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# EUROPEAN METALWORKER PARTICIPATION: STATE OF PLAY AND BEST PRACTICES ON THE EDGE

A Syndex study  
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Associated organizations



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### **Layout**

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Why the decision to study European Works Councils (EWC) within the metallurgy sector and submit a plan to the European Commission? Quite simply because 10 years after the implementation of the recast 2009/38 EU Directive on EWCs, it was time to take stock of how these transnational bodies function and assess how to make them more effective.

The European metallurgy sector is at the core of Europe's industrial base and contributes largely to its economic development. However, it is facing major challenges linked to worldwide competition, resulting in restructuring and relocation plans as well as planned regular factory closures. Considering that EWCs in the metallurgy sector make up a third of all existing EWCs, we can legitimately state that employee representatives, through EWCs, can potentially help the sector meet the several challenges facing it.

This final report marks the end of two years' work and collaboration with major European social dialogue stakeholders, namely European Works Council members and works councils for European companies (SE). Without your upstream contributions by answering questionnaires, followed by your active and meaningful participation throughout seminars organised across Europe, it would have been impossible to optimally reflect how EWCs and European companies within the metallurgy sector function.

For this, I would also like to thank the Syndex experts based in Paris, Brussels, Warsaw, Bucharest, London and Madrid, who have put enormous effort into this project and without whom it would not have seen the light of day.

Putting such a project in place, building it and bringing it to life is an extremely enriching experience. I was fortunate to collaborate with people from diverse backgrounds and different trade union cultures, namely associated trade unions, and especially members of participating EWCs, the leading stakeholders in this adventure. And therein lies all the wealth of an EWC: our differences must be an advantage and not a source of weakness, and communication remains the key to our success.

Today, you have in your hands the final report of the EMWP project: "European MetalWorker Participation: State of play and best practices on the edge", I hope that it will shed light on the functioning to adopt and the practices to avoid in order for your existing or future EWC to be truly considered as a crucial and unique body for social dialogue, information and consultation at the transnational level.

Merci. Mulțumesc. Dziękuję. Gracias. Dëkuji. Thank you. Tack. Dank.

Caroline BLOT  
Project organizer. FGMM-CFDT

# CONTENTS

<b>INTRODUCTION</b>	<b>5</b>
<b>#1 EWCs in 2019: where are we?</b>	<b>7</b>
<b>#2 Going further</b>	<b>14</b>
<b>#3 Annexes</b>	<b>15</b>

# INTRODUCTION

Within the European Union, the idea of creating a transnational employee representation body in the 1990s was an innovative idea for the period. And the idea still remains unique.

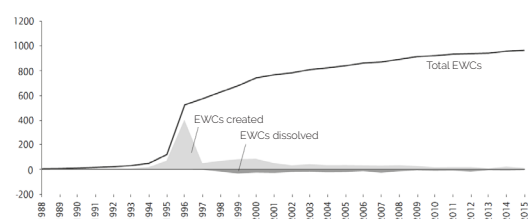
However, 25 years after the adoption of the first directive, it is still difficult to implement European Works Councils (EWC). In fact, only 40% of companies in the European Union that are subject to this obligation have such a body in place.

In a recent study (De Spiegelaere 2017), it appeared that one in three companies conducting a transnational restructuring operation had no EWC.

The absence of such bodies may be explained by ignorance of the regulations in force, the lack of interest in them and/or employer reticence.

It also appeared that new EWCs were being created at a slower pace in recent years.

Establishment and dissolution of EWCs



Source : Too little, too late? Evaluating the EWCs Recast Directive, Stan De Spiegelaere, Bruxelles, ETUI, 2016.

But what certainly raises even more questions is the issue of how these bodies function, their capacity to have real consultative prerogatives and to emerge as a place for discussion, which company managers must listen and must consider.

In a report made public in May 2018<sup>1</sup>, the European Commission noted several challenges central to the functioning of EWCs, in particular:

- > The absence of a clear definition of the information to be provided to the body;
- > The absence of a timetable for the information and consultation procedure;
- > The little influence of the EWC opinion following the consultation procedure;
- > An imprecise definition of the notion of "transnationality";
- > Difficulties for elected EWC representatives in having their rights respected and the lack of "dissuasive and proportional" sanctions in most national legislations.

Despite these worrying conclusions and in spite of a request by the European Trade Union Confederation, the European Commission has decided not to modify the directive in force.

