

These European meetings are really just a waste of time



The information and consultation processes in EWC / SE WC

- architecture of information and consultation procedures
- confidentiality rules
- internal procedure

Cyprian Szyszka

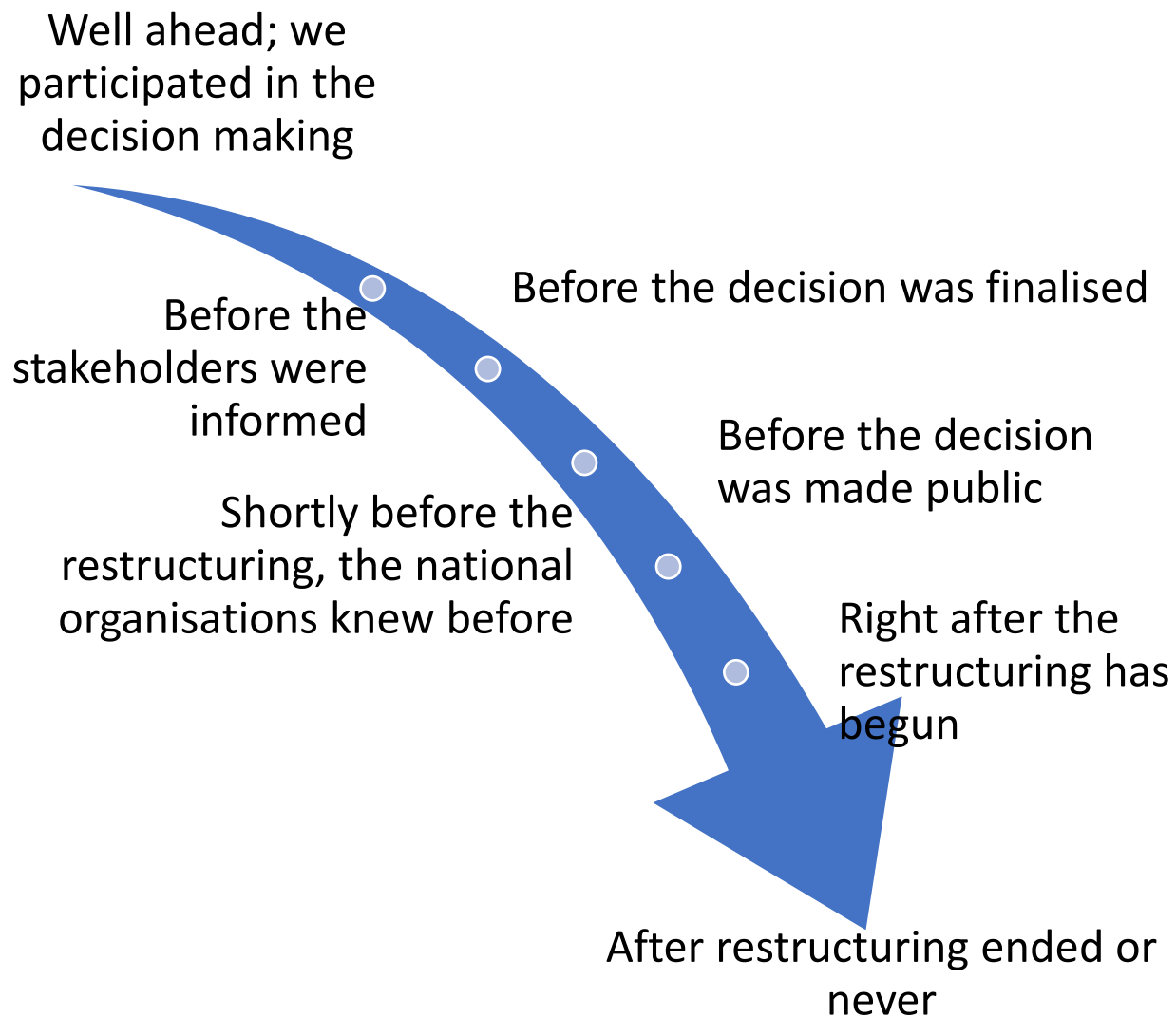
Timing

Wise use of time: don't allow to be outplayed at this field



Issue of time

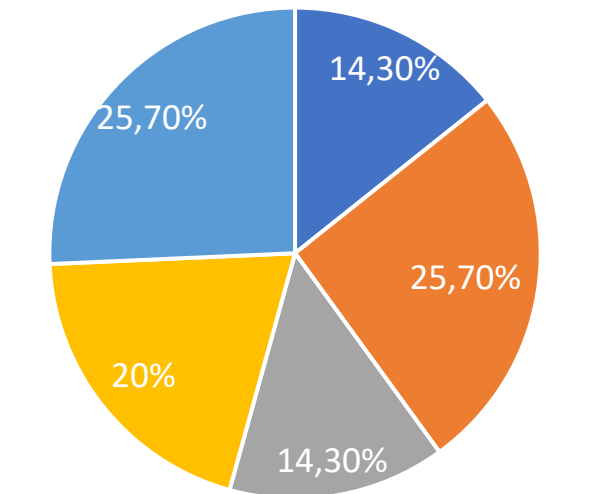
- Too often the EWC is only notified during the final stages of a decision and the announcement of restructuring comes like a bolt from the blue.



Irrelevant & late information (!!!)

- 1 out of 5 properly informed and consulted

Was your EWC informed/consulted about last restructuring?



