

Start and Go!

Social partners towards effective processes
of establishing and managing EWCs



WITH SUPPORT FROM THE EUROPEAN UNION

"Start and Go! Social partners in the successful establishment and management of European Works Councils"

COMPARATIVE REPORT

- SPAIN
- POLAND
- PORTUGAL
- SLOVAKIA



Introduction

The main objective of the empirical research was to identify the functioning of European Works Councils (EWCs) in 4 selected countries. In particular, the aim was to obtain information on:

- the potential for establishing EWCs in enterprises with an international reach,
- the productivity of existing EWCs,
- space to improve and strengthen EWC activity,
- training needs of EWC members,
- the role of the social partners in supporting the work of the EWC.

The study was directed towards achieving the objectives set out above, closely related to identifying effective processes for setting up and managing EWCs and involving social partners in transnational information and consultation procedures. In this respect, a methodological approach was adopted, which included both quantitative and qualitative analysis. The tools used were a survey questionnaire and an in-depth interview scenario for conducting a focus group and individual interviews. Both research methods were carried out in the second half of 2020.

The point of reference for the content of the exploration was Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings to inform and consult employees (OJ L 122/28, 16.5.2009).

It is worth mentioning at the outset that EWCs in the European Union Member States are information and advisory bodies that have established themselves as significant social partner. As an important representative of employees, they take part in dialogue with employers on matters concerning the operation of transnational enterprises. Their importance is growing due to the general phenomena that are increasingly affecting the decomposition of industrial relations in Europe, namely globalisation, increasing competition, the transition to an economy based on knowledge and new technologies and the desire to maintain social cohesion. The changes taking place in the internal market, with mergers and acquisitions, cross-border mergers, and joint ventures involving international economic activities, require harmonious development and social order. Therefore, it is important to create bodies for employee



representation to ensure that the staff of Community-scale undertakings are involved in creating new corporate governance through information and consultation.

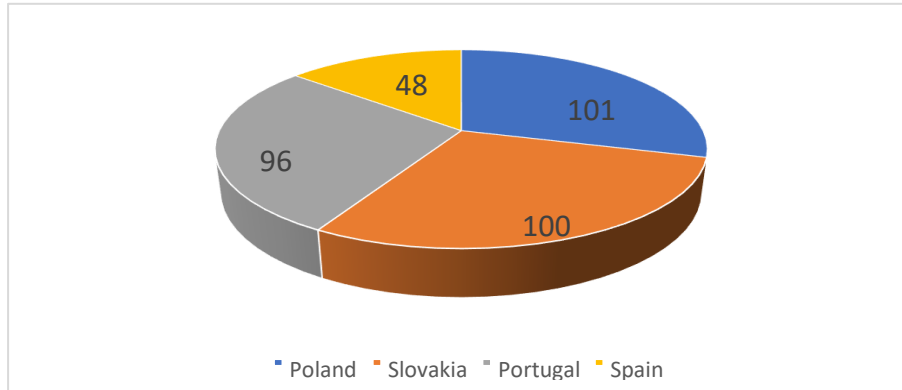
The research results presented in this paper deal with selected issues of EWC functioning, which have been widely discussed in the country reports Spain, Poland, Portugal and Slovakia. Undertaken analysis of EWCs, including identifying strengths and weaknesses and presenting the role of social partners in supporting their activities, should be a valuable contribution to reflection on the current state and directions of Europeanisation of dialogue. Moreover, they can be a stimulus to identify training needs and knowledge of specific topics among the actors involved in EWC work. Although the data obtained do not have statistical power, they outline a certain fragment of reality that seems to coincide with the conclusions found in the literature on the subject. Conclusions are drawn on their basis to highlight relevant issues from the point of view of the project's objectives.

Part I. Analysis of survey results.

The survey was conducted mainly online and in writing among two groups of respondents, namely EWC members and representatives of employees working in multinational companies that do not have an EWC. The sample selection was purposeful and nationwide. The questionnaire consisted of closed, semi-open questions allowing the respondents to supplement the content with their comments, open questions, and a metric presenting the characteristics of the respondents.

A total of 345 people took part in the survey (Figure 1). They came mainly from enterprises belonging to the industrial processing section. The most numerous industries were represented: automotive, food, metallurgy, chemical, metal, electrotechnics and electronics, graphic arts, wood and paper, and glass.

Figure 1. Total respondents participating in the survey.



Respondents differed in their knowledge and experience of EWC functioning. It was influenced by the different length and degree of establishment of these institutions in enterprises. The longest period of their operation, covering 15 years and more, was characteristic of Poland and Portugal. On the other hand, in Slovakia and Spain, they are a relatively new phenomenon (Table 1).

The incomplete understanding of the manifestations of improvement in the establishment and operation of EWCs, especially after implementing the recast Directive 2009/38/EC, is evidenced by the short participation of respondents themselves. A vast majority of respondents in Slovakia, and more than half of those in Portugal and Spain, indicated that they had been in practice for only up to 5 years. On the other hand, a relatively longer EWC experience of 10 years was reported by more than 74% of representatives in Poland.

Table 1. EWC operational period (%)

How long has the EWC in which you participate functioned?	Spain	Poland	Portugal	Slovakia
0-5 years	60,0	18,4	26,1	28,0
5-10 years	8,0	13,8	17,4	43,0
10-15 years	12,0	31,0	21,7	21,0
15 years and over	20,0	36,8	34,8	7,0
total 100.0	(Σ 25)	(Σ 87)	(Σ 46)	(Σ 50)



Opinions on EWCs vary as a result of many factors. The advancement of procedural and substantive prerogatives is evidenced by the country of the company's headquarters, the degree of internationalisation, the applicable legal order, the tradition and culture of dialogue, the socio-economic situation, the type of representation, the length of existence and the organisational structure.

EWCs were rated best by Slovak respondents (78%) in contrast to Spanish respondents expressing mainly dissatisfaction (44%). When asked about the reasons for their positive attitude, they indicated that EWCs provide genuine support for employees in terms of information and consultation, as they have a strong influence on decisions taken by central management, contribute to dealing with issues that are overlooked at the national level, and strive to raise (equalise) labour standards. Thanks to advantageously structured agreements and granted powers, they can operate efficiently and effectively. The advantages are the regularity and increased frequency of meetings with the central management, the reliability and the diversity of data provided in advance, the exchange of experiences and good practices, the cooperation with foreign employee representatives, the participation of experts and translators, the development of competencies by providing training. Discussions in the forum are substantive, allowing for a thorough understanding of the issue and subsequent improvements. Dialogue respectfully takes place; transparency, openness and equality are guaranteed. In addition to the efficient organisation of EWCs, the added value is, in many cases, a higher number of members compared to common law requirements.

Remarks determine the negative assessments addressed to employers, whose unwillingness to participate in employee participation results in the non-establishment of EWCs or weakening their activity. As a result, there is no exchange of information and consultation, or it is a sham, selective and often delayed when the position of central management has already been decided. Another example is the confidentiality of information, even though there is no basis for its application or vagueness, omitting key issues related to employment conditions and stability from the discussion. EWC meetings are sporadic and not always full. They are held remotely (videoconferencing), which is not conducive to cooperation.

A barrier to building genuine partnerships is treating the EWC as an onerous obligation rather than a forum for cooperation. There is a lack of empowerment and influence on decision-

making. Members from different countries are not treated equally. The employer is guided by particular interests and does not always fulfil agreements or prolongs the procedure for concluding them. Sometimes it does not provide the means for the EWC to function efficiently (equipment, communication tools) and increase its professionalism (training, expertise). The current situation created by the SARS-CoV-2 coronavirus pandemic does not facilitate the empowerment of EWCs.

Despite critical remarks and not much experience revealing the actual functioning of these dialogue institutions, positive opinions prevailed in Slovakia. However, respondents cautioned that time would tell whether there will be a change in attitude in the long term. The strengths and weaknesses of EWCs were presented in the Polish and Portuguese surveys. By contrast, sceptical voices were expressed in Spain due to the very difficult labour market situation and general concern about rising unemployment. The pandemic had a strong impact on the deterioration of the country's economic condition and the weakening of multinational companies (Table 2).

