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EWC confidential: Confidentiality in European works councils and how representatives deal with it. Case study and survey insights

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EWC Confidential

Confidentiality in European Works
Councils and how representatives
deal with it: case study and survey
insights



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european trade union institute

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Summary

The idea behind the establishment of European Works Councils (EWCs) is that these are bodies which should be informed and consulted on company decisions and actions. This information is then subsequently to be spread locally by employee representatives on the EWC in order to keep the entire European workforce up-to-date with the firm's most important measures.

However, this flow of information is often disrupted by confidentiality constraints imposed by management. Confidentiality is used to protect sensitive information from leaking and thus it limits representatives from sharing information with the workforce. In principle, only early and sensitive information should be subject to confidentiality requirements. On top of this, management might also decide to withhold information from the EWC. This would change the situation regarding confidentiality. If information is withheld, the EWC is informed later when that information has lost its sensitive nature and confidentiality should no longer be required.

In previous years, much research has been done on information and consultation practices in EWCs. Although information sharing and confidentiality are directly linked with one another, little is known about confidentiality practices, issues and strategies. What experiences do employee representative have with confidentiality? Are demands for confidentiality being misused by management? How do representatives cope with confidentiality and the withholding of information by management?

Three central research questions are: (1) what are the different practices of confidentiality and the withholding of information in EWCs; (2) what are the different handling strategies EWC representatives use in order to deal with confidential information; and (3) how do these handling strategies affect the functioning of the EWC and the employee representatives themselves?

These research questions are addressed in this study using both qualitative and quantitative data. Four case studies on EWCs were carried out, based on several semi-structured interviews. From these case studies, we first draw a general assessment of how each EWC functions based on the typology developed by Lecher et al. (2001). Next, the (legitimate) use of the confidentiality label by management is discussed. We consider confidentiality to be legitimate when information is provided in a timely manner but has a sensitive nature. In this situation, management has the right to consider information as confidential. In contrast, we consider confidentiality to be illegitimate when information is disclosed late to

the EWC and/or it has no sensitive nature. Here, the management has no right to prevent the EWC informing employees. In a third step, we look at how employee representatives deal with this confidentiality and any withholding of information. How an EWC reacts to confidentiality issues is related to, and could affect, the general functioning of the EWC. Based on existing models from industrial psychology, we distinguish between several different handling mechanisms.

Representatives on three out of the four EWCs included as case studies evaluated information and consultation provision as late and minimal, which explains why most EWCs may be defined as a 'symbolic' or 'service provider' EWC. In only one of the case studies did representatives say that it operated under a timely and effective information and consultation procedure; this one may, therefore, be defined as a 'project-oriented' or 'participatory' EWC. The same three EWCs with minimal information and consultation procedures were confronted with illegitimate and strict confidentiality constraints and the withholding of information. Employee representatives tried to cope with these strict constraints by challenging management or making compromises. The support of a trade union coordinator helped to strengthen these strategies. However, this did not lead to the provision of earlier and more sensitive information. In only one EWC, and in one select committee of an EWC, did employee representatives receive early information. While we might have expected management to put (legitimate) confidentiality requirements on this information, it did not. Paradoxically, these case studies demonstrated that, where information was non-sensitive and late, management imposed (illegitimate) confidentiality requirements; and, where it was sensitive and early, it did not.

These insights were subsequently cross-checked using survey data from 1,635 EWC and SEWC (European Company Works Council) members. The survey findings generally confirm the observations based on the case studies: EWC members who think management withholds information are also more likely to feel limited in discussing information because of the 'confidential' labelling; at the same time, EWC members who think management shares all information also feel much more free to talk about that information.

The paradoxical situation that we have established goes against the reasoning that labelling information as confidential can enable employers to share early and sensitive information with the EWC; it is more in line with the reasoning that, where employers do not want the EWC to function, they use several means (not providing information, marking everything as confidential) to limit it.

1. Introduction

‘What goes on in Europe stays in Europe,’ declared an employee representative recently in a training session. He was positive about his work as an employee representative in the European Works Council (EWC) of his company. The company’s management informed the representatives about the current state of the company and about future projects. They could voice their views and really influence decisions. The flip side was that everything that was being discussed was termed ‘confidential’. By no means was he able to inform the employees he represented, discuss the formation of a common view or obtain advice from the trade union. Early information and real consultation came with demands for strict confidentiality.

As this story shows, employee representatives do not have the easiest task on their hands. Their job is to represent and defend the interests of employees. In order to fulfil their role as a representative of the workforce, they need up-to-date information about the firm’s affairs, such as (probable future) decisions, strategic plans and business operations.

However, such information may be sensitive and could damage the interests of the company if made public. This kind of information could also cause (possibly unnecessary) unrest amongst employees; it is therefore often defined as confidential. To continue getting this kind of confidential information, employee representatives thus need to show management they can be trusted as well as discreet.

At the same time, this requirement conflicts with their responsibility to represent the views of employees. To fulfil this role, they need to discuss these issues with employees, report back on debates and ask for input. This communication with the workforce is necessary in order to deliver a universally agreed response to management.

Employee representatives are thus confronted with conflicting (and competing) roles and tasks when it comes to confidential information (Hammer *et al.* 1991). Even though reporting back to employees is one of the most important duties of a representative, they are often restricted by the ‘confidentiality’ label. Communicating with employees and respecting confidentiality to ensure that management provides enough information, and at the right time, is a delicate balancing act. In order to do their work properly, confidentiality rules therefore need to be bent or broken (Hannah and Robertson 2015).

Virtually all employee representatives face this problem but, in this paper, the focus will be on employee representatives on European Works Councils (EWCs) (or European Company Works Councils – SEWCs). These transnational institutions of employee information and consultation bring together employee representatives from different countries with the senior management of a multinational company to discuss transnational issues such as the company’s strategy, employment forecasts, cross-border restructuring, etc. (De Spiegelaere and Jagodziński 2015). The EWC is, in theory, kept informed about general company strategy, large merger cases or strategic investments – sensitive issues which, if made public, might seriously damage the company and its employees. For employee representatives on these EWCs, this confidentiality issue can be even more difficult as the EWC brings together representatives from very different industrial relations traditions that might have divergent opinions on what is confidential and how information should be treated.

Previous studies have indeed indicated that there are issues regarding the use, misuse and abuse of the confidentiality label in EWCs. A 2016 survey commissioned by the European Commission of 37 EWCs showed that 15 per cent of employers strongly agreed with the statement that the EWC information and consultation process led to breaches of confidentiality. In contrast, only two per cent of the employees surveyed were of the same opinion (ICF 2016). Earlier research had shown that real breaches of confidentiality were exceptional (GHK 2007); however, while breaches might be the exception rather than the rule, the topic is still one that raises concerns. For companies listed on the stock exchange in particular, detailed planning is needed on some issues like mergers, acquisitions or major restructuring (Pulignano and Turk 2016: 29). Based on these and other insights, the European Trade Union Confederation included the demand to clarify confidentiality rules in its 2017 position paper on the future of EWCs (ETUC 2017).

The literature and evidence in practice clearly shows that confidentiality is an issue for employee representatives on EWCs (Hoffmann 2006). In some case studies, the subject is touched upon, but rarely developed in detail (De Spiegelaere and Jagodziński 2016; Steiert 2001; Telljohann 2011). De Spiegelaere and Jagodziński (2016), for example, state that the use and misuse of confidentiality requirements in EWCs can conflict with the employee representatives’ right and obligation to report back to the workforce. In the case studies edited by Telljohann (2011), the researchers looked into the ‘inner life’ of EWCs with the objective of attaining a broader view of the interaction processes and operations of different EWCs. Unsurprisingly, they also ran into the same confidentiality issues with which employee representatives are confronted, although these issues were not discussed in detail in the paper. Prior research thus notes confidentiality as an important point for attention concerning the goal of making EWCs a properly functioning instrument for social dialogue.

In this working paper, we aim to contribute to the debate and knowledge about confidentiality in European Works Councils by describing and discussing two sources of information: one qualitative and one quantitative.

2. Qualitative and quantitative sources

This working paper starts out from insights developed out of four explorative case studies in which we tried to get an image of how EWC representatives treat confidential information, why they do what they do and how this affects their EWC and themselves as individuals. Building on the one hand on the EWC typology literature and, on the other, on industrial psychological literature, these case studies aim to clarify the kind of confidentiality issues that EWCs come up against; how they cope with this; and how this affects representatives' individual and collective performance. The central research questions in this respect are:

1. What are the different practices concerning confidentiality and the withholding of information in EWCs?
2. Which handling strategies do EWC representatives adopt in order to deal with confidential information?
3. How do these handling strategies affect the functioning of the EWC and of the employee representatives themselves?

These case studies are of an explorative nature. They are, to our knowledge, the first to examine the subject of confidentiality in EWCs in a detailed way, drawing on the literature on EWCs and in the field of industrial psychology. The aim of the research is thus to approach this subject using a broad theoretical framework of EWC types and handling strategies, but without clear hypotheses – at least, at the outset – on how the one should relate, or lead, to the other. Four EWCs were selected with the aim of developing points of comparison.

All the companies have strong representation in Belgium and three of them have an EWC based on Belgian law (A, B and D). The fourth EWC is based on Dutch law (C). The selection of cases conformed to good reason: two cases (A and C) were selected because they were known to have had some rather serious debates regarding confidentiality in the past; while a third (D) was selected because of its good practices concerning information and consultation. The last case study (B) was selected based on ease of access considerations.

In all cases, members of the EWC and the trade union coordinator were approached for semi-structured interviews. EWC members were able to offer first-hand information about their EWC and company, while the trade union coordinators had a broader understanding of issues in other EWCs (Eisenhardt 1989). As can be seen in Table 1, a total of ten interviews were conducted. The norm for the

number of interviews for credible research into organisations and workplaces, as defined by Saunders and Townsend (2016), is 15-60 interviewees although they do acknowledge the scope for some exceptions. In this research, for example, the aim was not to generalise the results; the focus really lay on exploring this under-researched topic and pointing out some of the areas of concern around it.

The interviews each took sixty to ninety minutes. Every interview was taped and transcribed. The interview guide included four general sections: introduction and enquiry into the representative's function and the system of reporting back to the EWC; general questions on the functioning of the EWC; questions regarding the prevalence and nature of confidential information; and an enquiry into good and bad examples of how employee representatives have acted regarding confidential information.

Table 1 The cases and interviewees

	Sector	Interviews	Position of respondent in EWC
EWC A	Chemical	Trade union coordinator A	Trade union coordinator
		Employee representative 1A	Member of the EWC
		Employee representative 2A	Member of the EWC and former member of the select committee
EWC B	Chemical	Trade union coordinator B	Trade union coordinator
		Employee representative 1B	Secretary of the select committee
		Employee representative 2B	Vice-president of the select committee
EWC C	Hotel and travel	Trade union coordinator C	Trade union coordinator
		Employee representative 1C	Former member of the EWC
EWC D	Chemical	Employee representative 1D	Member of the EWC
		Employee representative 2D	Secretary of the select committee

Next to this qualitative source of information, this working paper explores quantitative data from the largest survey of European Works Council representatives carried out to date (De Spiegelaere and Jagodziński 2019). This survey collected questionnaire responses from 1,635 EWC (and SEWC) representatives from all European countries. A weighting factor was used to correct for over- and under-response based on three variables: (1) country of origin; (2) sector of activity of the EWC; and (3) whether the respondent came from an EWC or a SEWC.

In the survey, three statements were included regarding confidentiality and the withholding of information in EWCs. Representatives were invited to indicate whether they agreed or disagreed with the statements using a 5-point scale from 'totally agree' to 'neutral' to 'totally disagree', plus the possibility to indicate 'don't know' or 'not applicable'. The statements were as follows:

- management often refuses to give information on grounds of confidentiality
- I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality
- employee representatives often challenge management over what information is confidential.

