

Chapter 1

Setting the scene

As initially conceived in Council Directive 94/45/EC (hereinafter ‘the Directive’), European Works Councils (EWCs)¹ were innovative bodies intended to ‘improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings’ (Article 1). This was to be achieved through information exchange and consultation between central managers of multinational companies (MNCs) with European operations and worker representatives selected from the different sites of the MNC. Subsequently, more than 1,250 EWCs have been established with operations undertaken in a range of industries and based in different European Union (EU) Member States and countries within the European Economic Area (EEA) that committed to the Directive (De Spiegelaere and Jagodziński 2015).²

European-level policy-makers viewed EWCs as a body that is integral to the European social model and as a keystone to the establishment of a European system of industrial relations (Savoini 1995). In the context of the then formative development of the European single market, EWCs were viewed as mitigating the impact of the ‘fundamental asymmetry’ between the economic and social elements of European integration (Scharpf 2002: 665) by promoting an interdependence between the social partners based on regular meetings. The initial intentions of European-level policy-makers were not realised in practice, with the consequence that the Recast EWC Directive 2009/38/EC (hereinafter the ‘Recast’) was adopted to revise and reformulate the terms of the Directive with the intention of improving practice. The stated objective of the Recast, however, remained the same as that of the original Directive (Article 1(1)). A purpose of this book is to establish whether the Recast has promoted EWC practice that is consistent with the initial intentions of European-level policy-makers.

EWCs are relatively immature bodies by comparison with many national institutions of labour representation in Western Europe. EWCs are also unique in that they are transnational bodies involving lay representatives. Furthermore, the legislation that underpins EWCs was reformed within some 15 years of the adoption of the Directive as European policy-makers strove to create circumstances within which the stated objectives of EWCs could be attained. These points illustrate that EWCs are an institution in process. Compounding the processual nature of the institution is the

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1. The Directive also allowed a ‘procedure for informing and consulting employees’ to be established rather than an EWC. Unless explicitly stated, this book uses the term ‘EWC’ throughout to refer to both legal options.
 2. Between 1957 and 1992, the official name was the ‘European Economic Community’. It was only in 1992 that it became known as the ‘European Union’. For ease of explanation, the term ‘European Union’ is used throughout this publication.

continual development of EWC practices and the absence of a common understanding between and within the social partners regarding the purpose of the institution and how it might develop. It should also be acknowledged that further reviews of the legislation are envisaged, raising the prospect of further change to the underpinning regulations. In short, EWCs are an institution in process where the underpinning regulations, objectives and practices are not fixed but are subject to debate and contestation.

Irrespective of the legislative underpinning, EWCs are institutions of indirect representation in which employee representatives voice the interests of the workforce with the intention of influencing strategic corporate decision-making. As such, EWCs are a transnational variant of national works councils that are present in many Member States. Constitutionally, however, EWCs are limited by comparison to many national systems of works councils. Unlike many national works councils, for example, EWCs are restricted to information and consultation rights. There are no codetermination rights as are available to German and Austrian works councils or negotiation rights as are available to Hungarian works councils (Slomp 1996: 79–91; Tóth 2001). Similarly, the subsidiary requirements set out in the Annex to the Directive (point 1(a)) and Annex I to the Recast (point 1(a)) include items that may appear on the agenda of an EWC, but do not state that these items must necessarily appear. Whereas some national works council systems specify which agenda items are attached to either an information right or a consultation right, EWC legislation draws no such distinction. EWC legislation also stipulates a minimum of one plenary meeting per year. While the legislation does not preclude more frequent meetings, it sets a particularly low standard compared to the frequency of meetings of national works councils (Slomp 1996: 79–91). Furthermore, Article 13 of the Directive allowed the establishment of EWCs between 22 September 1994 and 22 September 1996 that were exempt from many of the terms of the Directive. The voluntary EWCs established during this period, of which it is estimated that there are about 490 (De Spiegelaere and Jagodziński 2015), are also exempt from the provisions of the Recast.³ While some argue that voluntary agreements established under Article 13 of the Directive are subject to the core definitions of the concepts of ‘transnational information and consultation’ (Picard 2010: 34), the point remains that the range of constitutional shortfalls raises questions concerning the operation of EWCs: namely, can these shortfalls be overcome or do they preclude the institution operating in a manner consistent with the intentions of European-level policy-makers?

In contrast to the constitutional shortfalls identified when comparing EWCs with national works councils, the operational challenges faced by both institutions have many similarities in principle. This is particularly the case regarding the ‘intensity of participation’ and articulation. These operational matters are clearly not independent of the constitutional arrangements applicable to EWCs but are central to the development of an institution with the capacity to influence corporate decision-making. These operational matters are briefly considered below as a means of introducing some of the themes that figure large throughout this study.

3. Throughout this study, these agreements are referred to as ‘voluntary agreements’. Earlier studies have referred to these agreements as Article 13 agreements or pre-directive agreements. The preference for the term voluntary agreements rests on the point that the Recast includes an Article 13 covering other matters and that some EWCs were established before the Directive was first adopted in 1994.

The ‘intensity of participation’ refers to the extent to which employee representatives can exert influence and power within institutions of employee participation (Gold and Hall 1990: 4; Knudsen 1995: 8–10). Clearly, constitutional factors directly affect the intensity of participation. The absence of a codetermination right, for example, necessarily curtails the intensity of participation. Operational matters also influence the intensity of participation. Information and consultation should be timely and of the appropriate quality. Both in principle and in practice, in order to be meaningful, information exchange and consultation should be completed before management has finalised a decision to allow EWC representatives the opportunity to influence both the strategic corporate decision and the manner of its implementation (Blanke and Rose 2010). EU policy-makers acknowledge this point on two counts. First, Article 27 of the 2000 Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’) states that ‘[w]orkers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time’. Second, and in recognition of the inadequacies of EWC practices based on the Directive, the Recast advocates the provision of information and consultation in sufficient time to allow ‘in-depth’ impact assessments to be completed of the matter at hand. Furthermore, information has to be provided ‘without slowing down the decision-making process in undertakings’ (recital 22, Recast) and consultation has to allow for the ‘expression of an opinion which will be useful to the decision-making process’ (recital 23, Recast). The immediate research question is thus: does the intensity of participation at EWCs allow EWC representatives to exert influence and power over the content and the implementation of corporate strategic decision-making?