Several trade union federations in the metallurgy sector in Europe have therefore joined forces in an attempt to see things more clearly. Around 30 EWCs were therefore involved in this project based on several procedures: answering a questionnaire, participating in one or several seminars, or even helping create case studies. The summary below is based on all these elements as well as a review of the recent literature on this topic.

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<sup>1</sup> European Commission Report (2018) on the implementation of Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings with a view to informing and consulting workers (recast), Brussels.

## #1 EWCs in 2019: WHERE ARE WE?

### THE BARE FACTS

There are currently around 1,000 EWCs. At end 2016 the database of the European Trade Union Institute (ISE/ETUI-EWCDB) listed 980 EWCs. Several EWCs have obviously been created since. This data is indicative and should be used with caution as the ETUI, the body that manages this database, has no information on some EWCs that are no longer active. This explains why the number of active EWCs is undoubtedly slightly below 1,000. It should be noted that the revision of the directive in 2009, one of the objectives of which was to boost the creation of new EWCs, has been a failure in this regard because fewer EWCs have been created recently.

Of this total of 1,000, a little over 400 fall within the metallurgy sector. The headquarters of companies concerned are located mainly in Germany, the United Kingdom and France. The Benelux countries and Sweden also make up a significant share.

It should be noted that the increasing importance of European companies (SE) is being felt because roughly 10% of EWCs are in fact established as works councils of the European company (SE).

In the metallurgy sector, among the major companies that have shifted towards an SE structure are: Airbus, Dassault Systèmes, Faurecia, MAN, SAP and Schneider.

This trend could increase in coming years considering the growing number of companies attracted by this status. It should be noted that in Germany, several companies use this means as a way of avoiding obligations with respect to co-determination (Mitbestimmung) by putting in place an empty SE without employees. Several companies in the Czech Republic have also chosen this status.

It should be noted that with respect to employee representation, implementing an SE requires putting in place an employee representation body resulting from negotiation within a special negotiation group.

A substantial portion of agreements in force fall under pre-directive agreements (Article 13 of Directive 1994/45), in which there are often no consultative prerogatives and it is only during a takeover or a switch to an SE status that the body may have consultative prerogatives.

At end 2015, around 40% of EWCs were still not fully governed by the directive or its 2009 recast<sup>1</sup>. In fact, the revised directive imposes no obligations to renegotiate the agreements in force. It is only if the company's structure is modified significantly (example by a takeover) that any renegotiation is required.

Generally, EWCs rarely have prerogatives extending beyond consultation (recommendations, assent, etc.).

### EWCs in the METALLURGY SECTOR

The metallurgy sector represents a significant share of all existing EWCs, roughly 40%. This represents roughly 380 active EWCs.

By sector, the automotive sector seems to head the list as regards the number of EWCs, followed by the mechanical engineering, high technology (ICT), aeronautics, iron and steel, household and electrical equipment sectors.

The distribution of EWCs in the metallurgy sector is linked directly to country size and their industry.

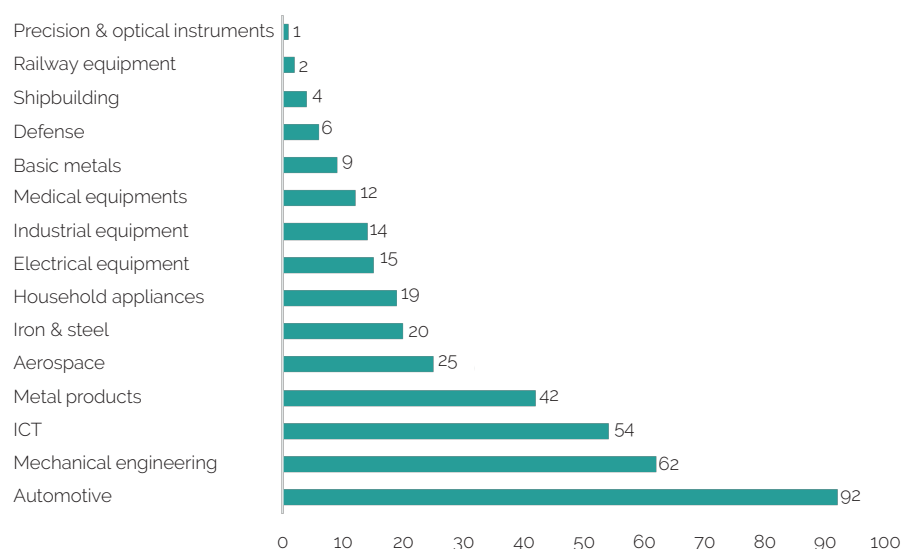
It is hardly surprising, therefore, that Germany is the first country as regards the number of EWCs fol-

