**(Chapter number)**

**European Works Councils and the Convergence of National Collective Bargaining Processes**

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# Abstract

The emergence of European industrial relations is at the core of the European integration process. The European Works Councils (EWCs) have evolved as transnational forums for discussing work-related issues and, because of this, have turned into counterbalances to the power and control exerted by ‘European employers’. As will be argued, the regulatory framework of EWCs is characterized by divergences among the Member States in transposing the Directives regulating the establishment of EWCs and the arrangements between workforce and management for informing and consulting employees. However, the fact that an increasing amount of EWCs is developing other competencies in addition to those provided for by legal provisions suggests that national collective bargaining realities are in the process of converging. This paper aims to explore the factors influencing EWCs to expand their competencies, specifically focusing on the concept of ‘labour agency’ in order to explain the formation of a transnational collective bargaining process.

# I. THE EWCS IN THE CONTEXT OF THE EU DIRECTIVES ON INFORMING AND CONSULTING WORKERS

The adoption of the first EWC Directive was seen as the creation of the first “transnational system of industrial relations based on European legislation.”[[1]](#footnote-1) When created, it was placed among workers’ recognised rights to information and consultation (I&C), which have evolved in ways that parallel the EU itself.[[2]](#footnote-2) As has been pointed out, the *social acquis communautaire* has evolved as the ‘social dimension’ of the internal market.[[3]](#footnote-3) The Treaty of Rome did not mention these rights, but it did include a Social Policy chapter where Member States agreed upon “the need to promote improved working conditions and an improved standard of living for workers” (Article 117). In this vein, the Social Action Programme adopted in 1974 sought to increase the involvement of workers in the life of undertakings. Two Directives were adopted regarding this matter in order to approximate the laws of the Member States: Directive 75/129/EEC[[4]](#footnote-4) (collective redundancies) and Directive 77/187/EEC[[5]](#footnote-5) (transfers of undertakings).

The adoption of the Single European Act highlighted the social dimension of the future internal market.[[6]](#footnote-6) In November 1988, the European Commission stated it was essential to have a social foundation within the Community which shows that “the social dimension of the internal market is being completed at the same time as its economic dimension”[[7]](#footnote-7) and which could be embodied in a “European Charter of Social Rights.” This was finally adopted in 1989[[8]](#footnote-8) with the name “Community Charter of the Fundamental Social Rights of Workers.” In it, paragraph 17 states the following:

Information, consultation, and participation for workers must be developed (…), especially in companies or groups of companies having establishments or companies in two or more Member States of the European Community.

This preceding background was the origin for the adoption of the first Directive in 1994.[[9]](#footnote-9) Indeed, the first action programme[[10]](#footnote-10) to come about as part of the application of the Community Charter included a proposal for a Council Directive on the procedures for the information and consultation of the employees of undertakings with complex structures, in particular, transnational undertakings. Moreover, the European Parliament considered[[11]](#footnote-11) the Commission’s annual programme for 1990 to be insufficient for the balanced creation of a social dimension and called on the Commission to include a Directive on procedures for the information, consultation, and participation of workers, including the setting up of European consultative committees for multinational undertakings.[[12]](#footnote-12)

Once the Treaty of Maastricht came into force, EU Social Policy, as the Commission stated,[[13]](#footnote-13) was governed not only by the provisions of the EC Treaty as amended by the Treaty on the European Union but also by the provisions introduced by the Protocol on Social Policy. With regard to the later, the consultation and negotiation procedures with social partners provided for in the Agreement were used for the first time in practice when the first Directive was adopted in 1994.[[14]](#footnote-14) Moreover, the Commission launched a wide-ranging debate about the future direction of social policy. Because of the adoption of a Community action in the social field[[15]](#footnote-15) and the EWC Directive in 1994, the Commission allowed other proposals for Council Directives concerning the information and consultation of employees to be discussed.[[16]](#footnote-16)

When new Member States entered the EU, the Council embraced ‘Agenda 2000,’[[17]](#footnote-17) which required that Member States’ employment policies be coordinated. On this basis, the adaptability of employees was approached as an integral part of the employment strategy, and, concretely, it had to be “conceived and achieved through information and consultation procedures which allow employees to face and anticipate change.”[[18]](#footnote-18) That was the seed for the proposal of a Council Directive which would establish a general framework for informing and consulting employees in the European Community, which was successfully adopted in 2002.[[19]](#footnote-19) Directive 2002/14 is more broadly applicable, that is to say, it is applicable “in any situation where corporate restructuring is envisaged.”[[20]](#footnote-20) Two more directives were adopted in the early 2000s regarding the involvement of employees in European companies (SE Directive)[[21]](#footnote-21) and European Cooperative Societies (SCE Directive).[[22]](#footnote-22)

In parallel to this, the European Council affirmed that the development of the European Union should be accompanied by the consolidation of the fundamental rights applicable at the Union level by means of a Charter to make them more evident.”[[23]](#footnote-23) Therefore, the European Council decided to draw up a Charter of Fundamental Rights of the EU (CFREU), which was solemnly proclaimed in Nice in 2000 and which recognised in Article 27 the right of workers to information and consultation in an undertaking. After the Treaty of Lisbon entered into force, the CFREU acquired binding force. The recast EWC Directive adopted in 2009 contains a specific reference to the CFREU in order to ensure that fundamental rights are respected and to observe the principles recognised by the CFREU.

# II. THE FRAGMENTED EWC LEGAL FRAMEWORK ACROSS NATIONAL REALITIES

As stated above, the EU legislated on EWCs for the first time through Directive 94/45/EC, but Directive 2009/38/EC[[24]](#footnote-24) is currently in force, recasting the former and other subsequent directives. According to Lamers, unlike the old EWC Directive, the recast Directive stresses the European role of EWCs.[[25]](#footnote-25) The EWC Directive sets out the rights of information and consultation in Community-scale companies or groups of undertakings (hereinafter, MNC) to be exercised by the EWC (or other similar procedures). However, the role of EWCs has to be analysed from a broader perspective beyond the information and the consultation of workers. As Njoya has affirmed, the EWC Directive is concerned with participation rights since it implies a permanent body within the company whose function is “to engage with management on decisions affecting employees.”[[26]](#footnote-26)

The specific competencies of EWCs are defined through a process of negotiation between central management and a negotiating committee called the Special Negotiating Body (SNB). Exercising the principle of autonomy of parties, the SNB and the management of the MNC will determine the functions and operating methods of the EWC by mutual agreement. As a key element of the role of the EWC, the Directive guarantees that it is the bearer of the right of information and consultation on transnational issues.

However, its ability to deal with transnational matters vary from one Member State to another due to the flexibility of the Directive’s content. On one hand, the Directive refers to specific provisions that must be directly regulated by national norms under the principle of subsidiarity. On the other hand, the Directive guarantees relative flexibility to Member States when transposing its content to the national level. Because of this, the EWCs’ legal frameworks are not uniform but are composed of a diverse array of regulations causing EWCs’ competencies and resources to differ.

