



*In restructuring,
also pandemic
induced,
employee
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restructuring
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steps, health
and safety
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their potential
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especially
concerning
working
conditions."*

Covid-19 and company restructuring

Workers' rights remain sacrosanct in a lockdown

From the very beginning of the pandemic, every multinational was confronted with a need to address the potential and/or actual impact of the disease and to implement distancing measures across all their sites around the globe. The measures introduced to contain the spread of Covid-19 impacted all areas of economic activity: retail, manufacturing, public services, transport, energy and utilities, construction, agriculture, and culture, to name just a few. Accordingly, employee representatives at all levels of the company also needed to address the measures proposed to mitigate these impacts: local employee representatives and trade unions, health and safety representatives, board-level employee representatives, and collective bargaining actors. In European-scale companies, European Works Councils and SE-Works Councils also had key roles to play in addressing the cross-border implications of measures enacted to try to stem the spread of Covid-19. This section will explore the ways in which the kinds of measures enacted by companies in response to the pandemic were (or should have been) subject to information, consultation and negotiation requirements. Not one of these processes is complete by itself: different institutions of employee representation address different aspects, and in multinational companies, the European Works Council has the responsibility and competence to address the transnational dimensions of these policies and responses.

The pandemic changed everything at once

Figure 6.4 depicts some of the many interrelated issues that were thrown up by the pandemic and companies' responses to it. In the initial phase of the pandemic, sites started to be locked down in an effort to mitigate the spread of Covid-19. As a result of the closely interlocked supply chains within and across companies, in the manufacturing sector in particular, there were knock-on effects which were not immediately related to health measures: some sites had to halt their activities simply because their suppliers had been forced to close down. Essential services such as utilities and transport, both in the public and in the private sectors, had to find a way to continue to function despite the pandemic. Working from home surged in those sectors whose activities made it possible. In other sectors, such as healthcare and logistics, workloads increased exponentially (for more details on the impact of Covid-19 on working conditions in the health sector, see Chapter 5). Protecting the health of these essential workers throughout the lockdown was an overriding concern, particularly in the health and

public transport sectors. Once the economies started reopening, it then became a priority to ensure the safety of workers in other sectors, such as hospitality and retail. Companies, employee representatives and unions needed to manage a sudden surge in working from home, and to engage with the different national regimes of short-time work or technical unemployment schemes. As economic activity tentatively resumed, companies then had to address the labour law and health and safety concerns of bringing their employees back to work, which in many cases also raised issues of whether such returns to work were voluntary or obligatory (ETUC 2020). Finally, companies began to try to manage their recovery, by initiating new restructuring plans or by accelerating plans that had already been in development prior to the pandemic (Kirton-Darling and Barthès 2020) (Eurofound 2020b).

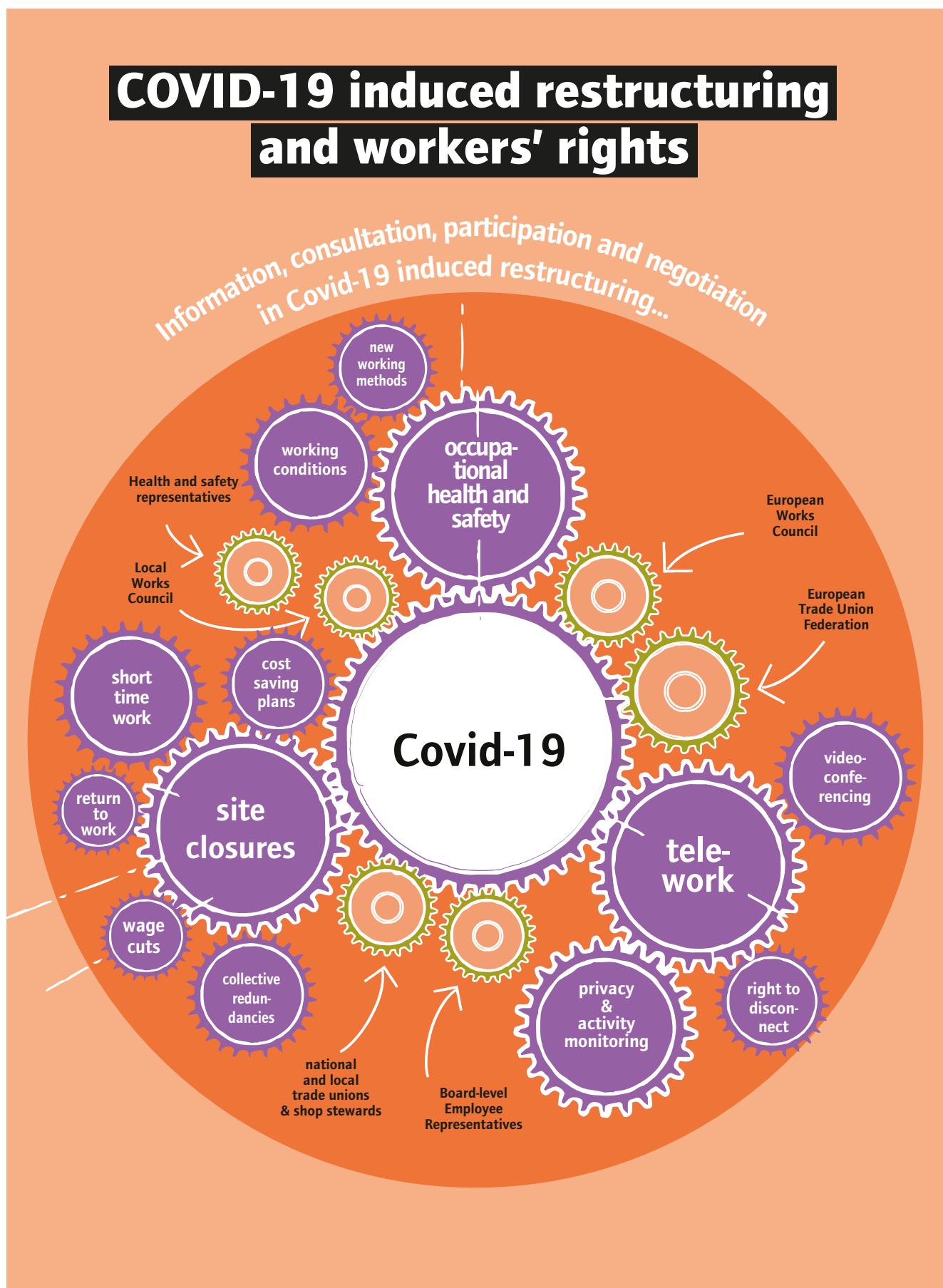
Where these measures had to be taken across different national sites of European multinationals, the need to accommodate sometimes significant differences in national labour law and social security regimes added additional layers and challenges to an already complex process. The task of addressing these comprehensively and coherently fell not only to management, but also to employee representatives and their unions.

