

Chapter 3

Mapping variation within the institution

In bringing together representatives of the European workforce of MNCs and central managers of MNCs, EWCs are certainly innovative institutions. The terms of the Directive and the Recast are also unusual insofar as they comprise imprecise definitions of some key terms; allow for negotiation on the purpose, form and procedures of EWCs; and, compared with arrangements for workers' participation within several Member States, specify weak minimum standards. Furthermore, the legislation is effectively 'layered' with different institutions operating under Article 13 of the Directive, Article 6 of the Directive and the terms of the Recast. Compounding the inherent legal uncertainty is the contestation between the parties regarding the institution. In practice, there is no universal understanding between the parties to EWCs as to their objectives and the procedures that might be employed to achieve these objectives. In consequence, there is no reason to assume that EWCs constitute a monolithic institution. To the contrary, variation within the institution is assumed to be wide-ranging.

The implications of these observations are threefold in the context of survey research. First, it is useful to identify the parameters along which EWCs vary.¹ These parameters include variation in the composition of EWC representation and in the constitution of the institution. Variation in these parameters may be the source of differences in practice. Second, the extent of variation within the institution necessitates examination of the composition of the survey sample in relation to the entire population of EWCs to 'test' whether the sample is representative of the population. Third, identification of the variation within the institution serves to illustrate the extent to which the 'flexibility' sought by European policy-makers has been integrated into the institution and the forms that this flexibility takes. Examination of these issues allows identification of some of the variables that are used in subsequent chapters. These variables are listed and specified in Appendix C.

The challenge of investigating these issues centres on two populations: the population of EWCs, and the population of representatives that serve on EWCs. In practice, the population of EWCs, on which comprehensive information is available, was used to generate a sample of representatives, information about which is relatively sparse. The objective of the survey was to collect information from the population of representatives, but there is no exhaustive or reliable database comprising the contacts of this population. The European Works Council database (hereinafter 'the EWCdb') maintained by the

1. It is acknowledged that other parameters may impact on EWC practice. The point here, however, is to identify those parameters that may inform the selection of a survey sample. Later chapters will examine the impact of other parameters on EWC practice.

ETUI, however, is based on information covering EWCs and SEWCs, the agreements on which they are founded, and the MNCs within which they operate. While the EWCdb is not exhaustive, it is the most comprehensive database available. For the purposes of this research, the EWCdb was used as a means of generating a sample of EWCs. When the sample was being assembled, 975 EWCs were reported as active within the EWCdb and used as a sampling frame. Based on those EWC founding agreements that specified the number of representatives sitting on the EWC, the population of representatives was estimated at 15,768. Questionnaires were distributed to 4,746 (30.1 per cent) EWC representatives from this population, and a total of 1,520 questionnaires were returned, corresponding to a rate of return of 32.0 per cent. The returned questionnaires came from representatives based in 335 institutions. For the purposes of this study, responses from 1,520 EWC representatives based in 335 EWCs form the basis of the analysis. These respondents represent 9.6 per cent of the estimated population of EWC representatives, and the 335 EWCs within which they are based constitute 34.4 per cent of all EWCs that were active when the sampling procedure was undertaken. The number of respondents per EWC varied between 1 and 39 with an average of 4.5 respondents per EWC. Details of the research method and the weighting procedure applied to the survey results to mitigate the impact of anomalies are presented in Appendix A.

In the light of the variation within the institution and the method used to distribute the survey, the remainder of this chapter ‘maps’ the representatives and the institutions within which they work. This chapter thus establishes the character of the representatives and the form taken by the institution, while subsequent chapters investigate how the institution functions. To this end, the chapter comprises two sections. The first section identifies some of the personal characteristics of the representatives, while the second section reviews some key constitutional arrangements of the EWCs within which the representatives work. Throughout these two sections, comparisons will be made with the 2007 survey and the state of the EWCdb in December 2018 in order to establish whether the composition of the representatives and the constitutional arrangements changed after the adoption of the Recast and whether the constitutional arrangements reported by EWC representatives differ from those specified in EWC founding agreements.