Table 2. Assessment of EWC functioning (%)

How do you assess the EWC in which you participate?	Spain	Poland	Portugal	Slovakia
very good	12,0	13,8	2,2	20,0
well	28,0	46,0	52,2	58,0
unsatisfactory	44,0	35,6	41,3	14,0
wrong	16,0	4,6	4,3	7,0
total 100.0	(Σ 25)	(Σ 87)	(Σ 46)	(Σ 50)

When asked about the actual role of EWCs in the information and consultation process to which respondents belonged, the majority considered them to be active. Only in Spain did statements to the contrary prevail, indicating that EWCs are a façade and of symbolic importance (Table 3).

Table 3. The role of EWCs in the information and consultation process (%)

What is the actual information and consultation role of the EWC in which you participate?	Spain	Poland	Portugal	Slovakia
active, measurable	24,0	56,5	58,7	71,0
symbolic, facade	76,0	43,5	41,3	29,0
total 100.0	(Σ 25)	(Σ 85)	(Σ 46)	(Σ 50)

Related to the impact of EWCs is the degree of involvement of respondents themselves, who assessed their contribution as intensive and regular, especially in Poland (over 63%), or adequate to needs, as in Slovakia (43%). In Spain, activity was the lowest (24%), which may be explained by the abandonment of dialogue favouring maintaining temporary employment, which is becoming a common norm in the face of the economic crisis (Table 4).

Table 4. Respondent's EWC activity (%)

Is your activity in the EWC intensive and regular?	Spain	Poland	Portugal	Slovakia
yes	24,0	63,5	45,7	43,0
not	40,0	2,4	26,1	14,0
difficult to say, rather average	36,0	34,1	28,3	43,0
total 100.0	(Σ 25)	(Σ 85)	(Σ 46)	(Σ 50)

An aspect that influences the effectiveness of EWC members' work is their competencies. Among the given catalogue of assets, respondents most often emphasised professional knowledge, communicativeness, rich experience (Table 5).

Table 5. The usefulness of competencies in EWC work (%)

What competencies do you find most useful in EWC work?	Spain	Poland	Portugal	Slovakia
extensive experience	32,0	48,3	34,8	40,0
expertise	32,0	55,2	65,2	50,0
negotiation skills	20,0	32,2	30,4	58,0



communicativeness (knowledge of foreign languages)	24,0	37,9	32,6	66,0
personality traits	24,0	31,0	23,9	25,0
achievements (activity) in trade unions	16,0	65,5	56,5	17,0
other	52,0	6,9	2,2	-
total 100.0	(Σ 25)	(Σ 87)	(Σ 46)	(Σ 50)

The sum of percentages exceeds 100% because respondents could select more than one answer.

Part of the survey was concerned with assessing the impact of Directive 2009/38/EC on the functioning of EWCs. A significant proportion of respondents could not answer due to the recent accession to these institutions when the recast provisions had already been implemented in national legislation. The lack of sufficient understanding of EWCs was due to ignorance of the situation that existed before the modernisation of Community legislation on transnational information and employee consultation. The analysis of achievements pointed to a general improvement in dialogue, which is not only the result of the enactment of new regulations but of many years of building social links.

The successes undoubtedly included better flow and accessibility of information, the possibility to learn about the company's plans, improved communication, more effective cooperation with central management based on transparency and equality, respect for verbal agreements, reaching favourable agreements, joint problem-solving and looking after employees' interests, covering the costs of EWC activities and increasing the number of members, better technical facilities. There was a noticeable improvement in consultations through more frequent and well-structured meetings, application of uniform standards (annual reporting, replies to opinions submitted), creation of working groups and division of tasks, expert support, provision of translation.

Existing practices have been strengthened and sometimes go beyond the requirements of Directive 2009/38/EC as a consequence of the good will of the social partners. The operability of trade union representatives, who have the appropriate training and acquired negotiating skills, deserves to be highlighted, thus increasing the role of EWCs. The strengthening of participation



is spreading to more and more countries, and the impact on central government policy is being felt. Undoubtedly, an improved (less vague) law has contributed to these successes. Some EWC representatives recommend introducing more advanced techniques of influence in certain matters (co-determination instead of opinion), which is related to responsibility and modern methods of business management.

Regarding the identification of problems that hinder the implementation of the right to information and consultation, despite the adoption of Directive 2009/38/EC, respondents stated the necessity to take general corrective measures and change employers' approach to the Europeanisation of dialogue. It is important to create a guarantee for its conducting in a situation of lack of such tradition (national practice) or appearance of various obstacles eliminating or diminishing the need for cooperation. Imposed legal regulations are not always respected unless they envisage heavy sanctions. Hence, it is better to create awareness and good practices so that partners are convinced of the rightness of their actions. The central management of companies has not always been open to dialogue, which has manifested itself in the delegation of lower level management to EWC meetings, in a pretence of commitment that was useful only to create a certain image. Representatives from different countries continued to be treated differently. They saw themselves as competitors and threats, especially when it came to employee benefits.

The EWC was not a forum for exchanging information and consultation but a channel of access to the decision-making entity to deal with particular interests. The inability to reach a common position weakened its position and hindered consultation, especially as it was based on imperfect procedures (untimely and protracted proceedings, incomplete and convoluted information, limited freedom of communication). In the case of many delegates, meetings became inefficient, lacking substantive discussion and understanding due to language barriers. In difficult topics, EWC members were referred to the national management, which did not have the appropriate competence to take a position. An insufficient number of meetings (once a year) is a problem. Online correspondence does not facilitate the resolution of issues, as confirmed by the current reality and the imposed constraints resulting from the COVID-19 pandemic. Face-to-face meetings are essential for constructive dialogue, as only they provide a proper dynamic for deliberations. Having its own budget could contribute more to enhancing the EWC's competencies and guaranteeing its independence.

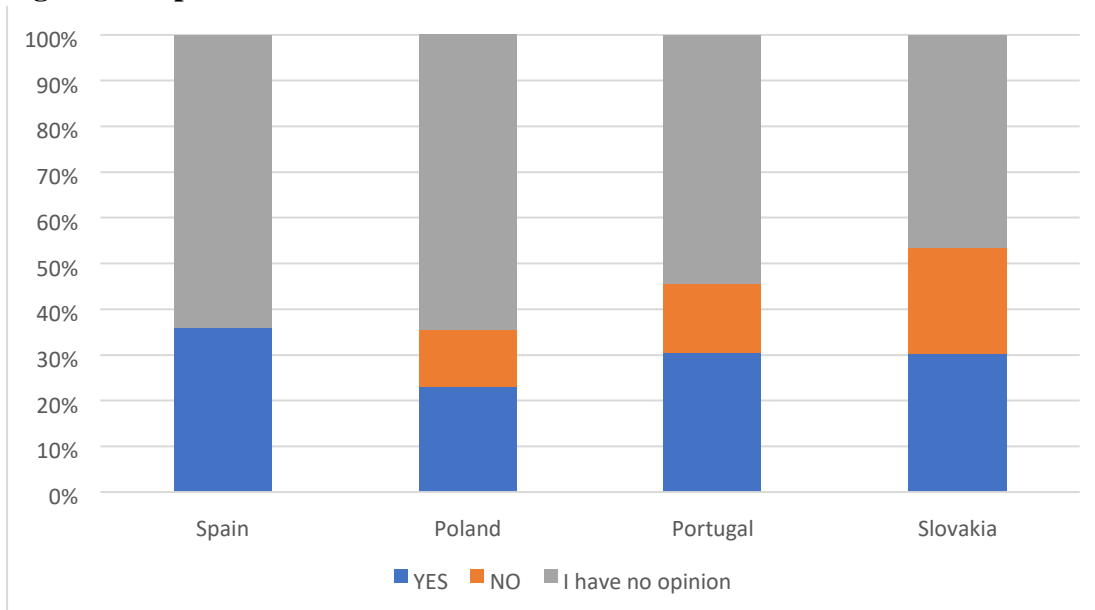


Some respondents claimed that democratic elections to the negotiating team are not held. Central management evades agreements and standards in the face of insufficient enforcement tools. Heterogeneity of practices and divergent national regulations raise doubts and complicate EWC consensus building. Its status is being instrumentalised and marginalised, mainly given planned company restructuring. It is not treated as an equal partner in negotiations. Members feel that their influence on the resolution of problems reported by the workforce is insufficient. They are not convinced of building a sustainable community order. They claim that employers prefer hierarchisation and a stereotyped management model rather than building genuine crew involvement, as encouraged by Directive 2009/38/EC.