Every piece of the complex machinery of multi-level workers' participation has its place

As illustrated in Figure 6.4, company-level responses to the Covid-19 crisis engage all levels of workers' participation institutions. Workplace health and safety representatives are particularly front and centre in addressing the challenges and risks to workers created by the pandemic (see also the next page). At the local or workplace level, it is the local employee representation bodies, such as works councils or trade unions, which are to be informed and consulted by employers and which engage in negotiations about the ways in which the company's Covid-19 measures are to be implemented. Board-level employee representatives, where these exist, also have a key role to play in ensuring that the needs and interests of the workforce are taken into account at the top echelons of the company's decision-making structures when company-wide strategic decisions regarding the response to the pandemic are made.

Within European-scale companies, all these adaptations made to mitigate the growing crisis must take place simultaneously at all levels, increasing the need to coordinate across them. This is where the transnational level of interest representation within

Figure 6.4 Workers' rights in Covid-19 pandemic



Infographic by R. Jagodziński, ETUI, 2020.

“

Covid-19 cannot mean a quarantine of workers' rights to information, consultation and participation.”

European Works Councils, SE-Works Councils, and in many cases at the board level have a crucial role to play. This transnational level must essentially function as a bridge between national employee representations, so that the information and consultation about company responses to the Covid-19 crisis can take place across borders and at national level, depending on where decisions are being made and where they are being implemented. The European Trade Union Federations (ETUFs), which are the relevant European sectoral organisations, were able to draw upon a long history of support to their members active at the transnational level in EWCs and SE-WCs. Working together, the ETUFs compiled information briefings and advice to European Works Councils on how to address the challenges of the pandemic. The ETUC and the ETUFs wrote to Commissioner Schmitt, insisting that the pandemic meant that workers' involvement rights needed to be strengthened and enforced more urgently than ever (ETUC et al 2020). Collective bargaining, conducted primarily at the local, regional or national levels, rounds out the picture by securing collectively agreed frameworks and solutions. The modalities of short-time work (see Chapter 2), for example, were laid down in collective agreements in many countries. (For an overview of the European legal framework for workers' rights to information, consultation and board-level participation, see ETUI and ETUC 2017: 55.)

In sum, the response to the effects of Covid-19 in the world of work did not take place in a vacuum, but through an interactive multi-level system which seeks to get all the right people around the table to play their respective roles in social dialogue, information and consultation, negotiation and collective bargaining. Data on EWCs and SE-WCs also clearly shows that where trade union support is present, employee representation works more efficiently (De Spieghelaere and Jagodzinski 2019). It is too soon to tell how well this worked in practice. Initial evidence suggests a wide variety of responses: local and national-level employee representatives, health and safety representatives and trade unions seem to have played the roles clearly ascribed to

them in the national context. At the European level, however, things were less predictable: some EWCs were closely informed and even consulted about company-wide measures adopted, while others played no role whatsoever.

The role of democracy at work in a pandemic

Fighting a pandemic requires democracy at work.

Figure 6.5 Workplace representation and health and safety policies: there are better health and safety policies where a employee representation is present and/or a health and safety representative selected by the employees.

The pandemic has put health and safety protection in the spotlight

'I don't mind working, but I do mind dying'. This slogan comes from the League of Revolutionary Black Workers, which protested, among other things, the dangers of working on the assembly line in the American automobile industry in the late 1960s (Georgakas and Surkin 2012).

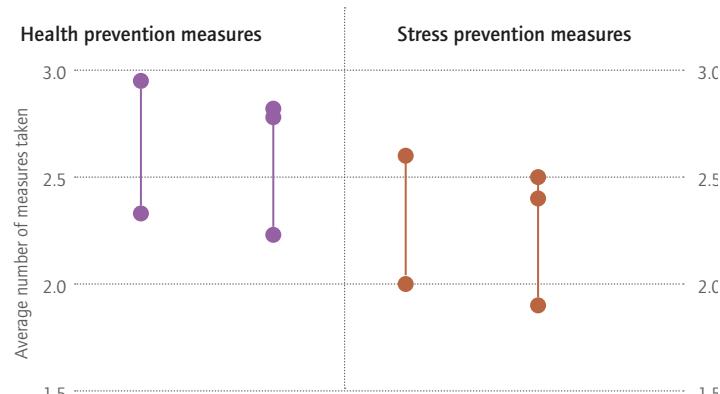
The line illustrates perfectly how important health and safety policies are for workers and unions. For many, the role played by employee representatives in fostering healthy and safe workplaces may have previously been largely invisible. Covid-19 has changed that: coping with the pandemic has put the protection of workers' health and safety at the centre of public attention. For essential workers who continued to work while the coronavirus swept across the world, and for those workers returning to work under heightened protection measures, health and safety representatives, works councils and trade unions have played a pivotal role in working to create and maintain healthy workplaces.

Figure 6.5 Workplace representation and occupational safety and health policies, 2019



Source: ESENER 2019 survey (weighted data).

Figure 6.6 Workplace representation and occupational safety and health policies



Source: ESENER 2019 survey (weighted data).

Employee participation on the company level is related to the overall level of democracy in a country



It has long been recognised that workers' participation must play a key role in the development and implementation of health and safety policies."

The importance of workers' participation in occupational health and safety policies

Employees and their representatives have more direct knowledge about the daily risks at work than does management. Their tacit knowledge of what the 'real work' involves can contribute to sounder decision-making when it comes to protecting workers from hazards. Involving employees also means they will better understand and support the measures taken. The policies will enjoy a larger backing throughout the company which will support their implementation. Workers' representatives ensure that the adherence to rules and procedures can be better monitored and management held accountable for their responsibilities towards the workforce.

For all these reasons, (European) legislation requires employee involvement in almost all aspects related to occupational health and safety. It has long been recognised that workers' participation must play a key role in the development and implementation of health and safety policies. Since the 1970s, workers in the EU have held wide-ranging rights to information and consultation on health and safety issues. The 1989 Framework Directive on health and safety at work requires all Member States to ensure that employees and their representatives are informed and consulted about occupational health and safety (OSH) matters at the workplace.

Strong participatory rights for employee representatives are laid out in European and national legislation. Health and safety representatives have strong information and consultation rights about minimum requirements for the use of work equipment and personal protective equipment and all measures substantially affecting health and safety. They must be consulted in good time, they must be able to make proposals, they have the right to ask employers to draw up and implement plans for mitigating or removing hazards at work, and they are involved when authorities carry out inspections. Health and safety representatives should have access to all the information they need, including risk assessments, preventive measures and reports from inspection and health and safety agencies. They must know the steps that need to be taken to reduce or eliminate these risks, so that they can check that safety procedures are being applied, particularly when changes occur at the workplace.

An ETUC study (Agostini and van Criel 2014) identified a widespread presence of health and safety representation across the EU. The 2014 company-level survey conducted by the European Agency for Safety and Health at Work already showed that in companies with works councils, with workers' representation or with democracy at work, health and safety policies tend to be more robust and systematic (EU-OSHA 2016). This bodes well for those companies' capacity to address the challenges of operation during the pandemic. Clearly, the input of health and safety representatives in all sectors and industries was greatly needed as the Covid-19 pandemic spread and understanding about how to mitigate the risks of transmission grew. For many

health and safety representatives and employers, the need to protect employees from these unprecedented risks will have been an entirely new and unfamiliar challenge.