Composition of EWC representation

Recital 20 of the Recast states that it is ‘for the Member States to determine who the employees’ representatives are and in particular to provide, if they consider appropriate, for a balanced representation of different categories of employees’. Four aspects of ‘balanced representation’ are assessed here: sex, age, nationality and unionisation. For each of these aspects, the implications for representation are examined together with the policy implications for the parties to EWCs.

The ETUC (2000a) and several ETUFs state a preference for EWC representation to reflect the gender composition of the workforce it represents. UNI Europa, for example, aims to ‘ensure that companies’ EWCs are representative of the composition of the company workforce, both in terms of gender and in relation to other factors’ (2011: 4). An initial point of departure for the examination of ‘balance’ thus concerns the sex

of EWC representatives. In 2018, 18.7 per cent of EWC representatives were women. While this proportion constitutes a slight increase on the 17.1 per cent of women who responded to the 2007 survey, it is clear that EWC representation is far from gender-balanced. The proportion of women also diminished in 2018 among office holders within the EWC (15.8 per cent) compared to EWC members (19.6 per cent) and substitute members (22.4 per cent). Furthermore, when respondents were asked in 2018 to specify the proportion of women EWC representatives in their EWC, 79.3 per cent of respondents reported fewer than 40.0 per cent of the EWC representatives were women and only 2.5 per cent reported that women comprised more than 60.0 per cent of the representatives on their EWC. While it is recognised that the workforces of MNCs vary enormously by sex, it is clear that EWCs are largely a male preserve, and wide-ranging policy initiatives emanating from ETUFs and national trade unions are required if proportionality is to be achieved.

The average age of an EWC representative in 2018 was 50.7 years with the majority (65.9 per cent) aged between 46 and 60 years. Only 4.5 per cent of EWC representatives were aged 35 years or younger. This situation largely replicates that recorded in 2007 when 65.1 per cent of EWC representatives were aged between 46 and 60 years, and 6.5 per cent were 35 years of age or younger. The relatively high age of EWC representatives suggests that they may have accumulated considerable experience as representatives both before becoming an EWC representative and as an EWC representative. This latter point can be consolidated insofar as, in 2018, the median length of service of EWC representatives was five years, with 18.7 per cent having served for more than 10 years. Turnover is pronounced, however, as 10.1 per cent of EWC representatives had been in office for one year or less. The experience of EWC representatives is also reflected in the number of plenary meetings they had attended. The 2018 survey reports EWC representatives as having attended a median number of six plenary meetings with 9.7 per cent of EWC representatives having attended more than 20 plenary meetings. In 2007 by comparison, the median number of meetings attended by EWC representatives was four, while 2.8 per cent had attended 20 or more such meetings. Of course, the increasing longevity of the institution between the two surveys may account for much of the longer duration of service among EWC representatives. The longer duration of service, however, suggests that, if a learning curve is in evidence among EWC representatives, it should manifest itself in improved practices in 2018 compared to 2007.

A further aspect of 'balance' to consider in connection with EWC representation is nationality. Most ETUFs recommend formulae in which the size of a national workforce determines the number of EWC representatives from that nation (EFFAT 2009; UNI Europa 2011).² Additional measures are usually introduced to accommodate particularly

2. Borrowing from the subsidiary requirements regarding the composition of the SNB, EFFAT recommends the following distribution of representatives based on the proportion of the EEA workforce: 10 per cent or fewer, one seat; more than 10 per cent but fewer than 20 per cent, two seats; more than 20 per cent but fewer than 30 per cent, three seats; more than 30 per cent but fewer than 40 per cent, four seats; more than 40 per cent but fewer than 50 per cent, five seats; more than 50 per cent but fewer than 60 per cent, six seats; more than 60 per cent but fewer than 70 per cent, seven seats; more than 70 per cent but fewer than 80 per cent, eight seats; more than 80 per cent but fewer than 90 per cent, nine seats; and more than 90 per cent, 10 seats (2009).

large or small concentrations of employees within specific countries.³ Furthermore, representation from outside the EU can be negotiated into the EWC founding agreement. Many EWC founding agreements thus stipulate the nationality of the representatives by reference to these formulae, or modified versions thereof, depending on the outcome of negotiations with management. It should also be noted that corporate restructuring may alter the size of the workforce within nations and/or the relative size between nations with the consequence that the number of EWC representatives from a nation may vary over time.