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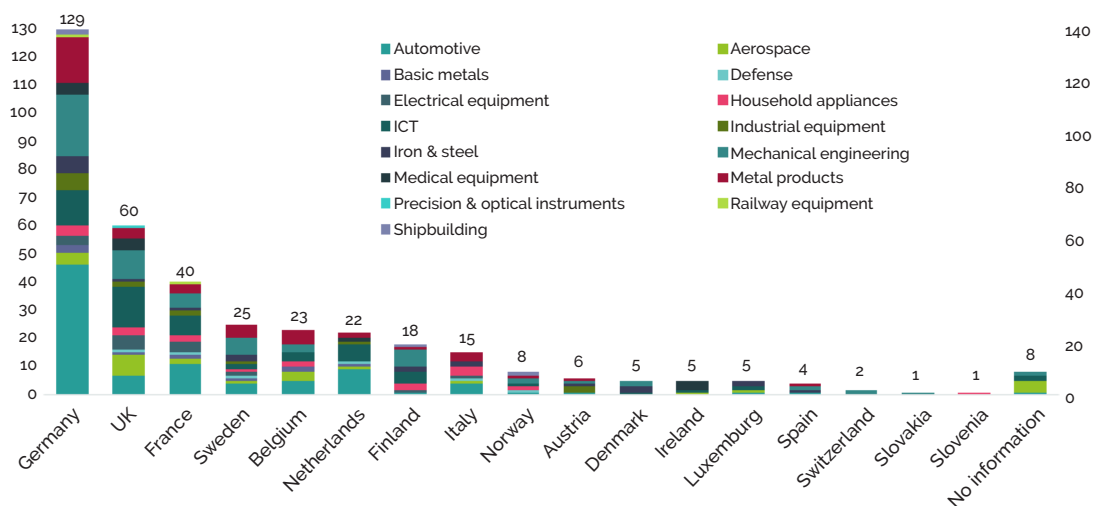
<sup>1</sup> European Works Councils and works councils for European companies (SEs) in 2015. Facts and figures. ETUI. 2016.



Existing EWCs by branch of Industry



Existing metal EWCs per country and branch of industry



lowed by the United Kingdom and France. The EWCs of several companies also have their headquarters in Sweden and the Benelux countries.

There are over 50 EWCs present in the Nordic countries (including Finland), i.e. 15% of the total.

Benelux also has some 50 EWCs.

Benelux figures are inflated by the registration of some companies in certain countries: EADS is considered as Dutch headed, Arcelor Mittal as Luxembourg headed, etc.



## OFTEN BARE-BONE AGREEMENTS

Based on the questionnaires received, 61% of agreements provide for a single plenary meeting per year. A small third plans two of them. Almost all agreements provide the possibility for a preparatory meeting (90%) or a debrief meeting (63%). However, select committees meet more often, with a half of them meeting more than three times per year.

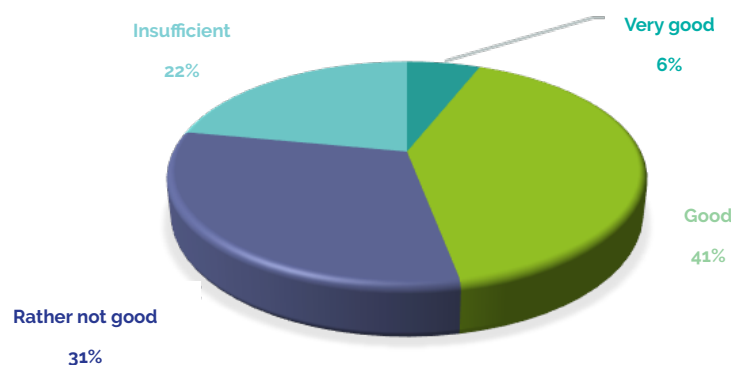
A study conducted in 2015 among EWCs of all sectors illustrated that the overall situation was pointing more towards bare-bone provisions: only 3% of EWCs meet at least three times per year, 23% two times, while 70% have only one annual meeting.<sup>1</sup>

Interpreting service is provided almost systematically (93%) and documents are translated (63%) without stating the number of languages actually available or whether interpreting is provided in the preparatory meeting.