The positive impact of workers participation, employee involvement or democracy at work through better health and safety policies is further reflected in data of the ESENER 3 survey managed by the European Agency for Safety and Health at Work (2020). This company-level survey included questions regarding the presence of a works council (or equivalent), trade union representation, and a health and safety (OSH) committee. These answers were taken together as a binary variable to see whether some form of worker's representation was present or not. Second, the survey asked whether a health and safety representative or officer was present in the company and whether or not that person was selected by the employees. These questions were taken together in a single variable with three categories: (0) no OSH representative present; (1) a OSH representative chosen by the employer present; and (2) a OSH representative chosen by the employees present.

Better health and safety policies with workers' representation

In Figures 6.5 and 6.6, the importance of democracy at work to occupational safety and health (OSH) is illustrated in terms of risk assessment and prevention policies.

First of all, those companies that have a form of employee representation and those companies that have an OSH representative (and moreover one who is selected by the employees) are more likely to have regular risk assessments done in their workplace. This can be seen in Figure 6.5. According to the ESENER 2019 survey, about 70% of the companies without employee representation carry out regular risk assessments, compared to over 85% of the companies with a representative structure. The same pattern is visible for the presence of an OSH representative. Of those companies that have no such representative, about 63% conduct regular risk assessments. Where there is a management-selected OSH representative, the proportion is 83% and where there is an employee-selected representative it is almost 90%.

It is clear that there is a positive relation between having employee representation (and specifically employee participation in OSH issues) and having more regular assessments of the risks present in the workplace. Not only is the assessment of risks better in companies with employee representation and/or employee-elected health and safety representatives, but prevention policies are also better developed. Regarding health risks, the ESENER 2019 survey asked the respondents whether or not the following measures were taken: provision of equipment to help with moving heavy loads, rotating tasks to reduce repetitive work, encouraging breaks, provision of ergonomic equipment, and reduction of working time for people with health problems. As can be seen

85% of the companies with a representative structure carry out regular risk assessment

Vs.
75% without workers' representation



Not only is the assessment of risks better in companies with employee representation and/or employee-elected health and safety representatives, but prevention policies are also better developed."



There is indeed a positive relation between democracy at work and having effective health and safety policies in workplaces."

in Figure 6.6, on average, companies with employee representation take more of these preventive measures than do companies without such structures (about 3 measures versus fewer than 2.5). The same pattern is visible with regards to the presence of a health and safety representative who is elected by the workforce.

With respect to psycho-social risks, the survey also asked whether or not the following preventive measures were taken: reorganisation of work to reduce job demands, provision of confidential counselling for employees, provision of training on conflict resolution, intervention where there are excessively long or irregular working hours, and more autonomy given to employees to make decisions about their own jobs.

As can be seen in the figure, companies with an employee representation structure tend to introduce more of such preventive measures (about 2.5) compared to those without employee representation (about 2). Similarly, companies with no OSH representative tend to introduce fewer than 2 of such preventive measures compared to just under 2.5 on average for companies with employee- or management-selected OSH representatives.

Figures 6.5 and 6.6 compare companies with and without representation structures. Obviously, part of the difference could be related to other factors such as company size. Larger companies might be more likely to have a representation structure and also better-developed health and safety policies. However, even in multivariate logit models controlled for other variables such as country of origin, company size and sector of the company, the differences remain significant.

We can thus conclude that the survey data show that there is indeed a positive relation between democracy at work and having effective health and safety policies in workplaces and companies that both identify and prevent or mitigate risks. In a pandemic, such infrastructure would prove to be highly conducive to keeping workplaces safe. There is a clear relation between occupational health and safety and the involvement of workers in companies. This also indicates the way forward: democracy at work contributes to more pandemic-resilient workplaces. The Covid-19 pandemic evidently posed new risks to workers' health, on top of the risks already known and addressed. It is to be expected that the presence of employee representation structures will have helped in the elaboration and implementation of the health and safety measures introduced to protect employees from infection with the coronavirus.

Some research on democracy at work and health and safety at work

- Li et al. (2020) studied the impact of unions gaining a presence in manufacturing companies in the US and focused on the relation between their 'entry' and the rate of accidents, as well as the likelihood of having a workplace inspection. They found that after a union election, the number of accidents decreased rapidly, mostly because employees complained more. This study indicates that representation serves as an important organ of collective voice.
- Robinson and Smallman (2013) analysed UK data on the relation between employee voice and workplace injuries and found that more 'intensive' types of voice have greater impact: where there is employee voice, there are less accidents and injuries.
- Wels (2020) carried out a longitudinal study on the effects of trade union presence in UK companies and found that union presence was positively related with better psychological and (albeit to a lesser degree) physical health.

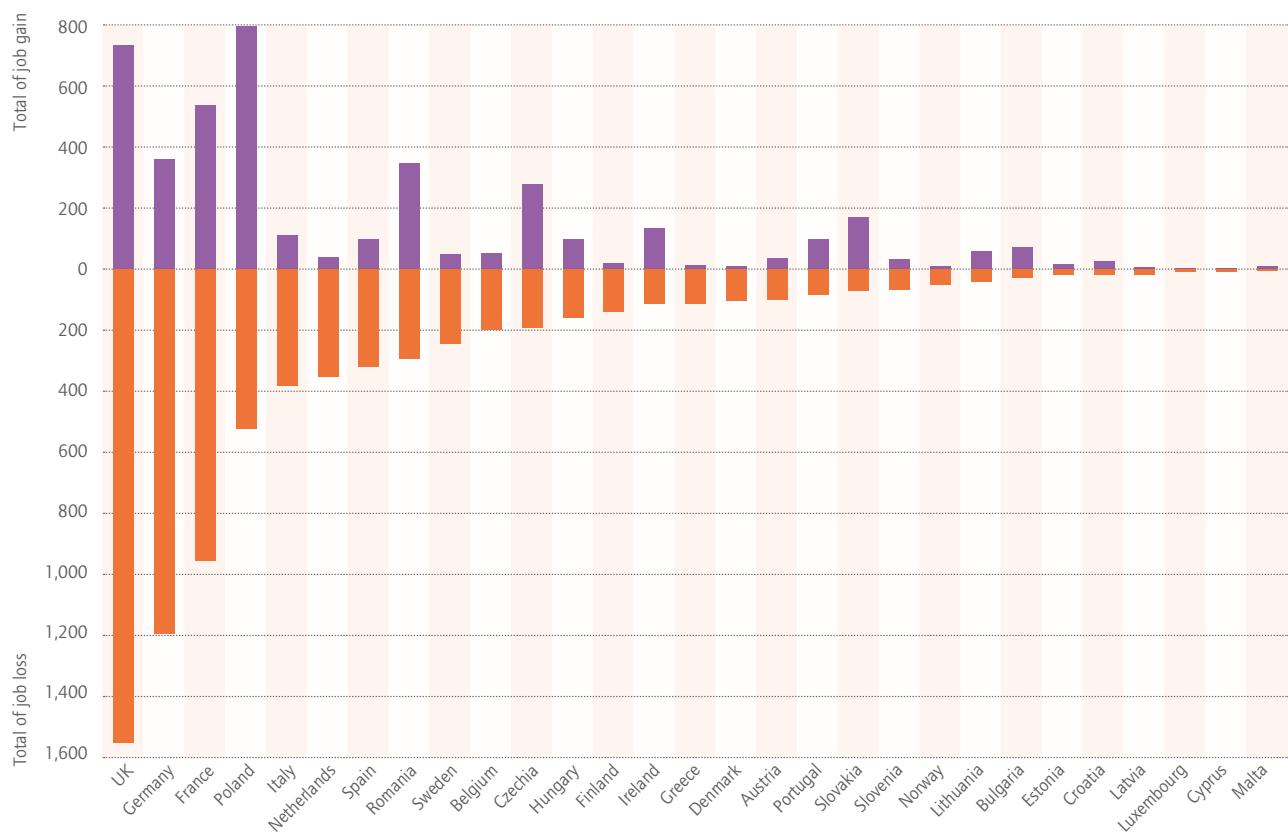
Covid-19 restructuring: we've been here before