## A. National Circumstances Recognised under the Subsidiarity Principle: the Definition of ʻEmployees’ Representativesʼ as the Epicentre

The capacity of the EU for regulating the information and consultation of workers depends on its competence as established in the Treaties and the well-rooted basis of these rights in national traditions. In this vein, due to the fact that the issue of information, consultation, and participation “goes to the very heart of national industrial relations systems,” Schömann underlines that there are different attitudes among the Member States with respect to which social policy responsibilities should be allocated to the EU.[[27]](#footnote-27)

EU Social Policy is a shared competence between the Union and the Member States, and, therefore, it is governed by the principles of subsidiarity and proportionality (Article 5, TUE). With respect to the principle of subsidiarity,[[28]](#footnote-28) the EWC Directive would allow Member States to adapt the provisions of the Directive to national industrial relations and legal systems, specifically with respect to “determining the arrangements for designating or electing employees’ representatives, their protection, and determining appropriate penalties.”[[29]](#footnote-29) In this sense, the idea of flexibility in designing national legal frameworks is anchored in “the different national traditions, needs, and profiles of multinational companies.”[[30]](#footnote-30) Indeed, the idea of flexibility is embraced by all I&C Directives.[[31]](#footnote-31)

Accordingly, the Directive refers to national law and/or practice in several issues, widening the extent to which the application of the Directive may diverge. The most significant definition in the Directive is that related to ‘employees’ representatives.’ Effectively, the term ‘employees’ representatives’ means “the employees’ representatives provided for by national law and/or practice” (Article 2.1.d, EWC Directive). It is important to highlight that the definition was taken[[32]](#footnote-32) from Directive 75/129/EEC on collective redundancies and Directive 77/187/EEC on transfers of undertakings. The definition of ‘employees’ representatives’ provided by Directive 75/129/EEC specified that any type of representation of workers’ interests is accepted under the Directive and that they “could function within the [relevant] type of consultation/negotiation procedure.”[[33]](#footnote-33)

Those implications should be also applicable to the definition found in the EWC Directive. Moreover, the EWC also specifies that the Member States shall determine the method for electing or appointing members of SNBs who are to be elected or appointed in their territories (Article 5.2, EWC Directive). As Picard affirms, SNB members could even be “a representative from a European Industry Federation or a trade union official from a national trade union.”[[34]](#footnote-34) The Directive also provides that the Member States shall provide employees who, through no fault of their own, are employed in undertakings or establishments where there are no employee representatives the right to elect or appoint members of the SNB.[[35]](#footnote-35) Therefore, the EWC Directive also included this innovation, that is, the definition of ‘employees’ representatives’ that was stipulated in the Directives on collective redundancies and transfers of undertakings.[[36]](#footnote-36)

As a result, it is possible to find out a national framework’s influence on the composition of an EWC, even though MNCs and workers are entitled to dictate an EWC’s composition through the exercise of their autonomy (Article 6.1.b, EWC Directive). For instance, it is possible to distinguish between the German model, which establishes a joint composition of the EWC (thus including both employee and employer representatives), and the French model, which provides for employee representatives in the EWC only. Furthermore, national works councils in some countries are vested with the central role in the composition of the EWC, whereas, in other countries, trade unions appoint members jointly with the works council or just play an indirect role.[[37]](#footnote-37)

The EWC Directive includes other references to national frameworks. For instance, the Member States are also competent to establish the method for calculating the thresholds for workforce sizes (Article 2.2, EWC Directive). Moreover, under the same rationale, “national legislation must define the conditions under which temporary agency workers should be taken into account.”[[38]](#footnote-38) Regarding the protection of employees’ representatives, Article 10.3. of the EWC Directive provides that EWC members may enjoy protection and guarantees “similar to those provided for employees’ representatives by the national legislation and/or practice in force in their country of employment.” Because of this, members of the same EWC may have different statutes applicable to them.[[39]](#footnote-39) Furthermore, the Directive also stipulates that Member States shall ensure information and consultation links between the EWC and national employee representation in cases where decisions likely to lead to substantial changes in labour organization or contractual relations are envisaged and no arrangement for which is set forth in the agreement establishing the EWC (Article 12.2, EWC Directive). The links between national employee representatives and EWCs will be assessed below. Member States are also empowered to rule on confidential information (Articles 8 and 11.3, EWC Directive). Finally, it is important to highlight the statutory duty of the Member States to take appropriate measures in the event of failure to comply with the obligations laid down in the Directive (recital 35). However, this is not homogeneous, since these policies have been implemented differently in each Member State.[[40]](#footnote-40)

All those references to national laws and national practices when Member States have transposed the Directive have subsequently resulted in a huge variety of national norms guaranteeing information and consultation rights at different levels of protection. Moreover, the flexibility of Member States in increasing the standards provided for by the Directive also makes the legal framework of EWCs even more complex. In the next section, the different transpositions will be assessed.

## B. Divergent I&C Rights as a Result of Laws Transposed to the National Level

According to the principle of proportionality, the content and form of Union actions “shall not exceed what is necessary to achieve the objectives of the Treaties” (art. 5.4, TEU). One of the most important factors limiting EU actions is respect for national circumstances. In doing so, Directives serve to set minimum standards in the EU, which may be eclipsed by a Member State’s transposed legislation. Indeed, the weight of national transposed legislation is highlighted in all I&C Directives, since the Directives may be less effective “in the absence of a supportive domestic legal framework.”[[41]](#footnote-41)

As for the practical functioning of EWCs, this is influenced not only by the home country’s industrial relations but also by “company-specific industrial relations considerations, including structures and forms of employee representation and participation.”[[42]](#footnote-42) Workforce size was also indicated as an attribute of a company which might affect compliance with the EWC Directive.[[43]](#footnote-43) Concretely, as De Spiegelaere argues, employees, unions, and management are more likely to take an interest in organizing and making resources available to an EWC in countries with strong information and consultation rights.[[44]](#footnote-44)

If we compare national frameworks for informing and consulting workers, we find that strong differences exist between countries. For example, there is a higher percentage of establishments with structures for employee representation in Denmark (80%) or Finland (70%) than in the UK, Hungary, Malta, Greece, the Czech Republic, Latvia, and Portugal (less than 20%).[[45]](#footnote-45) Furthermore, there are also striking differences in terms of information rights. In more than 80% of establishments in Austria, the Czech Republic, Denmark, Germany, and the Netherlands, employee representatives receive information about the employment and financial situation, whereas these percentages drop to 52% and 38% in Cyprus and Portugal, respectively.[[46]](#footnote-46) Taking industrial relations regimes into account, it is possible to detect similar trends:[[47]](#footnote-47) employee representation in countries with “organised corporatism”[[48]](#footnote-48) is based in unions and has a high level coverage. Under a “social partnership”[[49]](#footnote-49) regime, employee representation is based in a dual system but also has a high level of coverage. On the contrary, employee representation in countries whose systems are based in “liberal pluralism”[[50]](#footnote-50) or the “fragmented, state-centred” regime[[51]](#footnote-51) are both union-based and show limited coverage.