## THE QUALITY OF INFORMATION VARIES SIGNIFICANTLY

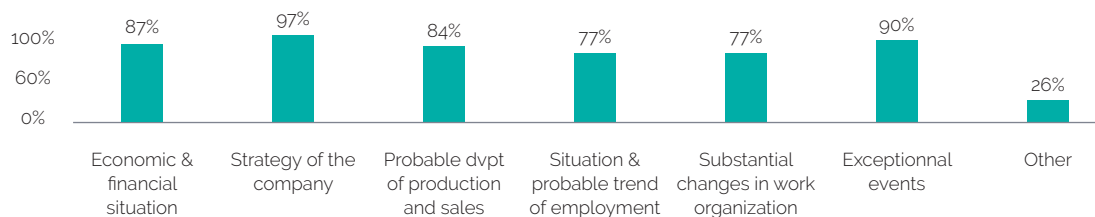
It is difficult to form an assessment regarding the quality of information especially since the assessment of the quality of information may vary significantly from one country to the other due to the existence or non-existence of employee representation systems at the national level. In the responses collected, a very large majority of respondents consider that the quality of information transmitted was good or very good. An overwhelming majority (81%) even believe they receive confidential information. But several respondents who consider that the quality of information provided was good, in fact, received the information during the meeting, possibly orally. This, under no circumstances can be considered as quality information. Other respondents, although stating they receive good information, note nevertheless, that they are scarcely consulted for major issues.

How to assess the level of information provided to the EWC?



<sup>1</sup> De Spiegelaere, Stan and Romuald Jagodzinski (2016) European works council and works council for European companies (SEs) in 2015 - Facts and figures. ETUI, Brussels.

**What type of information is transmitted to the EWC  
by the management?**



Through these responses, we can really ask if members truly know on what they should be informed.

Nevertheless, it is rather encouraging that the subjects on which the information is submitted are varied according to the responses,

The "other" category includes responses such as corporate indicators, corporate policy, acquisitions, disposals, health and safety, CSR, training, R&D, etc.

However, at a closer look, it appears that this information is often submitted during plenary meetings, and in some cases, only orally. And fewer than 30% of EWCs receive information sufficiently in advance — that is, more than a few days in advance — making the organisation of their preparatory and plenary meetings less effective.

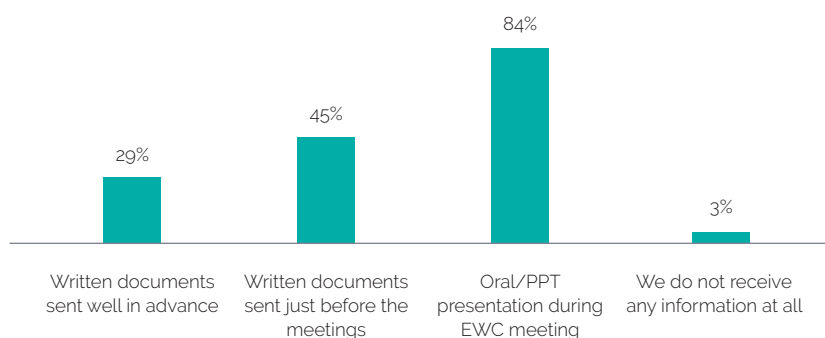
In reality, in pursuing the discussion further, the information appears to be of poor quality: "selective, information without citing any sources", "documents

received during the meeting", "information on restricted topics". These are some of the responses that may be given.

Quite frequently, employers use the notion of confidentiality tiresomely to limit the content of information to be provided, as well as the ability of European Works Council members to share it. Sometimes public documents such as those communicated by the company for the publication of its financial results are stamped confidential. A new (or revised) directive should consider this problem by giving a precise definition of "confidentiality" to end this abusive practice by management.

Finally, due to inadequate training, it is not always easy for employee representatives to get hold of the information, analyse it properly and use it advisedly. In this regard, using an external independent expertise may be beneficial for employee representatives. Agreements often mention this possibility but, in many cases, does this not require some negotiation and or approval by management?