Based on the content of EWC founding agreements, the column headed ‘Estimated population 2017’ in Table 3.1 details the distribution by nationality of EWC representatives within the 511 founding agreements, analysed as part of the sampling frame of EWCs reported as active at the time of the sampling, that specified the distribution of seats. As anticipated from the formulae mentioned above, the size of the population of EWC representatives from each country is related to the size of the country. The nationality of the respondents to the 2018 survey is specified in Table 3.1. As is apparent from the percentage data, there is a broad correspondence between the sample returned and the estimated population. Exceptions are Belgium, where the number of respondents was greater than the estimated population, and France and the UK, where the estimated populations were greater than the number of respondents. Because of these differences, a weighting procedure was applied, as described in Appendix A.

Throughout this study, comparisons are drawn between the surveys of EWC representatives conducted in 2007 and 2018. Table 3.1 thus also details the nationality of respondents to the 2007 survey. Four points are noteworthy. First, the ‘balance’ between the size of the country and the proportion of EWC representatives from that country remains broadly in place. The obvious exception to this statement for 2007 was the over-representation of Finnish respondents. Second, respondents from the new Member States of Central and Eastern Europe (CEE) appeared less frequently in 2007, no doubt as a consequence of the then recent accession of these countries to the EU. Third, the 2018 survey was based on a stratified cluster sample, whereas no comprehensive sampling procedure was applied in 2007.⁴ Fourth, in contrast to 2018, no weighting procedure was applied to the 2007 data. These points should be considered when comparisons between the two surveys are drawn in subsequent chapters.

Two additional points originating in nationality apply to both sets of survey data and have implications for the duty of representation undertaken by the EWC representatives. The first of these concerns the distinction between home country and foreign EWC

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3. These may specify that countries with a small proportion of the workforce are guaranteed one seat irrespective of the size of the thresholds employed or a representative from a second country be designated to act on behalf of two countries within the EWC. In cases where a large proportion of the workforce of the MNC is located in a single country, there may be limits imposed on the number or proportion of EWC representatives from that country.
 4. Within the European Metalworkers’ Federation, European Mine, Chemical and Energy Workers’ Federation and UNI Europa, a structured sample of questionnaires were distributed, comprising one in four of the companies within which an EWC agreement had been concluded. A similar approach was intended for the other ETUFs, but, in practice, the outcome was not as systematic and was reliant on the contacts established between the officer responsible for EWCs within the ETUF and EWC coordinators and representatives.

Table 3.1 Nationality of EWC representatives

Country	Estimated population		Sample returned		Sample returned	
	2017		2018		2007	
	N	%	N	%	N	%
Austria	508	3.2	55	3.6	16	1.7
Belgium	896	5.7	159	10.5	56	6.0
Bulgaria	69	0.4	21	1.4	–	–
Croatia	14	0.1	12	0.8	–	–
Cyprus	11	0.1	–	–	–	–
Czechia	303	1.9	47	3.1	15	1.6
Denmark	417	2.6	42	2.8	18	1.9
Estonia	58	0.4	5	0.3	–	–
Finland	537	3.4	51	3.4	101	10.7
France	2,348	14.9	118	7.8	147	15.6
Germany	2,469	15.7	279	18.4	224	23.8
Greece	178	1.1	14	0.9	5	0.5
Hungary	153	1.0	36	2.4	7	0.7
Ireland	320	2.0	18	1.2	12	1.3
Italy	1,084	6.9	75	4.9	49	5.2
Latvia	31	0.2	3	0.2	2	0.2
Lithuania	40	0.3	8	0.5	–	–
Luxembourg	124	0.8	8	0.5	6	0.6
Malta	11	0.1	–	–	4	0.4
Netherlands	807	5.1	53	3.5	49	5.2
Norway	397	2.5	37	2.4	8	0.9
Poland	326	2.1	83	5.5	24	2.6
Portugal	358	2.3	14	0.9	14	1.5
Romania	112	0.7	36	2.4	–	–
Slovakia	109	0.7	16	1.1	–	–
Slovenia	45	0.3	11	0.7	2	0.2
Spain	1,012	6.4	109	7.2	59	6.3
Sweden	721	4.6	79	5.2	46	4.9
Switzerland	252	1.6	12	0.8	–	–
United Kingdom	2 049	13.0	119	7.8	77	8.2
Other	8	0.1	–	–	–	–
Total	15,768	–	1,520	–	941	–

Note: The 'other' respondents were from Iceland and Liechtenstein.

