lithuania and Portugal, to settle national disputes on collective bargaining, like in Poland and Romania, or to support the unions in negotiating redundancy plans during the partial closure of factories in the Netherlands (BOZ), Germany (Berlin) or in Hungary.
Lessons learned or best practice	This case study demonstrates that trade union representatives have significant expertise to enhance social dialogue and collective bargaining at all levels in which the company operates. This is an example of a) a top-down mechanism that can potentially benefit all countries, independent of their respective national industrial relations system and economic environment and b) peer-to-peer support (trade unionist supporting other trade unionists or elected reps from other countries). It also highlights the critical role of an ETUF in terms of effective coordination and operational solidarity (EFFAT in this case).

Opinion of workers' representatives	

10. Anonymous

Case study	Role of economic expertise in case of restructuring: highlight and help foster the cross-border nature of a project

Sector and ETUFs	Communication & Media	UNI Europa
Headquarters country and country legislation applicable to EWC if different	Paris, France	Societas Europaea (SE) under French applicable law
Number of employees	Between 55,000-75,000 worldwide», more than 50% in Europe	
Number of countries of operation in EU	21 countries in EU and EEA.	

SE agreement clause on expertise or summary	The Agreement provides for access to economic and financial expertise. The ES Committee is entitled to receive the Group Committee expert report on accounting and other financial subjects. They may also attend preparatory, plenary and executive committe meetings. Said committee can also request for expertise on a specific subject during a consultation process. the agreement also mentions the possibility of a lawyer within the framework of a consultation and provides for the right to appoint an expert in case of transnational restructuring.
Legal expert	Possibility of access to, among others, legal expertise within the framework of the consultation procedure.
Economic expert	Access to an economic and financial expert is duly mentioned as possible within the framework of an information and consultation procedure and on an annual basis.
Trade union expert / coordinator	No
Other experts	Management may decide to invite employees or external speakers with specific expertise.

Main reasons for case selection / focus of the case study	This case shows how the economic expert, in case of a restructuring, can help to highlight the cross-border nature of a restructuring and support workers' representatives in providing useful information to management.
Facts/ Background / Findings	The SE WC had asked for a consultation process due to 2 countries being impacted by a restructuring plan. Even though the project was being carried out in at least 2 European countries, management denied the cross-border nature of the restructuring. The SE WC was helped by the economic expert who was able to find evidence that the restructuring plan was being carried out in several countries. The expertise provided helped to highlight the fact that certain industrial relations measures were not being properly implemented in one of the 2 countries, resulting in unfair treatment of some of the impacted employees due to be made redundant from the company. This situation was relayed by the workers' representatives. Management decided to intervene to remedy the unfair situation.
Lessons learned or best practice	By demonstrating the cross-border nature of the project, the expert supported the role of the SE WC in ensuring a relevant level of information and consultation, thereby fostering cross-border social dialogue. In this case, economic expertise can support the ability of SE WC members to provide valuable information about the local situation to management.

ANNEXES

Survey report

- **Results of the 2023 - 2024 survey on EWC practice and internal/external expertise**

Who responded? 62 EWC and T.U. members

ACV Plus	1
BTB	2
CFDT	11
CFE-CGC	2
CCOO	15
CNE	2
EVDSZ	1
Fiom Cgil	1
FO	3
FÓRSA	1
FNV	1
GPA	1
Greek union of G4S	1
HK Handel	1
IG Metall	3
IGBCE	1
OPZZ	2
Setca/ Bbtk	4
Solidarnosc	2
Unionen	3
ver.di	1