- No
- We had some irrelevant/late information
- We were properly informed
- We were properly informed and consulted
- Don't know / other answer

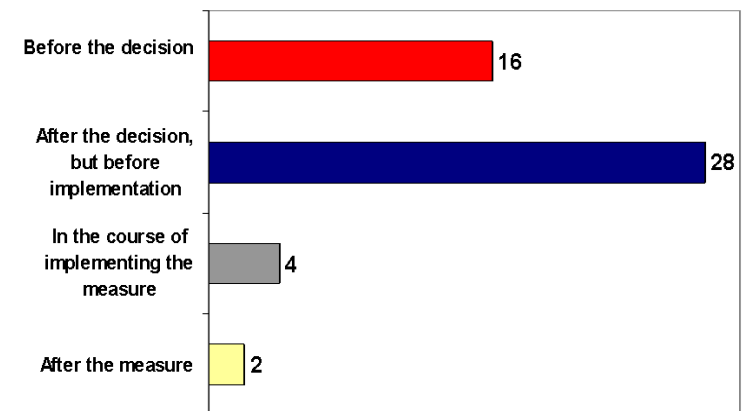
source : Cyprian Szyszka (ETUI) training survey, 2020

company restructuring	when was the EWC informed ? %	when was the EWC consulted %
before the decision was finalised	24,2	19,9
before the decision was made public	37,0	29,7
after the decision was made public	25,7	20,5
the EWC was not informed or consulted	13,1	30,0

source : "The views of EWC representatives" survey by prof. Jeremy Waddington 2005

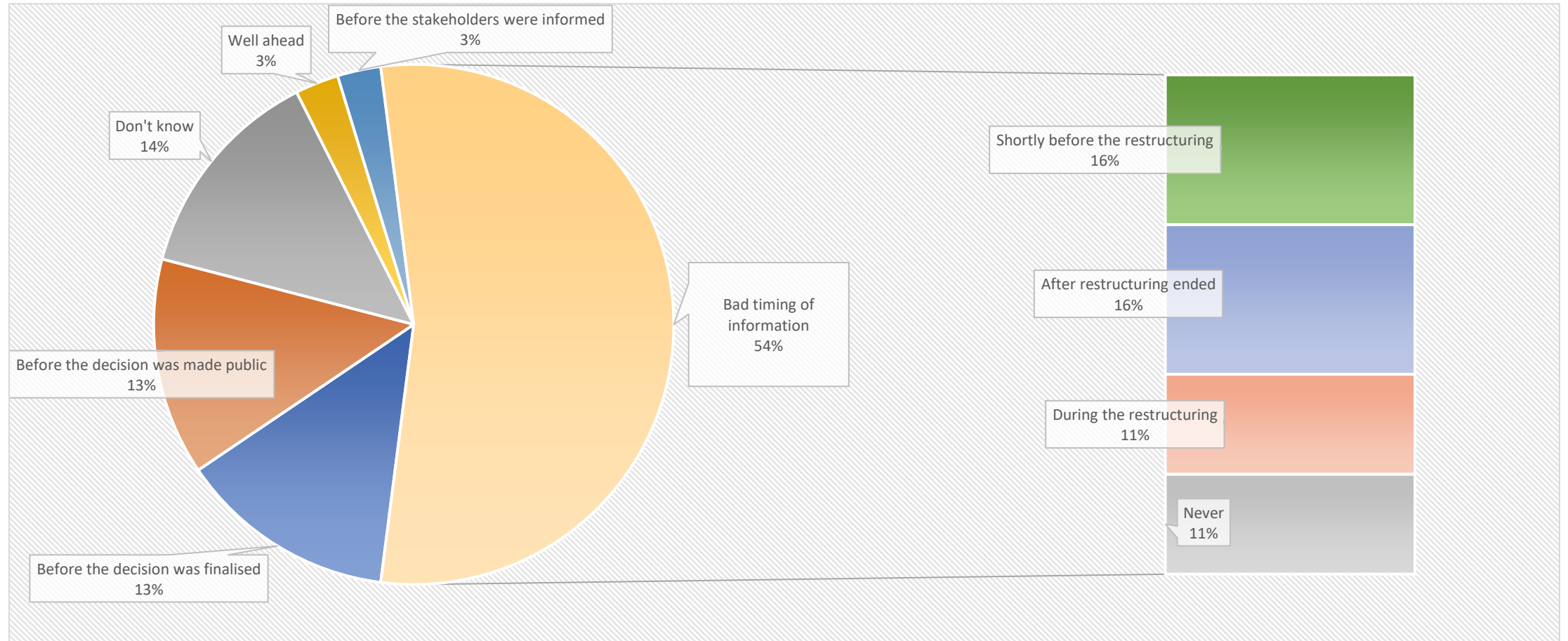
If management informed EWC: When?

Absolute figures; n=50 instead of n=57 following pilot phase



source : IG Metall survey 2005 (85 EWCs involved)

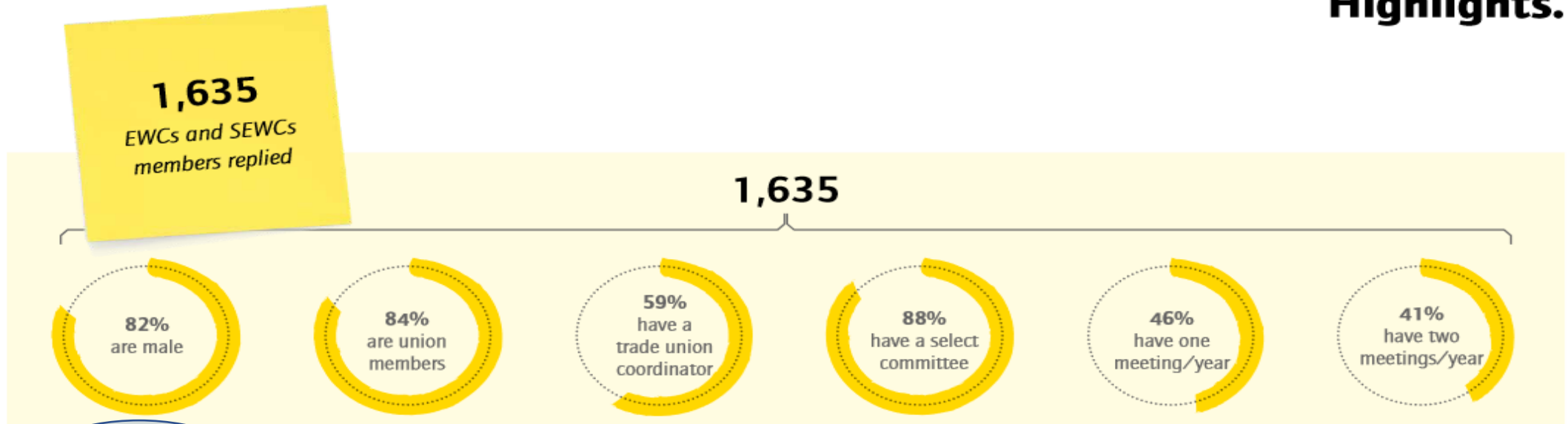
'Timely manner?' not with restructurings...