Excluding an EWC representative from debates on either the content or the implementation of a strategic corporate decision places that representative in an invidious position. Although responsibility for a decision made in these circumstances lies with management, those represented by the EWC representative may view him/her as responsible for the decision and its implications, given that there is, by definition, a ‘distance’ between the EWC representative and the workers that s/he represents. It is thus necessary to articulate the activities of the EWC with other institutions of labour representation within the MNC and with interests in the MNC (Martinez Lucio and Weston 2000). In practice, articulation with national works councils and/or trade unions within the MNC and with European trade union federations (ETUFs)⁴ beyond the MNC would appear to be a minimum requirement for EWC activities to be situated within a ‘network’ of labour representation. A failure to articulate the EWC with other institutions of labour representation may lead EWC representatives to become politically isolated from representatives of labour elsewhere in the MNC. In these circumstances, initiatives arising from information and consultation within the EWC may be undermined from the perspective of labour, as EWC representatives will not be able to brief representatives throughout the MNC on the initiative. While a range of mechanisms to articulate EWCs with other institutions of labour representation are in place, the most prominent are reporting back procedures, the selection of EWC

4. Although the term ‘European industry federation’ was previously used, the more recent name ‘European trade union federation’ is used throughout this study.

representatives from people already holding representative positions within other institutions of labour representation, and the appointment of EWC coordinators to liaise with the ETUFs (Haipeter et al. 2019). To a degree, each of these mechanisms is reliant on the willingness of management *inter alia* to provide premises and tools for reporting back. Some managements, however, may restrict articulation to hinder the effective operation of labour representation within EWCs (Pulignano and Waddington 2020). The provision of training by trade union organisations may also encourage articulation insofar as the establishment of communication systems and interrelationships between institutions of labour representation are prominent issues addressed in training courses. Similarly, coordination between the trade unions whose members are represented on the EWC contributes to the development of articulation (Pulignano 2005). In the context of articulation, the research question thus centres on the degree to which EWC representatives are embedded within networks of labour representation.

To elaborate these themes and to introduce further points of analytical departure, this chapter comprises two further sections. The first of these will review the current evidence on EWCs. This evidence forms the counterpoint to the survey data presented throughout this book. The policies of the actors relevant to the development of EWCs are discussed in Chapter 2 in order to identify the areas of contestation between them. The role of the actors is thus downplayed in the review of the evidence. A second section will introduce the survey research that underpins this study, outline the structure of the presentation and briefly summarise the argument advanced in this book.

What does extant research tell us?

The novelty and potential of EWCs has stimulated a vast array of research since the early 1990s. The purpose here is to identify some of the themes addressed by this research. These themes introduce evidence on several analytical strands against which the data generated in the research reported here are compared. Although distinctions between the categories are by no means hard and fast, extant research is discussed by reference to four disparate categories: history and law; numerical studies of agreements; quality and timing of information and consultation processes; and infrastructural issues beyond the formal information and consultation agenda.

History and law

The initial focus of studies in this category was on the duration of the negotiations that resulted in the Directive and its content (Hall 1992; Danis and Hoffmann, 1995). Similar themes were prominent in history and law studies of the processes leading to, and the content of, the Recast (Jagodziński 2008; Lulom 2010). Initial analyses emphasised the innovative character of the institution, particularly the bringing together of employee representatives from different sites operated by MNCs on a regular and transnational basis (Meissner 1994).

With regard to the Directive, attention was directed towards the form that EWCs may adopt (Ramsay 1997; Stoop 1994); the potential and/or limitations of the legislation (Knutsen 1997; Streeck 1997); comparisons with arrangements for information and consultation within Member States and how EWCs might impinge upon these arrangements (Hancké 2000); the implications for the parties in terms of the provision of training and other forms of support to EWC representatives (Miller 2002; Stirling 2004);⁵ and the identification of managerial objectives for engagement with the EWC (Lamers 1998; Hume-Rothery 2004).

Initial analyses of the Directive were divided into those who viewed the measure critically and those who saw potential in the legislation that required realisation. Academic critics highlighted the limited capacity for information and consultation practices in EWCs, coupled with the absence of meaningful sanctions for non-compliance (Lecher et al. 1999; Royle 1999); the limits to transnational communication systems on the labour side (Lecher et al. 2001; Veersma 1999); different definitions of the objectives of EWCs proposed by EWC representatives (Fulton 1996; Rivest 1996); the likelihood that EWCs may come to serve national rather than transnational interests (Hancké 2000; Wills 2000) and the limited capacity of trade union organisations⁶ to support EWC representatives and develop effective networks through which transnational activities may be conducted (Keller 1995; Streeck 1997).

In contrast, those who saw potential in the Directive emphasised those features that required development if the potential of the Directive was to be realised, while acknowledging that the legislation was limited in scope. Among the features that required some development were a common identity or solidarity among EWC representatives (Knudsen et al. 2007; Miller 2002); transnational networks of employee representatives within which EWC representatives were embedded (Weston and Martinez Lucio 1998; Stirling 2004); the establishment of trust among EWC representatives with experiences based in very different industrial relations environments (Timming 2006; Stoop 1994); and training programmes to promote trust and solidarity, to develop an understanding of different industrial relations systems and to enhance the language skills of EWC representatives (Gohde 1995; Miller 2002). In short, those emphasising the potential of the Directive saw trade union activity as the means by which the potential of the Directive could be realised, as such activity would deliver training programmes and underpin the development of solidarity, networks and trust. In contrast, critics of the Directive thought that trade union activity would be insufficient to overcome the inherent weakness of the Directive, in part due to limited resources available at European level.

While the debate between the critics of the Directive and those who saw potential in the measure has subsided, primarily due to the withdrawal of many of the critics from the topic, the issues at the centre of the debate remain contentious. There are three

5. The term 'EWC representatives' is used here to refer to all persons formally selected to serve on EWCs. Later chapters draw distinctions between different categories of EWC representative.

6. The term 'trade union organisations' is used here to refer collectively to the ETUC, ETUFs, national trade union confederations and national trade unions.

reasons for this. First, the process leading to, and the adoption of, the Recast generated further debate about the viability of the legislation in fulfilling the objectives assigned to it by European policy-makers (Dorssemont and Jagodziński 2018). Second, the decision to opt for a directive rather than a regulation remains contentious. A regulation would have limited diversity and subsidiarity in practice (Villiers 2009), which, as subsequent analysis shows, is problematic. Third, debates around identity, trust and solidarity now centre on the circumstances that allow or inhibit the development of these attributes.