59

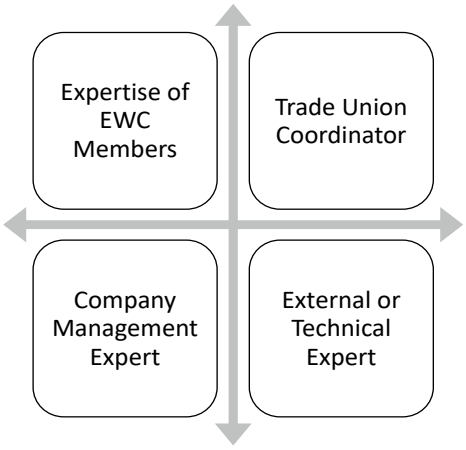
+ 3 non-union members

Companies "represented" in the survey

ACTISCE
Airbus
Air France
Allianz
APERAM
ArcelorMittal
AXA
Bankinter
Boluda
Club Med
COMPASS GROUP
Deutsche Bank
DHL
EVIOSYS
Evotec
ExxonMobil
Flere firmaer
FNAC-DARTY
Ford-Werke-GmbH

Foundever
G4S
Getronics
Global Business Travel AMEXCO
Groupe Seb Belgium
Grupo Elior
H&M Hennes & Mauritz GBC AB
Hanon Systems
hydro
IBM
Iberia
Kaiser Backform
Lagostina
Menzies
Orange
Philip Morris
Renault Group
Ryanair
SAFRAN
Société Générale
Stellantis
Teleperformance SE
Thales
T-Mobile Austria GmbH (Deutsche Telekom)
UPS
Verizon
Vueling

Type of expertise



The experts for EWCs

The main types of expertise

Most EWC agreements contain no definition of "expert". Management often has the last word in the final choice.

The Airbus example

1 IndustriAll Europe Coordinator (present at all preparatory, plenary and select committee meetings)

+ 2 experts chosen for their recognized experience in the field of aeronautics and/or space and defense (present at all preparatory, plenary and select committee meetings).

+ Expert accountant to examine the accounts

+ Other experts during consultations "on certain specific subjects" by agreement with Management

Preferred type of intervention

Desired time: split results

Type of intervention required

- No major difference in **expectations regarding economic and legal experts:** a) Guarantee access to information in good time b) Check the quality of information and c) Advise and support the EWC in drawing up/developing its opinion during consultation procedures.
- **Specificities** are clear for many respondents: economic analysis v. legal advice (negotiation of EWC agreement, legal action, confidentiality).
- Respondents sometimes mix up responsibilities of experts: **General versus specialized support** depending on expectations placed on the EWC's role & action and company restructurings.

Preferred type of intervention

Type of intervention required

There is often no indication of the expert's profile in EWC agreements.

Expertise required

- General
- Specific (legal, economic, etc.)

Access to expertise varies

- Budget
- Frequency
- Number of experts

Other items suggested by respondents

Expertise should not only be economic and legal:

- **Need support from communications professionals**
- **Need for technical resources to overcome language barriers**
- **National works council members should share their field of expertise with EWC members when needed**
- **A database of experts is needed, according to their specialty**
- **Acquiring new learning by EWC members: on-going training.**
- **Litigation strategies should be a priority for the trade union movement**

A revision of the directive: suggestions of respondents

Provide for automatic penalties without having to take legal action

Have management representatives with decision-making powers at EWC meetings; not pointless discussions with HR staff with no mandate.

Access to experts should be compulsory in all EWC agreements. Today, company management has too much decision-making power.

Compulsory seat for ETUF (UNI, ETF, EFFAT, EPSU, EFBWW, IndustriALL Europe, etc.)

The "in-house" expert and trade union coordinator

Trade union coordinator

- Expert from the European or national Trade Union Federation, present at each Select Committee meeting and during plenary sessions (AXA, Groupe Elior, Groupe Seb, G4S, etc.)
- In practice, however, there may be difficulties in getting him or her to participate (budgetary problems, Deutsche Bank, etc.).

Expert member of EWC

- Contributions from EWC colleagues on economic issues, personal data, vocational training, IT (Ford-Werke-GmbH, Teleperformance, Evotec, T-Mobile, etc.)

Company expert

- Business input (Management): economic and legal analysis and other technical topics like IT.
- The EWC sees the internal expert essentially as a means for the company to avoid the payment of external experts (H&M).