Table 3.2 Number of sites represented by each EWC representative

Number of sites	All respon- dents 2007	All respon- dents 2018	Home country reps 2007	Home country reps 2018	Foreign reps 2007	Foreign reps 2018
	%	%	%	%	%	%
1	14	21.1	12.3	9.4	15	24.5
2	8.7	8.1	3.9	4.4	11.2	9.2
3	9.8	8.5	7.4	5.1	11	9.5
4	6.1	6.6	5.5	4.4	6.4	7.2
5	7	5.5	7.4	4.3	6.9	5.8
6 to 10	22.2	15.3	25.8	17.8	20.4	14.6
11 or more	32.2	34.9	37.7	54.7	29.1	29.2
N	940	1,440	310	306	628	1,134

representatives. Home country representatives are those whose nationality is the same as the country of origin of the MNC within which the EWC is based, whereas the nationality of foreign representatives differs from the country of origin of the MNC. Home country representatives comprised 32.9 per cent in 2007 and 23.2 per cent in 2018 of all respondents, while foreign representatives constituted 67.1 per cent in 2007 and 76.8 per cent in 2018. Home country representatives thus comprised a larger proportion of respondents in 2007 than in 2018 with implications for representation in that home country representatives would be expected to be more familiar with home country managerial practices and have more frequent contact with central management than their foreign counterparts (Streeck 1999; Hammer and Lutz 2002).

Linked to nationality and home country/foreign representation is the number of sites represented by each EWC representative within the MNC. The median number of sites represented by each EWC representative was comparable in 2007 (six sites) and 2018 (five sites). Table 3.2 illustrates the situation and introduces some of the differences between EWC representatives regarding their representative duties. By reference to all respondents, the situation in 2007 and 2018 was broadly comparable: in 2007, 45.6 per cent of respondents represented workers employed at between one and five sites, whereas 49.8 per cent did so in 2018. Corresponding figures for home country representatives were 36.5 per cent in 2007 and 27.5 per cent in 2018, whereas those for foreign representatives were 50.5 per cent in 2007 and 56.2 per cent in 2018. In short, foreign representatives are more likely to have fewer sites with which to liaise than their home country counterparts. The challenge of liaising with sites is also clearly becoming more intense for home country representatives, as 55.7 per cent of them had representative coverage for 11 or more sites in 2018 compared to 37.7 per cent in 2007. Compounding the representative challenge for 5.3 per cent of representatives in 2018 is that they represent workers in more than one country.

To a degree, the term ‘balance’ is a misnomer regarding the final point on the composition of EWC representation: namely, the unionisation of EWC representatives. Every ETUF argues that it is preferable that union members be selected as EWC

representatives and strives to ensure that this is the case. Arguments cited in support of this preference include the provision of support and training to EWC representatives from trade union organisations; the need to articulate EWCs with other institutions of labour representation within the MNC, unionisation being particularly important in countries with single channel systems of representation; and the critical importance of union engagement in EWCs' negotiations with MNCs (EMCEF 2001; EFFAT 2009; UNI Europa 2011). In 2007, 93.6 per cent of survey respondents were unionised, a proportion that had declined to 84.5 per cent among the 2018 survey respondents. Given the method of distribution of both surveys, it is likely that these data overstate the proportion of EWC representatives that are unionised (see Appendix A).⁵ In 2007, 42.9 per cent of representatives reported that their EWC was 100 per cent unionised, whereas, in 2018, 33.6 per cent reported complete unionisation.⁶ It is thus apparent that wide-ranging policy initiatives are required from the ETUFs if unionised EWCs are to become the norm.