This plurality of national frameworks influences the definitions of information and consultation when they are transposed from the EWC Directive into the national legal framework. Therefore, it becomes crucial to assess the parameters contained in the EWC Directive which Member States must respect when they adopt definitions of ‘information’, ‘consultation’, and ‘transnational’, as well as the links between national and supranational levels of information and consultation. The extent to which Member States eclipse the minimum standards of the EWC Directive will explain the divergences in workers’ information and consultation rights among EWCs’ national legal frameworks.

First of all, the recast EWC Directive involved two new developments which serve as parameters to regulate the EWCs’ competencies in informing and consulting employees. On one hand, it introduced a definition of ‘information’ – which did not exist in the previous Directive – and revised the old definition of ‘consultation’ in light of the other definitions included in Directives 2002/14, 2001/86, and 2003/72. Accordingly, the definitions contained in the current EWC Directive could be approached in the context of the effects of the Directives on I&C from the 2000s, so they have to be interpreted in an interrelated way with the other I&C Directives. On the other hand, the revised Directive introduced the general principle of effectiveness via Article 1.2 (EWC Directive), so the arrangements for informing and consulting employees shall be defined and implemented in such a way that their effectiveness is increased and so as “to enable the undertaking or group of undertakings to take decisions effectively.”

The definitions of both ‘information’ and ‘consultation’ and the idea of effectiveness behind the procedures serve to delimit the minimum standards which should be respected by Member states when transposing workers’ rights of information and consultation into national legal frameworks. However, some countries define ‘consultation’ more broadly.[[52]](#footnote-52) In this vein, Jagodzinski pointed out that only five countries (Germany, Estonia, the Czech Republic, Lithuania, and Slovakia) have implemented a broader definition of consultation, covering the right of an EWC to obtain a detailed response. For instance, whereas the UK legislation defines ‘consultation’ in similar terms to those of the EWC Directive (“the exchange of views and establishment of dialogue”), the German law provides employee representatives with the right to express an opinion and to meet with central management to obtain a reasoned response to any opinion they have expressed. Moreover, the same author argues that not all countries include references to the requirement of ensuring effectiveness neither in information and consultation procedures nor in the decision-making process. For example, social partners in Belgium specified in the transposed collective agreement that the arrangements for informing and consulting employees need to be defined and implemented in such a way that their effectiveness with regard to the provisions of the agreement is guaranteed.

One of the main issues where Member States may diverge is in the transposition of the definition of trans-nationality. The concept of ‘transnational’ becomes the material frontier of EWCs’ competencies for being informed and consulted.[[53]](#footnote-53) This is why Picard argues that clarity should be given to the notion of trans-nationality so as to prevent management from challenging EWCs’ powers and capabilities.[[54]](#footnote-54) In this vein, two aspects should determine the transnational scope of the EWCs’ competencies regarding information and consultation: the scope of an issue’s potential effects and the level of management and representation involved in it (recital 16, EWC Directive).[[55]](#footnote-55) However, Jagodzinski concludes[[56]](#footnote-56) that there are few countries that include references to recital 15 in their national laws or even broader definitions of ‘transnational’ than in recital 16. For instance, Spain included a specific reference to recital 16 in the Preamble of its transposed law, whereas Hungary included its content in the operative part of its transposed law.

Finally, the EWC Directive states that EWCs’ information and consultation procedures and those of national bodies of employee representation shall be linked with due regard to the competencies and areas of action of each (Article 12, EWC Directive). When an EWC’s establishing agreement does not include arrangements for linking EWCs and national employee representation bodies and management takes a decision likely to significantly affect labour organisation or contractual relations are envisaged, the Member States shall ensure that the procedures for informing and consulting employees are conducted both through the EWC and national employee representation bodies (Article 12.3, EWC Directive). Once more, countries have transposed the provisions of the EWC Directive in non-harmonious ways, since some of them do not provide any statutory solution if the agreement does not include any arrangement for linking the procedures at the national and the European levels. Furthermore, of those countries that have transposed Article 12.3 from the EWC Directive, only a few add more precision regarding how both levels have to be linked.[[57]](#footnote-57) Moreover, it has been stated that the way Member States and social partners at each level perceive the issue of linking may be influenced by “the existence of co-determination rights, injunction rights, or more or less dissuasive sanctions to enforce local-level information and consultation rights.”[[58]](#footnote-58)

In conclusion, divergences in the laws governing the competencies and functioning of EWCs are a consequence of references contained in the EWC Directive to national law or practices and, consequently, the distinct forms in which countries have transposed the Directive’s minimum requirements. In spite of that, the principle of autonomy of parties rules the capacity of employee representatives and management to determine the scope of EWCs’ competencies. Therefore, the principle of autonomy implies that new possibilities for convergence lie among the distinct national traditions.

# III. THE EWC AS A SOURCE OF CONVERGENCE FOR NATIONAL COLLECTIVE BARGAINING PROCESSES: THE POTENTIAL OF THE AGENCY OF LABOUR

Despite the fragmentation characterising EWCs’ legal frameworks, they are likely to undergo a lengthy process of change by which an increasing number of EWCs are enlarging their competencies even to include collective bargaining power. The myriad of factors influencing the negotiation process establishing an EWC and its functioning may range from the managerial structure of a company[[59]](#footnote-59) to transnational variables such as the sector.[[60]](#footnote-60) Even when the EWC is already in operation, divergences arising among an EWC’s members can also be attributed to “representation cultures, trade union policies, and [the] labour market situation” in the countries of their constituencies.[[61]](#footnote-61) Moreover, actors’ strategies may be decisive in the functioning of EWCs.[[62]](#footnote-62)

The concept of agency may be useful to explain why the process of empowering the EWC’s role is taking place. Though the concept of agency has been used in distinct scientific fields,[[63]](#footnote-63) the approach given by labour geography literature will prove insightful. Labour geographers have brought the role of labour to the forefront in the study of the global economy and, more concretely, in the development of transnational production systems.[[64]](#footnote-64) From their perspective, the potential for worker action is embedded in “the formation of capital, the state, the community, and the labour market.”[[65]](#footnote-65) In this vein, they use the geographical concept of ‘political scale’ to explain that workers have employed scalar strategies through which labour has managed to “reconfigure political landscapes and renegotiate social hierarchies in ways which are more beneficial to the interests of workers.”[[66]](#footnote-66) The evolution of the role of EWCs shows this trend.