The adoption of the Recast confirmed the position of the academic critics of the Directive insofar as the Recast revised elements of the Directive identified by the critics as inadequate. In particular, the following were cited by critics as constituting distinct limitations of the Directive and were addressed in the Recast, albeit not necessarily to their satisfaction: the definition of information and consultation to take into account timeliness and improvements in quality, and the provision of in-depth impact assessments (Articles 2(f) and 2(g)); the communication obligations to link European- and national-level activities (Articles 10(2), 6(2)(c) and 12); the right to training without loss of wages (Article 10(4)); and the introduction of ‘effective, dissuasive and proportionate’ sanctions (recital 36)⁷ to be put in place by Member States to encourage compliance (Article 11). Since the adoption of the Recast, the debate has shifted to addressing whether the revisions are sufficient to satisfy the critics (Laulom 2010; De Spiegelaere 2016). The research data generated for this study are directed towards establishing the impact of the Recast on the practices of EWCs.

Rather than debating whether the Directive or Recast provide an adequate underpinning for the development of identity, trust and solidarity, recent research has focused on those features that develop or inhibit these attributes and the different forms that these attributes might take (Kotthoff 2007; Kotthoff and Whittall 2014; Hürtgen 2011). Case study evidence shows that, where a common identity based on some form of mutual transnational interdependence has been established, EWCs are more effective (Knudsen et al. 2007; Kotthoff and Whittall 2014; Weiler 2004). Even in supposed ‘best case’ EWCs, however, ‘the foundations of trust and solidarity’ are inherently fragile, can be easily undermined and can be sustained only through constant cooperative action (Mählmeyer et al. 2017; Greer and Hauptmeier 2012).

A range of factors have been associated with the generation or, conversely, the preclusion, of trust and solidarity. The principal structural factor associated with the generation of a common identity within an effective EWC is a high degree of internationalisation of the MNC coupled with the introduction of centralised management systems operating at European level (Marginson et al. 2004; Kotthoff 2006). ‘European companies’ (known by the Latin name ‘Societas Europea’ or SE) with these features operate in a network of interdependent sites and conduct interdependent operations, which promotes a mutual interdependence among the EWC representatives (Kotthoff and Whittall 2014). A second range of factors viewed as limiting the development of a common identity

7. Recitals are not formally part of a directive and do not have a force in law. They are used, however, to amplify and clarify the terms of a directive. In practice, recital 36 thus suggests the scope of sanctions in cases of infringement.

relate to differences between national systems of interest representation and a lack of knowledge thereof among EWC representatives, competing interests between the different sites operated by the MNC, the dominance of representatives from the home country of the MNC on the EWC, resulting in the exclusion of other representatives from involvement in decision-making processes, and inadequate support from trade unions (Lecher et al. 1999; Ramsay 1997; Rampeltshammer and Wachendorf 2009; Telljohann 2005b; Klemm et al. 2011). A third range of factors that may inhibit the development of a common identity among representatives are the absence of appropriate language skills, a reluctance among senior managers to engage with the EWC, the infrequency of plenary meetings and the absence of communication between meetings (Telljohann 2005b; Klemm and Weyand 2009; Ierardo and Ongaro n.d.). The impact of some of these factors on the development of a European identity or solidarity among EWC representatives constitutes a further analytical strand of this study.

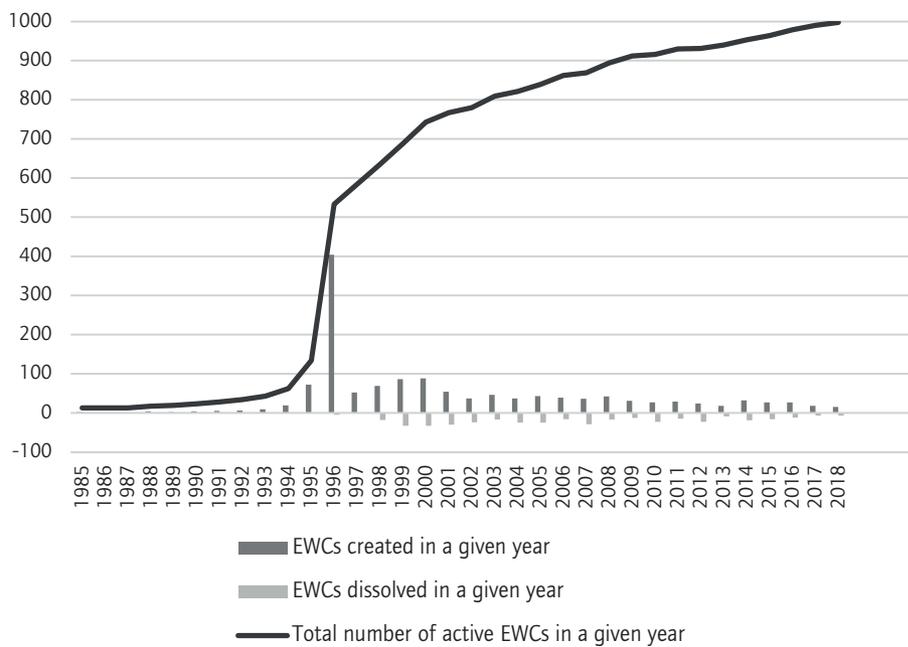
The debates on whether the content of the Directive and Recast is sufficient to achieve the objectives intended by European policy-makers are supplemented by analyses of legal proceedings brought to clarify the legislation. The imprecise nature of the legislation prompted some to speculate whether many court proceedings would be brought in an effort to achieve greater precision (Blanpain 1998). A review of litigation pursued through the national courts of eight countries, however, unearthed only 25 cases in the period until 2010 (Dorssemont and Blanke 2010: 115–223).⁸ No fewer than nine of the cases were settled within the highly juridified German industrial relations system (Blanke 2010), suggesting that the propensity to pursue a case may be related to the character of the industrial relations system (Jagodziński 2010a). Most of these 25 cases revolved around one of two issues. First, workers and/or their representatives brought legal proceedings with the intention of setting up an EWC. In these instances, management had no desire to establish an EWC, and so legal proceedings were initiated in an effort to overcome management resistance. Second, court proceedings were brought in order to enforce the completion of information and consultation procedures before management implemented a decision. Both of these issues highlight areas of contestation concerning EWCs that are examined in later chapters.

Numerical studies of agreements

Numerical analyses of EWC agreements come in two forms: those that focus on the number of agreements and those that review the content of agreements.⁹ These numerical analyses are examined here to highlight the scope of the institution, to provide pointers regarding the operation of EWCs and to identify some of the factors that explain the variation in the content of agreements.

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8. Cases were reviewed in the following eight countries: Austria, Belgium, France, Germany, the Netherlands, Slovakia, Sweden and the United Kingdom.
 9. The term ‘numerical studies’ is used here to focus exclusively on research that has traced the development of EWCs by reference, for example, to the size of the population, the number of EWC agreements that have been renegotiated or the number of EWC founding agreements that address a specific matter. It is acknowledged that survey research on EWC is also numerical, but not in the sense used here.