**How is the information being transmitted by the management?**



## WHAT DOES TRANSNATIONAL MEAN?

The notion of transnationality places us at the core of the EWC's prerogatives. In essence, the EWC's field of expertise is European. Consequently, an issue may be considered transnational if it exceeds the competence of local management. And the group's management should have to prove that the issue is local/national and not transnational.

Recital 16 in the 2009 directive is useful in this regard: "The translational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.

A recent decision by a Dutch court perfectly illustrates the challenges entailed in this notion of transnationality. It concerned knowing in this matter, if the company (Alcoa), which was planning to close two factories in Spain, should consult the EWC when the restructuring is to be done in a single country. It was considered that a reorganization in a single country could still be considered transnational. The consequences of this ruling, however, have not yet become clear for other countries. In this case in point, the factory closures in Spain could have an impact on a shared service centre in Hungary. This is a perfect example of the difficulties in defining what is transnational and especially in not necessarily considering two countries at first glance.

It has been observed that since the 2009 revised directive, the probability of including a definition of what is transnational has increased from 65% to

85%<sup>1</sup>. However, there is a drawback: the definitions frequently include words such as "decisions that affect employees' interests negatively or unfavourably." But it is important for EWCs to be able to be informed regarding decisions that are not only negative or unfavourable. There should be a consultation on a new work organization, without this necessarily being translated into negative effects for employees.

## HOW ARE INFORMATION AND CONSULTATION PROCEDURES CARRIED OUT?

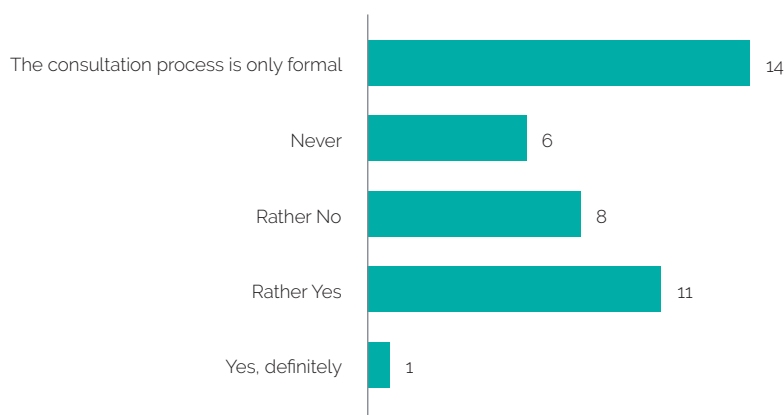
For management, a consultation is a formal ritual that one must go through, more or less willingly. But this ritual may also allow it to test certain ideas, allow information to flow back downwards or facilitate the launch of initiatives. For employee representatives, a consultation must allow them to be informed about a project (and not a decision) in order to be able to question, enrich and change it. In other words, to be heard by management.

A consultation in the spirit of the directive implies the transfer of quality information at an appropriate time. But these first conditions are not always complied with, as the results of our sample indicate.

Furthermore, the spirit of the directive imposes that the different points of view be discussed. But an indispensable condition lies in the holding of at least two meetings to be able to discuss validly, which is not always the case in EWCs. How can there be a discussion around all the different points of view if everything is done in a single meeting? Or if the meeting is but a succession of presentations by management, in which information is presented for the first time during the meeting, and with room for few questions at the end? Or simply, if the information and consulta-

<sup>1</sup> Too little too late? Evaluating the EWC Recast Directive, ETUI (Stan de Spiegelaere) 2016, page 62.

**According to you, are the opinions of the EWC taken into account by the management?**



tion take place on the same day, leaving the EWC with very little room for manoeuvre?

Furthermore, some consultations are done with the EWC executive or the select committee rather than with the EWC. This relieves the EWC of a part of its prerogatives.

Our study sample shows an overall low level of satisfaction as regards the consultation process. This high level of dissatisfaction is very telling: we touch at the core of what should be the EWC's prerogatives.

The revised directive has certainly clarified areas in stating some notions but it still has not solved all the problems. And even under agreements that have been revised since, the key definitions of "information", "consultation" and what is transnational have often been watered down compared to the definitions given in the directive.

Furthermore, it is often revealed that the deadlines granted are not sufficient to process the information suitably. The right to the use of an expertise is not always guaranteed, or agreement clauses state often that management must agree to or participate in selecting the expert. This means the negotiation is often long and painstaking.