Based on the qualitative research, several hypotheses were developed regarding confidentiality issues and particular patterns that arose. These hypotheses were

then checked as regards their applicability to the broader population of EWC/SEWC representatives using data from the quantitative research.

The rest of this working paper is structured as follows. First, the case studies will be discussed in relation to each topic: information and consultation; confidentiality and the withholding of information; and dealing with confidentiality requirements with a view to improving the operation of the EWC. Through our analyses, it became clear that, in some cases, the select committee had contrasting experiences concerning information, consultation and confidentiality. Therefore, where there are significant differences between the experiences of the EWC and of the select committee, these are discussed separately. The data are considered first using a within-case analysis in which we analyse, separately in each case, information and consultation, confidentiality and handling mechanisms. Second, the cases are compared using cross-case analysis (Eisenhardt 1989; Yin 1994) and hypotheses developed. Next, the survey results are presented and discussed in relation to the case study findings. Lastly, an overall discussion and conclusion is presented.

3. Analysis of the case studies

3.1. Information and consultation

According to Fitzgerald and Stirling (2004), there are three Cs which prevent EWCs from realising their full potential: consultation; co-determination; and confidentiality. Focusing on the last of these, the authors argue that management might hesitate to provide sufficient and timely information out of fear of breaking stock market rules. Yet, despite the identification of confidentiality as one of the main obstacles to a well-functioning EWC, little attention has been given to this issue in the industrial relations literature.

According to the EWC Recast Directive (2009/38/EC), information shall be ‘Given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of the possible impact.’ Consultation, next, should take place ‘At such time, in such fashion and with such content as enables employees’ representative to express an opinion [...] about the proposed measures.’

If EWCs were informed and consulted in line with the definitions of the Recast Directive, confidentiality would often be a legitimate requirement. However, many studies have shown that EWCs are not always (or even rarely) informed and consulted in a timely and in-depth fashion (GHK 2007; ICF 2016; Stoop 2004; Waddington 2011). This means that many EWCs do not manage to become fully involved in the company decision-making process and are, instead, sidelined.

One of the most influential approaches regarding EWC efficacy is the typology made by Lecher *et al.* (2001). They distinguish between four types of EWCs based on the degree to which the management recognises the body as legitimate and the degree to which there is either a cohesive or competitive logic between employee representatives from different countries. The different types are listed here from the most passive to the most active:

- (1) ‘Symbolic’ EWCs exist formally but have very little real activity. The information provided is minimal and there is little to no consultation. Management drives the process and EWC members take little initiative to upgrade the functioning of the works council.
- (2) ‘Service provider’ EWCs obtain information and are involved in disseminating this to their constituencies but there is no real consultation. These EWCs are quite often characterised by a strong national chair, or team, which leads the process. The EWC is therefore seen as serving national-level processes of information and consultation.

- (3) 'Project-oriented' EWCs are more proactive in organising working groups. They focus on the development of some projects which aim to improve transnational information and consultation. There is a sufficient exchange of information and real consultation of employees.
- (4) 'Participatory' EWCs are characterised by well-functioning employee representation and a management which appreciates employee input. These EWCs tend to go beyond the mere legal requirements of the Directive.

In short, these classifications are based on the level of information, consultation and participation in the EWC. 'Symbolic' EWCs have the lowest level of this as they are the least effective of the four types. In contrast, 'participatory' EWCs have the highest level and allow for indirect employee involvement and participation.

These four types of EWCs all feature, in different ways, four so-called fields of interaction which are of interest to our study of confidentiality. They concern the interactions between:

- (1) The EWC and management: this field of interaction refers to the degree to which management sees the EWC as a legitimate partner. In 'symbolic' and 'service-oriented' EWCs this is hardly ever the case. As a consequence, the information provided is insufficient and there is no real consultation process. Regarding confidentiality, we can assume that the first two types of EWCs will be faced with managements which use confidentiality to avoid giving information. We might thus speak of an unjustified – or illegitimate – use of confidentiality. When there is sufficient information (as for the last two types of EWC), confidentiality may also be used but could be justified given the potentially damaging nature of the information.
- (2) EWC members internally: this second field of interaction refers to relations between employee representatives. This can be characterised by open or concealed conflict, by cohesion or by the existence of a clear dominant (group of) employee representative(s). In cases of open conflict (more present in 'symbolic' EWCs), keeping information confidential might be a real challenge as some EWC representatives might communicate amongst each other on their own terms.
- (3) The EWC and the national level: this refers to communication between the European and national levels of employee representation. Again, these relations might be constructive or very unsubstantial. Regarding confidentiality, strong relations between these levels (as is present in 'participatory' EWCs) might make it difficult for EWC representatives to keep information to themselves.
- (4) The EWC and trade unions: this last field of interaction concerns the role of the trade union in relation to the EWC. Trade union support might enable EWCs to challenge the unjust use of confidentiality and thus improve transparency. On the other hand, it might increase management's unwillingness to disclose sensitive information where third parties are present.

Table 2 Extra information about the cases

	Year of establishment	EWC legislation	EWC agreement	Size of the EWC	Meetings/year	Headquarters
EWC A	2000	Belgian	Article 6 agreement	24 employee representatives	1 meeting/year	USA
EWC B	2003	Belgian	Article 6 agreement	24 employee representatives	2 meetings/year	Belgium
EWC C	2014	Dutch	Article 6 agreement	25 employee representatives	1 meeting/year	USA
EWC D	1995	Belgian	Article 13 agreement	24 employee representatives	1 meeting/year	Belgium

3.1.1. European Works Council A

In Table 2, further information – such as year of establishment, size of EWC, etc. – is provided for the different case studies.

As can be seen from this overview, EWC A has 24 employee representatives. It meets once a year and can call for extraordinary meetings. It was established in 2000 and still functions under that first agreement. Legally speaking, EWC A falls under Article 6 of European Directive 94/45/EG, which means it should fully meet the requirements of the Directive. This EWC, based in a USA-headquartered company, is characterised by late-arriving information and almost no consultation. The EWC has relations with the European management but not with the American senior management. The senior management is wary of the EWC's influence and tries to play everything strictly according to the (legal) rules:

‘It’s a very legal company. Everything goes through the lawyers. They do what they are legally required to do, but nothing more. They try to keep everything as minimal as possible.’ (Employee representative 2A)

In terms of the information and consultation procedure, interviewees gave a rather bleak picture. Information often comes only at the last moment before implementation and management tries to reduce the consultation process to something akin to a *pro forma* exercise:

‘The decision is already taken. All research is done in secret by them and only at the last moment are we informed. (...) If we give advice, we always get an explanation but it is always directed towards fitting in with their story. (...) In the end, they just do what they want and don’t take our advice into account.’ (Employee representative 1A)

Despite late information and inadequate consultation, EWC members still try to get the best out of the EWC and use it as an active instrument, even if they face serious obstacles in achieving common positions. They use written statements and try to enforce a real process of consultation. The EWC is mentored by a trade union coordinator who has adopted a very active role, stimulating the employee representatives to respond more actively through written statements and trying to improve the EWC's internal cooperation. In this way, local information is also shared internally, which makes it possible to circumvent management's late information in some cases. The overall image is one of a ‘service provider’ EWC:

‘We try to enforce this [consultation] by writing a statement (...) about what’s said during the meeting. This is a signal to the management to say “Look, these are our opinions on the points we’ve discussed. We want you to take these into account.” But it [the statement] is also a signal towards the local levels to let them know which topics we thought were important.’ (Union coordinator A)

Employee representative 2A is a member of the EWC and a former member of the select committee. He describes the role of the select committee as a working group which tries to improve certain organisational aspects of the EWC and to achieve a smoother information flow. The committee tries to do so by repeatedly indicating and highlighting the rights of the EWC on certain topics. However, this committee does not receive information any earlier than the EWC.

3.1.2. European Works Council B

EWC B is composed of 24 members. It meets twice a year and has a select committee which plays a very active role and meets at least four times a year. The EWC was founded in 2003 and did not draw on any prior EWC agreements. As with EWC A, this EWC operates under an Article 6 agreement. The select committee is composed of four members and both our interviewees are members of this committee. The company is headquartered in Belgium, in the same location as the two Belgian members of the select committee. This enables them to have close contact with senior management and is a contributing factor to the active role being played by the select committee in this EWC. In one way, the EWC and the select committee can be seen as two institutions with their own logics and ways of functioning. This is why we analyse them separately.

The functioning of this EWC is comparable with that in EWC A, although it is not as active as that of A. Information often comes late and there is little room for real consultation. There are often lengthy discussions on what information and consultation really means:

‘Apparently the management has a very different view. What do we mean by information? Being informed before the decision is taken. As such we can consult and see if there are any alternative solutions possible. (...) But the management? They do the information and consultation at the same time. (...) The decision they took is already being implemented.’ (Employee representative 1B)

The EWC tries to deal with this situation by writing minutes of the meeting which summarise everything and communicating these to the local level in the attempt to force management into a more real consultation process. The members thus try to push for the EWC to function better, but only do so in a limited way. EWC B appears overall to function similarly to A, but we would nevertheless define it overall as a ‘symbolic’ EWC because members often receive information after decisions have been taken and implemented, whereas in EWC A they receive information after decisions have been taken but before implementation. Furthermore, the trade union coordinator of EWC B takes a less active and guiding approach than those of A (and C), although this is principally due to the assertive attitude of the select committee in B. The activity of EWC B is also affected by this, as the select

committee tends to take over the role of the EWC as the potentially active partner of management.

The select committee of EWC B is a very active body. It anticipates events and is assertive towards management. Here, information comes often very early and has a sensitive nature. In this way, the select committee is being consulted effectively. The consultation process occurs early enough to take the advice of the select committee into account. The committee is dominated by the two Belgian delegates, although neither is the president of the committee. According to the trade union coordinator, the select committee tends to take over some of the roles of the EWC; it is often consulted without the EWC being involved. The select committee members try to keep EWC members updated on their activities, but this does not always work out smoothly because of the confidential nature of the information they receive.

Therefore, even though the EWC is, in general, a ‘symbolic’ type, the select committee is a more ‘project-oriented’ body.

‘It is a very well-functioning committee that is highly anticipatory and also particularly assertive. They meet with the management on a regular basis. They really demand that they receive information.’ (Trade union coordinator B)

3.1.3. European Works Council C

EWC C has 25 members. It meets once a year and the select committee also meets at least once a year. Contrary to EWCs A, B and D, the EWC functions under Dutch law but, like EWC A, the company is headquartered in the US. The employee representative interviewed had just left the EWC. EWC C was established fairly recently, in 2014, and so it functions under this agreement (which is also an Article 6 agreement).

As with EWCs A and B, the information shared with the EWC often comes late and there is little room for consultation. Management keeps strict control over the meetings: questions have to be sent before the meeting in writing and are treated as ‘any other business’ on the agenda. Questions asked during the meeting are barely addressed. Just as in EWC A, employee representatives believe this could be explained by the American mentality.

‘The management’s approach was to keep the EWC as passive as possible. In order to keep full control over everything. (...) Just ask for advice. What is the problem?’ (Trade union coordinator C)

Employee representatives have made the attempt to upgrade the role of the EWC by challenging management on the late provision of information and by writing reports on the most important topics which are used to inform workers locally. The EWC has also established an online forum to share local information. By doing this, it has sought to speed up the information flow in order to get topics earlier on the agenda and thus allow consultation to be more effective. The EWC can thus be classified as a ‘service provider’ type.

Recently, however, the situation has changed with the EWC being informed in a more timely manner and properly consulted. A change in management, and the union coordinator taking a more active role, is cited among the possible reasons for this change. The role of the trade union coordinator is similar to the one in EWC A; he plays an active and leading role in the EWC which could be one of the reasons why members were properly informed and consulted during the most recent EWC meeting. This could be the first sign of the EWC moving towards becoming a 'project-oriented' EWC.