source : Cyprian Szyszka (ETUI) training survey, 2020

EWC survey

Highlights.



Information & consultation

- Only 22% consulted before the final decision

Restructuring

- 91% are engaged with restructuring projects
- Less than 13% had a timely extraordinary meeting

Communication

- 67% always try to align positions between countries

Management

- Able: 67% say decision-makers are present
- But not willing: only 39% say management tries to find solutions

Training

- 38% have received no training

Conflicts

- 16% had experienced a serious conflict
- Few cases went to court

Art. 13, Art. 6 and SEWCs

- Few differences in practice
- Legal base different

Trade union coordinator

- Where a trade union coordinator is present, the EWC's internal organisation is better.

Changes over time

- More meetings per year
- Little improvement

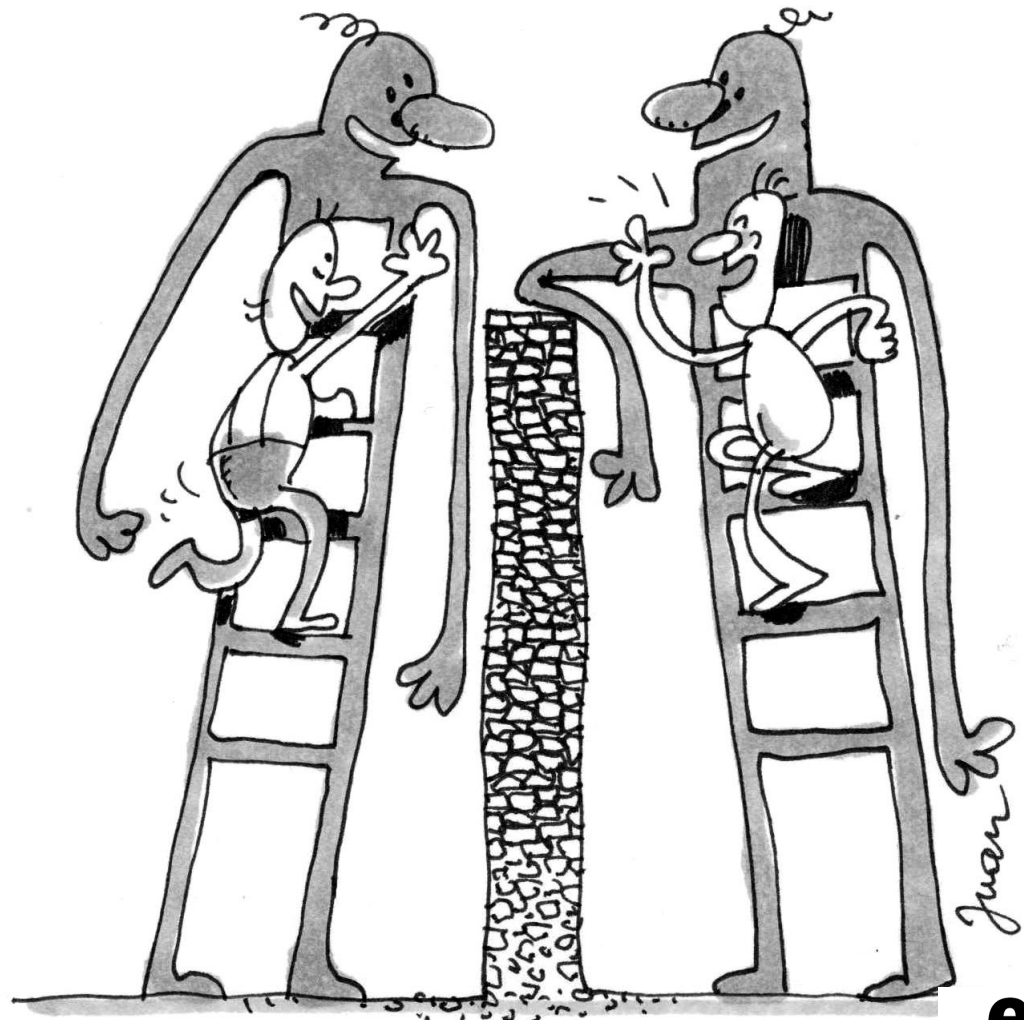
Demands for the future

- Enforcement: 83% want a prohibition of decisions taken without prior consultation



Information & consultation

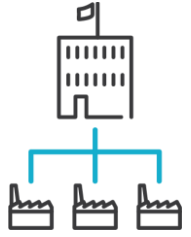
EWC primary task



etui.

the 2009/38 legal framework

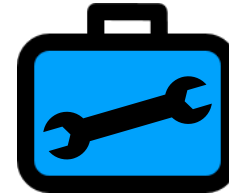
- Competences of EWC (**information rights**)



structure of the group



changes in the organisation



transfers of production



investments



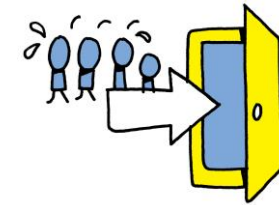
economic and financial situation



situation and trend of employment



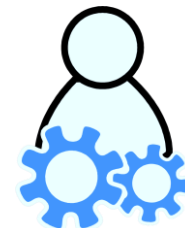
mergers, cut-backs or closure of undertakings



collective redundancies



development of activities, production and sales



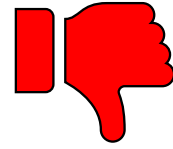
new working methods

information + consultation
meeting with management
obtain a response, and
the reasons for that response

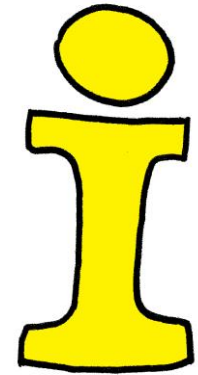
information

What is 'Information'?