As the European Commission reminds us in the above-mentioned report, another way of looking at

things is to ask ourselves the question of whether it is possible for employee representatives to influence major decisions, especially in crisis situations. In fact, although they are entitled to give an opinion during a restructuring operation - and then again, this is not always the case - they have hardly any influence in their company's decision-making process. However, the restructuring decisions are made often in advance, sometimes several years, before they are effectively implemented.

Finally, for a consultation process to be complete, whenever the EWC gives an opinion management must systematically give a detailed response, within a tight deadline, explaining the reasons for its disagreement and not restating suggestions or proposals that have been submitted.

For now, it appears too often that the effectiveness of the consultation is non-existent or insufficient because the quality or quantity of the information and the time in which the information is transmitted are problematic. According to a recent study among managers, in an overwhelming majority of cases, the consultation takes place after the strategic decision has already been finalized.

<sup>1</sup> EWC on the move: management perspectives on the development of a transnational institution for social dialogue, KU Leuven. Valeria Pulignano and Jeff Turk. 2016.

## EXPAND OR STRENGTHEN THE ROLE OF THE EWC?

According to Stan De Spiegelaere et Romuald Jagodzinski, it appears as if the works councils of European companies have broader prerogatives than the mere information and consultation rights. According to their study<sup>1</sup>, over a half of the works councils of European companies have the capacity to issue "opinions & comments", "start projects", "make recommendations" and "engage in negotiations". These same bodies also have more competence regarding employment matters. The only precision made in this field is that it would be with respect to the transfer of activities and collective redundancies.

On the question of transnational, worldwide and European agreements, the EWC is sometimes a

stakeholder, and in some cases even central, in negotiating and concluding these agreements. This trend, fought by trade unions, reflects the Europeanization of corporate relationships. There are over twenty-odd agreements involving EWCs in the metallurgy sector<sup>2</sup> and this figure rose to thirty something in 2018.

It is not about going out in the field of transnational agreements, which is a trade union prerogative, nor in that of employee representation in board meetings or supervisory boards.

Rather, it is about expanding the topics dealt with by EWCs and especially giving them more weight in the decision-making process: detailed responses by management to EWC proposals, impact assessment of EWC proposals, assent on some matters, possibility to give recommendations, etc.

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1 EWC and work councils of European companies (SE) 2015. Facts and figures. ETUI. 2016. Stan de Spiegelaere. Romuald Jagodzinski.

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2 Transnational company agreements and the role of EWCs in negotiations. Torsten Müllern Hans-Wolfgang Platzer and Stefan Rüb.

## #2 GOING FURTHER

The 2009 revised directive made some useful clarifications, especially in giving definitions to key concepts such as "transnational", "information" and "consultation".

Yet, the outcome is also disappointing on several fronts:

- > A significant portion of agreements have not integrated these new provisions;
- > There has been no observed increase in the pace of new EWC creations<sup>1</sup>;
- > The consultation often remains a formal exercise and the use of an external expert is often or almost non-existent.

Another limitation is that often the EWC has no legal personality (e.g. in Finland). In Belgium, the EWC cannot bring a civil action, only members or trade unions may do so. And even when it is legally possible for the EWC to go to court, there are several obstacles (lack of a specific budget to pay a lawyer, the courts do not necessarily know the texts in force, etc.).

Twenty-five years after the adoption of the first directive, the number of EWCs is still far from its potential. And the absence of dissuasive sanctions if companies fail to comply with the obligation to create an EWC certainly does not help.

Furthermore, EWCs are often stakeholders with insufficient rights and which struggle to make their

voices heard or assert their point of view. In short, for the voices of employee representatives be heard and their opinion taken into account. The thirty-odd EWCs in our study have shown that much work needs to be done before EWCs became a strong voice.

Consequently, considering the observed practices and the weaknesses contained in the texts in force, a new directive (or a new revision) is required. Among the course of action, we should mention:

- > Renegotiate all Article 13 agreements;
- > Facilitate access to the courts;
- > Provide for dissuasive sanctions for employers that fail to comply with their obligations;
- > Create objective criteria to avoid employers resorting to social tourism;
- > Raise the level of subsidiary requirements to encourage more negotiation;
- > Incorporate employees of franchises or other types of structures that fall outside of the directive;
- > Better formulate the notions of transnationality and exceptional circumstances;
- > Limit the excessive use confidentiality;
- > Introduce the principle of prohibiting the implementation of a plan if a consultation procedure has not been conducted or conducted improperly;
- > Introduce minimum time frames for carrying out consultation procedures and avoid them taking place in a single day.