"This time they've taken a different approach. The management told us "Look, today we come with information, next month there will be a second meeting where we will answer your questions and within two months a third meeting to hear your advice."" (Trade union coordinator C)

3.1.4. European Works Council D

EWC D is the EWC of a Belgian multinational company and has 24 employee representatives. It meets once a year. Because it was established in 1995, EWC D functions under an Article 13 agreement which means that, unlike the previously-discussed EWCs, it does not have to comply with Directive 94/45/EC. Such agreements are called 'voluntary agreements' (Blanpain 2002). However, a comparison of the EWC agreements shows no significant differences. Moreover, the EWC D agreement includes more detailed terms, such as the purpose and mission of the select committee and the employee representatives' duty to inform the workforce. Furthermore, EWC D has a select committee similar to the select committee of B which is very active and meets once per month. Employee representative 2D takes up the role of secretary in this select committee. In order to develop a comparison with the select committee of EWC B, the EWC for company D and its select committee are also analysed separately.

In contrast to the practices of the other EWCs on information and consultation, EWC D is often informed in a timely manner and has an effective consultation procedure. In most cases, the decision has been made, but there is still sufficient room for manoeuvre for the EWC to make suggestions. Interviewees gave the example of good practice when a reorganisation had been announced:

"The presentation was 150 pages of information which we received before the meeting. So then we had the meeting; two days on this subject alone. We got detailed information on what they proposed to do. Then we had three months for consultation. Three months later was our plenary meeting and then we gave our feedback.' (Employee representative 2D)

EWC D is thus informed early enough for there to be proper consultation. Management listens carefully to the opinion of the EWC, although both parties do not always agree and thus debate may occur. Despite certain discussions, the EWC and management maintain an open and transparent relationship.

"They listen carefully. See, you will never change a whole decision. (...) But we have a big influence and thus we can also help the management. Sometimes

they make decisions and are not sure whether it will go in the right direction. Therefore we are helpful to give them feedback on what people are thinking.’ (Employee representative 2D)

In another example, management delayed the deadline for the implementation of a decision in order to make sure the EWC had sufficient time to consult and propose solutions, and for these then to be executed.

In the past, this early information and effective consultation had not always been the case. Over time, this process of information and consultation has been improved especially through improved cooperation with the select committee. This committee meets once per month and thus receives more frequently updated information about the day-to-day management of the company. The EWC used to have the impression that information got stuck with the select committee. Now, information is shared in a timely fashion and management takes consultation more seriously. After the select committee sits down with management, they organise a teleconference with the EWC to keep the members up to date.

‘This communication process is evolving positively because now we know a lot more (...) Before that, it [the relationship between management and the select committee] was too closed. We had the impression that there was information that passed between the management and the select committee and then it stayed there. (...) Now we have a monthly telephone meeting between the select committee and the other EWC members.’ (Employee representative 1D)

Up until now, there was no trade union coordinator present in the EWC. This will change in subsequent meetings as a trade union coordinator for EWC D has been appointed. However, the EWC seems to be an active instrument: it publishes reports and presentations for local communication on intranet or team sites, issues concerning particular locations are addressed by working groups and local information is shared internally among representatives.

‘When organisation D decides to sell an activity, all the sites concerned are represented on a working group which meets every two months. (...) Representatives and management meet to give an update on the problems and sometimes they discuss possible solutions.’ (Employee representative 1D)

Furthermore, besides the EWC, a global forum under a global framework agreement has also been established regarding transnational topics outside Europe. In this respect, the EWC can be defined as a ‘project-oriented’ EWC.

An important remark is that solidarity and internal operation between the representatives of different countries, especially those without a tradition of social dialogue, could be better. Most of the employee representatives are only interested in cases which concern their local site. Therefore, employee representative 1D believes EWC D could be more active than it currently is. However, the EWC has tried to tackle this by organising a team building event once per year.

In the select committee, information and consultation are at such level that not only the committee is informed and consulted in a timely way, but it also tries to devise solutions together with management. One example was given by employee representative 2D who spoke of redundancies which they tried to avoid by investigating alternatives such as retirement, rotation or jobs on other sites.

‘In this case we worked together with the management to find a solution.’
(Employee representative 2D)

The relationship between the select committee and management is thus not only a transparent one but, moreover, it is one founded on trust between both parties. Therefore, we could define this select committee as somewhere between a ‘project-oriented’ and a ‘participatory’ type.

Table 3 lists the EWCs by type.

Table 3 EWC type: information and consultation

	Information and consultation	Trade union coordinator	EWC - management	Internal operation EWC	EWC type
EWC A	Late & minimal	Active role	Low trust	Information is spread locally through reports	Service provider
EWC B	Late & minimal	Passive role	Low trust	Information is spread locally through reports SC takes over aspects of EWC role	Symbolic EWC
SC B	Early & effective	Passive role	High trust	Active and assertive	Project-oriented SC
EWC C	Late & minimal	Active role	Low trust	Information is spread locally through reports Online communications forum for EWC members	Service provider
EWC D	Timely & effective	/	High trust	Intranet and team site Working groups Lack of solidarity	Project-oriented EWC
SC D	Early & effective	/	High trust	Active in communication towards EWC	Project-oriented to participatory SC

3.2. Confidentiality and the withholding of information

Confidentiality can be defined both from a legal as well as a practical perspective. Generally, confidential information can be understood as information that is not publicly available and that confers a competitive advantage to the bodies that possess it (Hannah and Robertson 2015). This implies, therefore, all the information that has a certain level of sensitivity and where access to it is controlled or limited.

Legally, confidentiality is regulated by Article 8 of EWC Directive 2009/38/EC. Here, a distinction is made between confidentiality (see point 1 in the box below) and the withholding of information (point 2). Confidentiality refers to information

disclosed to the EWC which cannot be revealed to employees; withheld information indicates the right of management to hold back information that could seriously damage the company if leaked. The Directive does leave room for EWCs to specify and interpret the notion of confidentiality in their individual agreements, which leads to significant variations in the definitions (Teissier 2016).

Box 1 EWC Directive 2009/38/EC: Article 8 on confidential information

1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorized to reveal any information which has expressly been provided to them in confidence. [...]
2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

From a practical perspective, we should approach confidentiality by questioning its level of legitimacy: is the use of this ‘confidentiality’ label justified or unjustified? An EWC with a high level of confidentiality could potentially be better performing than an EWC with a low level of confidentiality if it means that management is informing and consulting the EWC early in the decision-making process, and thus treating it as an insider or cooperation partner. In this case, confidentiality would be legitimate. This distinction between legitimate and illegitimate confidentiality is based on empirical studies on the experiences of employee representatives.

In more concrete terms, we consider confidentiality to be legitimate when information is provided in a timely manner but where it has a sensitive nature. In this situation, management has the right to consider information as confidential. Examples of legitimate confidential information can be personal issues, mergers or restructurings, stock market regulations, financial information, trends in employment, transfers of production, cutbacks, closures of undertakings, etc. (Waddington 2003). If the use of legitimate confidentiality can lead to early information and consultation for the EWC, this could potentially have a positive effect on its operation.

In contrast, we consider confidentiality to be illegitimate when information is disclosed late to the EWC and/or it has no sensitive nature. Here, the management has no right to prevent the EWC informing employees.

This differentiation between the legitimate and illegitimate use of confidentiality requirements shows the close relationship between the issue of confidentiality and the timing of employee information and consultation. The more detailed the information and the earlier the consultation happens in the decision-making process, the more that confidentiality can be a legitimate requirement.

3.2.1. European Works Council A

Confidentiality is, notably, something that is only imposed before meetings in EWC A. Two weeks before the meeting, the necessary documents are provided to the representatives with most of the information in them being embargoed, meaning it should be treated as confidential and cannot be shared. This confidentiality can be lifted with the permission of management but is otherwise lifted the day after the EWC meeting, except for some economic and financial figures which remain under embargo. Pre-meeting confidentiality is often perceived as unjustified because it concerns all information, including that which is not sensitive at all. We can thus speak of an ‘illegitimate confidentiality’ in this case.

The fact that there is free access to almost all information after the meeting is well received by employee representatives but there is, nevertheless, a feeling that management does withhold information from the EWC. Information of real significance is only shared at the very last moment. As a result, employee representatives’ advice and opinions no longer matter, as the decision has already been taken.

In summary, before the meeting everything is marked as confidential, even though the information is hardly sensitive; while, after it, almost nothing is confidential. The confidentiality issue in EWC A is, therefore, very ambiguous:

‘The most ideal process would be that we receive information under confidentiality and that we could have influence as an EWC. But this isn’t the case. (...) We don’t have the trust of the management to fully implement this process. (...) This trust should be there, but it isn’t.’ (Employee representative 2A)

‘At the very last moment all of a sudden you receive some information. If they can keep it secret, it [information] is only at the very last moment. This doesn’t always work. Sometimes we catch rumours in advance.’ (Employee representative 1A)

3.2.2. European Works Council B

Confidentiality features at three different levels here: at the level of the EWC; at the level of the select committee; and at the individual level.

At the level of the EWC, the problem is mostly related to management’s withholding of information. The information the EWC receives often arrives after a decision has been taken and thus cannot legitimately be considered confidential. So, on the one hand, very sensitive information is withheld and is only revealed to the EWC at the very last moment. On the other hand, all the information that the EWC does receive is incorrectly labelled as confidential, which we define as illegitimate. This complicates the role of the employee representatives in giving advice and opinions on the topics coming before the EWC and such practices are, thus, often challenged by EWC members:

‘Before every EWC, we get slides with all the information. Sometimes these slides include “confidential” at the bottom of every page. Then we say, “Ok, but this is not confidential information, why does it say so?” The only answer we get is that it’s been copied and pasted. These are practices that shouldn’t be possible.’ (Employee representative 1B)

At the level of the select committee, however, it is mainly the issue of confidentiality (and thus not the withholding of information) which plays the key role. Unlike with the EWC, management does share sensitive information with the select committee while requiring that this remains confidential. However, this goes against the duty of select committee members to share information with, first, the EWC members and, second, employees. The select committee members then need to consider carefully which information they should or should not share, particularly because they are sometimes consulted before the employee representatives of the concerned country are informed:

‘We [select committee members] often have a large problem when they [the management] say, “This, you can’t share with anybody.” (...) We can’t communicate this, because in fact we would have to share it with all members. All 24-25 members. Then they need to keep it confidential too. That’s a difficult exercise.’ (Employee representative 2B)

How should we define this confidentiality? On the one hand, the information committee members receive is truly sensitive and is being communicated early to them. On the other hand, the select committee should not be prohibited from communicating this kind of information to the EWC. Therefore, we define this confidentiality as legitimate as regards employees but as illegitimate as regards other members of the EWC.

The Belgian representatives are also confronted with the confidentiality question at an individual level. They are located near the company management, and a relationship of trust exists between the Belgian representatives and Belgian senior management which means they sometimes get hold of information which they cannot share even with the select committee. They often demand to do so but, again, need to consider the merits of this. In such cases, the employee representatives seek support and advice from each other:

‘Some stuff is too heavy. (...) It’s really a ball that you need to keep pushing under the water. At the start that’s ok, but after some days it wants to come to the surface and your muscles can’t hold it. You have to tell it to someone.’ (Employee representative 2B)

Here, the fields of interaction between EWC and the management and the EWC internally are clear: management only informs the EWC when a decision is already being implemented; but, on the other hand, fully informs and consults the select committee. Therefore, the select committee is taking over the role of the EWC, which is leading to some ambiguous relations within the EWC. This can also partly be explained by the interaction between the EWC and the trade union, as we can see that the trade union coordinator of EWC B clearly takes up a less active role

than coordinators in other EWCs: he does not always attend meetings, despite employee representatives indicating their need for guidance, explaining this by pointing out the assertive attitude of the select committee.