Workers' rights are part of the EU solution

The pandemic has induced a period of sometimes massive restructuring of companies across Europe. Firstly, the sheer force and suddenness of the economic impact of the crisis is widely expected to have directly sparked restructuring measures in companies, the extent of which is difficult to measure due to a current lack of available data (Eurofound 2020b). Secondly, Covid-19 is accelerating the pace of planned restructuring in many sectors (Kirton-Darling and Barthès 2020).

Companies in Europe have faced crises and waves of restructuring before, of course. What is particularly challenging today, however, is that this significant sectoral and company-level restructuring across our economies is happening simultaneously, and in a context in which all the usual means of information, consultation and negotiation are hampered by the communications and travel restrictions imposed to try to stem the spread of the pandemic – not to mention the effects of persistent uncertainty about when the pandemic itself might be over.

Figure 6.7 Jobs lost and gained as a result of restructuring, 2002-2020



Source: European Monitoring Centre for Change (consulted 05/10/2020), Eurofund. <https://www.eurofound.europa.eu/observatories/emcc/erm/restructuring-statistics>. Own compilation.

Restructuring is another 'new normal'

It is important to bear in mind that restructuring induced by Covid-19 is not exceptional – quite the contrary, it is an ordinary occurrence in 21st century companies. Figures compiled by the European Monitoring Centre on Change (Eurofound 2020a), based on media reports, show (Figure 6.7) that between 2002 and 2020 more jobs were lost than gained in the course of restructuring processes (7.34 million vs 4.19 million). Data charting the aggregated outcomes of all Covid-19-induced restructuring is not available yet, although it may be safely predicted that more jobs will be lost than gained at company level.

As demonstrated in the chapter 'Democracy at work' in *Benchmarking Working Europe 2019* (ETUC and ETUI 2019), a wide range of EU directives provide a legal framework for workers' rights to information, consultation and participation (ETUC and ETUI 2017: 55).

There are few consequences of restructuring, if any, more important for workers than changes to their employment. According to the European *acquis* on workers' rights there are a number of directives that can be invoked as grounds for consultation with workers' representatives in Covid-19-induced restructuring processes, ranging from directives on transnational information and consultation (EWC, SE, SCE), to those dealing with specific circumstances and employment law, such as part-time work or collective redundancies. To address the workplace health and safety issues brought to the fore by the pandemic, workers' rights to information and consultation have been embedded in the specific health and safety

protection directives adopted in the context of the Framework Directive for Health and Safety, such as the Directives on Personal Protective Equipment and Biological Agents, to name just two clearly related to Covid-19 (see Chapter 5) and ETUI and ETUC 2017: 55).

In addition to this legal framework, over the past decade alone, there have been a range of targeted attempts by the EU institutions and social partners to develop sustainable and fair responses to the challenges of restructuring in European multinational companies in particular. Since the 2003 cross-sectoral social partners agreement, various documents by the European Commission, including its Communication on handling restructuring and enhancing the role of EWCs (European Commission 2005), the Explanatory Memorandum of the Proposal of the Recast Directive (European Commission, 2008), and a Green Paper on restructuring (European Commission 2012a), to name just a few, identified which EU policies and instruments are concerned with major restructuring events and outlined ways of utilising them to mitigate and manage consequences of restructuring. The European Parliament also addressed restructuring, for example with its resolution on restructuring and employment (European Parliament 2006) and a resolution endorsing the so-called Cercas Report (European Parliament 2012).

The resolution urged the Commission to submit, as soon as possible, in consultation with social partners, a proposal for a legal act on the information and consultation of employees, and the anticipation and management of restructuring. In 14 recommendations for such a legal act, the EP confirmed the crucial role of social dialogue based on mutual trust and shared responsibility as the best instrument with



Restructuring is hardly an exceptional phenomenon in the life cycle of a company."

91%
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some form of
restructuring
within the three
years prior to
the survey

which to manage restructuring in a sustainable way. Commissioner Andor welcomed the initiative and promised that 'This debate in Parliament and the report (...) make a useful contribution to the issue and the Commission will take it into account in its future work.' (Eurofound 2013)

Are EWCs ready to deal with Covid-induced restructuring?

Covid-19-induced restructuring: a stress test for workers' participation

What role can we expect workers' representatives to play in tackling Covid-19-induced restructuring processes? Lacking available data on 2020 restructuring, we can refer to extrapolations based on previous evidence of restructuring and workers' participation. In the ETUI's 2018 large-scale survey among EWC members (De Spiegelaere and Jagodziński 2019), one of the key areas of enquiry was the occurrence of restructuring and the role EWC members report to have played in their capacity as elected workers' representatives.

First and foremost, we found that restructuring is hardly an exceptional phenomenon in the life cycle of a company. On the contrary, complex multinational companies seem to be in a near-permanent state of reorganisation and restructuring. A total of 91% of survey respondents reported that their company had engaged in some form of restructuring within the three years prior to the survey (Figures 6.8 and 6.9). Such frequent restructuring makes it an almost

universal experience for all workers' representatives and a good basis for drawing general conclusions about their involvement, as well as the persistent deficiencies relating to it.