Closely associated with increasing unionisation among EWC representatives is the policy objective among ETUFs to ensure that each EWC be assigned an EWC coordinator. The role of the EWC coordinator is to liaise between the EWC and the ETUF, in particular informing EWC representatives of the policies of the ETUF. In 2007, 32.9 per cent of representatives reported the presence of an EWC coordinator at the EWC, acting on behalf of the ETUF. By 2018, this proportion had risen to 58.9 per cent. While this increase reflects improved performance among trade union organisation, Chapters 4, 6, 7 and 9 will examine how EWC coordinators impact on the performance of EWCs.

Consistency is the principal feature of the composition of EWC representation between 2007 and 2018. The 'average' EWC representative in 2007 was male, aged 50, unionised and represented workers at six sites. In 2018, his counterpart was male, aged 50, unionised and represented workers at five sites. A difference between 2007 and 2018 is that, in 2018, the EWC representative was more likely to be from Central or Eastern Europe. In both 2007 and 2018, home country representatives were more likely to represent workers at a larger number of sites than their foreign counterparts. The proportion of home country representatives with representative responsibilities covering 11 or more sites increased markedly between 2007 and 2018.

Constitutional arrangements

The Directive and Recast allow wide-ranging negotiation on the constitutional arrangements of EWCs. The minimum standards set a floor to these negotiations but, compared to national arrangements for worker representation, are weak and ill-defined. This section makes no attempt to review the complete range of constitutional

5. Union density in the EU was 31.1 per cent in 2007 and 25.4 per cent in 2018 (OECD/AIAS ICTWSS database, accessed March 2021). The rate of unionisation among EWC representatives is thus markedly higher than aggregate density rates, suggesting the efforts by trade unions to ensure unionists sit as EWC representatives have been relatively successful.
6. In 2007, 19.7 per cent and, in 2018, 34.0 per cent of EWC representatives did not know the extent of unionisation within their EWC.

arrangements applicable to EWCs, many of which are examined in subsequent chapters. Instead, it focuses on the selection of EWC representatives and meeting arrangements. The objective is to identify how these issues may impinge on EWC practice, thus adding to the analytical framework applied in later chapters.

Selection of EWC representatives

The median number of representatives on an EWC reported by the EWC representatives was 21 in 2007 and 19 in 2018.⁷ This section examines how these representatives were selected to sit on the EWC. In referring to the principle of subsidiarity, the legislation places responsibility for the selection of EWC representatives on the Member States (recital 20 of the Recast). An analysis of EWC founding agreements confirms that national legislation underpins the selection of EWC representatives (De Spiegelaere and Jagodziński 2015). Furthermore, a legal assessment shows that there is considerable variation in how the selection of EWC representatives is organised within Member States (Jagodziński 2019). It is thus expected that a wide range of practices will underpin the selection of EWC representatives, reflecting different national practices. This expectation was realised in both 2007 and 2018. Central to the selection procedures in both years, however, was the influence of single- and dual channel systems of representation within Member States.⁸ In 2007, for example, 39.3 per cent of all EWC representatives were selected by an election held by the works council or equivalent institution of employee representation. This proportion had risen to 43.4 per cent by 2018, probably as a result of the dual channel systems of representation operating with the new Member States. By comparison, the proportion of all EWC representatives appointed by a trade union remained fairly constant: in 2007, 22.6 per cent and, in 2018, 21.3 per cent, although the proportion of all EWC representatives elected by union members rose from 10.2 per cent in 2007 to 18.5 per cent in 2018. These proportions rise markedly when respondents from either single- or dual channel systems of representation are examined separately. No fewer than 78.7 per cent of EWC representatives based in dual channel systems of national representation in 2018 were selected to serve on the EWC by an election held by the works council or equivalent institution of employee representation. Similarly, among EWC representatives based in single channel systems of representation, the proportion elected by union members was 26.3 per cent.