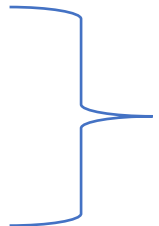
- Transmission of written/verbal data by the employer to the employees' representatives
- In order
 - to acquaint themselves with
 - to examine
- Information shall be given
 - At time such
 - In such fashion
 - With such content



- what is meant by « appropriate »?
- how much time for the « in-depth » assessment?
- extra meeting for consultation?



the subject matter



as enables the employees' representatives to undertake an **in-depth assessment** of the possible impact



And, where appropriate, prepare for consultations

What is 'Consultation'?

- Establishment of a dialogue & exchange of views
- Between EWC and central management



- Reference: EWC Directive 2009
- at such **time**
- in such **fashion**
- with such **content**

as enables the employees' representatives to express an **opinion**

- Within a reasonable time
- With regard to the responsibilities of management

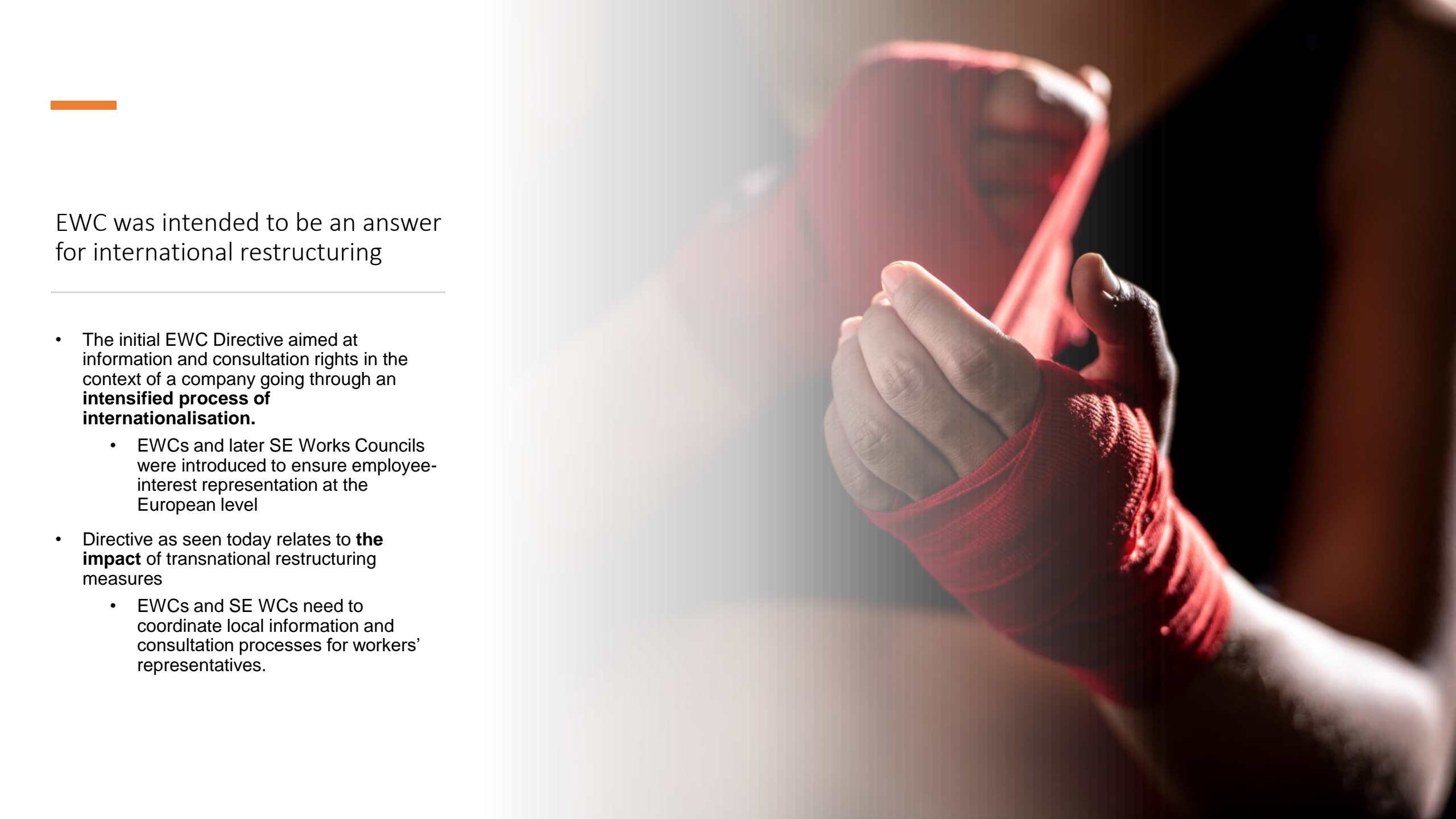
which may be taken into account in the decision making process.