There are still shortcomings in the observance of contracts and procedures. Communication between the European and national levels of representation of workers' interests fails. All the initiatives of the central management are subordinated to the main objective, which is solely to protect the company. This is particularly evident in periods of economic stagnation. In the case of transformations leading to job cuts and lower labour costs, the asymmetry between the established right to information and consultation and the EWC's actual influence on the course and effects of these processes becomes apparent. The disproportion is accentuated when it concerns countries with clear differences (divisions) in the level of wealth of societies or attractiveness of investments. Economic considerations and global corporate strategies are so strong that it is difficult to find reliable, proven mechanisms to develop solutions that counterbalance and protect workers' rights and ensure equality for workers by expressing a transnational view.

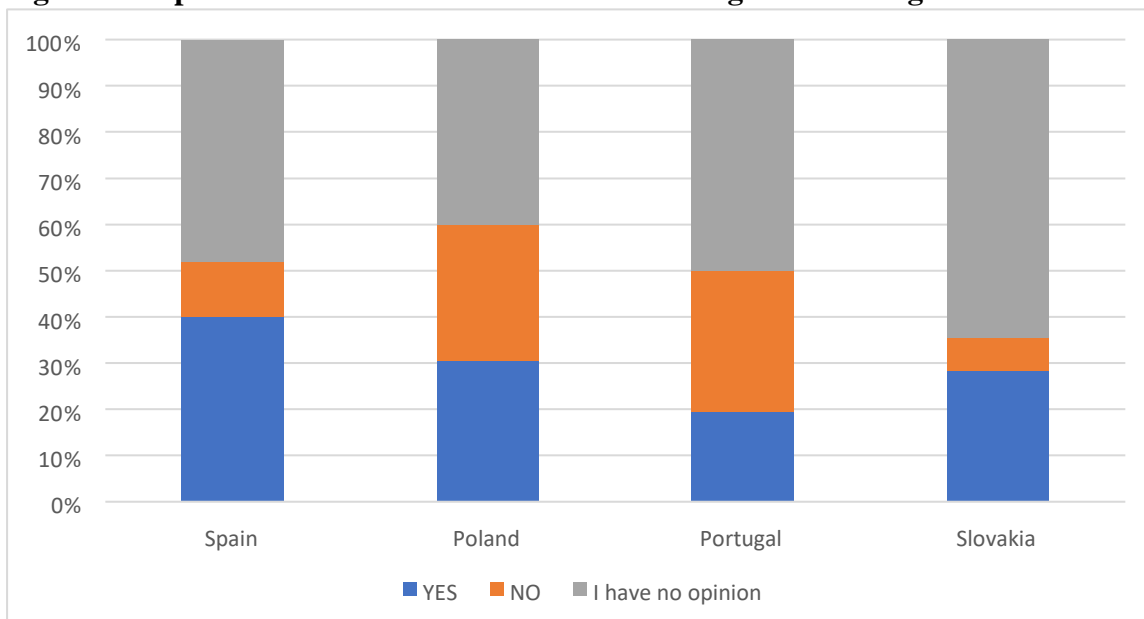
When assessing the impact of Directive 2009/38/EC on the process of setting up new EWCs, most respondents did not have an opinion. In the second place, statements confirmed, most in Spain, and negating mainly in Slovakia (Figure 2).

Figure 2. Impact of Directive 2009/38/EC on the establishment of new EWCs



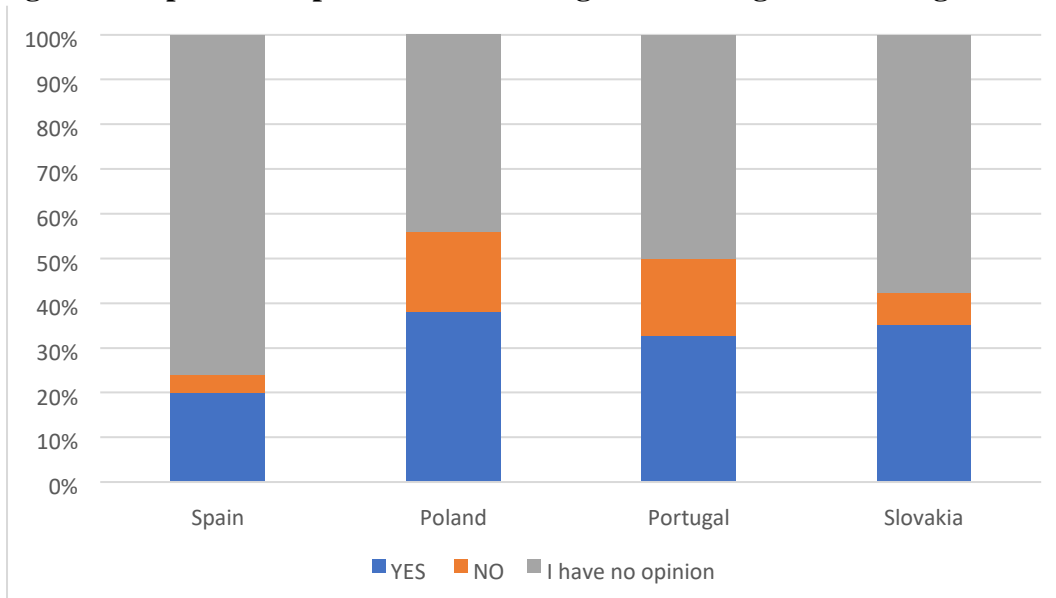
A sizable group was also unable to answer whether Directive 2009/38/EC had provided an incentive to renegotiate existing agreements in order to adapt EWCs to the new rules. The Spanish representatives gave a positive response as opposed to the Portuguese (Figure 3).

Figure 3. Impact of Directive 2009/38/EC on the renegotiation of agreements



Respondents had strong doubts about whether corporate restructuring (mergers, acquisitions) could be a more decisive reason for renegotiating existing EWC agreements than the implementation of Directive 2009/38/EC. A lack of opinion was cited mainly by Spanish representatives. On the other hand, the highest percentage of confirmations distinguished Poland, followed by Slovakia (Figure 4).