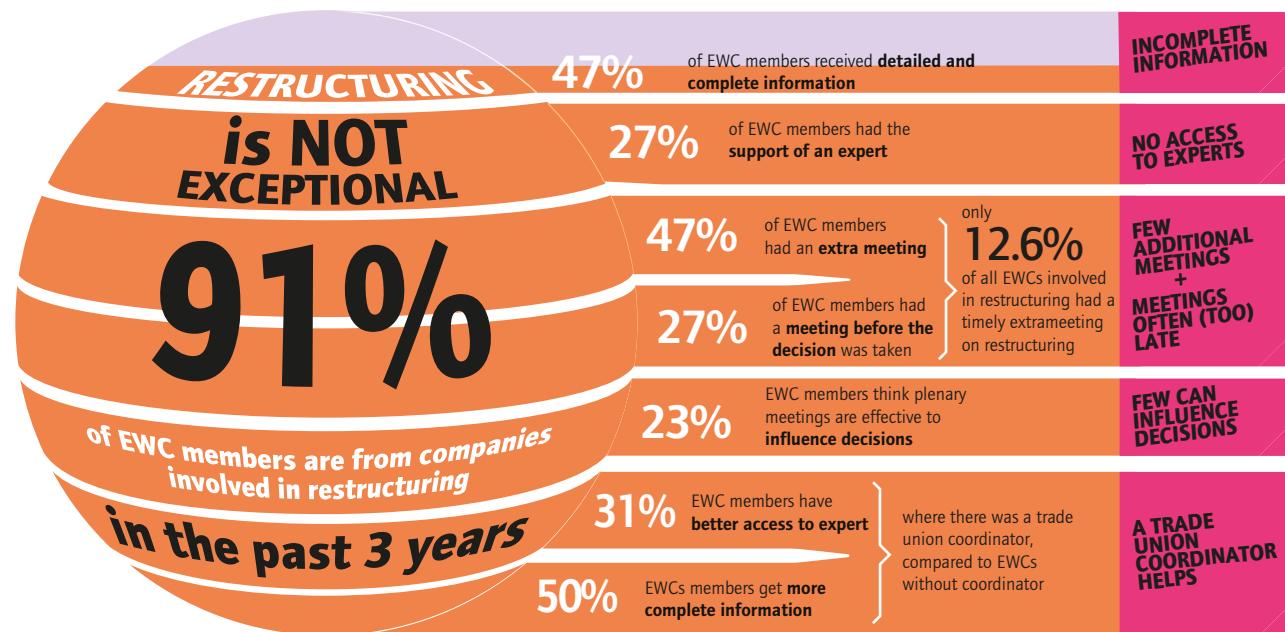
EWC Recast Directive: a robust framework for information and consultation in restructuring?

When taking decisions about company restructuring, on top of regular communication with the EWC, management is legally obliged to inform and consult EWCs about such measures which involve transfers of activities between Member States or of which 'the scope of [...] potential effects' is of relevance for the workforce (Recital 16, Directive 2009/38/EC). The EWC is collectively entitled to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations and express an opinion on the basis of the information provided about the proposed measures (Art. 2, Directive 2009/38/EC). Such an opinion does not limit the managerial responsibilities. In the case of such 'exceptional circumstances' (the Directive 2009/38/EC clearly ignores the regularity of restructuring) or of decisions affecting the employees' interests to a considerable extent – particularly in the event of relocations, the closure of establishments or undertakings, or collective redundancies – the EWC shall be informed and shall have the right to meet, at its request, the central management. It may also procure the help of experts.

Figure 6.8 European Works Councils and company restructuring

How do EWCs deal with restructuring?

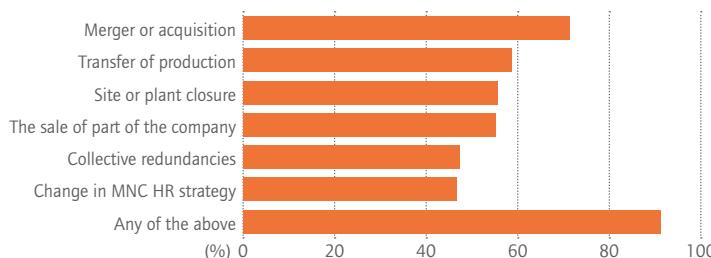
In 2018 the ETUI conducted the largest survey to date among over 1500 EWC members from 365 EWCs. The results are unambiguous: EWCs ability to deal with restructuring is limited. The situation in 2020 is even more challenging because of the Covid-19 pandemic.



* the above figures are not supposed to add up to 100%

Source: infographic by R.Jagodziński based on De Spiegelaere and Jagodziński (2019)

Figure 6.9 Types of restructuring in which EWCs were involved during the past three years



Source: De Spiegelaere and Jagodzinski (2019).

Restructuring is often an obstacle course for EWCs

How have these provisions and tools at the disposal of EWCs been operationalised and used so far in practice? As regards the very basic right to information as an indispensable foundation for any form of social dialogue, the situation in EWCs is dire: less than half of EWC members report to have received complete and detailed information concerning restructuring. In other words, a majority of EWC members needed to try to represent workers' interests without having received from management basic facts about the planned measures or their extent, scope or nature. It is comparable to flying a plane in the dark without any instrument readings.

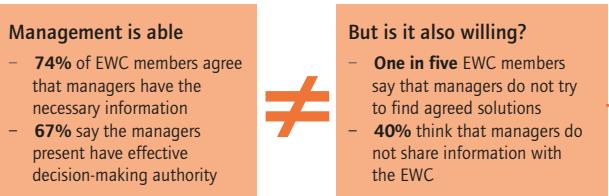
Secondly, most EWC members (72.9%), when confronted with company restructuring, can count only on their own levels of expertise in economics, finance, human resources, law and other areas for which the management has ample support from specialised staff and consultants to help make their decisions. In other words, without access to their own expert support, EWC members are expected to express an opinion about the impact of managerial decisions on workers' interests solely on the basis of their own analysis of highly complex information.

Thirdly, less than half of EWC members (46.8%) have had the opportunity to meet with management in such 'exceptional circumstances'. Furthermore, only 27% of them report that this meeting took place within the legally prescribed time before a decision was taken by management. All in all, only 12.6% of respondents have had an additional, timely meeting to discuss restructuring.

Finally, given their overall experience with information and consultation in EWCs, only one in five (22.5%) of workers' representatives think they can influence managerial decisions. The survey data proves that EWCs are still at best recipients of information, and

22.5%
Only one in five of workers' representatives think they can influence managerial decisions

Figure 6.10 Managerial ability and willingness to share information with EWCs



Source: De Spiegelaere and Jagodzinski (2019).

are vastly excluded from any meaningful consultation. This is true for regular information and consultation processes but, as data on (timely) meetings show, even more so in restructuring cases. There are no grounds to suppose that any restructuring induced by Covid-19 will be any different from previous cases; in fact, given the magnitude of the challenge and currently strictly circumscribed travel restrictions, it looks as though upcoming restructuring will be even less subject to information and consultation than before the pandemic.

If we contrast the reality revealed by the EWC survey data with the EU's sombre declarations of its commitment to social sustainability, or the actual impact of the EU social *acquis*, we have little grounds to expect that this crisis will be addressed, or any future solutions designed, in a fair or sustainable way without a major paradigm shift.

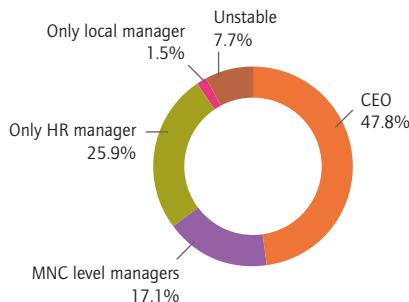
Managerial attitudes to EWCs and restructuring

Managerial prerequisites for consultation: ability and willingness

As demonstrated above, information and consultation processes in EWCs suffer from serious deficits under normal circumstances (see also De Spiegelaere and Jagodziński 2019). They are even more difficult to implement in the context of restructuring. There are two key questions that frame any information flow from management to workers' representatives. Firstly, do the managers engaging in social dialogue possess the relevant information and do they have the authority to take decisions or change them as a consequence of consultation with workers? And, secondly, are they even willing to engage in social dialogue?