- timing, fashion, content?
- what is a « reasonable » time?
- yes or no is not enough



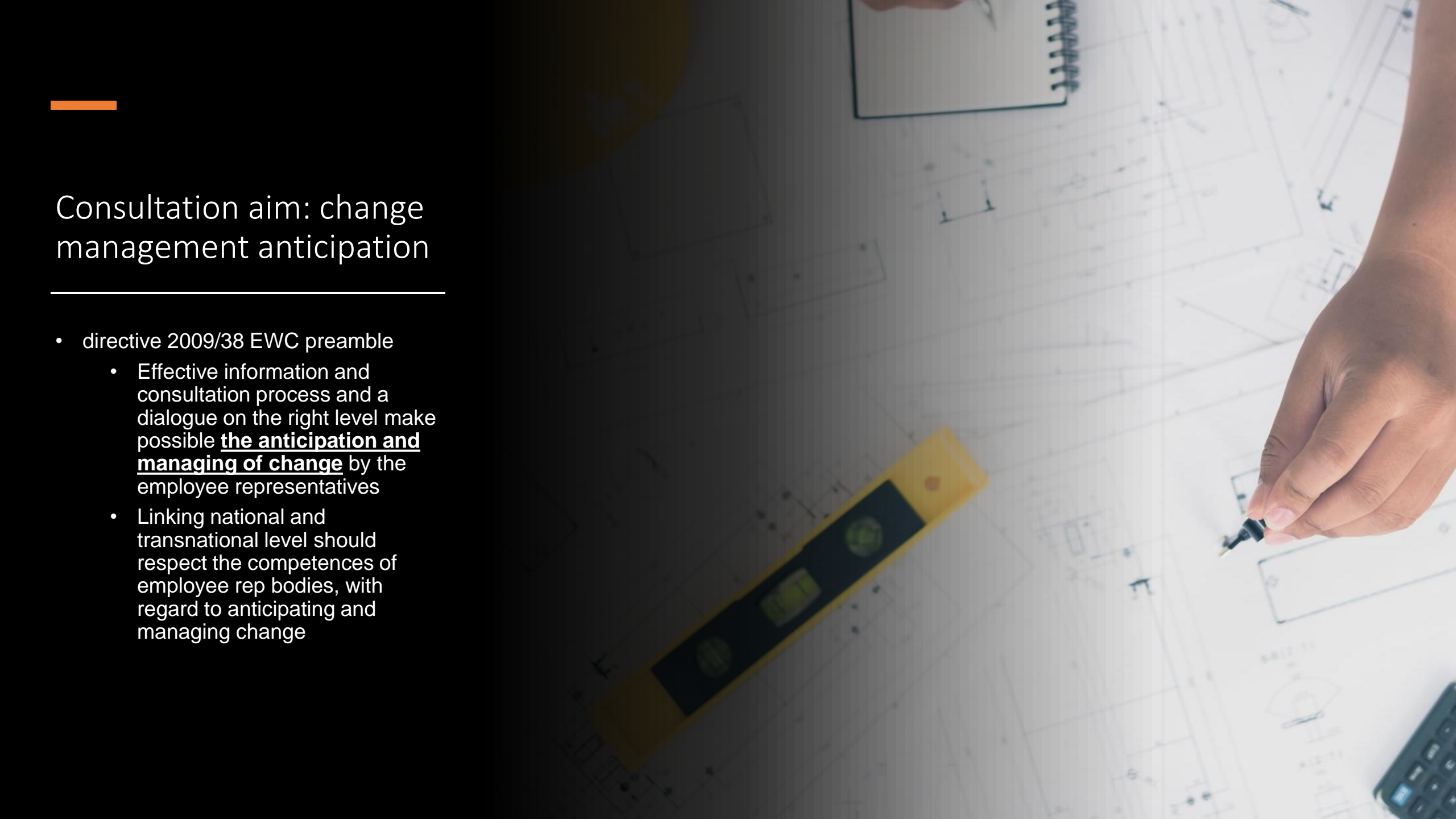
Information & Consultation in real life





EWC was intended to be an answer for international restructuring

- The initial EWC Directive aimed at information and consultation rights in the context of a company going through an **intensified process of internationalisation**.
 - EWCs and later SE Works Councils were introduced to ensure employee-interest representation at the European level
- Directive as seen today relates to **the impact** of transnational restructuring measures
 - EWCs and SE WCs need to coordinate local information and consultation processes for workers' representatives.



Consultation aim: change management anticipation

- directive 2009/38 EWC preamble
 - Effective information and consultation process and a dialogue on the right level make possible **the anticipation and managing of change** by the employee representatives
 - Linking national and transnational level should respect the competences of employee rep bodies, with regard to anticipating and managing change

A hand is shown moving a black chess piece on a chessboard. The background is dark and slightly blurred, focusing on the hand and the piece. An orange horizontal bar is located in the top left corner.