Figure 4. Impact of corporate restructuring on the renegotiation of agreements



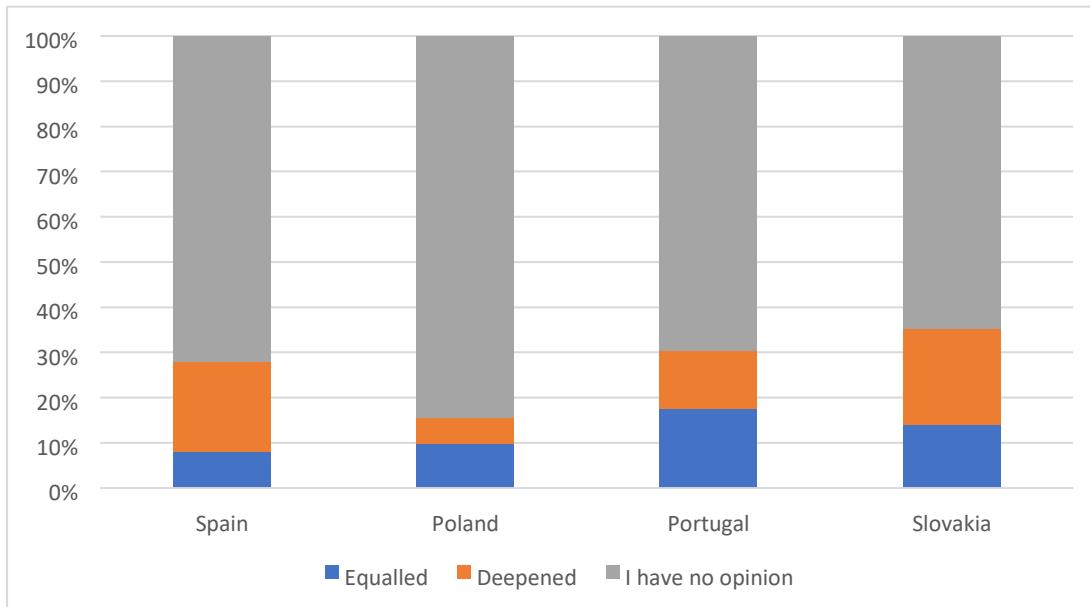
To explain why some EWCs do not enjoy the benefits conferred by Directive 2009/38/EC, respondents argued that much depends on the approach to dialogue and workers' issues, the understanding of mutual needs and interests, the practice of removing the social side from opportunities to influence company business, and, at the same time, their determination to assert their rights. Difficult to overcome is the sceptical attitude of management from home countries to the implementation of costly, time-consuming and useless international cooperation in information and consultation. Having a negotiating advantage, they do not conclude agreements because they feel impunity. They ignore Directive 2009/38/EC, which has no binding force, and its guidelines implemented in national legislation are sometimes interpreted differently. Therefore, the role of supervision and appropriate sanctions as an element of pressure on employers and increasing the inclination of employee representation to take legal action is



important. Legal and ownership complexities, especially in situations of company restructuring, do not make it easy for EWC members to engage in dialogue and make specific claims.

Simultaneously, the role and positions expressed by EWCs are being undermined because of their insignificance, passivity, inadequate representation (lack of professionals, technical facilities, employee support) and insufficient cooperation between members. It is sometimes apparent that the national interest of the dominant group within the EWC is being protected rather than seeking to equalise standards. An important aspect is the insufficient knowledge of internal regulations and practice based on Directive 2009/38/EC. Therefore, the demand for an experienced coordinator with competencies for consultation is justified. A problem is also the weakness of trade union structures, pressure from national management and influence on the selection of EWC members who are not motivated to get involved with incomplete knowledge and awareness and lack of faith supported by too few bottom-up initiatives. Some are not interested in the implementation or are not familiar with the new solutions, as they have not studied the functioning of EWCs, whose establishment is a consequence of the adoption of Directive 2009/38/EC. Given the strong position companies are in, and they also express fears of any discussions and changes that might worsen information and consultation procedures. To a minor extent, respondents argued that they have more favourable agreements and better standards of cooperation than those provided for by Community regulations and therefore do not refer to Directive 2009/38/EC. However, these voices were isolated. The vast majority of respondents were unable to assess and explain the impact of this piece of legislation on the condition and efficiency of EWCs. Similarly, they could not determine whether there was a qualitative difference between them, which indicates a poor understanding of the subject (Figure 5).

Figure 5. Impact of Directive 2009/38/EC on levelling/deepening the qualitative gap between EWCs



When assessing the EWC, respondents were most positive about its organisation and facilities in terms of experts, translations, setting up of committees, and the conduct of dialogue between national and transnational levels. In contrast, they gave poor ratings to the professional preparation and competence development of EWC members and quick access to data and the efficiency of information and consultation procedures. On average, Slovak respondents gave more positive assessments of various aspects of EWC functioning. In their view, these dialogue institutions have a good reputation in the labour community. On the other hand, Portuguese respondents were more critical of the EWC for having too many deficiencies (Table 6).

Table 6. Assessment of issues related to the functioning of the EWC

How do you assess the issues related to the functioning of the EWC in which you participate?	Spain	Poland	Portugal	Slovakia
clarity and comprehensiveness of national law on EWCs	Light Blue	Pink	Pink	Light Blue
training and competence development of EWC members	Pink	Yellow	Pink	Pink



rapid access to data and efficient information and consultation procedures	Bad	Good	Bad	Bad
the dialogue between the national and supranational levels	Good	Good	Bad	Good
implementation of responsibilities by the management (central administration) of the company	Identical	Good	Bad	Good
EWC organisation and facilities (experts, translation, committee support)	Bad	Good	Good	Good
frequency of meetings, extraordinary meetings	Good	Bad	Bad	Good
international cooperation and trade union support	Bad	Good	Good	Identical

Good
 Bad
 Identical

Improvements are needed to make EWCs work better in practice. More than 52% of Spanish and 75% of Polish respondents mentioned access to experts and translators. A very important issue was to improve communication with national trade unions and to make European (sectoral) trade unions more active through a platform for cooperation, as stressed by respondents from Slovakia - 78% and over 57%, respectively. According to 73% of Portuguese respondents, giving EWCs the power to visit local companies deserves attention, while 63% mentioned training and qualification upgrading. According to 66% of Polish representatives, strengthening the EWC at the management level by allowing participation in meetings dealing with employee issues would help to optimise its activities. Quite a significant improvement should be tightening (introducing) sanctions for non-compliance - almost 62% of Polish, 54% of Portuguese and 46% of Spanish respondents thought so. None of the countries stated that it was important to strengthen the reduced committee (Table 7).

Table 7. EWC improvements needed

What improvements do you think are needed to improve the EWC and have more influence on central management?	Spain	Poland	Portugal	Slovakia
improving communication with national trade unions	X	X	X	X



increase the involvement of European (sectoral) trade unions (creation of a cooperation platform)	X	X	X	X
establishing closer links with national and European employers' organisations		X		X
introduction of implementing provisions on procedures, deadlines for fulfilling obligations	X	X	X	X
strengthening (introducing) sanctions for non-compliance	X	X	X	
provision of (mandated) training and qualification	X	X	X	X
empowering EWCs to visit local enterprises	X	X	X	
strengthening the EWC at the company board level, participation in meetings on employee issues		X	X	
access to experts, interpreters	X	X	X	
increased frequency of meetings	X	X	X	X
establishment of a separate EWC budget		X		

X - the percentage of highest rated improvements on a four-point scale: 1 - very important, 2 - important, 3 - useful, 4 - unnecessary.

The second part of the questionnaire survey covered employees from multinational companies with no EWCs in operation. When asked about the main reason for not setting up an EWC, respondents answered that it is due to management's attitude and deliberate actions that hinder the realisation of the right to information and consultation. Also, lack of basic knowledge and determination on the part of the crews and organisational (procedural) barriers are other reasons for omissions. In particular, unfamiliarity with and complexity of regulations and poor communication about the benefits of EWCs were mentioned by Slovak and Spanish respondents. This implies the need for awareness and popularisation of Social Dialogue, especially as a significant percentage of respondents in Poland did not express an opinion (more than 28%), in Portugal underlined dilettantism in procedures (34%), in Slovakia mentioned



insufficient legal knowledge and lack of initiative and doubts about the understanding of Directive 2009/38/EC (50%).

The factors directly influencing the establishment of EWCs are concerned, the status of a global company with international operations and experience, economic and creative potential, whose aim is to strengthen cooperation and build unity among the workforce, is decisive. Such an impact was indicated by 53% of Polish respondents. Another stimulus, raised mainly by the Portuguese respondents (40%), is the desire to learn more about the market realities and the condition of enterprises, the employment policy towards employees and standards of conduct. The Slovak respondents highlighted the aspect of improving dialogue and negotiation with the social side. If the workforce is satisfied with their relationship with their employer, there is no need to look for additional forms of cooperation. In their view, EWCs are unnecessary when employees have union representatives, and there is open communication. Furthermore, they referred to formal requirements regarding the size of the company and its transnational character as necessary conditions for the establishment of EWCs. When restructuring occurs, the workforce is downsized, and internal rules established under previous agreements do not match the new reality. There is no motivation for the workforce to enter into negotiations.