3.2.3. European Works Council C

This EWC faces relatively high levels of demand for confidentiality. Management sends out the agenda and the necessary documents one month before the meeting, but all the information must remain confidential, as in EWC A. Following the meeting, the representatives need to keep everything confidential until the publication of the minutes, about one month later. The employee representatives state that, for some parts of the information, the confidentiality label is 'absurd'. They do not have the feeling that they are being given particularly sensitive information and, in any case, the information tends to come very late. Consequently, we define such labelling as illegitimate. Respondents repeatedly mentioned the controlling approach of the American management when trying to justify this high level of withheld information and information being wrongly labelled as 'confidential'.

'Everything was confidential. We had really restricted that in the agreement and thought: "Ok, now we have a workable modus operandi." And then in the first EWC meeting they came with an information package. One package with all the documents and PowerPoints, and one cover page saying: "Because this package contains confidential information, all information should be considered as confidential." This was, in my view, another way of trying to keep control.' (Trade union coordinator C)

3.2.4. European Works Council D

In contrast with the confidentiality practices in the cases of EWCs A, B and C, employee representatives in EWC D are rarely confronted with major confidentiality issues. The overall image shows a low level of confidentiality which means that, during most meetings, management does not request that information be kept back. Generally, most information could be communicated to local employee representatives after the plenary meeting. As mentioned in the above example, during a reorganisation the EWC had three months in which to formulate its advice. In this period, the members of the EWC were even able to discuss this information and prepare feedback in conjunction with local employee representatives.

However, some information or events are too sensitive to be disclosed directly after a meeting. On these topics, confidentiality is invoked. In the experience of employee representative 1D, these confidential subjects mainly include stock market and financial information and production numbers. Additionally, in the event that the EWC receives early information (for example by asking questions) on divestments, redundancies or mergers, these topics are also considered confidential at this early stage as they could lead to unrest among workers. We would define such requests for confidentiality as legitimate as the information is of a sensitive nature.

‘When you ask further questions “Why this and why that,” here management says “Okay yes, we’ll tell you but this you have to keep quiet.” (Employee representative 1D)

Confidentiality issues in the select committee are, moreover, similar to those for the EWC. For important events such as divestments and mergers, the select committee is often informed a week earlier than the EWC, but never significantly earlier. In such cases, it tries to organise an extraordinary meeting as quickly as possible. For proposals which concern only one particular site it is also the case that the select committee is informed first. The withholding of information by management is not the experience of EWC D or its select committee. Furthermore, because management trusts the members of the select committee, restrictions are not imposed on with whom they can discuss these matters. Therefore, the select committee often discusses such subjects with trade union actors. As information is sensitive and does not come significantly earlier than in the EWC, we would define this confidentiality as legitimate.

‘They [the management] don’t tell us what to do or what not to discuss. They trust us. (...) But we do it [discuss matters with trade unions] in the case that we know they [trade union] will keep it confidential. (...) You need trust between people you’re talking with. Otherwise you will never receive confidential information.’ (Employee representative 2D)

3.2.5. Summary

In theory, there should be a trade-off between getting timely (and thus more sensitive) information and being limited in ability to communicate about it by confidentiality rules. Where no sensitive information is given, confidentiality should not be an issue. Where more sensitive information is given, confidentiality could play a larger role. In Figure 1, which presents a typology created from the results of our interviews, we illustrate this trade-off using two axes. The vertical axis runs from receiving information early to receiving it very late; while the horizontal one runs from being bound by confidentiality restrictions to not being bound. As such, four ideal-type situations are possible:

Quadrant 1: legitimate confidentiality and late information and consultation. This quadrant reflects the situation where the EWC is only informed once decisions are taken and is not consulted. In terms of confidentiality, it is free to communicate about topics which are no longer considered sensitive.

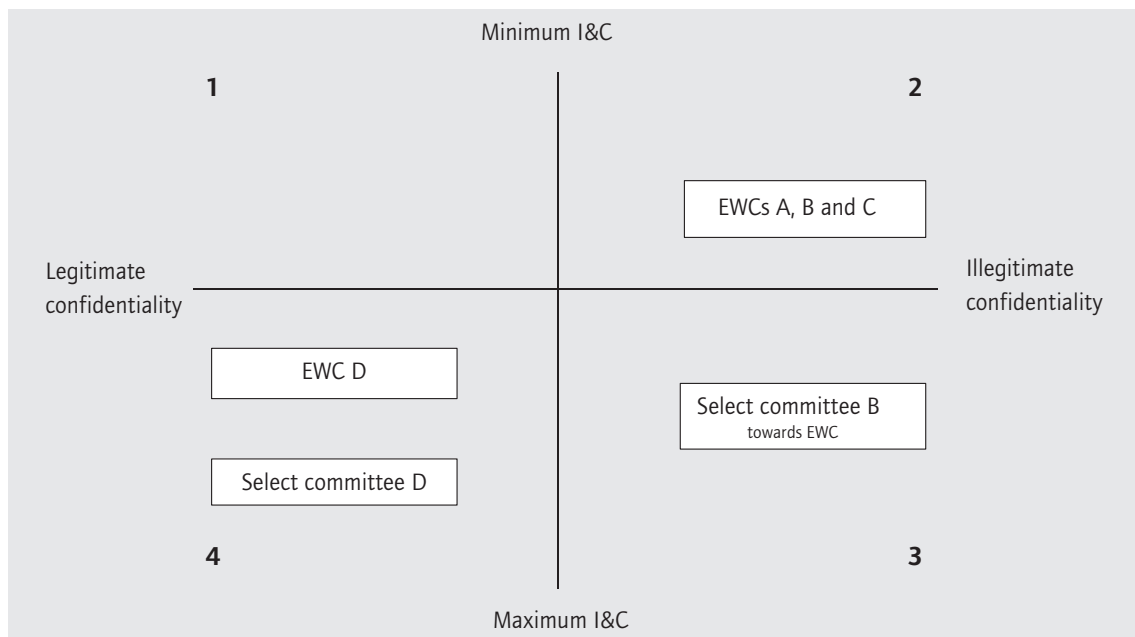
Quadrant 2: illegitimate confidentiality and late information and consultation. This quadrant reflects the situation in which the EWC is informed late about decisions taken but is still restricted in its ability to communicate about the information received. This quadrant thus reflects the unjustified use of confidentiality rules by management, as even non-sensitive information is treated as sensitive.

Quadrant 3: illegitimate confidentiality and early information and consultation. This quadrant reflects the situation where the EWC is informed about planned

projects and is properly consulted, but there is still an unjustified use of confidentiality rules. This can occur when information is only shared with a selection of the EWC's members (the select committee) or cannot be distributed to, for example, the other members of the EWC, local works councils, experts and trade unions supporting the EWC.

Quadrant 4: legitimate confidentiality and early information and consultation. This quadrant reflects a situation in which the EWC receives information early, it is consulted effectively and information is correctly labelled as confidential. The employee representatives have the possibility to share their views but are, in some cases, required to keep information confidential until the decision is final. This quadrant thus represents a justified use of confidentiality rules.

Figure 1 Information, consultation and confidentiality



3.3. Handling confidentiality requirements

Faced with confidential information, employee representatives and EWCs can react in different ways: they can accept confidentiality and keep the information secret; they can challenge the confidential nature of the information; or they can disclose the information, completely ignoring its confidentiality. Depending on the reaction, the effects of information being made confidential will differ: if an EWC is required to keep information secret all the time, tensions might develop in its relationship with the employees it represents; if it discloses information, this might jeopardise its relationship with the management (and possibly the jobs of the employee representatives). So, the way in which employee representatives treat confidential information will affect their work as representatives.

A look at the literature on this subject reveals that the focus concerning the operations of EWCs tends to lie on the legal aspects of confidentiality, particularly the Directive of 1994 and its Recast in 2009. However, not much is to be found about confidentiality at the micro level, i.e. confidentiality issues in particular cases and how employee representatives cope with them. While confidentiality is often cited as an issue for EWCs, there is little research which has gone into more detail. The Lecher typology and other empirical literature give us some general ideas on which EWCs might face certain problems regarding confidential information and what those issues might be. It does not, however, tell us much about how employee representatives deal with confidentiality.

This is why we now turn to the industrial psychology literature, in which different theories have been developed on how individuals respond to information being labelled as confidential. De Dreu *et al.* (2001) distinguish between different handling strategies that can be adopted when facing a conflictual situation:

- ‘problem solving’ involves taking into account the goals of the other party in order to come to a mutually beneficial solution. One example could be determining a deadline by which confidential information can be made public that satisfies the needs of both parties.
- ‘accommodating’ involves giving in to the wishes of the other party. Here, this could mean an EWC accepting the confidentiality stipulation imposed (rightfully or not) by management. This is most common when one party expects the other to do something for them in return: for example, when employee representatives expect to receive more sensitive information from the management in exchange for their silence.
- ‘avoiding’ involves moving away from the issue causing conflict and discussing other subjects. This could mean the EWC deciding not to discuss the issue any further.
- ‘forcing’ involves confronting the other party directly and trying to impose one’s own view. Here, the EWC could challenge the confidential nature of the information and demand the freedom to communicate it.
- ‘compromising’ involves seeking out mutual concessions to find a middle ground. In the EWC, management and employee representatives could decide on some information not being confidential and some retaining a confidential status.

The way in which EWCs and individual employee representatives cope with confidential information is evidently likely to affect their individual and collective performance. Indeed, keeping information secret from employees (thereby choosing an ‘avoiding’ or ‘accommodating’ strategy) might cause high levels of distress among EWC representatives and the team. A ‘forcing’ strategy, however, also has potential costs in terms of the mobilisation of resources and risking open conflict with the employer.

Different external factors are likely to affect the choice of strategy. First, union support could stimulate employee representatives to adopt a more combative attitude towards management. Unions could provide representatives with legal advice, consultation and training in order to take up a stronger position in the EWC (Steiert 2001). This would encourage employee representatives to lean towards a 'forcing' strategy (Elgoibar *et al.* 2013). In fact, works councils who experience a higher level of union support seem to perform better (Jirjahn *et al.* 2011).

Second, the industrial relations culture in particular countries also plays a role. How things are handled in the home country of an employee representative will also affect their desired handling strategy (Elgoibar *et al.* 2013). Employee representatives in some countries could adopt a rather conflictual, 'forcing' strategy while representatives of other countries are not used to negotiating with management. Determining a single, coherent strategy as an EWC could, therefore, be a difficult exercise. However, in order to establish the sort of effective EWC described by Lecher *et al.* as 'participatory', the EWC needs to develop its own collective identity (Stirling and Tully 2004).

Third, the state of trust between employee representatives and management is a major factor. An established degree of trust between the EWC and management induces co-operation (Timming 2006) and thus could motivate the instigation of a collaborative strategy. However, a lack of trust is often recognised as a problem within EWCs. Therefore, 'forcing' strategies could be more effective. Despite the lack of trust within many EWCs, it is possible to establish long-term foundations of trust between management and individual employee representatives. In these cases, information is often exchanged through informal means, often 'off the record' and on a confidential basis (Elgoibar *et al.* 2013; Haynes and Allen 2001) – a 'forcing' strategy may, therefore, not be suitable in this kind of situation.