Influence making

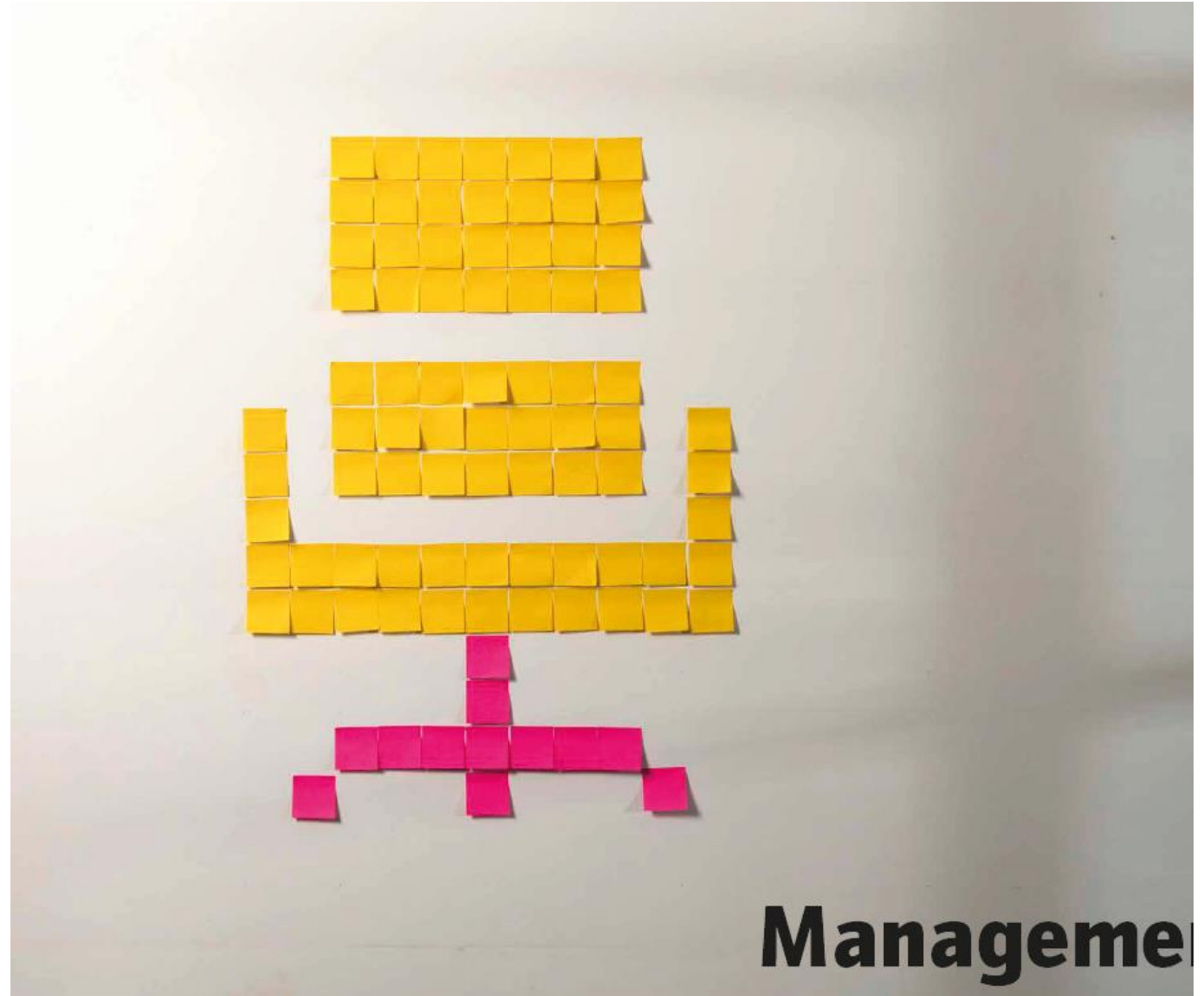
- Too often there is no defined timing for consultation, and it is seen only as a matter of exchanging opinions and dialogue: in the effect we get no consultations or short meaningless briefings
- Use consultations as a way to elaborate of alternatives to the management decisions (e.g. restructuring plans)

BUT

- The purpose of consultations is to exercise influence on the strategic decisions of central management
- The common leverage is playing with time/cost with issuing the EWC opinion (thus delaying the mgmt. decision)
- The Recast EWC Directive may be interpreted as shaped in a French consultation spirit, but SE WC Directive is written more in German spirit of codetermination

PERPSECTIVE

added value for management



Management

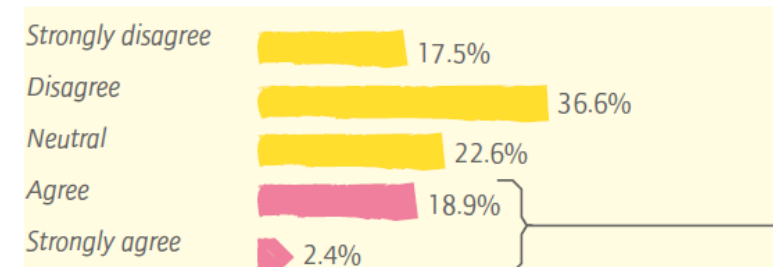
5 good reasons to respect EWC (for the employer)

<p>top-down</p>	<p>bottom-up</p>	<p>early check</p>	<p>broader platform for decision-making</p>	<p>CSR</p>
<ul style="list-style-type: none"> EWC allows for a more streamlined process, a one shot clear message at international level, which can subsequently trickle down to the local level 	<ul style="list-style-type: none"> EWC brings members experiencing in their daily work how the company is perceived, what problems arise and how transnational decisions are being implemented at local level 	<ul style="list-style-type: none"> EWC can offer Central Management the possibility to already check how projects will be received when several aspects are still under development. 	<ul style="list-style-type: none"> EWC brings together multiplicity of systems and cultures into one single body at the European level allowing diversified exchange forum. 	<ul style="list-style-type: none"> Establishing a EWC is one of the clearest expressions of the will to be a socially responsible company.

I receive sufficient appreciation



I think the employees in my company are well informed about what we do in the EWC



Management interest/concern in EWC

The cost of EWC



Medium annual cost is 60250 Euro (range from 10000 to 100000E)

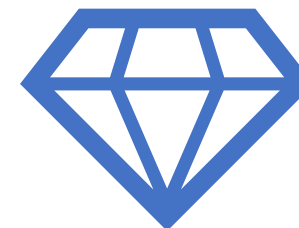
No direct relationship between costs and number of EWC reps