It is worth noting that the catalogue of reasons for not setting up an EWC is quite diverse. Most comments concerned the reluctance of central management - almost 72%, 66% and over 27% of indications from Poland, Portugal and Spain, respectively. More than half of Slovak respondents mentioned, in turn: insufficient knowledge of social partners, weak (insufficient) role of trade unions, doubts about Directive 2009/38/EC. The last two reasons were also dominant among Spanish representatives with 50% and almost 23%. Resistance from local management was raised by both Portuguese (54%) and Polish (52%) respondents. Given the comments still being made about the state of knowledge of the legislation, the *de lege ferenda* request to familiarise employees with national and European legislation seems obvious. It is worth noticing that the context of diversification of societies' wealth, labour standards, the economic situation of enterprises was marginalised (about 1/3 of indications in Poland, less than 1/10 in other countries).

Table 8. Reasons for not setting up an EWC

In your opinion, what are the reasons for not setting up an EWC?	Spain	Poland	Portugal	Slovakia
the vagueness and generality of the provisions of Directive 2009/38/EC as a starting point for the creation of objectives				
inadequate national regulations that do not simplify the process of setting up EWCs	* * *			
the reluctant attitude of the management (central management)				
weakness of trade unions				
resistance of local management		* * *		
fragmentation of companies in certain sectors and lack of unionisation	* * *	* * *		
insufficient knowledge of the social partners				
corporate culture, lack of understanding on the part of non-European investors, shareholders				
lack of a system (effective mechanisms) for creating a transnational representation of workers' interests				
differences in the prosperity of societies, labour standards, the economic situation of businesses				
total 100.0	(Σ 22)	(Σ 46)	(Σ 50)	(Σ 50)

The sum of percentages exceeds 100% because respondents could select more than one answer.

Most frequently indicated reasons
 second most frequently indicated reasons

*** same result

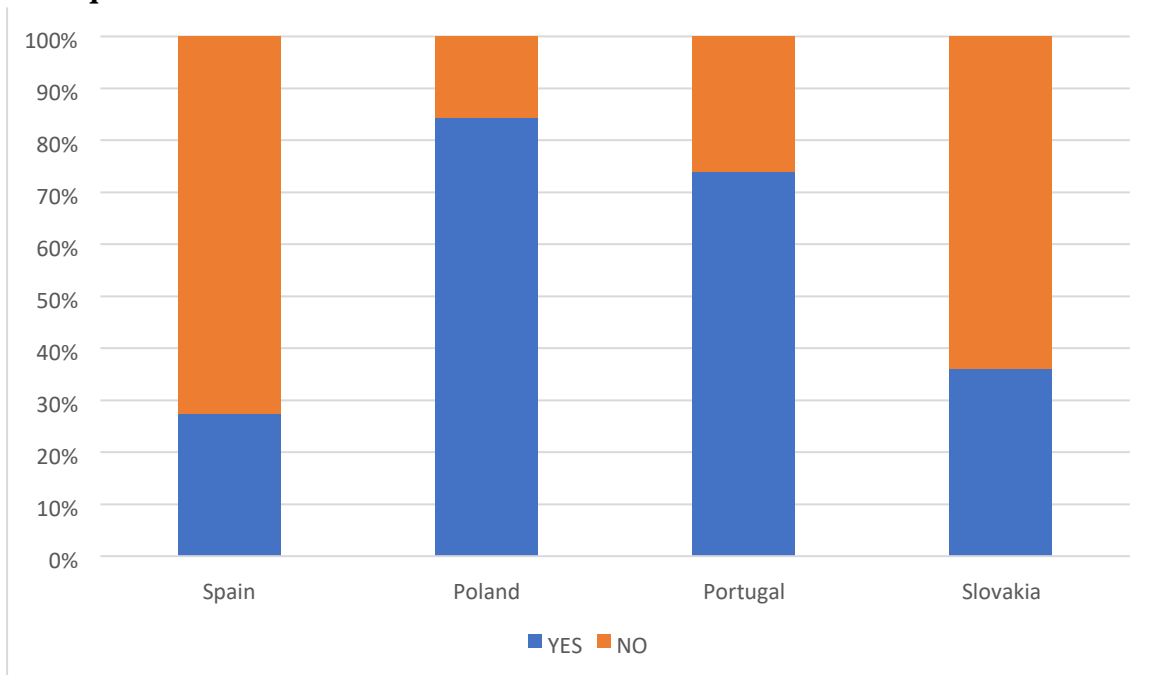
Respondents had different approaches to the feasibility of setting up EWCs in the face of current problems and inadequacies, especially the worsening labour market situation caused by the SARS-CoV-2 coronavirus pandemic (Figure 6). In Poland and Portugal, a sizeable group of



respondents (84% and 74%) confirmed the possibility of setting up an EWC, in contrast to the positions taken in Spain and Slovakia (73% and 64%). Positive responses were justified by the existence of a strong social need and willingness to engage in dialogue. Trade unions should be determined in pursuing this goal, especially since there are legal regulations, a common market, same industry interests, increasingly easy (remote) contact allowing for ongoing exchange of experience and knowledge between workers from different countries. Membership of European trade union federations and a common active policy to promote and strengthen EWCs is helpful. It is necessary to support national structures and influence central management to convince them of the advantages of mutually solving problems that should be known and eliminated on an international level since the single European market is the driving force. In companies with high organisational culture and maturity of social partners, EWCs are not an obstacle. Hence, good practices should be transferred, and their role emphasised where stereotypical thinking still exists and where employee participation needs to be strengthened.

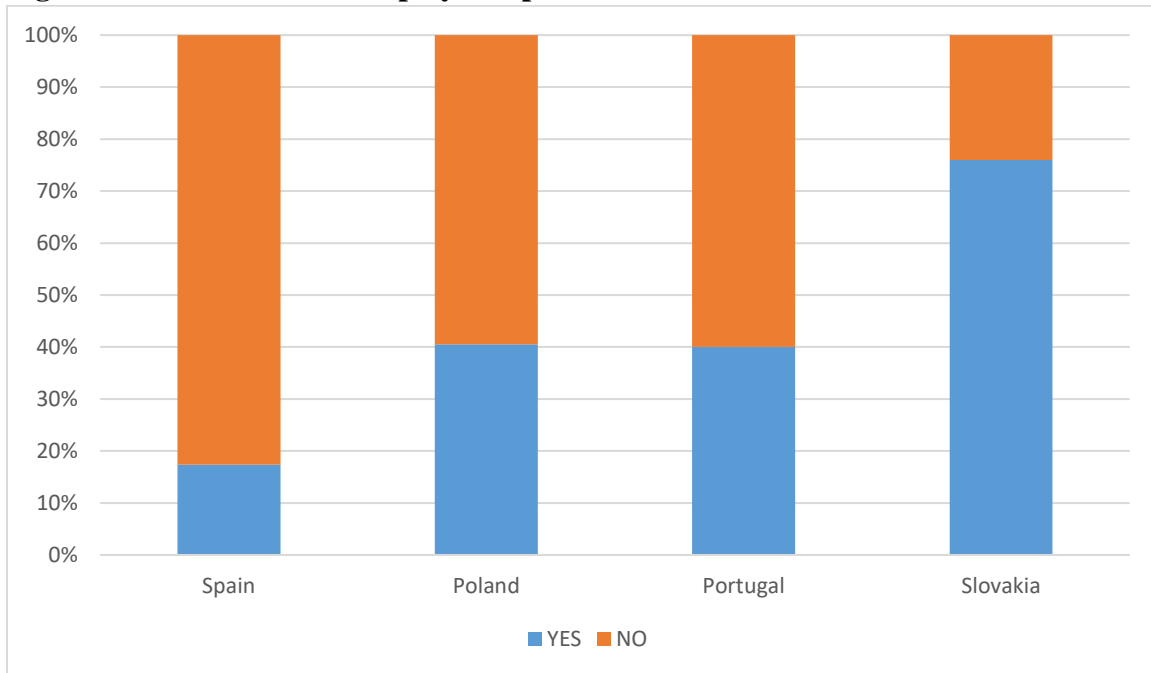
Among the negative statements made by respondents, scepticism towards changes in the enterprise's enterprise and the unpredictable reaction of the management may obstruct establishing EWCs by all means, considering them to be illusory and useless employee representative bodies predominated. Despite the passage of time since the adoption of the transformed provisions, the mechanisms facilitating the establishment and functioning of EWCs are still not working. Economic problems are mounting, competition is increasing, companies are pursuing a policy of limited trust as a result of an unstable external environment, and they are unwilling to hold talks with workers' representatives. The current problem created by the SARS-CoV-2 coronavirus pandemic is the economic recession and the concentration of forces on retention problems. There are no adequate labour resources within the ranks of either the trade unions or the workforce as a whole to initiate real action for the establishment of an EWC.