Use of the legal expert

Major disparities

- No budget (Ford-Werke-GmbH, Teleperformance, Genotrics, Groupe Elior, etc.).
- Employer's agreement required: "Demonstrate usefulness", "reasonable amount", etc.
- The right to an expert, which management can only oppose for "important" reasons (Evotec)
- A ”permanent legal adviser who takes part in our EWC meetings and who is also available to us”. The same applies in the event of legal recourse (T-Mobile/Deutsche Telecom).
- Support from an expert 4 times a year but with a multidisciplinary profile (Arcelor Mittal)
- Confidentiality agreement / NDA: Compass
- One seat for all experts: Irish legislation.

The "legal" expert has a varied profile

- A consultant (H&M)
- A trainer (ETUI)
- A Solicitor/ Barrister for the legal action (Verizon, T-Mobile)
- A trade unionist

Legal expertise is mentioned but is confined to specific tasks. Some examples: a) (re) negotiation of the EWC agreement b) challenge confidentiality and c) litigation (e.g.: Verizon)

Dispute resolution and litigation

DHL Express EWC Agreement (Art. 12)

Step 1
The Select Committee shall monitor the adherence to the Agreement and shall act as intermediary in the event of conflicts.

Step 2
The Select Committee shall resolve disagreements about the content, the interpretation or the application of the Agreement.

Step 3
- Should it not be possible to settle a dispute in this manner, each of the two subgroups of the DPDHL Forum (EWC, EMF) shall have the right to request the matter be settled in court. The necessary costs shall be borne by the company.

Recourse to an economic expert

A valued role

- To study the state of the Group's finances
- The impact of the pandemic
- Consultation on a specific project: the merger/acquisition of another company, the sale of part of the group
- "Without this outside help, we would not have been able to understand, apprehend, document and assess the situation."
- To advise about the right of having a national supervisory board (looking at ESG);

A poorly established role

- Ongoing advice or project-specific advice? A culture of annual external economic expertise only in France, based on the law.
- The opposite is true in other countries. Unfortunately, EWC agreements are often imprecise when it comes to experts.
- In some companies, the expert is not allowed to speak at the plenary session, while in others he/she can present his/her work as a whole.
- Several respondents explained that the expert should have more freedom to support EWC members, in particular to help them draft questions to management.

There is often no indication of the expert's profile in EWC agreements.

Expertise is envisioned in terms of a **theme** and not directly in terms of **the skills required**:

- For "a plan to close a business, a plan to make redundancies for economic reasons, a plan to restructure, relocate or transfer, provided that these plans fall within the remit of the EWC" (Fnac Darty)
- For a sale, acquisition/merger, renegotiation of the agreement (Elior Group)

The annual budget is for "all expertise" and sometimes varies according to the size of the company:

- €57,000 Safran
- €50,000 Thales
- €20,000 Fnac Darty
- €60,000 at Air France KLM over 4-year mandate

Best practice: suggestions from respondents

Supporting the cohesion and effectiveness of the EWC

- The EWC must be **active all year round**, thanks to an exchange of information obtained at **national Works Council** level.
- Good **structuring of the EWC's work** with input from countries
- Good **communication skills, including with countries outside the EU**
- Do not specify the 'area of expertise' in the EWC agreement. You may need different experts in different situations and the agreement should not preclude this need.
- More **training courses**
- Working groups: permanent ones (finance, H&S, etc.) and ad hoc ones (company restructuring)
- Ensuring good **coordination** between the Select Committee, the Trade Union Coordinator and the experts
- A **database of experts** on specific topics
- Developing **expertise in non-financial issues** (Human resources, human rights and the environment)

Examples of the Berlin group

- International mobility agreement at company level
- Analyzing consolidated company accounts
- Personal data use by one company denounced at EWC level
- Working groups feeding the discussion with management and proactively taking topics on board.

Best practice (2)

KEY POINTS TO REMEMBER:

EWC members responded that their efforts to **coordinate and structure their work** should be supported by:

- Personal development of EWC members' skills through training provided by an expert
- Support for themed working groups by an expert (internal or external?)

Some more quotes:

- "Ad hoc (temporary) support from an expert when you're stuck on a specific question"
- "An expert who gives the EWC the means of forcing management to provide information with a view to consultation"
- "Monitor how the expertise is being used and audit EWCs on how the democratic standards are respected."