Since their emergence, EWCs have, effectively, been seen as formal structures making a European labour movement possible.[[67]](#footnote-67) Workers have, thus, shown great interest in the new representative body in that they could use EWCs to defend their interests at the transnational level. Furthermore, they have been approached as a primary European institution that offers “a basis for international cooperation between the various unions represented at both [the] group- and workplace-levels within transnational companies.”[[68]](#footnote-68) Because of those reasons, the expansion of the competencies of new EWCs may denote a strategy on behalf of workers to expand the role of these transnational representative bodies towards the adoption of new competencies, provoking a process of convergence of the different national traditions.

Although the idea of convergence may be elusive in the field of industrial relations,[[69]](#footnote-69) the idea is to approach EWCs as bodies where national divergences converge through new competencies that are distinct from those prescribed by both the EWC Directive and national regulations. It deals with the idea of the ‘vertical Europeanisation’ of labour relations by means of the establishment and functioning of EWCs.[[70]](#footnote-70) ‘Vertical Europeanisation’ refers to the establishment of a distinctive trans- and supranational sphere of communication and cooperation used as a level of problem solving beyond the nation state.[[71]](#footnote-71) Complementing it, ‘horizontal Europeanisation’ refers to the horizontal, cross-national interactions that form “an integral part of the whole EWC-communication structure” and play “an important role in the shaping of the actor-profile of the EWC.”[[72]](#footnote-72) Notwithstanding the convergence that will be discussed below, it is interesting to highlight the existence of a previous convergence of European industrial relations systems “on a pattern of representative consultation – or participation – at the workplace” in Western countries up to the 1980s.[[73]](#footnote-73)

## A. The Articulation of the Multilevel System of Worker Participation as a Starting Point for Convergence.

It has been argued that EWCs should be analysed as multi-level, multi-dimensional organisations due to the fact that driving forces, fields of power, and interests have been inserted into EWCs’ structures, their internal dynamics, and their external impacts – from “the local plant level, through the level of national companies and unions, up to the European level.”[[74]](#footnote-74) This complexity is institutionalised when, as part of the autonomy of the parties, an EWC’s functioning is established. The EWC Directive includes provisions reinforcing the effective functioning of EWCs, including some which trigger the convergence of national practices.

The most relevant provision is the need to coordinate EWC information and consultation procedures and those of national employee representation bodies. Furthermore, it is likely for national and transnational information and consultation procedures to take place simultaneously, since the issue at stake is relevant at both levels.[[75]](#footnote-75) Therefore, it becomes necessary to anticipate the articulation of these procedures, taking into account that they may happen simultaneously, or even that informing and consulting the EWC may come first.[[76]](#footnote-76) Indeed, the articulation of both levels is already considered in several agreements. For example, the ING’s EWC agreement establishes that, where “there are transnational issues that also call for information and consultation at the national or local level, (…) parties shall endeavour to ensure that the information and consultation process at the European level and national level shall begin in a coordinated manner.”[[77]](#footnote-77) In a similar way, the SE-Banken EWC agreement states that information“shall, if possible, be given to the EWC at the same time as to the local employee representative body concerned.” The level of priority the EWC is given is also included in some agreements such as the Novartis EWC agreement, whose Article 6.2 stipulates that EWC employee members should be informed and consulted “prior to national works councils to allow them to provide their timely input to the national works councils.”

The Directive also makes it mandatory for members of the EWC to inform employee representatives or, when there are no representatives, the workforce as a whole of the content of the information and consultation procedure carried out as well as its outcome (Article 10.2, EWC Directive). This duty to report through a top-down process guarantees that the information from the management is distributed and ensures the fully representative role of the EWC (Recital 33, EWC Directive).[[78]](#footnote-78) Jagodzinski has pointed out that the duty to report back was hoped to “improve articulation and facilitate a factual exchange of information between national and transnational fora.”[[79]](#footnote-79) However, these processes may transform into a bottom-up process inasmuch as some agreements make it possible for local representatives or appropriate constituents to give feedback to EWC members. For example, GlaxoSmithKline’s EWC agreement states that the EWC employee representatives will afford reasonable time “to communicate with their constituents and give them the opportunity to express their views and opinions.”

Thirdly, the Directive opens the door to negotiating the establishment of a select committee set up within the EWC whose “composition, appointment procedure, functions, and procedural rules” shall be also provided for in the agreement (Article 6.2.e, EWC Directive). The idea behind the select committee is to promote coordination and greater effectiveness of the EWCs’ regular activities and to make information and consultation procedures available at the earliest opportunity when exceptional circumstances arise (Recital 30, EWC Directive). Whereas the operative part of the Directive does not include any more references to the select committee, the subsidiary requirements contained in Annex 1 establish that the EWC “shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.”[[80]](#footnote-80) It is relevant to highlight that the same rights ascribed to the EWC shall apply to the select committee’s members.[[81]](#footnote-81)

The ability of the Select Committee to impel the convergence of collective bargaining processes is based upon the development of its role. For instance, in the case of BNP Paribas, the select committee (called the Bureau) “represents the countries which are part of the European Economic Area but do not have their own representative on the European Works Council.” Another example would be the Select Committee of the Donnelley EWC being able to participate in resolving disputes (presumably also at the national level). The convergence process is even more strongly apparent when exceptional circumstances occur and the select committee acts on behalf of the EWC.[[82]](#footnote-82) For example, General Dynamics’ EWC agreement provides for a procedure whose provisions are more similar to those contained in a national information procedure than those in the EWC itself.

## B. Building a New Transnational Participation Structure: the Convergence of Collective Bargaining Processes beyond National Industrial Relations.

EWCs are becoming a powerful structure where different traditions of worker participation converge. Indeed, social partners have highlighted the capacity of EWCs to become a mechanism of reconciling different national cultures regarding industrial relations.[[83]](#footnote-83) This is also the role of European Industry Federations (EIFs) when they give support to SNBs. For example, trade union UNI Europa may appoint SNB coordinators whose task is to make SNB members aware of the differences in national legislations and industrial relations and to promote “the position that the interests of employees from all countries should be fairly represented.”[[84]](#footnote-84)

The EWCs’ competencies have evolved from information and consultation to other forms of participation. For example, some EWCs are entitled to give recommendations and to receive a reasoned response (e.g., the EWCs established with MNCs Ecolab & Nalco,[[85]](#footnote-85) Roll-Royce,[[86]](#footnote-86) and David S. Smith[[87]](#footnote-87)). Other EWCs are even able to adopt resolutions, as in the case of ThyssenKrupp.[[88]](#footnote-88) This phenomenon lies in the potential of agreements established while setting up the EWC to fulfil and develop the different procedures used to inform and consult workers. Some factors may influence the negotiations establishing the EWCs’ functions. For instance, the subsidiary requirements might influence the parties negotiating the agreement establishing the EWC, though they are not applicable.[[89]](#footnote-89) Moreover, the European Union’s *social acquis* may also be an influential factor. For example, references to consultation aimed at reaching an agreement contained in some Directives “blur the distinction between consultation and bargaining.”[[90]](#footnote-90)