Figure 6. The feasibility of setting up an EWC in the face of current problems and inadequacies



Employee representatives are effectively pursuing the establishment of EWCs. This was felt by 76% of respondents in Slovakia and 40% in Poland and Portugal. The highest level of negation was expressed by Spanish respondents - almost 83% (Figure 7). Most believed that trade unions make efforts because it is an important manifestation of their activity, especially with insufficient workforce involvement, which lacks knowledge and experience. Efforts are confirmed, among others, by the use of a network of coordinators established by sectoral or regional structures, correspondence with local management and central management, cooperation with international trade union structures, participation in European events and projects, participation in the legislative process and familiarisation with legal provisions. Workers' representatives strive for EWCs to varying degrees, sometimes directing their activity to current, local issues or withdrawing in the face of excessive barriers or failure to meet formal requirements.

Figure 7. Effectiveness of employee representatives' efforts to establish an EWC



According to nearly 70% of Spanish and half of Polish respondents, the company's central management neutrally views the EWC as a legal requirement to be fulfilled to the extent necessary. A similar view was shared by more than 52% of Slovak respondents, who indicated a neutral or negative stance as an additional burden slowing down decision-making processes. This was also the assessment shared by 66% of Portuguese respondents. Most respondents chose the positive approach of the central board, stating that there should be an institution for dialogue, a platform for communication and good practices from Poland and Slovakia - 25% and 21%, respectively.

Helpful in verifying employers' attitudes towards participation was the question of whether respondents had encountered circumvention and inappropriate practices by company management on the establishment of EWCs. The highest percentage was negative statements. This shows that employers' behaviour was appropriate, both at Community and national level. The negation rate stood out for Slovakia and Poland, which stressed the lack of inappropriate actions by both central management (80% and 75%) and local management (67% and 60%). In Portugal, respondents experienced no wrongdoing at the community level (68%). The practices of the local management were worse, as 46% had encountered misbehaviour. In Spain, 40%



were statements denying the circumvention of regulations and undesirable attitudes of employers at both levels of company management.

Respondents were unable to prejudge whether Directive 2009/38/EC had influenced the process of setting up EWCs. In all countries, a lack of discernment prevailed. The percentage of such statements ranged from over 67% in Poland, 78% in Spain, to 82% in Slovakia and Portugal. Among the remaining voices, there was a predominance of opinions confirming the beneficial impact of Directive 2009/38/EC. However, reservations were expressed that it is not a good starting point, the implementation of which will solve the problems that arise in practice. Hence, the discussion calls for a review of EWCs to adopt a strategy to improve these dialogue institutions in the current socio-economic situation.

Similarly, a large majority of respondents had no opinion on the impact of the recast Directive 2009/38/EC, mainly in terms of eliminating the gap between those EWCs considered to be well-functioning and others that had received only minimal support lacked experience and were not well established. In Portugal, 90%, in Slovakia, 86%, in Spain, 82%, and in Poland, 79% of respondents could not assess whether the qualitative gap between EWCs had evened out or widened. The rest, 39% in total, were convinced that the disparities were levelling out. Thus, symptoms of uniformization of employee participation in transnational social dialogue can be discerned.

When asked about the type of changes that might facilitate the establishment of EWCs, respondents answered differently (Table 9). They most frequently mentioned the need to tighten sanctions for non-compliance (Poland 67%, Portugal 64%, Spain 32%). Then they saw the need to clarify or amend the provisions of Directive 2009/38/EC regarding the negotiation of an EWC agreement (Slovakia - 39%, Portugal - 46%, Poland - 38%). It is worth noting that 80% of Polish respondents acknowledged the need for implementing provisions on the procedure for setting up an EWC. A sizable proportion of Slovak respondents - 55% - saw the need to implement a system of incentives for company management.

Table 9. Facilitating the establishment of EWCs

What changes will accelerate (facilitate) the establishment of EWCs?	Spain	Poland	Portugal	Slovakia
lowering of employee thresholds for the purposes of elections and determining the composition of the EWC		III		III
Strengthening sanctions for non-compliance	II	II	I	
implementation of an incentive system for central (national) management				I
Clarification and/or amendment of the provisions in Directive 2009/38/EC regarding the negotiation of an EWC agreement		III	III	II
introduction of implementing provisions on the procedure for setting up EWCs		I	II	
shortening the negotiating period for setting up the EWC	III			
other	I			
total 100.0	(Σ 22)	(Σ 45)	(Σ 50)	(Σ 50)

The sum of percentages exceeds 100% because respondents could select more than one answer.


Changes most frequently indicated in order from I to III.

Improving the work of EWCs depends to a large extent on the competence of employee representatives. According to respondents, expertise is the most useful skill, as confirmed by a range of 70% to 72% of responses from Portugal, Poland and Slovakia, and only 29% from Spain. In second place are negotiation skills with a percentage of 52% in Portugal, 50% in Slovakia and over 33% in Spain. Extensive experience, communication skills and achievements in trade unions are also important (Table 10).

Table 10. The usefulness of the competencies of employee representatives in EWC work

What competencies of employee representatives can be most useful in EWC work?	Spain	Poland	Portugal	Slovakia
extensive experience	III	II		
expertise	II	I	I	I
negotiation skills	I		III	III
communicativeness (knowledge of foreign languages)		II		II
personality traits				
achievements (activity) in trade unions		III	II	
other	I			
total 100.0	(Σ 21)	(Σ 48)	(Σ 50)	(Σ 50)

The sum of percentages exceeds 100% because respondents could select more than one answer.


 Changes most frequently indicated in order from I to III.

To increase the activity of EWCs and strengthen their influence on the company's central management, it is necessary to improve or modify specific solutions. Otherwise, these institutions will be marginalised, and the information and consultation process will become illusory. In the face of these concerns, respondents prejudged that improvements must take place (Table 11). Communication with trade unions and increased participation of European (sectoral) trade union organisations through cooperation platforms were given a key role among the improvements listed. Access to experts and translators is very important, as stressed by 73% of Polish respondents. On the other hand, giving EWCs the power to vet companies was important for 75% of the Portuguese group. An exceptionally high percentage in Spain, 58% of respondents, pointed to the need to strengthen the select committee. Other improvements were also of interest, which generally reflects the need to improve EWCs.



Table 11. Necessary EWC improvements as perceived by respondents

What improvements do you think are necessary to improve the functioning of the EWC and have more influence on central management?	Spain	Poland	Portugal	Slovakia
improving communication with national trade unions				
increase the involvement of European (sectoral) trade unions (creation of a cooperation platform)	***			
establishing closer links with national and European employers' organisations				
introduction of implementing provisions on procedures, deadlines for fulfilling obligations	***			
strengthening (introducing) sanctions for non-compliance				
provision of (mandated) training and qualification				
empowering EWCs to visit local enterprises				
strengthening the EWC at the company board level, participation in meetings on employee issues				
strengthening the select committee				
access to experts, interpreters				
increased frequency of meetings				
establishment of a separate EWC budget	***			

 improvements most frequently indicated *** same result

When characterising the total number of respondents participating in the survey, it should be emphasised that the vast majority were men aged between 35 and 50, with secondary education and work experience of over 15 years (Table 12). They belonged to trade unions. In Portugal, almost all of them were affiliated (93%), and the length of membership was over 15

years (57%). Poland was also well represented (68.6%), with membership between 11 and 20 years (38%). The situation was slightly different in Spain and Slovakia as union membership was 46% and 50%, respectively. Membership in both countries was not long and usually lasted up to 7 years (41%) and up to 5 years (57%).