55% think that benefits of EWC outweigh the cost

reported by managers on the research done by Pulignano/Turk

KU LEUVEN

The added value of EWC for the company



Facilitate change and corporate restructuring

Enhancing a better understanding what business is

Create a constructive counterweight to Management

Promote preparation among managers

Facilitate the strategic initiatives by the leverage between EU and local level

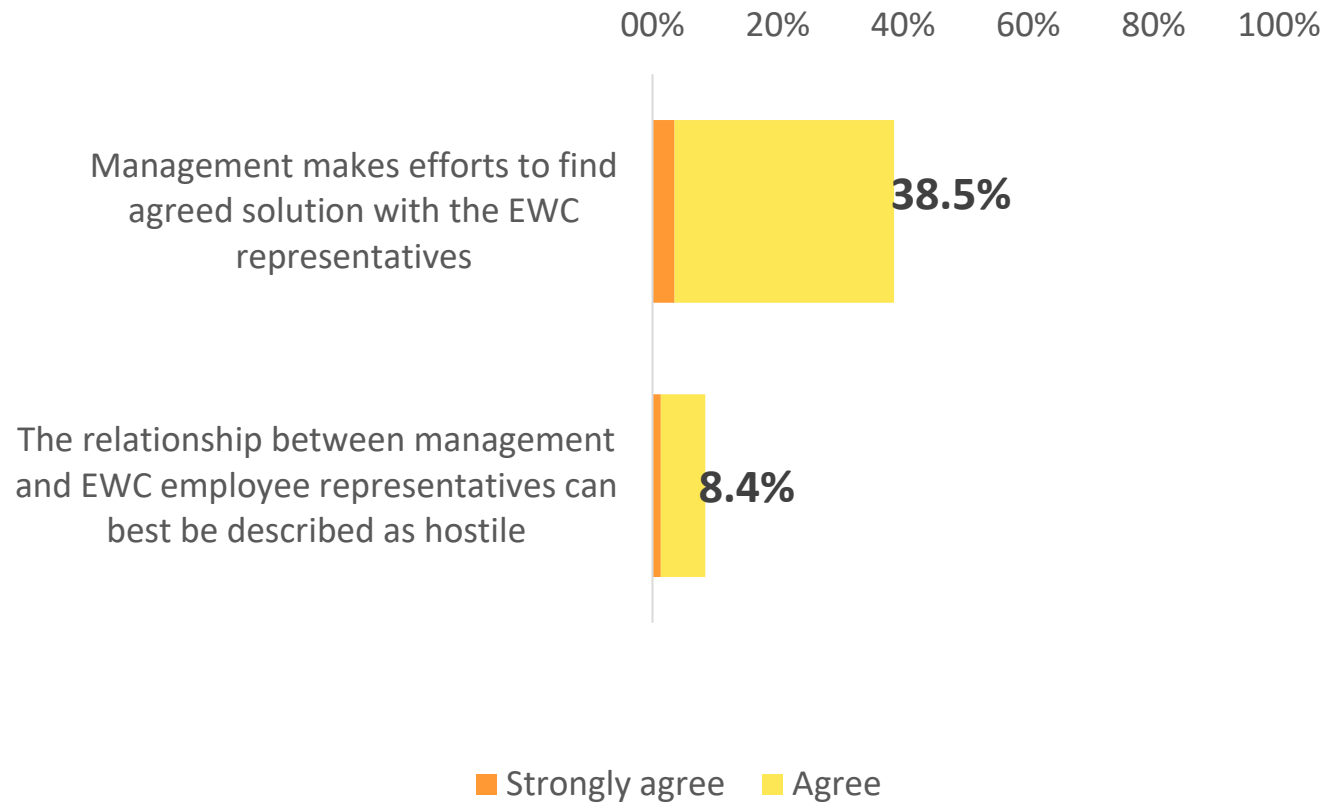
Management - Able

Management is often able to engage, but is it also willing?



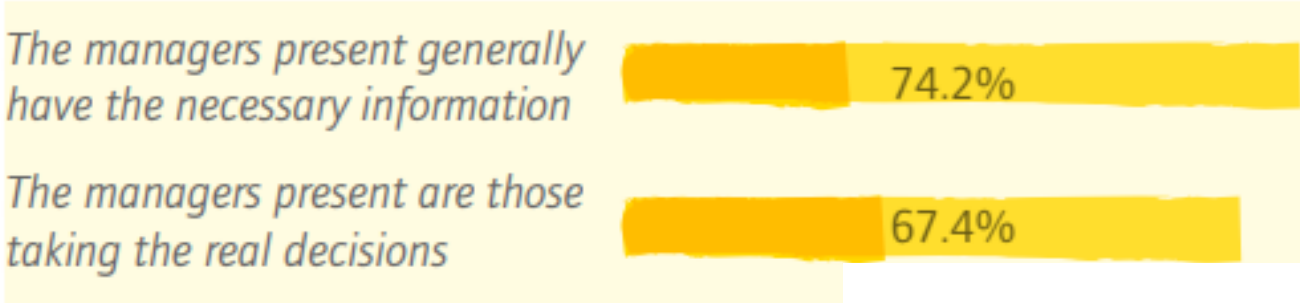
- ✓ Medium annual cost of 60,250 Euro (range from 10,000 Euro to 100,000 Euro)
 - ✓ No direct relationship between costs and number of EWC representatives, plenary and steering committee meetings
 - ✓ 55% of respondents report that benefits of EWCs outweighs the cost
 - Do the benefits justify the costs? 55% YES