Analytically, ‘information’ and ‘consultation’ have been seen “as initial stages within an overall employee participation process, preceding, but differing from, employee participation and co-decision making.”[[91]](#footnote-91) In the same vein, Njoya has stated that information and consultation rights “offer a valuable support for other avenues of worker voice and participation.”[[92]](#footnote-92) However, the lines between all of these are hard to define. Blurred frontiers between consultation and negotiation would be also transferred from national practices to the EWCs’ functions. As has been argued, the consultation process tends to blur into negotiation “or into the other, stronger forms of co-determination-type employee involvement that exist in some countries, such as Austria, Finland, Germany, the Netherlands, Slovenia, and Sweden.”[[93]](#footnote-93) The same report maintains that the relationship between collective bargaining and consultation within dual-channel systems may blur, such as in the cases of Italy, Spain, and Sweden.

The blurred boundaries between consultation and negotiation, which have been transposed to the competencies of EWCs in their establishing agreements, may be explained by the so-called headquarters’ homeland effect. This refers to the “clear influence of the national political and especially the industrial relations regime of the home country of the European company.”[[94]](#footnote-94) The German case may be a good example, as Germany has transposed the definition of information and consultation given by the EWC Directive with a broader scope, thereby enriching the procedures of EWCs linked to German companies. According to the headquarters’ homeland effect, it is likely that the broader competencies of EWCs established in a German MNC, and thus influenced by the co-determination basis of the German model, may be transferred to the functions exercised by the EWC’s members, regardless of the national tradition of their home country.

If we look at the data provided by the European Works Councils Data Base (EWCdb),[[95]](#footnote-95) EWCs may carry out five activities other than those of information and consultation: EWCs can give opinion/comments; make recommendations; initiate projects; negotiate; and, finally, reach consensuses. Focusing on EWCs that were established in 2009 and onward and are still in force, it is possible to see the following results: firstly, 72% of EWCs established at companies headquartered in Germany have been endowed with the capacity to give opinions or comments, whereas only 38% of EWCs established at French companies are entitled with the same right. Secondly, the percentage of EWCs established at French companies whose competencies include initiating projects or reaching consensuses with management is significantly lower (3% and 2%, respectively) than the percentage of EWCs endowed with those competencies at German MNCs (23% and 27%, respectively). In general, it is often the case that EWCs are entitled to expanded procedures when MNCs are headquartered in or expand their operations throughout continental Europe. For example, none of the EWCs established at MNCs headquartered in the UK have been given the capacity to negotiate, while 36 EWCs established at MNCs with a subsidiary in the UK but are headquartered elsewhere have been empowered to negotiate; most of these are headquartered in Germany (17), France (7), and the Netherlands (3).

The headquarters’ homeland effect should be less relevant than the agency of labour when the EWCs’ competencies come close to collective bargaining and the capacity to conclude Transnational Company Agreements (TCAs). Given that neither the EWC Directive nor any national transposed laws entitle EWCs to negotiating power, it is likely that worker action would trigger the signature of a TCA. Despite other factors, such as the willingness of management and others[[96]](#footnote-96) to facilitate the development of EWCs as negotiating actors, expanding the competencies of EWCs, including incorporating negotiating powers, runs in direct contradiction with the effects managements try to avoid when signing TCAs: “the transfer of social and economic standards from their countries of origin to other countries” and “paving the way for international trade union organisations to become real negotiating partners for working conditions on a much greater scale.”[[97]](#footnote-97) Therefore, whether or not the convergence of national collective bargaining processes will entail transcending national differences in industrial relations and reinforcing the role of EWCs at the transnational arena, it should be concluded that labour will act as a catalyst for the empowerment of EWCs.

Regarding the capacity of EWCs to negotiate with management, although it would seem that they are limited to an EWC’s instalment agreement, the amount of TCAs concluded by EWCs is significant, and some of them have been published as annexes to the establishment agreements for some EWCs.[[98]](#footnote-98) In this vein, Lamers has argued that all agreements directly related to the EWC’s functions and the execution of its rights should be legally covered by the provisions related to renegotiations of the EWC agreement.[[99]](#footnote-99) From this perspective, most of these kinds of agreements would be legally binding. For instance, MNC Air France-KLM signed the “Framework agreement regarding the Outstations in Europe” in 2013, which settled the role and information and consultation procedures of the company’s EWC as well as those of local EWCs. MNC Diageo and its EWC signed the framework agreement entitled “Best practice guidelines on redeployment, redundancy, and outplacement” as an appendix to their 2007 EWC agreement. Yet another example includes MNC Daimler Chrysler, which agreed to the “Framework Regulation with the EWC on the Realignment of the Sales Organization in the EU” in 2007. Finally, the EWC of the France Telecom signed with the management the establishment of the ‘France Telecom World Works Council’ in 2010.

# IV. THE DISRUPTIVE ROLE OF EWCS THROUGHOUT THE CONVERGENCE OF COLLECTIVE BARGAINING PROCESSES

European Works Councils are representative bodies where the rights of workers to information and consultation may evolve into other procedures that reinforce the role of workers’ voices in the workplace. As has been said, the competencies of some EWCs have transformed into other capabilities, including the capacity to negotiate with management on transnational matters. As was also discussed above, expanding the reach of EWC involves converging national traditions in the new procedures and going above and beyond the simple methods of information and consultation provided for by the EWC Directive and national laws. On the other hand, those far-reaching procedures may be influenced by the national industrial relations’ traditions regarding worker participation. This may happen at the enterprise level, but it also may happen by way of the workforce encouraging the EWCs’ roles to be developed.