Figure 1.1 Growth in the number of EWCs and the number of dissolutions (to December 2018)



Source: ETUI database of EWCs (2020). www.ewcdb.eu

Figure 1.1 shows the growth in the number of EWCs to December 2018, at which juncture there were 998 EWCs in operation.¹⁰ Three points are immediately apparent from Figure 1.1. First, during the period September 1994 to September 1996 when Article 13 of the Directive was in force, no fewer than 491 EWCs were created, 404 in 1996 alone. This period marked the highest annual growth in the number of EWCs and was concurrent with relatively weak control and monitoring of the establishment of EWCs by the ETUFs (Waddington 2011: 33–52). The voluntary EWCs established during this period were exempted from a number of the minimum provisions set out in the Directive, although the negotiation of these agreements took place ‘in the shadow of the law’ (Bercusson 1992). Furthermore, the parties to EWC founding agreements negotiated during this period are under no obligation to renegotiate these agreements to ensure that they comply with the terms of the Recast. In many cases prior to September 1996, management took the initiative to establish the EWC as a means of avoiding the need to comply with the terms of Article 6 of the Directive. In the light of these

¹⁰ Unless otherwise stated, all references to the number of EWCs are taken from the database compiled by the European Trade Union Institute, the EWCdb, the most comprehensive data source on the numerical development of EWCs. December 2018 was chosen as the date for EWCdb data, as this date closely coincided with the distribution of the survey (April 2018), and all aspects of the EWCdb were up to date for December 2018.

findings, this study investigates whether the practices within voluntary EWCs operating under Article 13 of the Directive differ from those of other EWCs operating under more exacting legal requirements. The distribution of EWCs at December 2018 comprised 361 operating under voluntary agreements and 637 operating under Article 6 of the Directive or the terms of the Recast.¹¹

Second, Figure 1.1 shows that the annual rate at which EWCs are being established is decreasing. Between 1997 and 2008, for example, an average of 52 EWCs were set up per year. Between 2010 and 2018, after the adoption of the Recast, the rate fell to just over 24 EWCs established per year. Two measures were included in the Recast to promote the rate of establishment of EWCs: Article 4(4) places an obligation on management to provide information on the size of the workforce, and Article 5(2) requires that information on the commencement of negotiations to set up an EWC be sent to the relevant trade unions and employers' organisations. These measures do not as yet appear to have had their desired effect.

Third, since 1996 when the first EWC was dissolved, no fewer than 406 EWCs have been dissolved at a rate of 17.6 per year (Figure 1.1). In other words, to keep the number of EWCs constant, a minimum replacement rate of almost 18 EWCs per year needs to be maintained. Company restructuring in the form of mergers and acquisitions accounts for 74 per cent of dissolutions, conversion of the company to another legal status 6 per cent and bankruptcy or the selling off of the company a further 6 per cent. Only 1 per cent of dissolutions are attributed to a lack of interest among participants, and 2 per cent are due to the company failing to meet the workforce size threshold (De Spiegelaere and Jagodziński 2015: 15).¹² The 'churn' in the institution indicated by the rate of dissolution of EWCs suggests that the maintenance of continuity is far from straightforward.

Two more points associated with the data presented in Figure 1.1 regarding the coverage of EWCs and the renegotiation of EWC agreements are also pertinent to the analysis that follows. First, data on the number of MNCs that fall within the scope of the legislation on EWCs are notoriously unreliable, in no small part due to the extent of corporate restructuring mentioned above. Successive EU enlargements and the reversal of the UK opt-out added to the uncertainty. Bearing these caveats in mind and taking into account that several MNCs operate more than one EWC, estimates suggest that the coverage rate of EWCs was 34 per cent in December 1996; 32.8 per cent in December 1998, following the growth in the number of eligible MNCs as a result of the reversal of the UK opt-out; 34.3 per cent in October 2006; 35 per cent in June 2005 (Kerckhofs 1999a, 2002, 2006); 36 per cent in 2008 (Eurofound 2008: 1); and 44.2 per cent in 2018 (European Commission 2018a: 39). The issue of the coverage rate is political insofar as employers' associations cite it as evidence of a lack of interest among employees in the institution (BDA 2004). The political character of the issue is addressed in Chapter 2.

11. In addition, there were 159 European company works councils operating under Directive 2001/86/EC. These are excluded from the analysis presented here, as there are variations in content between the Directive, the Recast and Directive 2001/86/EC, and regarding the country of origin of the MNCs adopting the different measures.

12. The reason why 11 per cent of EWCs were dissolved is unknown, hence the figures presented here do not add up to 100 per cent.

A second point associated with the data illustrated in Figure 1.1 concerns the renegotiation of agreements. Renegotiation of agreements is crucial for adapting to changes in circumstances and as a means of developing new practices within EWCs. Of the 998 EWCs active in December 2018, 369 (37.0 per cent) operate on the basis of a renegotiated agreement. The rates of renegotiation among the different forms of EWC were: voluntary agreements, 53.8 per cent; and Article 6, other agreements covered by legislation and agreements based on the subsidiary requirements, 30.5 per cent. It thus appears that, although there is no legal obligation to renegotiate voluntary agreements, operational requirements have prompted their renegotiation. Approximately half of the voluntary EWCs, however, have operated for more than 20 years based on agreements initially concluded no later than September 1996, suggesting likely differences compared to EWCs operating in conjunction with recent agreements. To observe the absence of renegotiation, however, is not to argue that practice has not changed over time.

A second strand of the numerical analysis of EWC agreements charts changes in the content of agreements over time. Rather than trace the change in the proportion of agreements that include or exclude a specific clause, the purpose here is to plot the overall trajectory of change and to identify the principal sources of variation. Chapter 3 includes a more detailed analysis of some key features of the constitutions of EWCs.

Initial numerical analyses of the content of EWC agreements observed that voluntary agreements tended to vary in their reference to the terms outlined in the subsidiary requirements of the Directive. The negotiation of voluntary EWC agreements may have taken place ‘in the shadow of the law’, but this did not mean that the law acted as a straitjacket. Training provisions for EWC representatives, for example, were available in only about a quarter of agreements (David 1998). In contrast, the agenda items that were listed as being subject to information and consultation obligations in EWC agreements were often drawn from those issues highlighted in the subsidiary requirements (Bonneton et al. 1996). More consistent deviation from the terms specified in the Directive was observed on three counts. First, whereas the Directive made no reference to trade unions, a substantial minority of voluntary agreements stipulated that trade union officers could be members of the EWC or granted them a right to attend EWC meetings. Second, the Directive specified that EWC representatives be drawn from countries covered by the Directive. In practice, however, where MNCs had operations in the UK, Switzerland and Central and Eastern Europe (CEE), representatives from these countries tended to participate in the EWC as full members. Third, following the German model, the Directive specified that the EWC comprise only worker representatives. The majority of voluntary agreements made provision for joint management-employee bodies, reflecting French practice (Marginson et al. 1998; David 1998; Carley et al. 1996). Operational requirements and preferences would thus appear to have superseded the terms of the regulations on these issues.