Table 12. Respondents by gender, age, education and length of service (%)

Characteristics of respondents		Spain	Poland	Portugal	Slovakia
Gender	man	59,6	81,4	82,3	51,2
	woman	40,4	18,6	17,7	48,8
Age	up to 24 years	6,4	0,0	1,0	4,6
	25 - 34 years	11,0	1,5	12,5	25,6
	35 - 50 years	53,5	53,9	57,3	47,7
	over 50 years	29,1	44,6	29,2	22,1
Education	incomplete primary and primary	16,4	0,0	3,1	0,0
	basic vocational	23,3	4,6	22,9	23,2
	Medium	40,1	53,4	61,5	16,3
	higher	20,2	42,0	12,5	60,5
The general length of service	up to 5 years	17,7	0,0	3,1	17,5
	5 to 15 years	32,5	9,6	22,9	30,2
	over 15 years	49,8	90,4	74,0	52,3

As far as occupations were concerned, there was a diversity resulting from the representation of many industries belonging to industrial processing. The survey included respondents in managerial positions, managers, team leaders and specialists. An important group included administrative staff, engineers, controllers, planners, warehouse workers and coordinators (of safety, technology, quality, processes), technicians and other middle production staff. A significant percentage also included manual workers, operators and fitters, mechanics. Among the respondents, some workers were delegated to perform functions in trade unions (chairmen). They formed a sizeable population in Poland (39%).

Part II. Analysis of the results of focus groups and individual interviews

To gain a deeper insight into the functioning of EWCs in multinational enterprises, qualitative research in the form of focus groups and individual interviews was carried out. A



total of 66 persons purposively selected from trade union and employer representatives were interviewed from 4 countries.

This part of the empirical investigation intended to identify social partners' attitudes towards EWCs. The aim was to find out what they think about their role in the information and consultation process, how they perceive the achievements and problems so far, and whether they have a chance to fulfil the EWC's challenge in the face of a rather complex legal and socio-economic reality. It was particularly important to identify the reasons for not setting up an EWC and for not fulfilling the tasks assigned to this employee representation.

The discussions focused on three areas: diagnosis of the EWC; achievements and difficulties in its activities so far; challenges and recommendations. At the outset, it should be noted that the parties in each country represented a different point of view. Trade union representatives raised more reservations and expectations. On the other hand, employers stressed the burden of EWC functioning, including bureaucracy, time-consumption, and high costs concerning effects of the Social Dialogue. They stressed the importance of conciliation rather than escalating problems in the face of a difficult market situation and the impossibility of satisfying many workers' demands.

1. Diagnosis of the EWC

Respondents gave a good assessment of the current EWC situation regarding its power to influence the information and consultation process. They stressed that partners' behaviour depends on the type of industry, the organisational culture, the type of company transformation (outsourcing, relocation to another country), and the issues to be addressed (collective redundancies, implementation of social programmes). They raised the role of law and good practice. They were aware that improving EWCs is a long one and much depends on the human factor. They perceived an improvement in the approach of company management (central, local) to EWCs in the face of the inadequacies that had occurred so far. In many cases, the intervention of trade union representatives and publicising problems led management to create a transnational model of dialogue. When certain processes cannot be slowed down in the face of negative market changes, it is necessary to communicate and seek compromises rather than opt for industrial action and strikes. Improper behaviour works to the disadvantage of both



parties. Hostility and protests can discourage investment, and the evasion of generally accepted standards can lead to the loss of qualified staff.

Employers present two types of approaches to the information and consultation procedure. They behave neutrally, i.e., treat the EWC as an obligation imposed by law and act only to the extent required or proactively go beyond the minimum and meet employees' expectations. In the second case, they justify their attitude to this form of participation by contemporary management methods and competitive processes on the demand side, which mobilise to take care of employees, especially skilled or scarce resources in certain sectors, including enabling their real and effective participation in company matters. Some employers do not attach any importance to the establishment of EWCs.

Trade unions play an important role. They are increasingly aware of the consequences of globalisation and know that decisions taken in one country affect the situation in other countries where transnational companies operate. As emphasised by the Spanish respondents, there is an intra-union paradox between solidarity and rivalry, as the representatives of trade union organisations are supposed to unite in a community forum and stand together in front of central management, while at the same time they separately strive to maintain employment and decent working conditions at the national level. Another issue is representativeness. There should be a relative balance on their side so that smaller organisations can have a real say in shaping the EWC and determining the information and consultation procedure. In the case of fragmentation, trade union representation becomes less effective, as was emphasised by the Slovak respondents. The dominant position of one organisation, including its membership in European trade union structures, results in monopolising EWC activities and access to knowledge at the EU level. In the absence of partnerships and federation and state support, it is difficult to create a counterbalance for the employer, which serves the autonomy of its conduct.

According to interviewees, Directive 2009/38/EC improved the functioning of EWCs, but its role was not crucial in improving the information and consultation system. The provisions adopted helped with communication and data quality received on issues of greatest concern to workers. They have also provided an incentive to renegotiate existing agreements in order to adapt EWCs to the new rules. Corporate restructuring (mergers, acquisitions) contributes more to these changes.



Some respondents did not have sufficient knowledge to assess the impact of the implementation of Directive 2009/38/EC, as many EWCs were set up after its adoption, as exemplified by the situation in Slovakia. However, they were able to confirm the readiness of the social partners to become more involved in employee-related topics. There has been a consolidation of the consultation, advisory and negotiation process through regular meetings and discussion of issues raised in advance and subject to expert analysis. An important manifestation of the activity of Slovak employers is the professional development of personnel, aimed not only at increasing their productivity but also at professionalising procedures, developing communication skills (supporting language learning) and negotiation skills (conflict resolution), preparing for crises, forming attitudes of loyalty and identification with company policy. In some cases, the workforce does not initiate creating an EWC, as direct communication with the employer works well. Employee spokespersons are appointed to take over consultation functions due to the absence of trade unions.

As far as the cooperation of social representatives with the management is concerned, it is very good at the local level, with meetings and consultations organised. Contacts with the central management are not so good. Respondents evaluated them as good or good. Information is usually sent, but consultations are not always held. Sometimes access to data is limited because it comes late or is of little use. In Portugal, inappropriate practices and unwillingness to cooperate with EWCs are more frequent at the local level. On the other hand, it is difficult to accuse employers of not complying with Directive 2009/38/EC regulations, which was the reason for negotiating the existing agreements.

According to employers, the monopolisation of trade unions is problematic. The responsibility of EWC members to obtain confidential data and assimilate global economic conditions and local market differences forcing the adoption of a specific strategy for the company a frequent source of misunderstanding among partners. In Western European countries (Germany, France, United Kingdom), EWCs have a strong representation in numbers and quality. They are treated very professionally and are recognised as bodies with real power. Management takes their opinions into account and has constructive discussions with them, as they represent the interests of employees and understand the problems and the nature of the business. At the European level, they are a solid representative of the workforce and a partner



appropriate to the employer's position, who can help in resolving specific issues. For this reason, EWC members are offered training to systematically improve their competencies and knowledge needed to fulfil their functions from the perspective of protecting the interests of both sides. A mature and responsible approach to cooperation lacks in the countries surveyed. Contrary to the assumption that it is supposed to be creative and pragmatic, partners focus on their positions and perceive themselves as adversaries rather than an ally for achieving the common good. Therefore, the initiative to start the negotiation process is with the workers' side more often than not. The perception of EWCs in terms of burdens and decision-making delays is a reason to discourage employers from being proactive, which contradicts the idea of Directive 2009/38/EC. According to its principles, it is not a matter of unreflective transmission of information and exchange of views but of forming real and serious relations to involve the workforce. The opinion-forming character of EWCs should not remain without any feedback and tangible results. To meet these guidelines, it is not enough to transpose them into national legislation and monitor and support activities, review internal representation systems, and implement good practices.