ANNEXES

Survey

SURVEY - EWC EXPERTISE

European Project - European Works Councils and employee representatives: how to rebalance social dialogue? Get to balance !
EWCs have the right to be assisted by experts. European federations appoint trade union experts (sometimes named 'coordinators') to assist EWCs on a permanent basis. In addition, external experts can be brought in on an ad hoc basis to support EWCs with their specific expertise on economic, financial and legal subjects. This study is about these external experts. If you need expertise, please contact your trade union expert (coordinator) or your trade union organisation.

MY PROFILE

1- First and Last name
The results of the survey will be confidential and anonymised; all data are collected for research purposes only.

2- Email Address

3- I am a European Company Works Council Member
o Yes
o No

4- I am a Board level Employee Representative
o Yes
o No

5- I am affiliated to a trade union
o Yes
o No

6- Trade union name

7- Company name

8- I usually work/live in the following country

9- I accept that the researchers involved in this project may contact me by email for further information
o Yes
o No

EXPERTISE INTERNE ET EXTERNE

10- Do you benefit from internal expertise (company expert, EWC Members experts...) to support your EWC? If yes, please explain how often and what topics are covered.

11- Does your EWC agreement allow you to hire a legal expert?
A legal expert is a professional in law (labour law, European law, health and safety...). He or she may help you understand the legal framework applicable to the functioning of your EWC, specific subjects dealt with therein and/or how to best use and defend your rights as EWC members A legal expert is a professional in law (labour law, European law, health and safety...). He or she may help you understand the legal framework applicable to the functioning of your EWC, specific subjects dealt with therein and/or how to best use and defend your rights as EWC members.
o Yes
o No
o I don't know.

12- If yes, please specify what provisions and resources (budget) are mentioned for the involvement of a legal expert.

13- Has your EWC ever hired a legal expert?
If yes, please explain their mission (subject, time available, expected outcome)

14- If you think your EWC should hire a legal expert, what tasks do you think said expert should carry out to support your EWC?

You can select one or several answers

o Advise and support the EWC to make sure that information from Management is relevant and timely

o Advise and support the EWC to make sure that Management organises consultation of EWC members when needed (restructuring, changes in production or work organisation…)

o Challenge confidentiality imposed by Management

o Going to Court against company Management

15- When do you expect a legal expert to participate actively in the EWC meetings?

You can select one or several answers

o Any time, upon request

o In preparatory and debrief meetings

o In plenary meetings

o In Select Committee meetings

o In Court proceedings

o Other

16- Has your EWC ever hired an economic expert?

If yes, please explain their mission (permanent or temporary/for a specific topic, subject, time available, expected outcome); if no, do you think that your EWC should hire an economic expert to reinforce its position?

An economic expert analyses the financial and economic health of the company and provides you with their interpretation of the company financial reporting. Their conclusions may sometimes differ from the information provided by Management. In some countries, this expert has access to confidential information. They may analyse job profiles and employment trends at the group level as well as working conditions data, health and safety and other sustainability (non-financial) data in some cases. Finally, they may advise the EWC worker representatives during a restructuring process to assess Management plans and to look for possible alternative solutions when needed..

17- If you think your EWC should hire an economic expert, what tasks do you think said expert should carry out to support your EWC?

You can select one or several answers

o Advise and support the EWC to make sure that the information from Management is relevant and complete

o Advise and support the EWC to make sure that Management organises an efficient/adequate consultation of EWC members

o Advise and support the EWC in the development of its opinion in consultation procedures

o Challenge confidentiality imposed by Management

o Other

18- Does your EWC agreement allow you to hire an economic expert?

o Yes

o No

o I don't know.

19- If yes, please specify what provisions and resources (budget) are mentioned for the involvement of an economic expert

20- When do you expect an economic expert to participate actively in the EWC meetings?

You can select one or several answers

o Any time, upon request

o In preparatory and debrief meetings

o In plenary meetings

o In Select Committee meetings

o Other

CONCLUSION

21- Is there a good practice that you could share with us? If yes, please explain below.