After September 1996, a second phase of the numerical analysis of the content of agreements focused on agreements concluded under Article 6 of the Directive. By comparison with the voluntary agreements concluded under Article 3, a more marked impact of the Directive on the content of Article 6 agreements was reported, particularly regarding the inclusion of clauses dealing with access to experts, specifying agenda

items, allowing the establishment and operation of a select committee or equivalent, and addressing confidentiality (Carley and Marginson 2000; Stanzani and Beiraert 2006; Cox 2005). In addition, the same commentators noted evidence of learned behaviour, as a greater proportion of Article 6 agreements than voluntary agreements included clauses introduced into the latter but not specified in the Directive. These clauses covered follow-up or debriefing meetings, access to experts, and arrangements for agenda setting and the distribution of minutes (Cox 2005). In combination, these developments led some to suggest that the agreements concluded under Article 6 were more likely to underpin EWCs that undertake an 'active role' than voluntary agreements (Carley and Marginson 2000: 50). This proposition is examined in subsequent chapters.

The Recast introduced substantial revisions to the Directive regarding training, trade union involvement and reporting back to employees; a reworking of the definitions of information, consultation and transnational competence; and a consolidation of the role of the select committee. Given the requirement for agreements concluded under Article 6 of the Directive to comply with the terms of the Recast, a wide-ranging revision of agreements was anticipated after 2009 (Kerckhofs 2010). In practice, however, this expectation was not realised. The Recast had an effect on reporting back provisions and on the definitions of information, consultation and transnational competence in EWC agreements. In contrast, the Recast had no observable influence on the content of EWC agreements regarding select committees and training (De Spiegelaere and Waddington 2017). The Recast failed to have an influence in these areas because learning effects since 1994 had served to ensure that the content of agreements on these topics was in advance of the content of the legislation. These findings are consistent with those showing a marked learning effect that overwhelms the impact of the Recast (Kerckhofs 2015; De Spiegelaere and Waddington 2017). It is possible, of course, that the Recast had such limited effects because EWC agreements had been renegotiated in anticipation of its content. Examination of this possibility is beyond the scope of this study. More central to our purpose is the question: have the terms of the Recast led to improvements in the practices of EWCs?

In addition to examining shifts in the composition of EWC agreements with successive amendments to the regulatory regime, these studies have identified factors associated with variations in the terms of agreements. Clearly, the legislation has had an effect on the terms of EWC agreements. As noted above, however, the imprecision of the legislation, both at European and, in its transposition, at national level (Jagodziński and Lorber 2015), coupled with the inclusion of many voluntary elements and an absence of enforcement are indicative of the limits to the statutory effect. As also mentioned above, a learning effect has been widely observed since the late 1990s. In effect, EWC representatives must glean information about practices from EWCs other than their own and choose to implement them within the EWC on which they serve. Trade union organisations at national and European level are clearly central to this transfer of information. Two other principal influences are associated with variations in the terms of EWC agreements: a country effect and a sector effect (Gilman and Marginson 2002; Knudsen and Bruun 1998; Hall et al. 2003). Of course, from these studies of agreements, it remains to be seen whether these variables have an impact on EWC practice. The variation in the practice of EWCs is discussed below.

Quality and timing of information and consultation processes

Information exchange and consultation are the central objectives of EWCs. It is thus not surprising that the quality of information and consultation processes has figured large in much of the research on EWCs. In this context, the quality of information has been discussed by reference to the form in which it is made available, its content and the detail in which it is presented, as well as the person(s) who is (are) its source. The quality of consultation has also been addressed by reference to timeliness: when does consultation take place in relation to the finalisation by management of the content of a strategic corporate decision and the implementation of that decision? The timing of consultation has also been linked to the influence of the EWC, insofar as the possibility of exerting influence is more marked if consultation takes place before management finalises the content of a strategic corporate decision. In addition, this study also examines the manner in which confidentiality and reporting back procedures impinge on information and consultation practices.

Although analyses of information and consultation processes at EWCs have used a wide range of research methods, case studies and questionnaire surveys are the most prominent. Case studies tend to focus on the operation of EWCs as a whole, whereas surveys rely on responses from EWC representatives or, in a few instances, from EWC coordinators¹³ or managers responsible for EWCs within MNCs. A comparison of the results from the two sources is thus not straightforward. The difficulty of analysing extant research on information and consultation practices is further compounded by differences in the time since 1994 at which research was conducted. With these caveats, the following review serves to summarise the current situation regarding information exchange and consultation and to identify the sources of variation in such practices.

In efforts to illustrate developments in the institution as a whole, a range of case studies were undertaken that included a relatively large number of cases (Lecher et al., 1999, 2001, 2002; Telljohann 2005b; Weiler 2004). The key finding from these studies is that EWCs were at different stages of development. These stages were not necessarily chronological in that, over time, an EWC did not necessarily move from one stage to another higher stage. It was also acknowledged that an EWC could regress to a less sophisticated state when confronted by adverse circumstances (Mählmeyer et al. 2017). As a result, a series of EWC 'types' were identified. The Lecher et al. (2001: 53) variant of this approach, for example, comprised four types: symbolic EWCs, service EWCs, project-oriented EWCs and participative EWCs. Symbolic EWCs are those that hold an annual meeting, but have very few other activities; whereas participative EWCs operate as social actors, engage in timely information and consultation practices, and may extend the activities of the EWC beyond the formal agenda specified in the legislation. Similar distinctions underpinned the typologies advanced elsewhere (Marginson 2000; Kotthoff 2006). Three points arise from these analyses. First, EWCs cannot be treated as a monolithic category: the inclusion of voluntary and negotiated elements in the

13. EWC coordinators are usually selected by the relevant ETUF to represent its interests at the EWC and to coordinate the activities of the EWC with those of the ETUF and the other EWCs coordinated by the ETUF. The role of the EWC coordinator will be discussed in more detail in Chapter 2.

legislation ensures variation in information and consultation practices between EWCs. Second, a range of factors were associated with the variation in the development of information and consultation practices within EWCs. Prominent among these factors were the sector, country of origin of the MNC, extent of unionisation among EWC representatives, variation between single- and dual channel systems of representation, and the degree of interdependence between the different sites operated by the MNC (Lecher et al., 2001; Marginson et al., 2004; Weiler 2004). Third, EWCs operated primarily as information rather than information and consultation bodies: that is, the intentions of European policy-makers were not being realised in most EWCs (Kotthoff and Whittall 2014).