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<sup>1</sup> As agreed in the European Commission evaluation in 2018. Report on the implementation by the Member States of Directive 2009/38 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community groups of undertakings for the purposes of informing and consulting employees (Recast). 14/05/2018.

## #3 ANNEXES

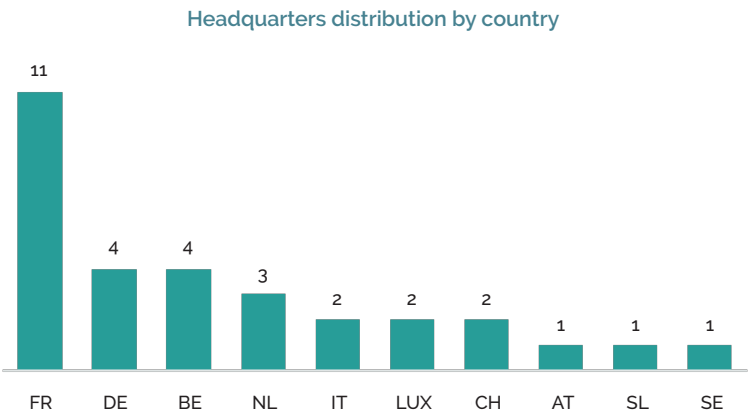
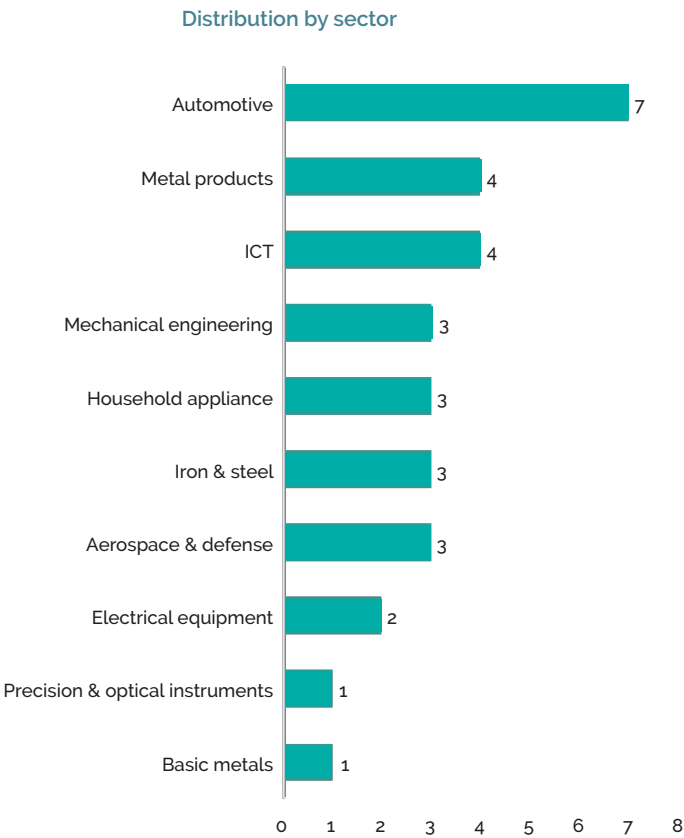
### ANNEXE 1

#### LIST OF EWC SAMPLE

- |                         |                  |
|-------------------------|------------------|
| > Bosch                 | > Bekaert        |
| > Essilor International | > Mora (Gorenje) |
| > Prysmian Group        | > Magna          |
| > ArcelorMittal         | > Valeo          |
| > SEB                   | > Wilo           |
| > Whirlpool Company     | > Aperam         |
| > STMicroelectronics    | > Constellium    |
| > Dassault Systèmes     | > Eramet         |
| > MBDA                  | > Ericson        |
| > Bombardier            | > Renault        |
| > CNHI                  | > Toyota         |
| > Honeywell             | > Legrand        |
| > Schneider             | > Vallourec      |
| > Faurecia              | > Wincor Nixdor  |
| > Norauto               | > Otis           |
| > ABB                   | > Nexans         |



ANNEXE 2: SOME DATA ON  
THE SAMPLE





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