Insufficient trade union support is considered a frequent reason for the weak position of the EWC, which lacks adequate dialogue facilities and influence on company management. The only means to force employers to fulfil their information and consultation obligations properly is through labour legislation, which should be stricter. Trade unions sometimes negate EWCs, seeing them as an alternative (competition) to their activities. They do not care to promote these institutions if they do not translate into their opinions and views, especially as they concern international issues. Simultaneously, they downplay the role attributed to them because they do not negotiate collective agreements and do not conduct disputes.

In all countries, there are a reluctance on the part of workers, mainly young people, to protect the interests of the whole and strengthen the workforce. Trade union power and its efficiency are also weakening, as evidenced by the decreasing number of agreements and collective bargaining. On top of that, there is the specificity of the common law, which, by guaranteeing a certain level of social protection, demotivates employees to become active, confirmed by the Polish and Slovakian normative system. They are not convinced of the operability of trade unions and the possibility for them to achieve additional benefits or more



benefits. This, in turn, translates into indifference towards EWCs. As a result, it is difficult to demonstrate the advantages of membership and the superiority of companies with present dialogue institutions over those without employee representation.

2. EWC achievements

In general, EWCs work better. Communication and understanding of business issues have improved with the provision of experts, translators and training. Other positive changes include the professionalization of EWC members and their increased awareness. Better assimilation of knowledge, broadening of competencies, and a sense of responsibility are visible as they pass on all information to the workforce and use the experience gained to protect workers' rights and interests. The role of trade unions and their activity in building relations, especially in the international dimension, is important, as such determination to act is lacking among the staff. Noteworthy is the goodwill of the management and conviction to social dialogue as an element of sustainable management. Undoubtedly, the consultation process takes place more easily when the economic situation is favourable, and the company is developing and investing. Improved legislation and compliance is also an achievement. Before the adoption of Directive 2009/38/EC, it was difficult to obtain information on the planned restructuring and strategies of the company's management, on whose decisions the fate of many workers depended.

3. EWC's difficulties

To meet the EWC's needs, training, better access to expertise and advice, more frequent meetings, facilitation of members' tasks (broadening the catalogue of privileges), increased technical and human resources are needed. There is a lack of fast track enforcement. There is no objectivity of the issues communicated, and they are selectively discussed during EWC meetings. The understanding of confidentiality is problematic. In practice, this caveat is abused by the employer and hinders the information process. A weakness of EWCs is the inadequate preparation of members for their function. Inadequate institutional support combined with human resource deficits is key factors that interfere with dialogue building. For companies that do not have EWCs, trade union activism and contacts with European structures effectively influence central management.



When asked about ways to encourage management to cooperate effectively with the EWC, interviewees representing the trade union side indicated that an effective solution is an adequate legislation and high financial restrictions for non-compliance. Only sanctions provide a guarantee that agreements are enforceable. In Poland, respondents considered it appropriate to create a unique website at the EU level and post reminders in non-compliance with the law on setting up an EWC. Employers, on the other hand, stressed the need to raise awareness and demonstrate mutual benefits. Stereotypes are often an obstacle. Therefore, they should be countered by disseminating good practices and creating uniform standards, which will positively affect eliminating management passivity while also levelling the position between different EWCs.

Most respondents agreed that coordination and recognition of activities at the national and EU level are needed. The experiences and positions of EWCs are different. Rules of conduct should help to bridge gaps and imperfections so that transnational information exchange and consultation cease to have a symbolic function. Polish respondents emphasised the two-track approach of some employers, who are ambivalent about strengthening such participation mechanisms. Their obligations under Directive 2009/38/EC do not prevent them from freely taking and implementing company decisions in consultation with national workforce representatives exercising their power to influence (press) planned changes. Spanish respondents expressed similar views. In their view, the existence of EWCs and independent trade unions in each country can produce very good results if there is coordination between the two levels of representation and joining forces to achieve a common goal in labour matters. The practice so far shows that opinions are usually not taken into account by employers. This highlights the need for mechanisms to ensure more effective EWC involvement in dialogue along the lines of collective bargaining to conclude agreements.

4. Challenges and recommendations for EWCs

A fundamental challenge is a mutual trust between the social partners and the conviction of the EWC's causal role. Interviewees agreed that there is a will on the trade union and employer sides to recognise the EWC as an institution for information and consultation and as a body supporting the implementation of international company strategies and projects. Workers expect the EWC to be able to set minimum labour standards, mainly on wages. The



mere provision of information is insufficient, although helpful in understanding company policy.

Experience from the restructuring of some concerns confirms that EWCs are becoming an effective institution for dialogue and can go beyond the framework provided by Directive 2009/38/EC in their activities. The position of central management is decisive. If it sees the benefits of additional arrangements, it takes on the burden. Therefore, an incentive system is a stronger motivator to create certain attitudes than the strictness of sanctions. However, not all interviewees shared this point of view. According to them, the certainty and severity of penalties guarantee the fulfilment of certain obligations.

A challenge is to train EWC members systematically, standardise their number, provide expertise, establish cooperation with the scientific Community, use experienced Western European countries' achievements, organise workshops with employer participation, conduct educational campaigns, and creatively apply best practices (benchmarking). It is necessary to improve the process of information and consultation to be transparent, reliable, regular and stable. Sometimes, with the appointment of new management, the approach to EWCs changes. As a rule, it is unsatisfactory, although there are cases of negotiating a more attractive agreement underlined by the Polish interlocutors.

According to the Portuguese respondents, employers must understand the need and legitimacy of EWCs, because only then is there real compromise and agreement. If the goodwill not be expected on their side, the only way to ensure dialogue is to amend Directive 2009/38/EC and improve its provisions.

According to Slovak interlocutors, the priorities in their country are to increase the rate of unionisation and improve employees' knowledge of EWCs. By combining these factors, the importance of information and consultation will no longer be marginalised. On the other hand, in a broader sense, exchange of experience and expert advice is justified.

Some Spanish respondents argued for the legitimacy of EWC members appointing an expert or consultant and a coordinator to better cooperate with central management. Based on their own experience, they confirmed that this practice works well in complex negotiations taking place interdependently at a national, regional and local level. The lack of experience and



the diversity of representation systems justifies creating a platform for standardising norms of conduct. On the other hand, excessive (casuistic) regulation cannot be achieved because such an approach will not improve the functioning of EWCs. Employers prefer open, flexible solutions as a basis for the sustainable and competitive development of enterprises where dialogue is a strategic value.

Given the asymmetry of the economic and social situation in the various EU Member States, ensuring a uniform (convergent) level of EWC functioning is very difficult. Added to this are the repercussions of the pandemic and the hard-to-quantify negative economic effects that may lead to restructuring and collective redundancies. Spanish interlocutors stressed that the common concern nowadays is rapid recovery from an uncertain and dire health situation that directly affects work, society and the economy. This crisis has invalidated forecasts and plans for the future. Partners face an unprecedented challenge. As a result, the dynamics and quality of further cooperation may deviate from the standards achieved during the period of stability. Community regulations may determine certain things, but the decisive factor is the health and related optimisation, vision, organisational culture and image of the company. This means that efforts are still needed to systematically professionalise EWCs and establish them in the wider context of employee participation, which may be problematic given the expected slump in the labour market.

According to the Polish respondents, an important issue is a changing reality, including the spread of remote working, flexibility and development of atypical forms of employment, digitisation and the need for employees with IT skills, the emergence of small enterprises, the dominance of the service sector. These phenomena constitute a reason to review national regulations and EU guidelines towards the European Cohesion Policy to improve dialogue and the condition of social partners, both in terms of trade union membership and transformations on the employers' side.

A new look at EWCs should be the right step to get information about the future of multinational corporations in the knowledge economy. In the face of global strategies, the role of human resources and the need for their integration cannot be overlooked. The flow of information and consultation must be universal and transparent so that assumptions do not fall short of practice.