Case study research based on a small number of cases takes a multitude of different points of departure in assessing the quality of information and consultation processes and identifying the factors that influence this quality. Studies situating the EWC in the context of the history and traditions of the MNC linked information and consultation arrangements to the industrial relations practices of the MNC (Royle 1999; Wills 2000; Whittall et al. 2009; Haipeter 2006). Specific national features of EWC information and consultation practices were highlighted by studies that took the country of origin of the MNC (Köhler and González Begega 2009; Nakano 1999; Hall et al. 2003; Rehfeldt 2009) or the country of origin of the EWC representatives (Bicknell and Knudsen 2006; Beaupain et al. 2003; Ziltener and Gabathuler 2016) as the point of departure. Company studies hint at a marked variation in the quality of information and consultation procedures and in the effectiveness of EWCs between sectors, with developments in engineering generally and automotive engineering in particular tending to be in advance of developments elsewhere (Hertwig et al. 2011; Haipeter 2006). Studies of EWCs based in specific sectors, however, demonstrate a wide-ranging variation in information and consultation practices within sectors (Rüb and Platzer 2015; Whittall et al. 2009), suggesting that, while the sector may influence the quality of information and consultation practices within EWCs, other factors also come into play. Among these are the strategic and organisational dimensions of the MNC, particularly its size and degree of internationalisation (Gold and Rees 2013); industrial relations in the country of origin of the MNC (Lecher et al. 2002); the extent and nature of trade union engagement (Banyuls et al. 2008); and management organisation and management attitudes towards the EWC (Pulignano and Turk 2016; Marginson et al. 2004).

The large-scale case study-based projects identified different ‘types’ of EWCs but did not attempt to quantify the distribution of EWCs across the range of ‘types’. Researchers settled for observations such as ‘only a few EWCs have had experience with consultation’ (Lecher et al. 2001: 134) or ‘the main objective [of EWCs] of providing workers with a voice in corporate decision-making processes has only been achieved in a minority of cases’ (Weiler 2004:103). Similarly, based on ‘those EWCs so far studied’, it is estimated that no more than 20 per cent have developed to a stage where consultation has taken place with management (Kotthoff and Whittall 2014: 7).

The application of survey techniques to the study of EWCs is infrequent compared to case studies, but a central objective of survey research is to establish the distribution of information and consultation practices between EWCs based on the views of individuals

involved in EWCs. The results are not dissimilar to those obtained from case studies. There was not one single agenda item drawn from the list of issues provided in the subsidiary requirements of the Directive in relation to which even a third of EWC representatives felt that ‘useful information and consultation’ had been provided in 2007. Although a significant number of EWC representatives reported that key issues had not even appeared on the agenda of their EWC, the survey results confirmed that EWCs operated primarily as information bodies rather than information and consultation bodies (Waddington 2011:90). Furthermore, only 17.6 per cent of EWC representatives were informed of a decision to undertake corporate restructuring before management had finalised their corporate decision-making process, and only 13.1 per cent of EWC representatives were consulted on that same basis (Waddington 2011: 103). Most EWC representatives were thus unable to influence the content of strategic corporate decision-making. A survey based on interviews of EWC coordinators and conducted after the Recast was adopted confirmed the pattern of results obtained from EWC representatives insofar as EWC coordinators reported that ‘all too often information is provided too late’ and that ‘consultation hardly takes place, and even when it does it is often under too restricted circumstances’ (Voss 2016: 14–15). Managers share the same view as EWC representatives and EWC coordinators. A project supported by BusinessEurope,¹⁴ for example, reports that, out of 56 managers responsible for EWCs within MNCs, only four (7.1 per cent) indicated that information exchange and consultation took place before managers finalised their strategic decision-making process (Pulignano and Turk 2016).

To summarise, the evidence derived from both case studies and survey techniques demonstrates that the information and consultation agenda proposed by European policy-makers is rarely met in practice. At best, the overwhelming majority of EWCs operate as bodies through which information is made available rather than as information and consultation bodies. Furthermore, a significant minority of EWC representatives report that key issues had not appeared on the agenda of their EWC.

Infrastructural issues: beyond the formal information and consultation agenda

As conceived by European policy-makers, information exchange and consultation are the core objectives of EWCs. Apart from specifying some minimal constitutional provisions, European policy-makers neither elaborated how the provision of information and consultation of sufficient quality might be ensured nor suggested how EWCs might develop beyond minimal core objectives. These omissions are addressed here by reference to four related issues that are not directly addressed in the Directive or Recast but are concerned with the quality of information and consultation processes and the development of EWCs beyond the formal information and consultation agenda. First, networking involving the EWC is viewed as fundamental in overcoming the

14. The Union of Industrial and Employers’ Confederations (UNICE) changed its name to BusinessEurope in 2007. For ease of explanation, the name BusinessEurope is used throughout this study, irrespective of the date to which the reference is made. Publications cited, however, are referred to by the title in operation at the time. It should also be noted that, in many instances, BusinessEurope publishes material jointly with the European Centre of Public Enterprises (CEEP) and the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME). To avoid overloading the text with acronyms, only BusinessEurope is cited in these circumstances.

limitations of the legislation and improving the quality of information and consultation practices (Weston and Martinez Lucio 1998). Second, transnational solidarity underpins coherent EWC policies and enables the EWC to be involved in activities to further these policies (Knudsen et al. 2007). Third, the generation of both networked EWCs and transnational solidarity therein relies on guidance and training programmes made available to EWC representatives to enable them to acquire the skills and techniques to operate within the unique institution that is the EWC. Fourth, efforts made to develop a negotiations function involving EWCs constitute attempts to move beyond the minimal formal constitutional arrangements detailed in the legislation and, in some instances, to address the shortcomings of the legislation. It is acknowledged from the outset that trade union organisations are the key to each of these four issues. These issues are addressed below to illustrate how it is envisaged that the limitations of the legislation may be overcome by these means. Later chapters illustrate the extent to which initiatives embracing these issues have achieved their intended objectives.