The implication of this variation between single and dual channel systems of representation is twofold. First, and further ‘complicating’ arrangements, EWC representatives based in the two systems of employee representation clearly have different reporting back priorities: one to the works council, the other to the trade union.⁹

7. It should be noted that, in 2007, 35.7 per cent and, in 2018, 15.0 per cent of EWC representatives did not know how many people sat on the EWC.

8. It is acknowledged that there are many variants of both single- and dual channel systems. Here, reference is made only to those systems that unambiguously ‘fit’ into one category or the other. Appendix C specifies the countries that were included in these two categories and the countries that were excluded on the grounds that their arrangements for participation comprised elements of both systems.

9. In the absence of a works council or a trade union branch or similar, EWC representatives are required to report back to the workforce. Such a requirement further ‘complicates’ reporting back procedures, as will be shown in Chapter 5.

Second, 16.9 per cent of EWC representatives based in countries with single channel systems of representation are not unionised. The question thus arises: to whom do these representatives report back, if at all? Chapter 5 examines this question.

Three further points are apposite regarding the selection procedures of EWC representatives. First, direct election by all workers is relatively rare: 10.0 per cent of all representatives in 2007 and 11.8 per cent in 2018. The rarity of such elections may contribute to the ‘distance’ reported between EWC representatives and those they represent (Lecher et al. 2002; Telljohann 2005a), as workers generally are not directly involved in the selection procedure. Second, in 2018, 2.1 per cent of all EWC representatives indicated that they were appointed/selected by company management to serve on the EWC. This is clearly contrary to the spirit of the legislation and runs counter to the guidelines produced by the ETUFs (EMCEF 2001; EFFAT 2009). Anecdotally, several EWC representatives informed the authors of this book that the managerial selection of representatives was a feature of the new Member States of CEE. The survey data do not, however, corroborate this anecdotal evidence, as less than one-third of the EWC representatives appointed by management are from a new Member State. One in five of the EWC representatives appointed by management come from the UK. It is noteworthy, however, that 9.6 per cent of non-trade union members reported that they had been appointed/selected by management, suggesting that, in some cases, management are attempting to manipulate the outcome of the EWC’s activities by exerting their influence over some of the EWC representatives. The survey does not allow further specification of the characteristics of these management appointees. Third, the ETUFs ask that EWC representatives verify their mandates to the EWC after election. With such a variety of national procedures in place, this is proving a difficult task in many EWCs. It remains to be seen what proportion of EWC representatives have their mandates verified in this way.

Meeting arrangements

This section examines the constitutional arrangements attached to meetings associated with EWC functioning. In addition to the plenary meeting, it is concerned with select committee meetings, preparatory meetings and debriefing meetings. Extraordinary meetings will be assessed in Chapter 4 and are thus excluded from consideration at this juncture. The Directive and the Recast state that the EWC has the right to meet in plenary session once a year with no upper limit imposed on the number of plenary meetings. The Directive and the Recast, however, are silent on preparatory and debriefing meetings, although the subsidiary requirements of the Directive and Recast (point 4) recommend that the EWC meet without a management presence before meeting with central management.¹⁰ There is thus no established right for EWC representatives to meet without the management being present either to prepare for the plenary meeting or to assess the content of the plenary meeting once it has taken place. On select committees, the legislation is more explicit, but still leaves room for

10. It should be noted, however, that Article 4(4) of the Recast allows the SNB to organise both a preparatory and a debriefing meeting in the absence of management.

Table 3.3 Purpose of the select committee in 2007 and 2018 (%)

	Very effective %	Effective %	Neutral %	Ineffective %	Very ineffective %	N
As a means of influencing the agenda of the EWC meeting						
2007	25.6	52.2	15.6	4.9	1.7	781
2018	38.9	44.3	13.1	2.7	1.0	1,200
As a means of communicating between meetings of the EWC						
2007	20.5	47.9	21.5	7.2	2.8	780
2018	29.6	45.8	17.3	5.5	1.8	1,229
As a provider of useful and accurate minutes						
2007	10.4	40.3	33.1	12	4.1	776
2018	26.8	40.0	24.9	5.9	2.4	1,190
As a means of reacting in exceptional circumstances						
2007	16.5	41.7	24.5	12.6	4.8	777
2018	29.2	39.1	22.4	6.7	2.6	1,219