3.3.1. European Works Council A

Employee representatives try to cope in different ways with the situation in which a lot of information is withheld and illegitimate pre-meeting confidentiality demands are made. First of all, they try to circumvent management and source information at a local level. As most employee representatives are also local representatives, they communicate any information that could be of relevance to the transnational level. This enables them to be informed about management plans even before they are officially announced in the EWC:

'The presentation the management gives each year, that information I can also read on the intranet. But the contact with colleagues from other countries: that is important. Because you will learn more and you'll be able to see through the story they tell you. (...) This mutual contact is the most important of the EWC.'
(Employee representative 2A)

Other than this, representatives try to reduce the pre-meeting confidential nature of information where they perceive it as unjustified. They do so by directly challenging management with their demands. For example, when, in one instance, the EWC did not get the required documents in time, it reacted as follows:

‘They [the employee representatives] went to the meeting and said, “As we don’t have documents nor an agenda, we have nothing to discuss with you,” and they left the room. The employer was in shock. That started a conversation. After about ten select committee meetings, we’ve agreed that all documents should be sent at least 15 days before the meeting.’ (Union coordinator A)

Here, the EWC clearly adopted a ‘forcing’ strategy, prioritising the defence of its own interests. This, in turn, led to a compromise between the two parties. Such strategies are difficult to put into action, however. Employee representatives from countries with fewer employees, or who are not union members or even selected by management, often block such actions, tending to use a more ‘avoiding’ style. The union coordinator has suggested commencing court action against management several times on the grounds of the lack of timely information, but this has been met with doubts and a sense of reluctance among some EWC members.

Regarding other interactions than between the EWC and management, there is also internal cooperation between EWC members. Members try to engage in a more informal form of contact between each other in order to achieve a better information flow:

‘We receive more and quicker information through this way [informal contact between members]. (...) We are all allocated anywhere and everywhere (...) so that everyone knows something. In this way, we can gather information much faster.’ (Employee representative 1A)

However, the EWC is composed of representatives with very different backgrounds and many of them are not trade unionists. There is, therefore, a considerable diversity of opinion about how to respond. Information is shared freely inside the group, but developing a common approach is often difficult:

‘The atmosphere is very good. But making the step towards “Doing something against the management” is very difficult and illogical for some. (...) This diversity keeps us from acting and management uses that.’ (Employee representative 1A)

As for the question of interaction between the EWC and trade unions, the trade union coordinator plays an important role. In this company, employee representatives described this role as being an active one. She encourages the EWC to write reports, investigate cases of illegitimate confidentiality and consider how to deal with these situations:

‘[The trade union coordinator] has tried to encourage the EWC to go to the Belgian court to say that information and consultation at European level is not being respected.’ (Employee representative 1A)

In conclusion, EWC A is – as we have concluded – a ‘service provider’ EWC which faces a significant problem of management withholding information from it. On top of this, there is the illegitimate imposition of confidentiality before meetings and almost no confidentiality afterwards. The EWC has sought to cope with

this situation by building up alternative informal information networks and by challenging management on the late provision of information. These handling strategies have had a beneficial effect on the functioning of the EWC, but have also led to internal discussions that reveal different views on what further action to take. Also, such strategies have not resulted in the EWC being given more, or earlier, information in the long-term.

3.3.2. European Works Council B

Employee representatives in EWC B have tried to battle with the problem of confidentiality at EWC, select committee and individual levels. The EWC has sought to challenge the illegitimately confidential nature of the information being provided by opening this issue up for discussion every time. They have done so in order to seek out compromise, always arguing that, for some information, they can accept confidentiality. The withholding of information by management, however, is a much larger problem and one that is also more difficult to address. This ‘compromising’/‘forcing’ strategy has had some effect as, in recent meetings, management has tended to be more specific about what information is confidential instead of branding all information with this label.

At the level of the select committee, the handling mechanisms adopted by members are more complex. As they want to keep getting timely and quality information, they most often opt for an ‘accommodating’ strategy: for the most part, they do not challenge the confidential nature of the information in order to gain the confidence of management and guarantee that they will be informed and consulted in the future.

‘If we say that we are going to tell our members everything [in the EWC], they’ll also stop informing us. (...) It’s a very difficult deliberation. (...) Normally we have the right, or even the duty, to communicate everything. But if we do that every time we wouldn’t get any more information and they would decide stuff which we cannot influence any longer.’ (Employee representative 1B)

In conclusion, EWC B has a rather inactive ‘symbolic’ EWC with a very active ‘project-oriented’ select committee. The EWC is frequently faced with information that is wrongly identified as confidential. It actively challenges management on this and tries to search for compromise. The select committee, on the other hand, has access to really sensitive information which it cannot share. This goes against its duty to inform colleagues. In order to maintain this early information and consultation, the select committee has therefore adopted an ‘accommodating’ strategy. While successful in retaining the trust of both the EWC and management, this situation clearly places strain on the individual employee representatives on the select committee.

3.3.3. European Works Council C

In contrast to EWC A, pre-meeting confidentiality is rarely challenged in EWC C. During the meetings, however, the employee representatives often challenge the confidential nature of the information, but not in a ‘forcing’ way: they discuss

the issue with management and try to reach compromise in order to quicken the process of reporting back to employees. Often, the compromise is that only some pages and some information should remain confidential:

‘In these meetings we say, “Why is this labelled as confidential? This isn’t what we want! Employees can know this, right?” Sometimes they [management] reply by saying, “Okay, this part can be shared and this part can’t.”’ (Employee representative 1C)

Employee representatives also try to speed up the information process by exchanging information internally within the EWC. For this, they have established an online forum where they can communicate in order to prepare for meetings and share local information which is possibly interesting to other countries. If they detect a possible transnational issue, they put it on the agenda and ask management about it. In this way, they try to prevent management withholding information until after the decision is taken:

‘We have a group online with all the representatives on the EWC. (...) Sometimes a country says, “We received this information. Did you receive this news already? Shouldn’t we speak about this?” Then we try to put this on the agenda. (...) I think we receive more information from colleagues in other countries. (...) This can be sensitive information.’ (Employee representative 1C)

The handling strategies used clearly affect the EWC and the individual representatives. Challenging the confidential nature of the information might have contributed to the recent attitude shift of management and the more useful consultation process that has begun to take place. At the same time, it has caused a lot of frustration for employee representatives who feel that they have to play the same game over and over again:

‘You’ve got the feeling like, “We have to say this again? It’s already the third meeting and (...) we told them last meeting that we don’t accept that cover page [which says that all information is confidential]”. (...) It is frustrating.’ (Union coordinator C)

In this EWC, the focus also lies on the fields of interaction between the EWC and the management, the EWC internally and between the EWC and the trade union. As mentioned earlier, management provides the EWC with information which is labelled as confidential – but illegitimately so, due to the late timing and non-sensitive content – and, in response, the members of the EWC have tried to strengthen the informal contact network by establishing an online forum in order to create an improved flow of information. The role of the trade union coordinator is similar to that of the coordinator in A; he plays an active and leading role in the EWC, which could be one of the reasons why members were properly informed and consulted at the most recent EWC meeting.

In conclusion, EWC C is a ‘service provider’ EWC, but with the potential to become more ‘project-oriented’ in the future. It faces problems of late information and little consultation. Confidentiality levels are high before the meeting and remain

in place for a while afterwards. The confidentiality label is generally perceived as illegitimate and challenged by employee representatives but via a ‘compromising’ approach. This increases the effectiveness of the EWC but also results in frustration at an individual level. However, in the light of the changed structure at the last meeting – with employee representatives receiving information in time and proper consultation – there is hope for an evolution towards a more active type of EWC.

3.3.4. European Works Council D

EWC D is not usually confronted with significant confidentiality issues and information is legitimately labelled as confidential so employee representatives, generally, respect it. In contrast to the members of other EWCs, they do not challenge the confidential nature of information in order to communicate faster to the workforce. They use an ‘accommodating’ strategy to be consulted properly and because, in most cases, they believe that confidentiality is justified.

Furthermore, members of the select committee uses the same ‘accommodating’ strategy. On important matters (such as divestments, mergers, etc.), they do not disclose confidential information either to the workforce or to the EWC, as the EWC receives this information shortly after.

‘Sometimes we [the select committee] are informed about the divestment of a small site. And then we are informed about one week before. And then we say, “Okay, we keep this confidential until the announcement appears.” (...) But these topics are for the whole EWC so then we organise an extraordinary meeting.’ (Employee representative 2D)

In this period in which only the members of the select committee have the information, they try to look for actions and possible solutions, list their questions and take the first steps in organising working groups in order to prepare for the EWC meeting and improve the consultation process.

‘We know that it’s confidential and we keep it to ourselves, but informally we discuss the next steps on how we proceed: what can we do to help employees if they are concerned?’ (Employee representative 2D)

In the case of EWC D, the focus lies particularly on the interrelationship between the EWC, the select committee and management. The EWC and management have an open and transparent relationship. This transparency stems mainly from the relationship of trust that the select committee has established with the management and which the committee ensures is pulled through to the EWC. As employee representative 2D states: ‘Trust is key in cooperating’. By building upon critical moments, the select committee (and the EWC) have shown strength as an instrument of consultation.

‘And there [one critical moment in company D] the management has seen that employee representatives are much more for companies than just representatives of employees. We are ambassadors of the company. This led

to a huge turn. From this time on, we [management and EWC] have worked really well together.’ (Employee representative 2D)

Trust might well be established between the select committee and management, but the committee sometimes deviates from its ‘accommodating’ strategy as it occasionally confides in the trade union by disclosing certain confidential information.

‘They [the management] don’t tell us what to do or what not to discuss. They trust us. (...) But we do it [discuss matters with trade unions] where we know they [the trade union] will keep it confidential. (...) You need trust between people you’re talking with. Otherwise you will never receive confidential information.’ (Employee representative 2D)

In conclusion, we have defined EWC D as a ‘project-oriented’ EWC as it receives timely information and is properly consulted. Despite some internal malfunctions, such as a lack of solidarity, the EWC takes various actions to support local communication. Since it is not confronted with major confidentiality issues and information is legitimately labelled as confidential, the members deal with this in an ‘accommodating’ way. Furthermore, the EWC is supported by a very active select committee which shares information with the EWC by organising teleconferences. This select committee can be situated somewhere between a ‘project-oriented’ and a ‘participatory’ type, in which trust and cooperation are well established. This is the line it tries to extend to the wider EWC.

3.3.5. Summary

Figure 2 Information, consultation, confidentiality and handling strategies

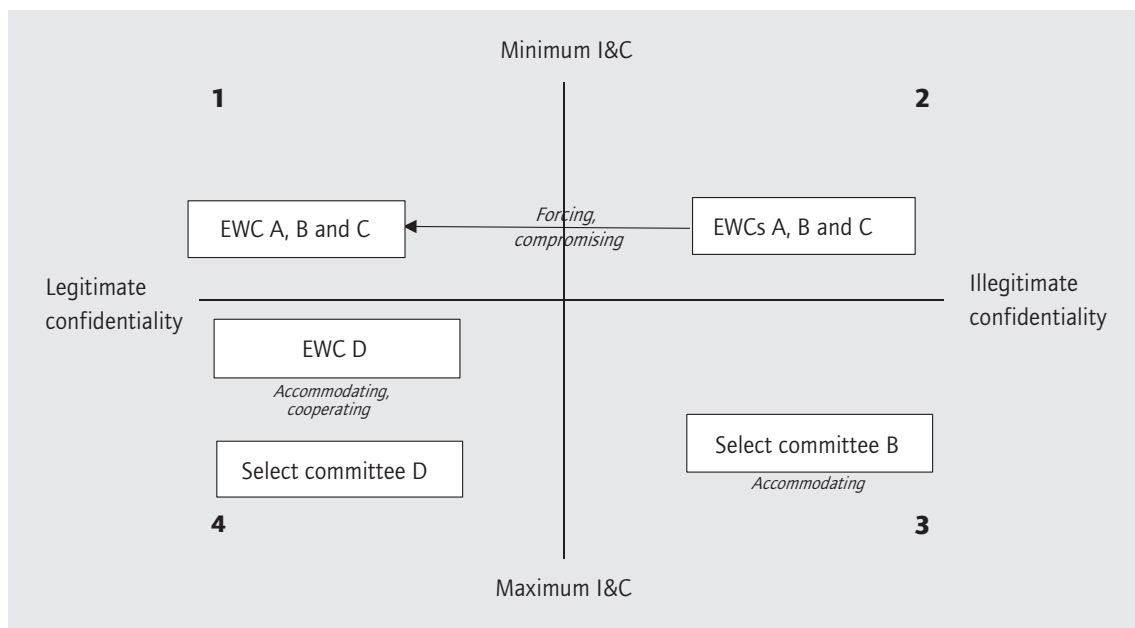


Figure 2 shows the handling strategies for each EWC and the implications these have for the quadrants in which the EWCs are situated. EWCs A, B and C fit into Quadrant 2, where they get little (and surely not sensitive) information but are still bound by confidentiality requirements. They deal with this situation through a mix of ‘forcing’ and ‘compromising’ strategies as a means of successfully challenging the confidentiality requirement. Through ‘active coping’ (i.e. adopting ‘forcing’ and ‘compromising’ strategies), EWCs A, B and C can reduce the confidentiality requirements facing their EWC. This could be considered an improvement in how the EWC functions as, in this way, members can at least talk about the information they receive, despite it arriving late. However, these handling strategies have not, unfortunately, pushed management to share information earlier and engage in a real consultation process.