As a consequence, EWCs may be the source of an authentic, new level of participation for workers. In this sense, Njoya has argued that information and consultation rights, operating in conjunction with other mechanisms that allow workers’ voices to be heard, should be understood as promoting the ideals of industrial democracy.[[100]](#footnote-100) This should be the principal reason behind discussing the need to empower EWCs with new competencies, always with respect for each party’s autonomy when the agreement is signed. Moreover, if they are to play a role in the construction of industrial relations at the European level, Lamers affirms that “an effective dialogue will evoke more EWCs to conclude transnational texts at the European level.”[[101]](#footnote-101) In doing so, codetermination models referring to the competencies conferred to EWCs cannot be a taboo subject for the European Commission,[[102]](#footnote-102) which should also be said of their capacity as negotiators at the transnational level.[[103]](#footnote-103)

1. Schulten, T, ‘European Works Council: Prospects for a New System of European Industrial Relations’ (1996) 3 *European Journal of Industrial Relations* 303. [↑](#footnote-ref-1)
2. Commission stated that ʻ*[t]*he history of the attempts to establish Community-level rules on employee information, consultation and involvement is closely linked to the history of the European Community itselfʼ. See Commission, ‘Communication from the Commission on worker information and consultation’ (Communication) COM (95) 547 final, 3. [↑](#footnote-ref-2)
3. Schömann, I, ‘EU integration and EU initiatives on employee participation and social dialogue’ (2011) 17 *Transfer* 244. [↑](#footnote-ref-3)
4. Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [1975] OJ L48/29. [↑](#footnote-ref-4)
5. Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses [1977] OJ L61/26. [↑](#footnote-ref-5)
6. Conclusions of the Presidency, European Council in Hannover, 27 - 28 June 1988 <www.europarl.europa.eu/summits/hannover/default\_en.htm> accessed 18 July 2017. [↑](#footnote-ref-6)
7. Commission of the European Communities, ‘Social Dimension of the Internal Market’ (Commission Working Paper) SEC (1988) 1148 final. [↑](#footnote-ref-7)
8. Conclusions of the Presidency, European Council in Strasbourg, 8-9 December 1989 <www.europarl.europa.eu/summits/strasbourg/default\_en.htm> accessed 18 July 2017. [↑](#footnote-ref-8)
9. Council Directive 94/45/EC of 22 September 1994 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. [1994] OJ L254/64. [↑](#footnote-ref-9)
10. Commission, ‘Communication from the Commission concerning its Action Programme relating to the Implementation of the Community Charter of Basic Social Rights for Workers’ (Communication) COM (89) 568 final. [↑](#footnote-ref-10)
11. European Parliament, ‘Resolution on the most important legislative proposals in the social field to be included in the Commission's programme for 1990’ [1990] OJ C68/155. [↑](#footnote-ref-11)
12. This is more developed in: European Parliament, ‘Resolution on the Commission's action programme relating to the implementation of the Community Charter of fundamental social rights for workers -priorities for 1991-1992’ [1990] OJ C260/167. [↑](#footnote-ref-12)
13. Commission, ‘Communication concerning the application of the agreement on social policy presented by the Commission to the Council and the European Parliament’ (Communication) COM (93) 600 final. [↑](#footnote-ref-13)
14. Commission, ‘Report on the Community Charter of the Fundamental Social Rights of Workers and on the Protocol on Social Policy’ (Report) COM (95) 184 Final, 42. [↑](#footnote-ref-14)
15. See Commission, ‘European Social Policy. Options for the Union’ (Green Paper) COM (93) 551; Commission, ‘European social policy - a way forward for the Union’ (White paper) COM (94) 333 Final. [↑](#footnote-ref-15)
16. Commission, ‘Communication from the Commission on worker information and consultation’ (Communication) COM (95) 547 final. [↑](#footnote-ref-16)
17. Conclusions of the Presidency, European Council in Luxemburg in 12-13 December 1997 <www.europarl.europa.eu/summits/hannover/default\_en.htm> accessed 18 July 2017. [↑](#footnote-ref-17)
18. Commission, ‘Proposal for a Council Directive establishing a general framework for Informing and Consulting Employees in the European Community’ (Communication) COM (1998) 612 final. [↑](#footnote-ref-18)
19. Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation. [2002] OJ L80/29. [↑](#footnote-ref-19)
20. Njoya, W, ‘The EU Framework of Information and Consultation: Implications for Trades Unions and Industrial Democracy’ in A Bogg, C Costello and ACL Davies (ed), *Research Handbook on EU Labour Law* (Cheltenham, Edward Elgar, 2016) p. 367. [↑](#footnote-ref-20)
21. Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. [2001] OJ L294/22. [↑](#footnote-ref-21)
22. Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. [2003] OJ L207/25. [↑](#footnote-ref-22)
23. Conclusions of the Presidency, European Council in Cologne 3-4 June 1999 < www.europarl.europa.eu/summits/kol1\_en.htm> accessed 18 July 2017. [↑](#footnote-ref-23)
24. 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). [2009] OJ L122/28 [↑](#footnote-ref-24)
25. Lamers, J ‘EWCs’ Role Recast: A European Actor?’ in F Dorssemont and T Blanke (ed), *The Recast of the European Works Council Directive* (Intersentia, 2010) p. 358. [↑](#footnote-ref-25)
26. Njoya, W, ‘The EU Framework of Information and Consultation: Implications for Trades Unions and Industrial Democracy’ in A Bogg, C Costello and ACL Davies (ed), *Research Handbook on EU Labour Law* (Cheltenham, Edward Elgar, 2016) p. 369. [↑](#footnote-ref-26)
27. Schömann, I, ‘EU integration and EU initiatives on employee participation and social dialogue’ (2011) 17 *Transfer* 244. p. 245 [↑](#footnote-ref-27)
28. Art 5.3 TEU states that ʻthe Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.’ [↑](#footnote-ref-28)
29. Commission, ‘Proposal for a European Parliament and Council Directive 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)’ (Communication) COM (2008) 419 final, 7. [↑](#footnote-ref-29)
30. Jagodzinski, R, *Variations on a theme? The implementation of the EWC Recast Directive* (Brussels, ETUI, 2015) 106. [↑](#footnote-ref-30)
31. Njoya, W, ‘The EU Framework of Information and Consultation: Implications for Trades Unions and Industrial Democracy’ in A Bogg, C Costello and ACL Davies (ed), *Research Handbook on EU Labour Law* (Cheltenham, Edward Elgar, 2016) p. 371. [↑](#footnote-ref-31)
32. Commission, ‘Proposal for a Council Directive on the establishment of European committees or procedures in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees’ (Proposal for a Council Directive) COM (94) 134 final, 12. [↑](#footnote-ref-32)
33. Commission, ‘Proposal for a Council Directive on the establishment of European committees or procedures in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees’ (Proposal for a Council Directive) COM (94) 134 final, 12. [↑](#footnote-ref-33)