A good practice can be an approach or actions that you deem efficient and beneficial to EWC members/actors, that could be transferable to other EWCs. .

22- Do you have any suggestions on how the EWC can make an even better use of expertise ?

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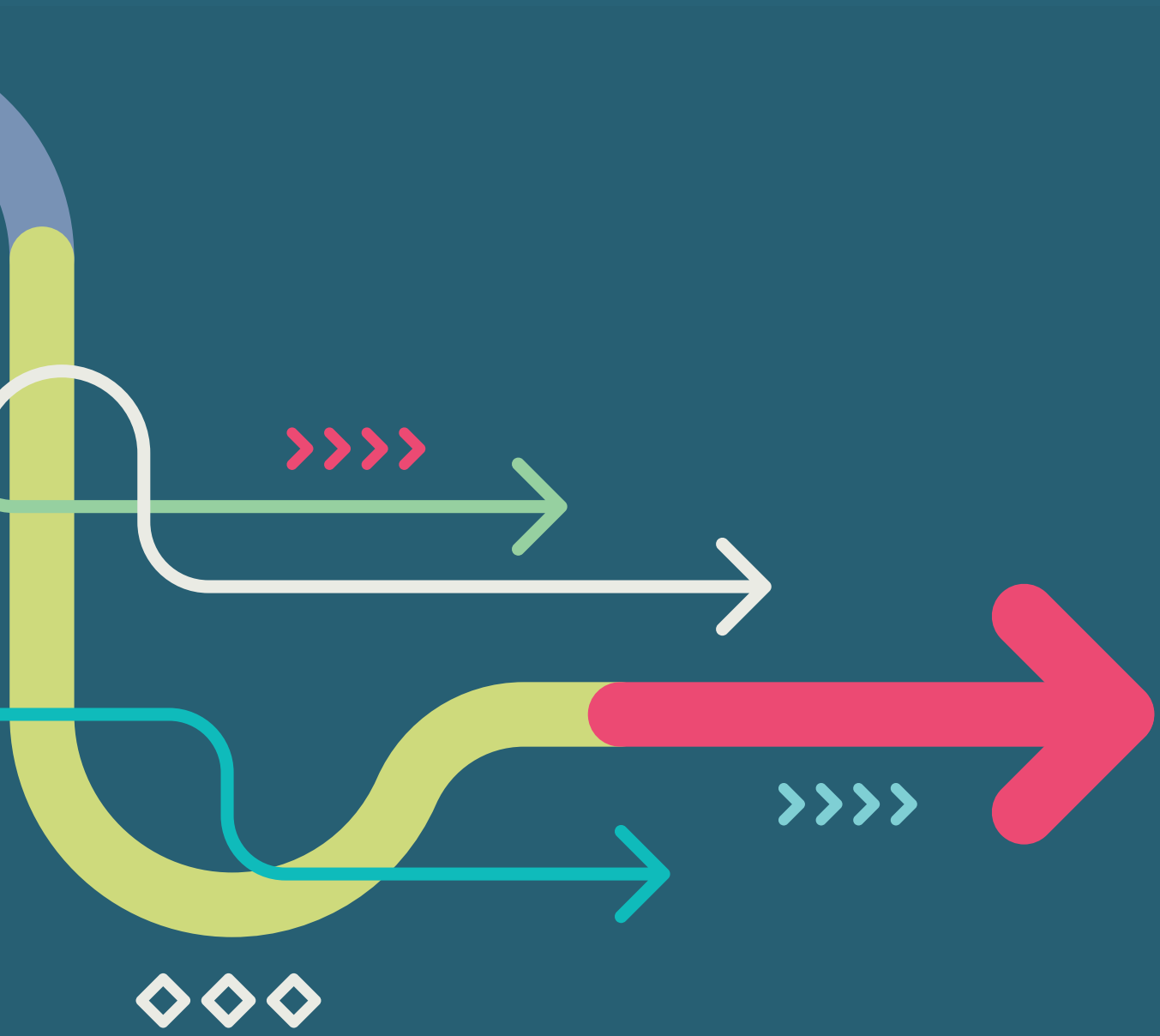

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