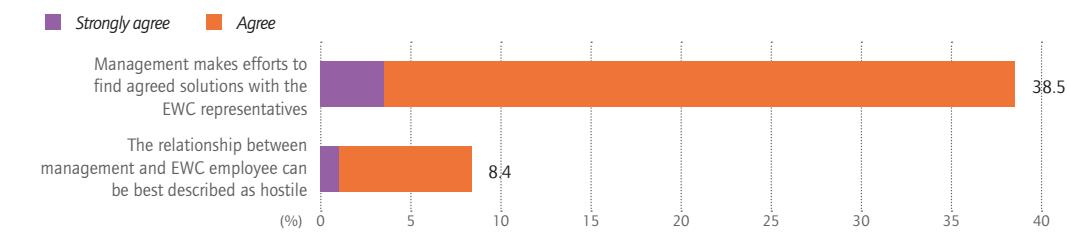
Informed managers?

Figure 6.11 Who represents management towards EWCs?



Source: De Spiegelaere and Jagodzinski (2019)

As the ETUI's latest large-scale survey among EWC members shows, the common perception of managers' capacities in and approach to company-level dialogue with EWCs could be characterised as 'able, but not willing' (Figure 6.10). Three in four EWC members find their managerial counterparts to be in possession of the information relevant for sharing

Figure 6.12 Managerial attitudes towards information and consultation in EWCs

Source: De Spieghelaere and Jagodzinski (2019)

with workers' representatives, and almost seven in ten respondents perceive them to be equipped with the necessary decision-making authority. While these results still show ample room for improvement, they are also evidence that most EWCs sit at the table with the right level of management. Which categories of management are associated with full information and decision-making capacity is the subject of a forthcoming study (De Spieghelaere, Jagodzinski and Waddington 2021), but Figure 6.11 suggests some initial insight into this question.

Willing managers?

The other indispensable component of successful social dialogue is the parties' willingness to conduct it in the first place, and furthermore, to conduct it in a spirit of cooperation. With regard to EWCs, the picture is mixed. One in five EWC members finds a cooperative approach and spirit missing on the part of management, while fewer than four in ten managers make efforts to find agreed solutions with the EWC (Figure 6.12). On the positive side, it can be noted that outright hostility characterises the relationship between management and EWC in the eyes of only 8% of respondents.

Confidentiality requirements: a safe space for consultation or a black hole?

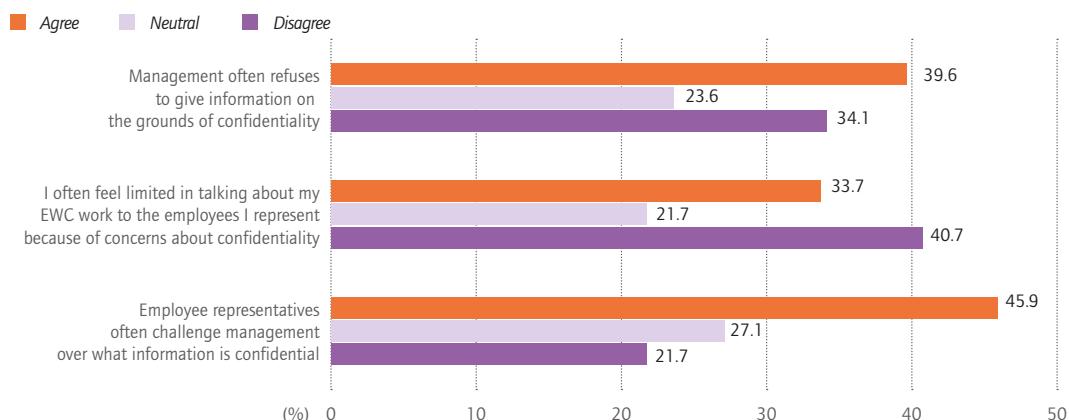
Management that is unwilling to engage in dialogue has several means at its disposal to avoid it. One of the most readily available tactics for management to block or limit information flows is the right to label

information confidential or secret and withhold it altogether.

According to the results of the EWC survey, almost four in ten EWC members report that management often refuses to share information on the grounds of confidentiality (Figure 6.13). In such cases, information-sharing (and consultation) is brought to a complete halt. Management can also opt to share information with the EWC, but limit its capacity to process it by preventing consultation with, for example, local workers' representatives or trade unions advising the EWC. The impact of confidentiality use on the EWC's ability to perform its duties is complex, but one important consequence is that it limits their most fundamental function: to inform employees about the results and outcomes of EWC work (Art. 10 of the Recast Directive 2009/38/EC). More than three in ten respondents report feeling limited by confidentiality when reporting to their constituents. At the same time, a comparable number of EWC members (33%) disagree with this statement. Nevertheless, these results offer a different picture than that seen from the point of view of managers, who generally perceive confidentiality as problematic to a much smaller extent (Pulignano and Turk 2016: 32).

The result is that almost half of EWC members challenge management over the use of confidentiality (Figure 6.13), showing that it is a contentious matter possibly requiring not only clearer rules but also a change in managerial attitudes, a much more challenging task.

As the pandemic continues and eventually subsides, company restructuring will also continue, perhaps at an even more accelerated pace (Kirton-Darling and Barthès 2020). Furthermore, companies will