34. Picard, S, *European Works Councils: a trade union guide to Directive 2009/38/EC* (Brussels, ETUI. 2010) 73. [↑](#footnote-ref-34)
35. That without prejudice to national legislation or practice laying down thresholds for the establishment of employee representation bodies (art 5.2 of the EWC Directive). [↑](#footnote-ref-35)
36. Commission, ‘Proposal for a Council Directive on the establishment of European committees or procedures in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees’ (Proporal for a Council Directive) COM (94) 134 final, 12. [↑](#footnote-ref-36)
37. See Commission, ‘Report from the Commission to the European Parliament and the Council on the application of the Directive 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’ (Report) COM (2000)188 final, 12. [↑](#footnote-ref-37)
38. Picard, S, *European Works Councils: a trade union guide to Directive 2009/38/EC* (Brussels, ETUI. 2010) 59. [↑](#footnote-ref-38)
39. Picard, S, *European Works Councils: a trade union guide to Directive 2009/38/EC* (Brussels, ETUI. 2010) 115. However, as recital 34 EWC Directive states, ʻ*[t]*hey must not be subject to any discrimination as a result of the lawful exercise of their activities and must enjoy adequate protection as regards dismissal and other sanctions.’ [↑](#footnote-ref-39)
40. Jagodzinski, R, ‘Implementation of enforcement provisions of the European Works Councils Recast Directive: are sanctions really ‘effective, proportionate and dissuasive’?’ in *ETUI Policy Brief* 7/2014. Available in www.etui.org/publications. [↑](#footnote-ref-40)
41. Njoya, W, ‘The EU Framework of Information and Consultation: Implications for Trades Unions and Industrial Democracy’ in A Bogg, C Costello and ACL Davies (ed), *Research Handbook on EU Labour Law* (Cheltenham, Edward Elgar, 2016) p. 371. [↑](#footnote-ref-41)
42. Eurofound, *European Works Councils in practice: Key research findings (*Luxembourg, Office for Official Publications of the European Communities, 2008) 17. [↑](#footnote-ref-42)
43. Eurofound, *European Works Council developments before, during and after the crisis* (Luxembourg, Publications Office of the European Union, Luxembourg, 2015) 10. [↑](#footnote-ref-43)
44. De Spiegelaere, S, *Too little, too late? Evaluating the European Works Councils Recast Directive*. (Brussels, ETUI, 2016) 30. [↑](#footnote-ref-44)
45. Eurofound, *Third European Company Survey – Overview report: Workplace practices – Patterns, performance and well-being* (Luxembourg, Publications Office of the European Union, 2015) 99. [↑](#footnote-ref-45)
46. Eurofound, *Third European Company Survey – Overview report: Workplace practices – Patterns, performance and well-being* (Luxembourg, Publications Office of the European Union, 2015)103. [↑](#footnote-ref-46)
47. Eurofound, *Mapping key dimensions of industrial relations* (Luxembourg, Publications Office of the European Union, 2016) 40. [↑](#footnote-ref-47)
48. Denmark, Finland, Sweden. [↑](#footnote-ref-48)
49. Austria, Belgium, Germany, Luxembourg, Netherlands, Slovenia. [↑](#footnote-ref-49)
50. Cyprus, Ireland, Malta, United Kingdom. [↑](#footnote-ref-50)
51. Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia. [↑](#footnote-ref-51)
52. Jagodzinski, S, *Variations on a theme? The implementation of the EWC Recast Directive* (Brussels, ETUI, 2015) 65. [↑](#footnote-ref-52)
53. According to the Directive, the competence of the EWC shall be limited to transnational issues (art 1.3 EWC Directive). [↑](#footnote-ref-53)
54. Picard, S, *European Works Councils: a trade union guide to Directive 2009/38/EC* (Brussels, ETUI. 2010) 24. [↑](#footnote-ref-54)
55. The Directive illustrates the idea of the ‘potential effects’ of the matter subjected to the competence of the EWC as those “regardless of the number of Member States involved, *[which]* are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States” (recital 16, EWC Directive). [↑](#footnote-ref-55)
56. Jagodzinski, R, *Variations on a theme? The implementation of the EWC Recast Directive* (Brussels, ETUI, 2015) 65. [↑](#footnote-ref-56)
57. Jagodzinski, J, *Variations on a theme? The implementation of the EWC Recast Directive* (Brussels, ETUI, 2015) 66. [↑](#footnote-ref-57)
58. Eurofound, *Linking information and consultation procedures at local and European level* (Luxembourg, Publications Office of the European Union, 2015) 1. [↑](#footnote-ref-58)
59. Gilson, C, and Weiler, A, ‘Transnational Company Industrial Relations: The Role of European Works Councils and the Implications for International Human Resource Management’ (2008) 50 *Journal of Industrial Relations*. [↑](#footnote-ref-59)
60. Marginson, P, ‘The Eurocompany and the Euro Industrial Relations’ (2000) 6 *European Journal of Industrial Relations* 30. [↑](#footnote-ref-60)
61. Bicknell, H, and Knudsen, H, ‘Comparing German and Danish Employee Representatives on European Works Councils: Do Differences in National Background Matter?’ (2006) 48 *Journal of Industrial Relations* 449. [↑](#footnote-ref-61)
62. Mählmeyer, V, Rampeltshammer, L, and Hertwig, M, ‘European Works Councils during the financial and economic crisis: Activation, stagnation or disintegration?’ (2017) *European Journal of Industrial Relations*. [↑](#footnote-ref-62)
63. Shapiro, S P, ‘Agency Theory’ (2005) 31 *Annual Review of Sociology*. [↑](#footnote-ref-63)
64. Cumbers, A, Nativel, C, and Routledge, P, ‘Labour agency and union positionalities in global production networks’ (2008) 8 *Journal of Economic Geography*. [↑](#footnote-ref-64)
65. Coe, N M, and Jordhus-Lier, D C, ‘Constrained agency? Re-evaluating the geographies of labour’ (2010), 35 *Progress in Human Geography* 214. [↑](#footnote-ref-65)
66. Coe, N M, and Jordhus-Lier, D C, ‘Constrained agency? Re-evaluating the geographies of labour’ (2010), 35 *Progress in Human Geography* 219. [↑](#footnote-ref-66)
67. Turner, L, ‘The Europeanization of Labour: Structure before action’ (1998) 2 *Europen Journal of Industrial Relations* 328. [↑](#footnote-ref-67)
68. Lecher, W, ‘European Works Councils. Experiences and perspective’ in W E Lecher and HW Platzer (ed), *European Union – European Industrial Relations? Global challenges, national developments and transnational dynamics* (London and New York, Routledge,2002) 249 [↑](#footnote-ref-68)
69. Turner, L, and Windmuller, J, ‘Convergence and diversity in industrial relations’, in M F Neufeld and J T McKelvey (eds) *Industrial relations at the dawn of the new millenium* (Ithaca, NY, Cornell University Press, 1998) 195. [↑](#footnote-ref-69)
70. Katz H, and Wailes, N, ‘Convergence and divergence in employment relations in A Wilkinson, G Wood and R Deeg (eds) *The Oxford Handbook of Employment Relations: Comparative Employment Systems* (Oxford, OUP, 2014) 55. [↑](#footnote-ref-70)