The select committee of EWC B, however, is located in Quadrant 3 (early information and consultation but illegitimate confidentiality).

EWC D and its select committee are located in Quadrant 4 where, as with the select committee in EWC B, they enjoy maximum information and consultation, with confidentiality requirements being justified. Both organisations in case D and the select committee for EWC B deal with the confidentiality issue by adopting an ‘accommodating’ strategy. However, what is the difference between these two cases such that EWC B is confronted with illegitimate confidentiality requirements whereas D is not?

4. Cross case analysis and development of hypotheses

This section of the working paper compares the four case studies in a cross-case analysis. To facilitate this, Table 4 provides a summary of the four cases. In this section, we also develop some hypotheses which will, in the next part, be cross-checked with information from the survey results.

As we can see from the cross-case comparative schematic presentation in Table 4, three cases (A, B and C), remarkably, face more or less the same problems in the information and consultation process. These three EWCs receive information late and are not really consulted on forthcoming decisions. Here, the select committee of EWC B and case D (both EWC and select committee) form exceptions as they have access to timely information and are properly consulted.

These results (unfortunately) are in line with many other studies that have identified deficiencies in EWCs (Pulignano and Turk 2016; Waddington 2011). Additionally, in the already-published results of the 2018 survey, only a minority of EWC representatives stated that they received information or were consulted before the final decisions were taken on a matter (De Spiegelaere and Jagodziński 2019). Regarding managements withholding information, therefore, the following is hypothesised:

Hypothesis 1a: Most EWC representatives agree that management withholds information from them.

Hypothesis 1b: Select committee members are less likely to agree that management withholds information from them.

Not only are most EWCs informed at a very late stage and improperly consulted, management also tags a lot of information as confidential; if information was provided earlier in the process, this confidentiality would be more readily accepted. However, in cases A, B and C, management applies confidentiality rules to virtually all the information provided up to the date of the meeting and, sometimes, even long afterwards. We therefore propose the following hypotheses:

Hypothesis 2a: Most EWC representatives agree that they feel limited in discussing issues due to confidentiality concerns.

Hypothesis 2b: EWC members who think management withholds information will also be more likely to feel limited in talking about issues in the EWC due to confidentiality concerns.

EWC representatives who are confronted with confidentiality requirements that they perceive as being illegitimate do challenge management on that score. They do so by seeking compromises (in all three cases) and, sometimes, also by forcing the issue (such as the walk-out in EWC A).

Hypothesis 3a: Most EWC representatives will challenge management over what information is treated in a confidential way.

Hypothesis 3b: EWC members who feel management limits their freedom to talk about EWC issues will be more likely to challenge management over what should be considered as confidential.

Challenging management on the confidential nature of information, and seeking compromise, does have a somewhat positive effect. In cases A, B and C, management conceded by limiting confidentiality to a certain number of pages. However, the long-term effects are unclear. Despite being regularly challenged at annual meetings, this has not encouraged management to take a different and more open attitude in the long-term. Neither has it pushed management to provide information earlier and, therefore, it has not addressed the issue of the withholding of information.

The select committee of EWC B and case D are in a very different situation: they do receive timely information which is often sensitive and thus, rightfully, marked as confidential. Employee representatives here cope in an ‘accommodating’ way to retain management confidence. However, the select committee in D also tries to enhance the flow of communication with the EWC by organising monthly teleconferences to ensure sufficient reporting back to EWC members.

Table 4 Comparative case study results

	EWC type	Confidentiality	Withholding of information	Handling strategy vis-à-vis management
EWC A	Service provider	Illegitimate pre-meeting confidentiality Legitimate post-meeting confidentiality	High level of information withholding	Forcing, compromising
EWC B	Symbolic	Illegitimate confidentiality	High level of information withholding	Compromising
SC B	Project-oriented	Legitimate confidentiality regarding workforce Illegitimate confidentiality regarding EWC	No or low level of information withholding	Accommodating
EWC C	Service provider	Illegitimate pre- and post-meeting confidentiality	High level of information withholding	Compromising
EWC D	Project-oriented	Legitimate confidentiality	No or low level of information withholding	Accommodating
SC D	Project-oriented / Participatory	Legitimate confidentiality towards workforce and EWC	No or low level of information withholding	Accommodating

In this research paper, different practices concerning information, consultation, (the legitimacy of) confidentiality, the withholding of information and various actions on how to deal with these practices have been brought forward. However, what is the reason for the existence of such differences in information, consultation

and, especially, confidentiality? How can we explain that EWCs A, B and C are confronted with late information, minimal consultation and an unjustified use of confidentiality while the select committee of B and case study D are informed in good time, consulted properly and under confidentiality rules that are legitimate (regarding the workforce) concerning the sensitivity of the information provided?

An explanation for this contrast could be found in the way that employee representatives interact with management, the handling strategies they adopt concerning confidentiality and the actions they initiate regarding information and consultation. Huzzard *et al.* (2004) distinguish two trade union strategies with which employee representatives can operate in interactions with management in bodies such as the EWC. The first of these is the 'boxing' strategy, which indicates the traditional, conflict-based approach used by unions; while the second, 'dancing', would appear in opposition to 'boxing'. 'Dancing' focuses on formal cooperative processes between both parties, introducing management as a partner instead of a counterpart. This partnership builds on confidence between management and employee representatives (Haynes and Allen 2001; Van Klaveren and Sprenger 2005).

Analysing the cases using this framework, we could say that EWCs A, B and C tend towards an adversarial, 'boxing' strategy as they have rather active handling strategies with regard to the confidentiality issues, including 'forcing' and 'compromising'. We saw in Figure 2 that these sorts of active strategies could improve the functioning of an EWC, moving it from being confronted with illegitimate demands for confidentiality to a position where confidentiality was legitimate. Also, these EWCs (cases A and C) seem to operate internally rather well as they share information between each other to speed up the flow of information.

Between the management and employee representatives of case D, a 'dancing' strategy based on partnership has been used. Management and the EWC, as well as the select committee, try to cooperate formally and facilitate an open and transparent relationship. Employee representatives deal in an 'accommodating' way with confidential information and, therefore, receive timely information and proper consultation. This 'dancing' strategy is built upon strong relations of trust between the select committee of EWC D and the management. In contrast with the select committee of EWC B, the select committee in EWC D does not tend to take on the role of the EWC; instead, it tries to pull the EWC along in this partnership strategy. The select committee seeks to do this by, on the one hand, lobbying management in order to be informed and consulted in a timely way; and, on the other, by stimulating cooperation with EWC members.

It may also be the case that EWC members in D are less stimulated to take up an adversarial, 'boxing' strategy than other EWCs as there has, up to now, been no trade union coordinator present.

By deploying this 'dancing' strategy, the EWC appears to receive timely information and proper consultation. The need for cooperation and trust in order to form an effective information and consultation procedure has also been stated by others (Kougiannou *et al.* 2019). Furthermore, a partnership-based 'dancing' strategy

could lead to a legitimate use of confidentiality as the management trusts the EWC with early and, thus, sensitive information. This could lead to an improvement in the functioning of EWCs.

Based on this possible explanation, we further hypothesise that trust and a good social climate is likely to relate closely with: (1) whether information is shared; and (2) whether EWC representatives can freely communicate the information:

Hypothesis 4a: Those EWC representatives who see the social climate in the EWC as being hostile will be more likely to say management does not want to share information.

Hypothesis 4b: Those EWC representatives who see the social climate in the EWC as being hostile will be more likely to say they feel limited in talking about EWC matters due to confidentiality concerns.

One factor stimulating an active handling scenario, mentioned by EWCs A and C, is the presence of an external trade union coordinator. We have already discussed that union support could stimulate employee representatives to adopt a more combative attitude towards management (Steiert 2001). This would encourage employee representatives to lean towards a ‘forcing’ strategy.

‘Thanks to the training of our union coordinator we could form a more active EWC and that’s really important. (...) Without him we would never have got so far, I think.’ (Employee representative 1C)

‘I have a mandate to make the voice of the union be heard, but also for guidance and to make sure that this group of employee representatives cooperates and, if needed, receives legal advice. But it really depends on the coherence of the group. (...) I’m not connected to the company and so I try to give input on how to work on this, drawing from my own experience with other EWCs.’ (Union coordinator A)

Interviews highlighted that the strong guidance of the trade union coordinator has a positive impact on the functioning of EWCs. For example, at the request of coordinators, reports have been written autonomously and independently of management, while the coordinators have also stimulated EWCs to react more proactively to management statements and the possible abuse of confidentiality labels on information. These findings are in line with results concerning union support in the studies published by Elgoibar *et al.* (2013), Steiert (2001) and Jirjahn *et al.* (2011). We mentioned earlier that the trade union coordinator in EWC B took a less guiding position *vis-à-vis* the EWC because of the assertive and active attitude of the select committee, with the result that EWC B is defined as more passive than the other EWCs.

Hypothesis 5: Those EWC representatives who have the support of a trade union coordinator will be more likely to challenge management over what information is confidential.

5. Quantitative insights from the EWC survey

From the case studies, a series of patterns have been observed and we have developed hypotheses in response. In the following section, we will use data from a large-scale survey of EWC representatives to assess these hypotheses. Further information on this survey can be found in the recent publication entitled ‘Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives’ (De Spiegelaere and Jagodziński 2019). The figures here are based on the responses of 1,635 EWC and SEWC respondents, weighted to reflect the population based on country of origin, sector of activity and whether the respondent was active in an EWC or in a SEWC. In this paper, as in the original report, we are citing the views of a sample of respondents, scaled to be representative, i.e. the percentages refer to people in EWCs and SEWCs; they do not refer to EWCs.

As a reminder, we repeat our hypotheses here:

- *H1a*: Most EWC representatives agree that management withholds information from them.
- *H1b*: Select committee members are less likely to agree that management withholds information from them.
- *H2a*: Most EWC representatives agree that they feel limited in discussing issues due to confidentiality concerns.
- *H2b*: EWC members who say management withholds information will also be more likely to feel limited in talking about issues in the EWC due to confidentiality concerns.
- *H3a*: Most EWC representatives will challenge management over what information is to be treated in a confidential way.
- *H3b*: EWC members who feel management limits their freedom to talk about EWC issues will be more likely to challenge management over what should be considered as confidential.
- *H4a*: Those EWC representatives who see the social climate in the EWC as being hostile will be more likely to say management does not want to share information.
- *H4b*: Those EWC representatives who see the social climate in the EWC as being hostile will be more likely to say they feel limited in talking about EWC matters due to confidentiality concerns.
- *H5*: Those EWC representatives who have the support of a trade union coordinator will be more likely to challenge management over what information is confidential.