Networking between worker representatives across national boundaries and between different levels of operation within a MNC 'will ultimately condition managerial initiatives' (Martinez Lucio and Weston 1995: 233). The precise way in which advocates of networking envisage that it will condition management actions is more difficult to pinpoint. Advocates of networking emphasise four points in elaborating its effects: networking may be formal or informal; the structure and activity of any network will depend on a wide range of factors prominent among which are the composition of the network, the frequency at which members of the network meet and communicate, and the structure of the MNC; the character of national industrial relations systems and the extent to which EWCs are interconnected with or embedded in such systems will impinge on the character of the networking; and the activities of trade union organisations are instrumental in promoting and sustaining networks (Martinez Lucio and Weston 1995, 2000; Helfen and Fichter 2013). Operationally, networking among EWC representatives and between EWC representatives and representatives serving on other institutions of labour representation is constrained by the constitutional arrangements that underpin EWCs. In particular, the minimum of one annual plenary meeting stipulated by the legislation does not promote networking. Similarly, the ambiguity over the link between information and consultation processes at workplace and at European level does not encourage network building (Blanke and Rose 2010; Dorsemont and Kerckhofs 2015), as it promotes imbalances in the availability of information and consultation procedures between representatives at different levels of operation. This imbalance is compounded by variations in national regulations on information exchange and consultation and in national relationships between trade unions and information and consultation procedures. Relations between EWCs and representative bodies at company level are also characterised by 'distance' (Telljohann 2005b: 9) and uncertainty (Rehfeldt 2004), again suggesting marked limitations to the networking of EWCs. In theory, the Recast enhanced the potential for networking insofar as EWC representatives were obliged to inform national-level employee representatives or, in their absence, the entire workforce, of the results of EWC consultation (Article 10(2)). Chapter 5 will examine whether this measure has intensified contact and communication between the EWC and those whom it represents.

With a view to addressing other constitutional limitations to networking, trade unionists have campaigned for more plenary and select committee meetings.¹⁵ By June 2015, however, only 3 per cent of EWC and SEWC agreements allowed more than two plenary meetings per year (De Spiegelaere and Jagodziński 2015: 30), suggesting that formal networking possibilities remain limited and that trade union campaigning for more frequent meetings has not met with much success. In contrast, 86 per cent of EWC agreements allow for the establishment of a select committee (De Spiegelaere and Jagodziński 2015: 36). Both case study and survey research methods indicate that members of the select committee are better able to network within the EWC as a consequence of the more frequent meetings that they attend (Weiler 2004; Waddington 2011). In order to assess the extent of networking, Chapter 5 will examine the intensity of communications involving EWC representatives and of links with other institutions of labour representation, as well as the extent to which EWC representatives can visit sites operated by the MNC.

The generation of solidarity (Telljohann 2005a), a common identity (Knudsen et al. 2007) or ‘felt interdependence’ (Kotthoff 2007) is also viewed as a means of overcoming the shortcomings of the legislation. In particular, transnational solidarity is associated with the exercise of influence and power (Hyman 1999; Kotthoff and Whittall 2014). In the context of EWCs, transnational solidarity has two interlinked components (Kotthoff and Whittall 2014: 257–259). Within the EWC, transnational solidarity may be generated among EWC representatives. Several case studies, particularly in engineering and automobiles, report the existence of this component of transnational solidarity (Banyuls et al. 2008; Voss 2006), although such solidarity is fragile and may be undermined by managerial decisions to restructure that have disproportionate and adverse national effects (Fetzer 2008). A second component of transnational solidarity regarding EWCs focuses on the capacity or willingness of employees to bear the costs of action taken in support of employees elsewhere in the MNC, particularly employees from other nations. The perception within the EWC in general, and within the select committee specifically, of the extent of such transnational solidarity among employees impinges on the capacity of the EWC to act. Where transnational solidarity among employees is in place and is recognised as such within the EWC, the position of the EWC is strengthened. It is acknowledged that transnational solidarity among employees is far from commonplace, thus restricting EWCs and preventing them from overcoming many of the shortcomings of the legislation (Timming and Veersma 2007; Kotthoff 2006). Clearly, examination of transnational solidarity among employees is beyond the scope of this study, although how EWC representatives perceive their mandate and its relation to the constituents they represent is assessed. The focus here, however, is on the identity generated by EWC representatives and how this identity impinges on their perception of the EWC. It is acknowledged that the relationship between identity and perception of the EWC may be mutually reinforcing. Aspects of this relationship will also be examined in Chapter 5.

Although the term ‘trade union’ did not appear in the Directive, those who saw potential in the measure viewed trade unions as essential to overcoming the limitations of the

15. The term ‘select committee’ is used throughout this publication. It is acknowledged, however, that other titles are used for this body in MNCs.

Directive. The role of trade union organisations in institution building in relation to EWCs was apparent soon after the adoption of the Directive. While the initial volume of voluntary EWC agreements that were concluded between September 1994 and September 1996, coupled with the absence of established systems within ETUFs, overwhelmed the ETUFs, they were able to support many negotiations, and a more steady state of operation was put in place shortly thereafter (Waddington 2011: 32–52). Integral to this steady state was the production of guidelines, the implementation of procedures for the ratification of EWC agreements, the establishment of committees to formulate and monitor EWC policies, the appointment of EWC coordinators to represent the ETUF within EWCs and the provision of training programmes. Differences in emphasis between ETUFs regarding policies and guidelines will be discussed in Chapter 2, while the impact of the presence of EWC coordinators will be examined in Chapters 4, 5, 6, 7 and 9.

From the outset, the provision of dedicated training to EWC representatives was viewed as a prerequisite for the establishment of trust and solidarity among EWC representatives (Stirling and Tully 2004; Gohde 2005), with emphasis placed on training programmes for all members of a particular EWC, as such programmes would create space within which informal dialogue could flourish (Miller and Stirling 1998; Miller 2002). Survey research showed that, in 2007, EWC representatives were more than three times as likely to have been trained on EWC matters through their national trade unions rather than through a pan-European organisation (Waddington 2011: 136). Given that very few trade unions offer places on training courses to members of other trade unions, this suggests that training programmes for EWCs as a whole were relatively infrequent, which, in turn, means that the space for informal dialogue and the building of solidarity was restricted.

While the Directive was silent on the training provisions that might be made available to EWC representatives, 35 per cent of voluntary agreements concluded under Article 13 of the Directive and 62 per cent of agreements reached under Article 6 made provision for the training of EWC representatives (Carley and Marginson 2000). Following campaigning by trade union organisations, the Recast introduced a right to training without loss of wages (Article 10(4)). While the Recast had no discernible effects on the content of EWC agreements with regard to training (De Spiegelaere and Waddington 2017), by 2015 learning effects had resulted in 55 per cent of voluntary agreements and 74 per cent of Article 6 agreements making provision for the training of EWC representatives (De Spiegelaere and Jagodziński 2015). In the context of training, the purpose of this research is to establish the extent of the training provision made available to EWC representatives, the subject matter of such training, the impact of training on EWC practice and the current training requirements of EWC representatives (see Chapter 7).