manoeuvre. The subsidiary requirements of the Directive stated that, where the size of the EWC ‘so warrants’, a select committee is to be elected ‘from among its members, comprising at most three members’ (point 1(c)). The Recast partially addresses the limitation of the earlier formulation in stating that ‘agreements must provide, where necessary, for the establishment and operation of a select committee in order to permit coordination and greater effectiveness of the regular activities of the European Works Council’ (recital 30). While the Directive regarded the size of the EWC as a threshold for the establishment of a select committee without specifying the size that justified the presence of a select committee, the Recast enters the caveat ‘where necessary’ without specifying the circumstances that necessarily justify the presence of a select committee. ETUFs are unanimous on these issues: there should be more than one plenary meeting per year; preparatory and debriefing meetings are required to accompany plenary meetings; and a select committee is the preferred means to coordinate and articulate EWC activities between the plenary meetings. The constitutional arrangements attached to meetings are thus subject to negotiation as trade unionists attempt to improve weak minimum standards.

Regarding the number of plenary meetings held per year, there is evidence that negotiators have secured some improvements. In 2007, for example, 58.2 per cent of EWC representatives reported that the EWC met once per year, a proportion that had declined to 48.7 per cent by 2018. In 2007, two meetings per year were reported by 31.1 per cent of EWC representatives, a proportion that had risen to 39.7 per cent by 2018. In 2018, however, three or more plenary meetings were convened at EWCs attended by 10.6 per cent of EWC representatives compared to 10.7 per cent of their counterparts in 2007, suggesting no improvement at this level. The proportion of EWC representatives reporting that the EWC had moved away from minimum standards was thus 50.3 per cent in 2018 compared to 41.8 per cent in 2007. Data from the

EWCdb valid at December 2018 show that 834 of 998 (83.6 per cent) active agreements mention the frequency at which plenary meetings take place. Of the 834 agreements, 73.9 per cent specified one annual plenary meeting, 23.1 per cent two meetings and 3.0 per cent three or more meetings. On this basis, 26.1 per cent of agreements have moved away from minimum standards. This suggests that the sample of respondents comprises a disproportionately large number of representatives operating in EWCs where agreements and/or practices surpass the minimum standards, particularly those attending EWCs that meet three or more times per year.

There is also evidence of marginal negotiated improvements in the proportion of EWC representatives reporting the establishment of a select committee: in 2007, 85.0 per cent and, in 2018, 87.5 per cent. No fewer than 75.8 per cent of agreements in the EWCdb in December 2018 mentioned that a select committee should be established.¹¹ The presence of select committees is thus overstated among survey respondents compared to their presence reported in active EWC agreements. Select committees appear to be meeting at a similar frequency: in 2007, the median number of annual select committee meetings reported by EWC representatives was three, a number that had not changed in 2018. In 2018, however, the distribution of select committee meetings was influenced by the legislative underpinning of the institution, with 88.0 per cent of EWC representatives operating under Article 6 reporting the presence of a select committee, while fewer, 86.4 per cent, operating under Article 13 reported the same. Based only on responses from EWC representatives that stated that the select committee undertook these functions, Table 3.3 demonstrates that select committees, where present, were more effective in 2018 than in 2007. Even though, in 2007, a majority of EWC representatives reported that the select committee was effective to some degree with respect to each of the purposes listed in Table 3.3, EWC representatives thought that, by 2018, select committees had become more effective. From the perspective of EWC representatives, it thus appears that select committees are crucial to the functioning of EWCs.