We start by looking at the overall responses of EWC representatives on the three questions related to: (1) management withholding information; (2) representatives feeling limited in talking about EWC issues because of confidentiality concerns; and (3) representatives challenging management over what information is confidential. The results on these questions are provided in Table 5 and allow us to address hypotheses 1a, 2a and 3a.

We observed that, in three out of the four case studies, management frequently refused to provide information on the grounds of confidentiality and that most representatives felt limited in talking about EWC issues because of confidentiality concerns. Looking at the general survey results, we find that 39.4 per cent of EWC representatives agree ('totally agree' and 'agree' combined) that their management withholds information on confidentiality grounds, while 33.7 per cent of EWC representatives agree that they feel limited in talking about EWC issues as a result of confidentiality concerns. In both cases, a considerable proportion of EWC representatives (respectively, 23.6 per cent and 21.7 per cent) adopts a neutral position.

Based on these results, we cannot confirm hypotheses 1a or 2a, as most EWC representatives disagree with the statement or remain neutral on it. Obviously, four case studies, of which two were sampled specifically on the grounds that they had issues regarding confidentiality, do not necessarily deliver a representative picture of the wider population. Nevertheless, 39.4 per cent of representatives saying that their management withholds information is still a very considerable group.

Regarding hypothesis 3a, the situation is a little more complex. As can be observed, 45.9 per cent of representatives agree that they often challenge management over what information is labelled confidential. This is remarkable as it shows that almost one-half of EWC members apparently quite often feel the need to disagree openly with management on what information is regarded as confidential.

Table 5 Survey: withholding information, limited in talking and challenging

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know
Management often refuses to give information on the grounds of confidentiality	14.0%	25.4%	23.6%	26.2%	7.2%	3.6%
I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality	8.9%	24.8%	21.7%	29.6%	11.1%	3.9%
Employee representatives often challenge management over what information is confidential.	12.3%	33.6%	27.1%	17.2%	4.5%	5.3%

In the case studies, we observed that there were differences between 'normal' EWC members and those who were members of a select committee, and we therefore compare their survey answers in Table 6. This enables us to assess hypothesis 1b. The table differentiates the results between 'office holders', 'normal members' and 'substitute members', with those in the 'office holders' group being EWC members that are also members of the select committee or who are presidents, chairs or secretaries of the EWC. Essentially, this groups all those EWC members that have an additional function within the EWC. The 'normal' group consists of all those EWC members who do not have an additional function, while the 'substitute' group comprises all deputy members, or replacement or substitute members.

Focusing first on whether management ‘often’ refuses to share information, we observe that substitute members are the most likely to agree with this statement. It may be that their distance from the work of the EWC accounts for this. Comparing office holders with normal members, the pattern is not so clear. Office holders seem to disagree more than normal members (41.4 per cent vs. 30.3 per cent); yet, at the same time, the percentage that strongly agrees with the statement is slightly higher among office members (15.5 per cent vs. 12.8 per cent). Hypothesis 1b stated that select committee members would be less likely to agree that management refuses to share information. This seems to be correct, yet it is more the case that they are much more likely to disagree, although there is a small group which agrees more strongly. It is most likely that being a select committee member gives earlier and better access to information, but it can also create more frustration if information is not forthcoming.

We did not draft hypotheses on the relationship between the function of the EWC member and (1) them feeling limited in talking about EWC matters; or (2) them challenging management. Nevertheless, we can observe some interesting patterns. In general, office holders take a neutral position less frequently than normal and substitute members. Regarding feeling limited in talking about issues, this translates into office holders both agreeing more often to this statement and also disagreeing more often. It is the proportion that strongly disagrees (15 per cent vs. 8.8 per cent) that is most remarkable. Regarding the question on challenging management, the differences are clearly less marked but follow the same trend.

Table 6 Withholding, limited and challenging – by function

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	chi-square p-value
Management often refuses to give information on the grounds of confidentiality							<0.01
Total	14.0%	25.4%	23.6%	26.2%	7.2%	3.6%	
Office holders	15.5%	20.9%	21.1%	33.2%	8.2%	1.1%	
Normal members	12.8%	27.1%	25.8%	23.8%	6.5%	4.1%	
Substitute members	15.8%	34.8%	19.1%	13.8%	6.3%	10.3%	
I often feel limited in talking about my EWC work to the employees I represent because of concerns about confidentiality							<0.01
Total	8.9%	24.8%	21.7%	29.6%	11.1%	3.9%	
Office holders	9.8%	26.8%	16.4%	30.7%	15.0%	1.2%	
Normal members	8.2%	24.2%	24.8%	29.1%	8.8%	4.9%	
Substitute members	9.4%	22.8%	20.5%	27.0%	10.8%	9.4%	
Employee representatives often challenge management over what information is confidential							0.02
Total	12.3%	33.6%	27.1%	17.2%	4.5%	5.3%	
Office holders	13.5%	38.0%	22.7%	18.5%	5.2%	2.1%	
Normal members	12.0%	31.3%	30.0%	16.1%	4.1%	6.5%	
Substitute members	9.9%	31.4%	24.3%	20.0%	2.8%	11.5%	

We focus next on the interrelationships between the three questions regarding confidentiality. Based on the case studies, we hypothesised that: EWC members who think management withholds information will be more likely to feel limited in talking about their EWC work (2b); and that EWC members who feel limited in talking about their EWC work will be more likely to challenge management over what information is confidential (3b).

For the sake of comparability, we have grouped the two shades of agreement and the two shades of disagreement on the various questions and eliminated those who answered 'don't know'. The results are given in Table 7.

This table shows that, indeed, among representatives who think management 'often' refuses to provide information, over one-half also agree that they feel limited in talking about the work of the EWC due to confidentiality concerns. Of those who are neutral or disagree that management withholds information, fewer than one in four say they feel limited in talking about the EWC's work. Obviously, hypothesis 2b is confirmed and, furthermore, what is observed in the case studies can be observed in the general population: management withholding information goes together with high confidentiality requirements and EWC members feeling limited in talking about their EWC work. This is indeed paradoxical because, if management is highly selective about which information they share, one might expect that the information they do share is not going to be confidential in any way.

Hypothesis 3b is also confirmed as those EWC representatives who feel limited in talking about their EWC work are also much more likely to say they challenge management over what information is and is not confidential (73.5 per cent agree vs. less than 40 per cent who are neutral or who disagree). Additionally, we can observe the same relationship where management withholds information: EWC members who think management withholds information are more likely to agree that they challenge management over what information is regarded as confidential (64.8 per cent agree vs. 42 per cent or less who are neutral or who disagree).

Table 7 Interrelationships

	Limited in talking			chi-square p-value
Withholding information	Agree	Neutral	Disagree	<0.01
Agree	51.1%	19.4%	29.6%	
Neutral	23.4%	39.8%	36.8%	
Disagree	24.1%	15.4%	60.5%	
	Challenging management			chi-square p-value
Withholding information	Agree	Neutral	Disagree	<0.01
Agree	64.8%	22.3%	12.9%	
Neutral	41.6%	44.6%	13.8%	
Disagree	33.5%	25.7%	40.8%	
	Challenging management			chi-square p-value
Limited in talking	Agree	Neutral	Disagree	<0.01
Agree	73.5%	17.2%	9.3%	
Neutral	39.5%	49.7%	10.8%	
Disagree	31.8%	27.5%	40.7%	

Regarding challenges to management, the case studies also observed that the presence of a trade union coordinator plays an important role (hypothesis 5). To assess this, Table 8 shows answers to the ‘challenge’ question, split into those who have and those who do not have a trade union coordinator. The results show that EWC representatives who say they have the support of a trade union coordinator are (a little) more likely to say they ‘often’ challenge management over what information is confidential (48.7 per cent among those who have a co-ordinator vs. 42 per cent among those who do not and 41.5 per cent of those who do not know whether they have one or not).

Table 8 Presence of a coordinator and challenging management

	Employee representatives often challenge management over what information is confidential						chi-square p-value
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	0.03
Trade union coordinator	13.6%	35.1%	24.6%	17.3%	5.0%	4.4%	
No trade union coordinator	10.4%	31.5%	29.4%	20.3%	4.6%	3.8%	
Don't know	10.5%	31.0%	32.3%	13.7%	2.9%	9.6%	

In the case studies, we observed that challenging management is a good strategy in reduce the prevailing level of confidentiality. After members challenge management they are, in general, more free to discuss information coming out of the EWC. HHHowever, it was also observed that active challenging by EWC members was not likely to encourage management to share information at an earlier point. Regarding the early sharing of information, it seemed that the overall social climate in the EWC was what was particularly important: where relationships were considered friendly and trustful, it was more likely that EWC members would receive full and early information and would also be more free to talk about the information provided.

To assess the social climate within a firm, we asked EWC representatives on the extent to which they agreed with the following statement: ‘The relationship between management and EWC employee representatives can best be described as hostile.’ The distribution of the answers is given in Table 9. From this, we can clearly see that most EWC representatives disagree or strongly disagree with this statement, indicating that the atmosphere is not hostile. Just 1.2 per cent strongly agrees while 5.9 per cent simply agrees with the statement.

Table 9 Social climate

The relationship between management and EWC employee representatives can best be described as hostile	
	Total
Strongly agree	1.2%
Agree	5.9%
Neutral	17.3%
Disagree	49.1%
Strongly disagree	24.2%
Don't know	2.3%

To assess hypothesis 4a and 4b, we can inspect the relationship between this variable and the three confidentiality-related questions. For this, we grouped respondents on the basis of broad agreement or broad disagreement and eliminated those who said ‘don’t know’.

The results in Table 10 indeed show that there is quite a strong relationship in the perception of EWC representatives between social climate and how confidential information is treated. The great majority of representatives who agree the relationship is hostile also agrees that management withholds information from them (72.4 per cent). Of those who strongly disagree with this statement, this proportion is only 24.3 per cent. This confirms hypothesis 4a.

A similar, but somewhat less outspoken, relationship can be observed between social climate and the perceived limits on talking about EWC issues because of confidentiality concerns. Compared to those who agree relations are not hostile, those who think relations are hostile are twice as likely to feel limited in talking about EWC issues (52.1 per cent vs. 26.3 per cent). This observation confirms hypothesis 4b.

For the sake of completeness, we also looked at whether the social climate relates to the degree to which EWC representatives challenge management over what information is regarded as confidential. The pattern is generally the same yet less diverse: where there is a hostile climate, EWC members are more likely to challenge management over what is confidential than where the climate is not hostile.

Table 10 Social climate and confidentiality requirements

	Withholding information			chi-square p-value
Hostile climate?	Agree	Neutral	Disagree	<0.01
Agree	72.4%	7.6%	20.0%	
Neutral	53.1%	28.8%	18.1%	
Disagree	41.0%	25.6%	33.4%	
Strongly disagree	24.3%	20.6%	55.2%	
	Limit in talking			chi-square p-value
Hostile climate?	Agree	Neutral	Disagree	<0.01
Agree	52.1%	20.7%	27.3%	
Neutral	45.1%	25.6%	29.3%	
Disagree	33.4%	23.4%	43.2%	
Strongly disagree	26.3%	16.7%	57.1%	
	Challenging management			chi-square p-value
Hostile climate?	Agree	Neutral	Disagree	<0.01
Agree	61.9%	13.9%	24.2%	
Neutral	56.2%	26.4%	17.4%	
Disagree	50.6%	32.1%	17.4%	
Strongly disagree	37.2%	25.5%	37.3%	

From a comparison between these qualitative insights and the quantitative data, we may conclude that only those hypotheses regarding the overall distribution in the population could not be confirmed (1a, 2a and 3a). This could have been expected as the qualitative study used a small and selected sample of EWCs. However, the patterns observed in the case studies (see Table 4) were confirmed by the survey data. In the next section, the results of both sections will be discussed in more detail.