71. Platzer, HW, ‘Approaching and theorising European Works Councils: comments on the emergence of a European multi-level-structure of employee involvement and participation’ in M Hertwig, L Pries and L Rampeltshammer (eds) *European Works Councils in complementary perspectives* (Brussels, ETUI, 2009) 56. [↑](#footnote-ref-71)
72. Platzer, HW, ‘Approaching and theorising European Works Councils: comments on the emergence of a European multi-level-structure of employee involvement and participation’ in M Hertwig, L Pries and L Rampeltshammer (eds) *European Works Councils in complementary perspectives* (Brussels, ETUI, 2009) 55. [↑](#footnote-ref-72)
73. Streeck, W, ‘Works Councils in Western Europe: From Consultation to Participation’, in J Rogers and W Streeck (eds) *Works Councils: Consultation, Representation, and Cooperation in Industrial Relations* (Chicago, University of Chicago Press, 1995) 347. [↑](#footnote-ref-73)
74. Hertwig, M, Pries, L, and Rampeltshammer, L, ‘European Works Councils as international non-profit-organisations’ in *European Works Councils in complementary perspectives* (Brussels, ETUI, 2009) 28. [↑](#footnote-ref-74)
75. The subsidiary requirements in Annex One refer as a likely EWC matter that which is related “to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.’ EDITOR’S NOTE: I tried to edit the introductory part of this sentence the best I can, but it still does not make sense to me. (I would have put this in a comment, but I can’t add comments to footnotes.) [↑](#footnote-ref-75)
76. Recital 37 stipulates that national legislation and/or practice “may have to be adapted to ensure that the European Works Council can, where applicable, receive information earlier or at the same time as the national employee representation bodies but must not reduce the general level of protection of employees.” [↑](#footnote-ref-76)
77. It also says that where ʻpossible and required, all levels will be informed at an early stage, allowing for enough time for consultation to have a meaningful effect.’ [↑](#footnote-ref-77)
78. Without prejudice of the provisions on confidential information in art 8 EWC Directive. [↑](#footnote-ref-78)
79. Jagodzinski, R, *Variations on a theme? The implementation of the EWC Recast Directive* (Brussels, ETUI, 2015) 101. [↑](#footnote-ref-79)
80. Indeed, recital 44 also foresees that the select committee should be able to consult regularly. [↑](#footnote-ref-80)
81. The select committee is guaranteed with the same rights and duties as the EWC, according to points four (to meet without the management concerned being present), five (to be assisted by experts of its choice), and six (cost of organising meetings and arranging for interpretation facilities and accommodation and travel expenses) of the subsidiary requirements. [↑](#footnote-ref-81)
82. The subsidiary requirements state that “there are exceptional circumstances or decisions affecting the employees’ interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings, or collective redundancie” (point three of the subsidiary requirements). [↑](#footnote-ref-82)
83. , CEEP, ETUC, UEAPME, UNICE ‘Lessons learned on European Works Councils’ <www.etuc.org/IMG/pdf/7c-EWCs\_lessons\_learned\_010305-EN.pdf > accessed 19 July 2017, p. 2. [↑](#footnote-ref-83)
84. UNI Global Union, ‘UNI Europa Guidelines on European Works Councils’ <www.uniglobalunion.org/publications/uni-europa-guidelines-european-works-councils-full-version>, accessed 19 July 2017, p. 13. [↑](#footnote-ref-84)
85. The 2015 agreement states in Article 8.3 that “Central Management shall take the EWC’s opinion and recommendation into account in its decision-making process and shall give a reply to the EWC with a reasoned response within fifteen (15) days.” [↑](#footnote-ref-85)
86. The 2011 agreement defines ‘consultation’ as including the right to “obtain a response and the reasons for that response, to any opinion the MNC might express.” [↑](#footnote-ref-86)
87. According to the agreement of 2013, the EWC is able to submit suggestions that will be also considered by the management. [↑](#footnote-ref-87)
88. Agreement of establishment of ThyssenKrupp’s EWC adopted in 2009. [↑](#footnote-ref-88)
89. Picard, S, *European Works Councils: a trade union guide to Directive 2009/38/EC* (Brussels, ETUI. 2010) 85. [↑](#footnote-ref-89)
90. Barnard, C, *EU Employment Law* (Oxford, OUP, 2012) 639. [↑](#footnote-ref-90)
91. Ribarova, E, ‘Information and consultation arrangements: results from a transnational study’ (2011) 17 *Transfer* 231. [↑](#footnote-ref-91)
92. Njoya, W, ‘The EU Framework of Information and Consultation: Implications for Trades Unions and Industrial Democracy’ in A Bogg, C Costello and ACL Davies (ed), *Research Handbook on EU Labour Law* (Cheltenham, Edward Elgar, 2016) p. 365 [↑](#footnote-ref-92)
93. Eurofound, *National practices of information and consultation in Europe* (Luxembourg, Publications Office of the European Union, Luxembourg, 2013) 57. [↑](#footnote-ref-93)
94. Hertwig, M, Pries, L, and Rampeltshammer, L, ‘European Works Councils as international non-profit-organisations’ in *European Works Councils in complementary perspectives* (Brussels, ETUI, 2009) 24. [↑](#footnote-ref-94)
95. ETUI, ‘European Works Councils Data Base’ (*European Works Councils and SE works councils Data Base of the ETUI*). <www.ewcdb.eu> accessed 18 July 2017. [↑](#footnote-ref-95)
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97. Eurofound, *The impact of Codes of Conduct and International Framework Agreements on social regulation at company level* (Luxembourg, Office for Official Publications of the European Communities, 2008) 46. [↑](#footnote-ref-97)
98. Commission, ‘The role of transnational company agreements in the context of increasing international integration’ (Staff Working Document) SEC (2008) 2155, 6. [↑](#footnote-ref-98)
99. Lamers, J, ‘EWCs’ Role Recast: A European Actor?’ in F Dorssemont and T Blanke (ed), *The Recast of the European Works Council Directive* (Intersentia, 2010) p. 394. [↑](#footnote-ref-99)
100. Njoya, W, ‘The EU Framework of Information and Consultation: Implications for Trades Unions and Industrial Democracy’ in A Bogg, C Costello and ACL Davies (ed), *Research Handbook on EU Labour Law* (Cheltenham, Edward Elgar, 2016) p. 365 [↑](#footnote-ref-100)
101. Lamers, J, ‘EWCs’ Role Recast: A European Actor?’ in F Dorssemont and T Blanke (ed), *The Recast of the European Works Council Directive* (Intersentia, 2010) p. 394. [↑](#footnote-ref-101)
102. In 1997, the EP affirmed the need to clarify “what role the EWC can play in an overall concept of codetermination and whether, after a few years’ consolidation, it can participate in negotiations on the codetermination model of the European company.” See European Parliament, ‘Resolution on the communication from the Commission on worker information and consultation’ [1997] OJ 33/130. [↑](#footnote-ref-102)
103. Commission, ‘The role of transnational company agreements in the context of increasing international integration’ (Communication) COM (2008) 419 final. [↑](#footnote-ref-103)