A direct comparison of the situation in 2007 with that of 2018 regarding preparatory and debriefing meetings is not possible because different questions were asked in the two surveys. In 2007, representatives were asked if their EWC founding agreement allowed such meetings. No fewer than 89.6 per cent of EWC representatives indicated that the founding agreement made provision for a preparatory meeting, while 57.1 per cent reported provision for a debriefing meeting. Given the absence of any reference to preparatory and debriefing meetings in the Directive, negotiators of EWC founding agreements had thus made some headway in the period before 2007 on these meetings. In 2018, the survey asked respondents to indicate ‘how often’ preparatory and debriefing meetings are convened in conjunction with the plenary meeting of the EWC. With regard to preparatory meetings, 76.2 per cent of EWC representatives indicated that such meetings were ‘always’ convened or were held ‘most of the time’, and 58.1 per cent reported debriefing meetings as occurring at the same frequency. In contrast, 13.6 per cent of EWC representatives reported in 2018 that preparatory meetings rarely or never took place or did not know if such meetings were convened, and 22.0 per cent of EWC

11. In all, 756 agreements state that a select committee should be established, which is 75.8 per cent (756/998) of all active agreements on the EWCdb at December 2018.

representatives responded on the same basis regarding debriefing meetings. Where preparatory and debriefing meetings were mentioned in agreements in the EWCdb, 99.4 per cent and 98.3 per cent respectively indicated that such meetings should take place. In both cases, however, large numbers of agreements made no reference to preparatory meetings (28.5 per cent) or debriefing meetings (58.0 per cent), meaning that the coverage of these meetings remains uncertain.

This brief review of the selection procedures that underpin the position of the representatives and meeting arrangements raises three points for subsequent analysis. First, the reporting back requirements differ between representatives from single- and dual channel systems and between home country and foreign representatives, suggesting different patterns of articulation between EWCs and other institutions of labour representation within the MNC. Second, there is considerable variation in the number of meetings of the EWC. Chapter 4 examines whether this variation impacts on the functioning of EWCs in relation to the frequency of plenary meetings. Third, the more extensive experience of representatives in 2018 compared to 2007 may impact on the performance of the institution. The impact of this potential 'learning curve' is examined in several subsequent chapters.

Conclusion

Between 2007 and 2018, the 'average' EWC representative remained remarkably constant: a 50-year-old unionised man who represented workers at five (in 2018) or six (in 2007) sites. In 2018, the 'average' EWC representative was more likely to be from the post 2004 new Member States. In 2007 and 2018, home country representatives tended to represent employees at a larger number of sites than their foreign counterparts, suggesting that the two groups face different reporting back challenges. In contrast, the emphasis of the review of constitutional arrangements was development over time. The increasing frequency of plenary meetings and the growing proportion of EWCs operating with select committees and preparatory or debriefing meetings indicates a gradual movement away from the weak minimum standards specified in the legislation. The wide-ranging variation in the method of selecting EWC representatives to serve on the institution was anticipated from the legislation, but it is a further variation within the institution.

The findings of this chapter raise three issues that will figure large in subsequent chapters and suggest a range of variables that may form the basis to the analysis. First, while the duties attached to the acquisition of information and consultation may be similar for all EWC representatives, their reporting back responsibilities vary widely dependent *inter alia* on systems of workplace representation within Member States, the structure of the MNC, and the relationship between the nationality of the EWC representative and the country of the headquarters of the MNC.

A second issue concerns the gradual movement away from the weak minimum standards regarding meetings, which suggests some 'learning curve' effects as EWC representatives come to understand the institution and how it may be improved.

Research on managers (Pulignano and Turk 2016) and the content of agreements (De Spiegelaere and Waddington 2017) suggest that learning effects rendered much of the Recast obsolete even before it was adopted. The point here is that legislative change and learning effects may both lead to improvements in the operation of the institution. While no attempt is made here to assign a value to these effects, subsequent chapters attempt to tease apart the implications of the two effects on EWC practice.

Third, and associated with the debate between the relative impact of learning effects and legislation, is the impact of contestation. The gradual movement away from weak minimum standards also reflects, to some degree, the policy initiatives of trade union organisations, which have repeatedly sought, and continue to seek, improvements in the legislation and in the terms of founding EWC agreements. This movement also confirms that some managers are prepared to search for mutual benefits and to implement improvements on minimum standards to upgrade EWC practice. Chapter 8 examines the motivation of management in these circumstances. The fact that this movement away from minimum standards is gradual, when it occurs, and partial, in that many EWCs remain wedded to the weak minimum standards, is a further indication of the contestation inherent in the content of the legislation and EWC practice. All subsequent chapters address different aspects of this contestation.