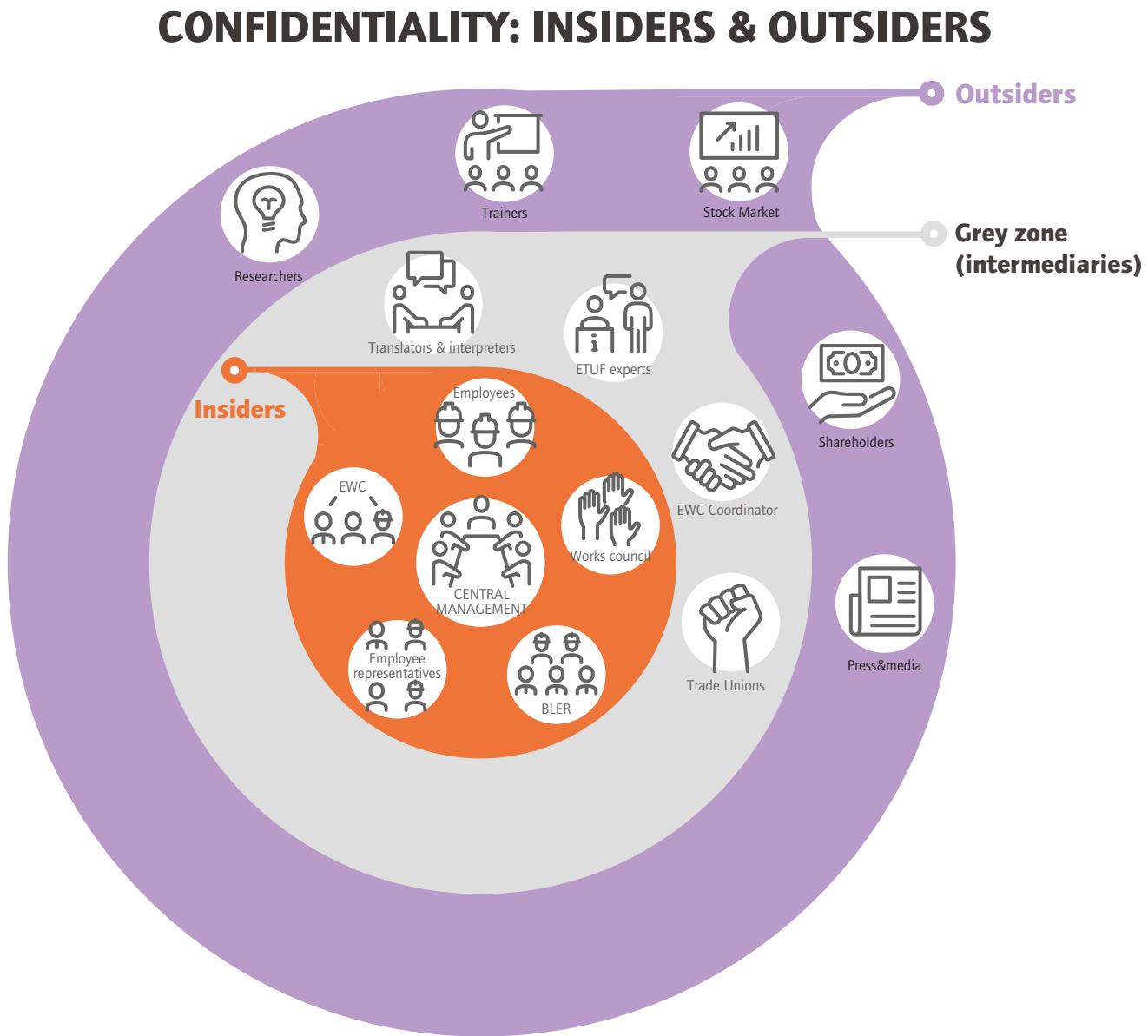
Figure 6.13 Confidentiality in EWCs: practice and consequences

Source: De Spieghelaere S. and Jagodzinski R. (2019).

compete with one another in terms of how they get through and out of the pandemic. We have seen that restructuring processes exacerbate the challenges of managing confidentiality requirements. Time and cost pressures bear down upon the often time-consuming and complex process of information and consultation, and companies tend to stress the need for quick solutions and progress, as well as the need to protect the confidentiality of their strategic decisions. In employing such strategies they often treat EWCs (and other workers' representation structures) as outsiders or parties external to the decision-making processes. While widespread among managers, such views are obviously fallacious in the light of the EWC Recast Directive clearly identifying

EWCs as insiders who are supposed to be an essential part of the corporate decision-making (Figure 6.14). All of this works against decision-making processes being transparent and participative. Furthermore, the complexity of often unaligned national health and safety provisions and labour market support schemes will lend further support to management's arguments that these topics do not fall under the competence of the EWC in the first place. In summary, there is a risk that the pressure to act quickly, decisively and strategically in the face of persistent uncertainty during the pandemic and in the post-Covid-19 world will increase the tendency of many companies to seek to sideline their employee representatives.

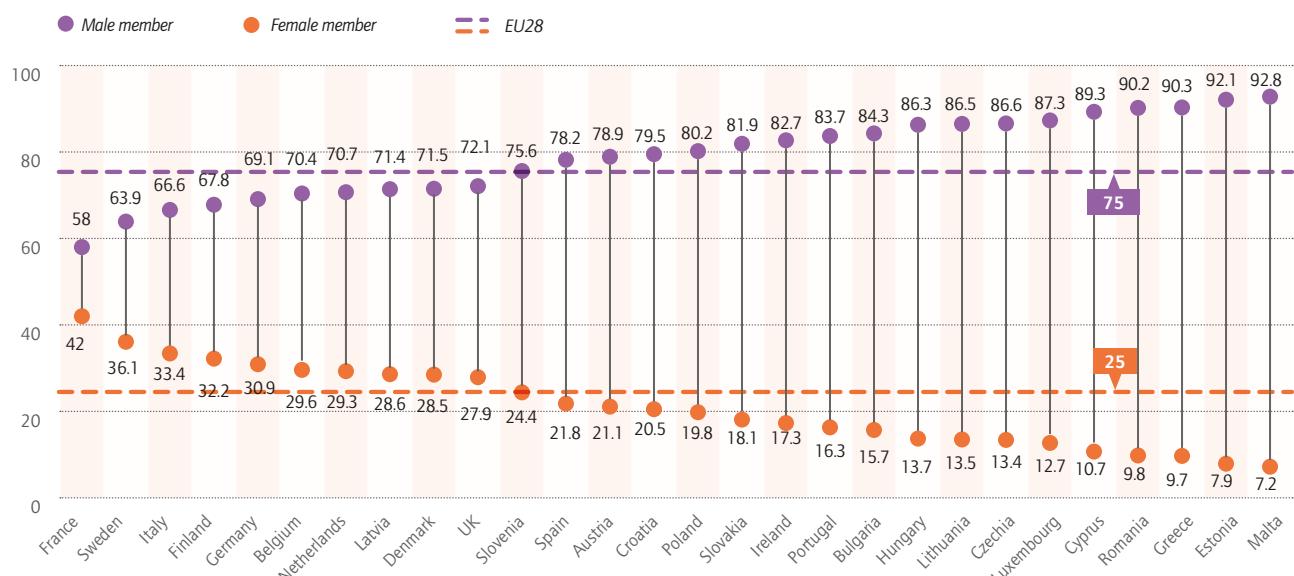
Fig 6.14 Confidentiality of information and consultation: insiders and outsiders



Infographic by R. Jagodzinski in Jagodzinski R. and Stoop S. (2020 forthcoming) European Works Councils Manual No. 4 'How to deal with confidentiality', ETUI, Brussels.

Source: Jagodzinski and Stoop (2020)

Figure 6.15 Share of members of boards in largest quoted companies, supervisory board or board of directors and gap, by sex and country



Source: EIGE 2020, Gender Equality Index, index_pwr_econ_board, data for 2020.

Board-level employee representation

Sex equality in corporate boards: a missing link in the recovery strategy

Women (and mostly racialised women) have been at the frontline in the fight against Covid-19. Not only are they overrepresented in the care occupations most exposed to the virus, but governmental measures to control the pandemic have also deepened pre-existing gender divides in unemployment, domestic work and financial insecurity (Mascherini and Bisello, 2020; Kaya-Sabancı, 2020). Meanwhile, with corporations under great pressure to reorganise work, taking critical decisions with profound implications for gender relations, work-life balance, and the public/private divide, the pandemic has actually led to a reinforcement of the decision-making power of company boards, at times altering their rules of functioning (Paine, 2020). Yet while women have been disproportionately exposed to the effects of management decisions during Covid-19, they have continued to be strikingly underrepresented on these increasingly powerful boards. A gender gap already existed in corporate positions of power, but the pandemic context has emphasised it and made its gendered effects all the more visible.