6. Discussion and conclusion

Every representative faces the dilemma of what to do with sensitive information. Keep it to yourself to guarantee that you will get more information later, or share it with ordinary members to inform them and gain input on how to proceed? Or, alternatively, challenge the confidential nature of the information so it can be shared without risk? Obviously, the way representatives deal with confidential information (or do not cope with it) will have an impact on their work. In EWCs, some extra layers of complexity can be added given the different national traditions and regulations regarding such information.

Interestingly, the subject has attracted only scant attention in the EWC literature. For this reason, this paper has presented an explorative set of case studies on the issue, building on the industrial psychology literature. Insights from these case studies were used to develop hypotheses which, in a second stage, were checked using quantitative survey results.

The study aims to provide insight into the kind of confidentiality issues confronting EWCs, how they deal with this and how this affects the way they function.

Three of the four case studies (A, B and C) show that, even though management shares little sensitive information, they still deem it to have a confidential nature, thereby limiting the possibilities for employee representatives on the EWC to communicate with employees at national level. This is paradoxical as the confidentiality requirement is designed for when management shares sensitive (and early) information with EWC members. We defined this as ‘illegitimate confidentiality’, the predominance of which was confirmed by the quantitative analysis.

When this unjustified use of confidentiality requirements is responded to with active handling strategies by the EWC, confidentiality requirements are, generally, softened. EWCs can be confrontational (e.g. by refusing to meet) or, alternatively, they might engage in a search for compromise. This insight finds support both in the case studies as well as in the analysis of the survey results.

Active handling strategies enable EWCs to communicate information more freely, but they do not resolve the main problem faced by representatives in these three EWCs: late information and/or the withholding of information. In each of these three cases, the information and consultation process could be called defunct since the EWCs are neither informed nor consulted in a timely manner: management often seeks to keep sensitive information to itself until a final decision has been taken.

In the case of EWC D, the EWC was informed in a timely fashion and properly consulted. In the case of EWC B, the select committee received early information and was consulted. They therefore received information which was, according to them, rightly marked as being confidential. In both cases, employee representatives handled this confidentiality in an ‘accommodating’ way. However, the reason why case D as a whole was informed and consulted in a timely way was because its select committee made efforts to establish formal cooperation between management and the EWC. In contrast, the select committee in EWC B did not make this sort of effort. This explains why we defined the remaining level of confidentiality in EWC D as legitimate while we regarded that in the select committee of EWC B, in contrast, as illegitimate.

In case D and in the select committee of EWC B, it is remarkable how often the issue of trust was mentioned as one of the reasons why management shared information early (under confidentiality requirements). Exploring the survey data, we can see that the relationship between having non-hostile relations is very closely related with management sharing information and employee representatives thus feeling freer to discuss issues regarding the EWC.

Drawing a conclusion from the qualitative information, we can say that active handling strategies, such as ‘forcing’ and ‘compromising’ can improve the operation of an EWC by focusing on the issue of information being illegitimately marked as confidential. Here, EWC representatives should be encouraged actively to challenge the confidential nature of certain information. This, however, does not seem to stimulate management to share more information. To reduce the withholding of information by management, more fundamental changes in its relationship with the EWC seem necessary.

Putting the insights from the qualitative and quantitative information together, we observed that most of the hypotheses we made based on the case studies could be confirmed by the survey results. Only the first three hypotheses tested (1a, 2a and 3a) were not confirmed. These hypotheses were, not surprisingly, related to the extent to which something was likely to occur within the population. In assessing the overall distribution of a characteristic in a population, case studies (and case studies with a clear selection criterion) are not a good indicator. Yet, all the hypotheses on the relationships between the variables were confirmed by the survey findings.

The main conclusions from both the qualitative and quantitative information can be summarised as follows:

- confidentiality and the withholding of information are topics of concern for a large proportion of EWC representatives
- paradoxically, withholding information often goes together with strict confidentiality requirements. This is at odds with the reasoning of policy-makers, for whom early information was intended to go together with confidentiality requirements and late information with fewer confidentiality requirements

- challenging management over what is confidential helps in reducing confidentiality requirements, but does not seem to result in management giving earlier information
- having the support of a trade union coordinator helps the EWC in challenging management over what information is confidential
- early information (and low confidentiality requirements) goes hand-in-hand with trustful and non-adversarial relationships (partnership strategies) between management and employee representatives.

The main question (for future research) arising from this working paper is, therefore, in what conditions and under which circumstances might a trustful, non-hostile relationship develop between employee and employer representatives in an EWC. For this, future research should look at the experiences of employee representatives from countries other than Belgium. We set out above that one of the conditions for evolving towards a ‘participatory’ EWC is to create a collective identity. However, for this to happen, employee representatives from different countries and industrial relations cultures need to work together in order to develop a clear view and strategy out of which they could operate as a single team (Stirling and Tully 2004). What could also be interesting in this respect is a comparison between the experiences of employee representatives and those of employers, in particular which aspects management representatives point to as crucial in order to obtain sustainable information and consultation practices without the presence of illegitimate confidentiality constraints.

We started this working paper with the story of an employee EWC representative that received early information and was properly consulted. This was combined with strict rules regarding confidentiality. In his words, ‘What goes on in Europe stays in Europe.’ While this might mean that the representative struggles from time to time to complete his tasks, there are arguments to defend strict confidentiality where the information provided is early and sensitive. However, throughout these case studies, and from what we observe arising from the survey data, this story is the exception rather than the rule. For the most part, EWC representatives who feel constrained by confidentiality rules are not the ones receiving early information. This suggests that confidentiality requirements are often deployed not to enable real consultation (as they should), but rather to disable the EWC from carrying out its tasks (as they should not).

References

- De Dreu C.K.W., Evers A., Beersma B., Kluwer E.S. and Nauta A. (2001) A theory-based measure of conflict management strategies in the workplace, *Journal of Organizational Behavior*, 22 (6), 645-668. <https://doi.org/10.1002/job.107>
- De Spiegelaere S. (2016) Too little, too late? Evaluating the European Works Councils Recast Directive, Report 138, Brussels, ETUI.
- De Spiegelaere S. and Jagodziński R. (2015) European Works Councils and SE Works Councils in 2015. Facts and figures, Brussels, ETUI.
- De Spiegelaere S. and Jagodziński R. (2016) The right and duty of European Works Councils to report back to the workforce: broad uptake, little specificity, Policy Brief. European Economic, Employment and Social Policy 2/216, Brussels, ETUI.
- De Spiegelaere S. and Jagodziński R. (2019) Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives, Brussels, ETUI.
- Eisenhardt K.M. (1989) Building theories from case study research, *Academy of Management Review*, 14 (4), 532-550. <https://doi.org/10.2307/258557>
- Elgoibar P., Munduate L., Medina F.J. and Euwema M.C. (2013) Why are industrial relations in Spain competitive? Trust in management, union support and conflict behaviour in worker representatives, *Revista Internacional de Organizaciones*, 9, 145-168.
- ETUC (2017) For a modern European Works Council (EWC) directive in the digital era, ETUC Position Paper, Brussels, European Trade Union Confederation.
- Eurofound (2015) European Works Council developments before, during and after the crisis, Luxembourg, Publications Office of the European Union.
- Fitzgerald I. and Stirling J. (2004) European Works Councils: pessimism of the intellect, optimism of the will?, London, Routledge.
- GHK (2007) A preparatory study for an impact assessment of the European Works Council Directive (No. VT/2007/098), European Commission. <http://ec.europa.eu/social/BlobServlet?docId=2421&langId=en>
- Hammer T.H., Currall S.C. and Stern R.N. (1991) Worker representation on boards of directors: a study of competing roles, *Industrial and Labor Relations Review*, 44 (4), 661-680. <https://doi.org/10.2307/2524455>
- Hannah D.R. and Robertson K. (2015) Why and how do employees break and bend confidential information protection rules?, *Journal of Management Studies*, 52 (3), 381-413. <https://doi.org/10.1111/joms.12120>
- Haynes P. and Allen M. (2001) Partnership as union strategy: a preliminary evaluation, *Employee Relations*, 23 (2), 164-193. <https://doi.org/10.1108/01425450110384697>
- Hoffmann A. (2006) The construction of solidarity in a German Central Works Council: implications for European Works Councils, PhD Thesis, Warwick, University of Warwick. <http://wrap.warwick.ac.uk/58483/>
- Huzzard T., Gregory D. and Scott R. (2004) Strategic unionism and partnership: boxing or dancing?. 22nd Annual Labour Process Conference, 135-137.
- ICF (2016) Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council, Brussels, European Commission. <https://publications.europa.eu/en/publication-detail/-/publication/81577ef3-78ec-11e8-ac6a-01aa75ed71a1>
- Jirjahn U., Mohrenweiser J. and Backes-Gellner U. (2011) Works councils and learning: on the dynamic dimension of codetermination, *KYKLOS*, 64 (3), 427-447. <https://doi.org/10.1111/j.1467-6435.2011.00514.x>

- Kougiannou N.K., Dundon T. and Wilkinson A. (2019) Forming effective employee information and consultation: a five-stage trust and justice process, *British Journal of Management*. <https://doi.org/10.1111/1467-8551.12382>
- Lecher W., Platzer H.-W. and Weiner K.-P. (2001) *European Works Councils: development, types and networking*, Aldershot, Ashgate.
- Pulignano V. and Turk J. (2016) *European Works Councils on the move: management perspectives on the development of a transnational institution for social dialogue*, Working Paper CeSO/CAAE/2016-1, Leuven, Centre for Sociological Research. <https://soc.kuleuven.be/ceso/wo/erlm/files/permeawc-final-report-eng>
- Saunders M.N.K. and Townsend K. (2016) Reporting and justifying the number of interview participants in organization and workplace research, *British Journal of Management*, 27 (4), 836-852. <https://doi.org/10.1111/1467-8551.12182>
- Steiert R. (2001) European Works Councils, World Works Councils and the liaison role of the trade unions: a test of international union policy, *Transfer*, 7 (1), 114-131.
- Stirling J. and Tully B. (2004) Power, process, and practice: communications in European Works Councils, *European Journal of Industrial Relations*, 10 (1), 73-89. <https://doi.org/10.1177/0959680104041193>
- Stoop S. (2004) 'Thriving on diversity' revisited, in Fitzgerald I. and Stirling J. (eds.) *European Works Councils: pessimism of the intellect, optimism of the will?*, London, Routledge, 48-61.
- Teissier C. (2016) *Managing transnational employee representation: how to effectively address the challenge of European Works Councils*. <http://manageworkscouncils.eu/>
- Telljohann V. (ed.) (2011) *18 European Works Council case studies*, Bologna, Istituto per Il Lavoro.
- Timming A.R. (2006) The problem of identity and trust in European Works Councils, *Employee Relations*, 28 (1), 9-25. <https://doi.org/10.1108/01425450610633037>
- Van Klaveren M. and Sprenger W. (2005) *Boxing and dancing: Dutch trade union and works council experiences revisited*, AIAS Working Paper 40, Amsterdam, University of Amsterdam.
- Waddington J. (2003) What do representatives think of the practices of European Works Councils? Views from six countries, *European Journal of Industrial Relations*, 9 (3), 303-325. <https://doi.org/10.1177/09596801030093004>
- Waddington J. (2011) *European Works Councils: a transnational industrial relations institution in the making*, London, Routledge.
- Yin K.R. (1994) *Case study research: design and methods*, London, Sage.
- Ziltener P. and Gabathuler H. (2016) Swiss multinational companies and their European Works Councils: European voluntarism meets Swiss voluntarism, *European Journal of Industrial Relations*, 22 (4), 353-369. <https://doi.org/10.1177/0959680115619715>

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