The Directive and Recast both specify information exchange and consultation as the principal purpose of EWCs. As noted above, the overwhelming majority of EWC agreements follow the lead provided by the legislation and specifically refer to information exchange and consultation as the purpose of EWCs. Most agreements do not explicitly restrict the EWC to information exchange and consultation (Jagodziński

2007a). Only 11 per cent of agreements, for example, explicitly excluded a negotiations function from the competence of the institution in 2015 (De Spiegelaere and Jagodziński 2015).

Although such engagement is very rarely explicitly allowed in agreements, EWCs have been involved in the negotiation of the growing number of European framework agreements (EFAs) and transnational company agreements (TCAs) (Telljohann et al. 2009a, 2009b; ETUC 2012; European Commission and ILO various), which, in some instances, have been shown to have had a marked impact on corporate decision-making (Whittall et al. 2017). This development demonstrates that the information and consultation function is not necessarily a straitjacket within which the EWC must act (Jagodziński 2012a). This development also raises two key policy questions. First, what is the relationship between EWC involvement in negotiations and trade union organisations, and how is this relationship managed? These aspects are particularly pertinent in many Member States where dual channel systems function and there is an operational distinction between the trade union bargaining function and works council activities (Rogers and Streeck 1995). Policy responses to this question will be examined in Chapter 2, and the way in which EWC representatives view the implementation of these policy responses will be assessed in Chapter 10. Second, what issues form the content of the agreements negotiated with EWC involvement and to what extent is this content intended to overcome the limitations of the legislation or EWC practice? Chapter 10 will present the views of EWC representatives on this question.

So, where do we go from here?

This book situates EWCs within an industrial relations framework: that is, it views EWCs as one institution that may be articulated with a range of other institutions, notably management, trade union organisations and national works councils. It is assumed that, to be effective, however that may be defined, the internal functioning of EWCs should be articulated with activities undertaken within other institutions of labour representation. The study of EWCs in isolation fails to acknowledge that, even if EWC representatives deem the quality of information and consultation procedures satisfactory, it is how such procedures are used that determines their value. The assumption adopted here is that the effective use of information exchange and consultation relies on the EWC and its relations with other institutions of labour representation. Management, of course, may impinge on these relations through the introduction of confidentiality provisions (see Chapters 5 and 8).

With these points in mind, Chapter 2 examines the views of the parties involved towards EWCs. Chapter 2 thus assesses developments within EU institutions, among employers' organisations and management, and among trade union organisations. Chapter 2 also highlights the contestation between these parties and the influence this has had on the content of the legislation and the development of EWC practices.

Chapters 3 to 9 present the survey data. Chapter 3 compares the characteristics of the survey data with those of the population of EWCs on a number of constitutional matters.

This comparison serves to introduce some of the variables used in subsequent chapters. In addition, Chapter 3 reviews the characteristics of the respondents and the EWCs on which they sit. Chapter 4 analyses the quality of information exchange and consultation from the perspective of EWC representatives. By means of comparisons with survey data generated before the adoption of the Recast, Chapter 4 also examines whether the quality of information and consultation procedures has improved since the Recast. Given the importance of the intended role of EWCs in corporate restructuring, Chapter 4 assesses the timing of information exchange and consultation during corporate restructuring.

The central focus of Chapter 5 is on communications within the EWC and communications between EWC representatives and those they represent. This focus is supplemented by a review of how EWC representatives assess their representative priorities. Chapter 5 identifies whether EWCs are articulated with other institutions of labour representation and with the workers represented by EWC representatives in practice. Chapter 6 examines relations between EWCs and trade union organisations. This examination is conducted by reference to the impact of the EWC coordinator and the unionisation of EWC representatives on EWC practice. In addition, Chapter 6 identifies whether EWCs are vehicles through which trade union objectives may be realised. Chapter 7 assesses the extent and the impact of the training provision available to EWC representatives. With regard to management, Chapter 8 assesses whether the managers who attend the EWC are viewed as those who make corporate strategy decisions, examines the use of confidentiality by management and discusses how EWC representatives view relations with managers. The enforcement of the rights of EWCs and the bringing of legal proceedings on occasions where there is a failure to agree between EWC representatives and management are examined in Chapter 9.

Chapter 10 examines the current state of play regarding the involvement of EWCs in the negotiation of EFAs and TCAs. This examination also considers the extent to which the negotiation function of EWCs is interlinked with trade union organisations and the subject matter of the negotiations entered into. Chapter 11 concludes the text in drawing together the principal strands of the argument that emerge from the analysis. It also presents the views of EWC representatives on how the institution should be reformed if the objectives of European policy-makers are to be realised in practice.

The data used to assess the issues and questions raised in this chapter are drawn from a large-scale survey of EWC representatives conducted between February and April 2018. A total of 1,520 EWC representatives (rate of return: 32.7 per cent) responded to the survey. Details of the survey distribution are presented in Appendix A. Appendix A also specifies the weighting procedure applied to accommodate disproportionately large or small numbers of respondents with particular characteristics. All data from the 2018 survey presented in subsequent chapters have been weighted using this procedure.

At several points, the data collected in 2018 are compared with similar data collected in an earlier survey of EWC representatives conducted between late 2005 and 2008 (Waddington 2011: 233–239). For ease of explanation, this survey is referred to as the

2007 survey.¹⁶ Several questions in the 2018 survey replicate questions from the 2007 survey. It is thus possible to compare the views of EWC representatives before and after the Recast was adopted. It is acknowledged, however, that the data from the 2007 survey are not weighted, with the result that these comparisons should be treated with caution.

In brief, the book argues that EWCs, at best, operate as information rather than information and consultation bodies. Furthermore, EWCs are generally unable to influence strategic corporate decisions on restructuring. As a result, the intentions of European policy-makers regarding EWCs are not being realised in practice. Attempts to remedy the shortfalls in the legislation by articulating EWCs with other institutions of labour representation, through trade union support and extensive training arrangements, have proved insufficient. Management, however, have been able to limit the effect of the information and consultation agenda assigned by European policy-makers to EWCs, while concurrently using EWCs to promote value-adding HRM agendas within MNCs. Although very few EWCs have initiated litigation to seek remedies for infringements to the legislation, in prioritising the revision of the Recast to address the fundamental weaknesses of EWC legislation, many EWC representatives consider the imposition of sanctions as a means of resolving disputes. In the light of the sub-standard performance of EWCs regarding information and consultation procedures, European institutions and the Commission in particular have failed to propose measures that might remedy the situation and result in EWC practices that are consistent with the original intentions of European policy-makers.

16. The questionnaires entered into the database in 2008 arrived in the post during the 2007-2008 Christmas break, hence the use of 2007 as the date for the initial survey.