European Institute for Gender Equality (EIGE) data from 2017 reveal a persistent gender gap in boards of the largest listed companies (EIGE, 2020). In the EU28 countries, women are still broadly underrepresented in comparison to men (25% against 75% on average, representing a gap of 50%, as shown in Figure 6.15). Malta ranks worst, with a gap of 85.6%, while France is not only the country with the smallest gap (16%) but also the most successful in decreasing it, by 14.4 points since 2015. As shown in Figure 6.15, no Member State reaches parity, and only five countries achieve the 40% objective set by the European Commission: France, Sweden, Italy, Finland and Germany.

Except in Bulgaria, Latvia, Lithuania and Romania (Figure 6.16), the gap generally decreased between 2015 and 2017, probably thanks to binding legislation or even (if to a lesser extent) soft law taking effect (Hoffmann et al, 2018:78). But this slightly positive trend hides pervasive discrimination regarding access to positions of power. Empirical evidence shows that family connections are a key driver for women's access to board representation (Bianco et al., 2015). Furthermore, there is a tendency for a few women to accumulate multiple directorships – the so-called 'golden skirts' phenomenon (Seierstad and Opsahl, 2011). Finally, female directors are more likely to sit in less relevant committees (Bilimoria and Piderit 1994; Peterson and Philpot, 2007). Such findings suggest that regulations on quota may be necessary but insufficient to fully remediate gender inequality and female underrepresentation in corporate positions of power (Joecks, 2020:238).

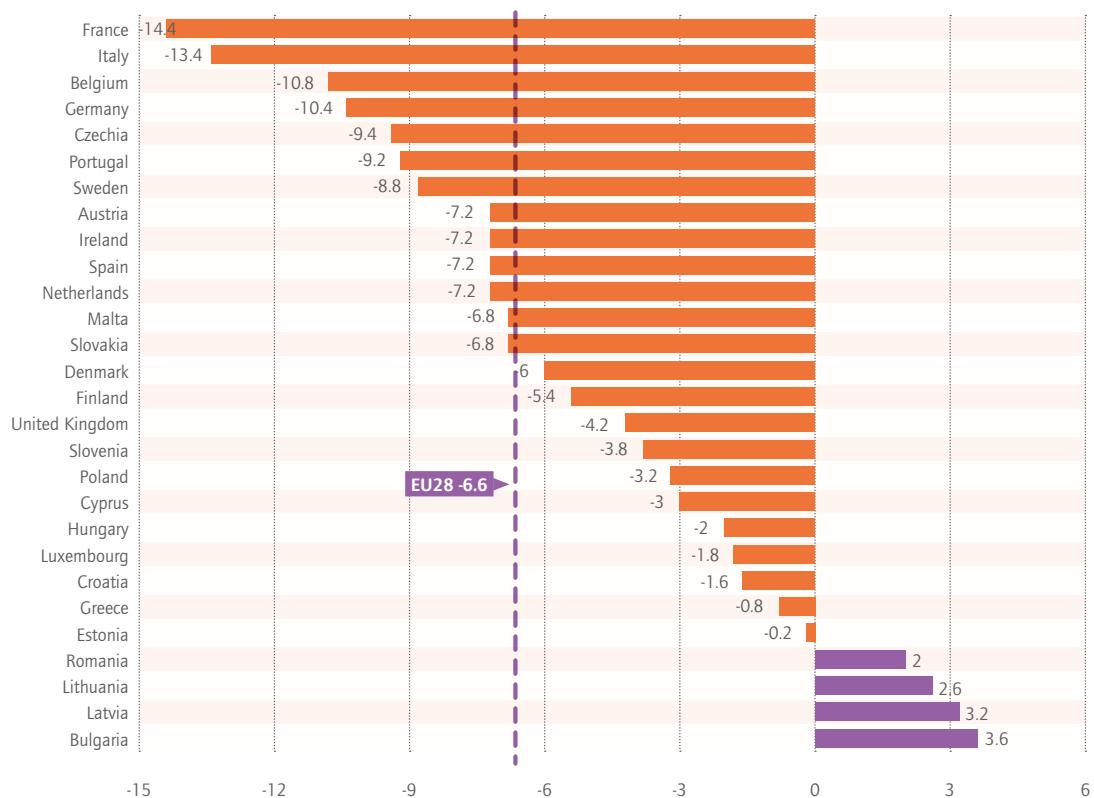
The NGO University Women of Europe lodged a set of complaints against 15 countries before the European Committee of Social Rights (ECSR) of the Council of Europe, alleging violations of the rights to equal pay and equal opportunities in the workplace granted by the European Social Charter. In its June 2020 decision, the ECSR found all the countries except Sweden in breach of at least one of these rights. Surprisingly, only Bulgaria, Croatia, Cyprus, Czechia, Greece and Ireland were considered in breach for lacking measures to ensure a balanced representation of women in decision-making positions in private companies, despite the empirical data revealing the same issue in other countries.

This points to an urgent need for national and European legislative changes to advance equal pay and opportunities in the workplace. In the context of Covid-19, concrete action is needed now more than ever to address gender inequality in all its complexity, starting with securing equal representation on company boards to rebalance the power asymmetries that the Covid-19 crisis has made even starker.



*Women
(and mostly
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women) have
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fight against
Covid-19."*

Figure 6.16 Gender gap evolution in company boards in the period 2015-2017 in EU28, by country



Source: Based on EIGE 2020, Gender Equality Index, index_pwr_econ_board, data for 2015 and 2017.

It is thus hardly surprising that proposals for a Gender-Balanced Company Boards (GBB) Directive (European Commission 2012b) are coming back on the scene. This proposal was blocked for a long time in the Council, but in March 2020, the European Commission announced it would revive it as part of a five-year gender equality strategy (European Commission, 2020a:13), and five political groups of the European Parliament are currently pushing to unblock it. The original proposal put forward a binding target of at least 40% representation for each sex amongst non-executive board members (or 33% of all directors) in large listed private companies by 2020, and laid down obligations for appointment procedures (i.e. pre-established neutral criteria, priority for the underrepresented sex, burden of proof on the company if a female candidate was not selected, etc.). Administrative fines and the annulment of appointments were sanctions foreseen in the event of any breach of the rules.

Seizing the momentum, the ETUC is demanding legislative and coherent action at EU level to advance gender balance in company decision-making, as part

of the EU response to the current Covid-19 crisis and of the resilience plans and economic recovery. In its September resolution (ETUC, 2020b), the ETUC advocates a 40% target quota for executive and non-executive board members, as well as for senior management positions and both employees' and shareholders' representatives, and the inclusion of medium-size companies in this regulation. Gender equality and pay gap reduction should be included as key priorities in directors' duties, according to the ETUC, and selection procedures should prevent indirect discrimination and ensure access to women from different backgrounds. Furthermore, social partners should be given a stronger role in the Directive's implementation, while parallel and integrated policies should address the obstacles to gaining positions of power encountered by women.

Moving forward, the GBB Directive is one of the core legislative actions that would contribute to redressing the gender power imbalance caused by the Covid-19 crisis and the policy and employer responses to it.