Attitude of Management



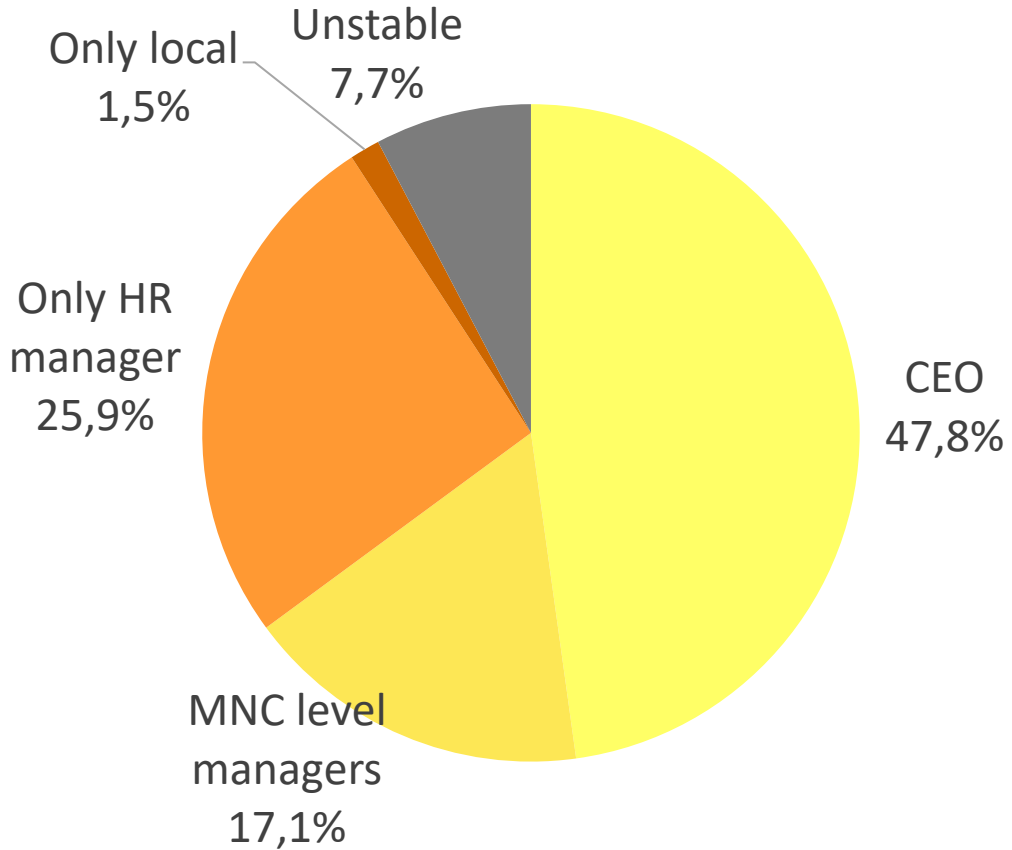
70% of interviewees reported that EWCs added value

Decision makers involved & informed

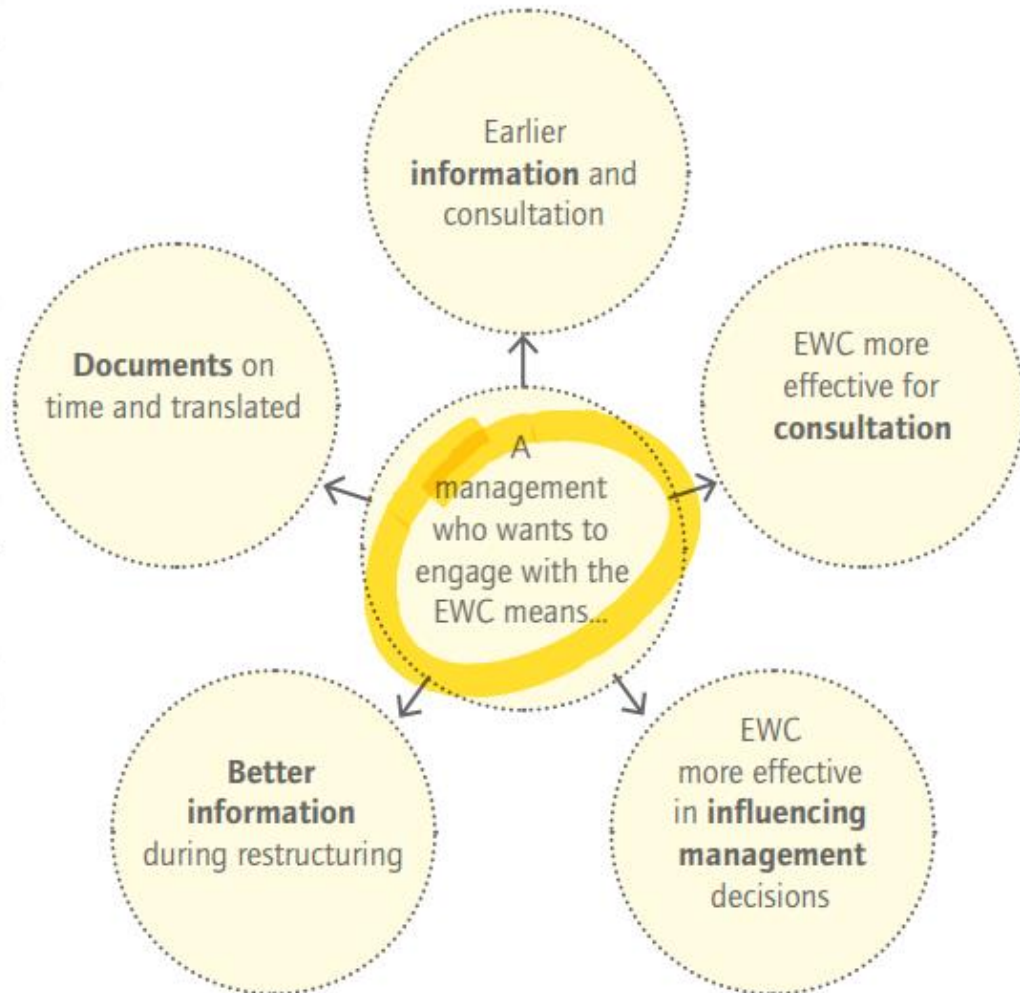


Agree Strongly agree

Who is present?



The power of management



• The Operational Benefits

- ✓ Linkage EU and national level = No problem when the two levels work in parallel and are not integrated
- EWCs showing proactive attitude and engagement
- Trust between Management and EWCs
- The role of experts
- ✓ Regular, frequent, meetings of SelectCtte
- For 75% of interviewees EWCs do not constitute a hindrance to management
- But operational concerns are underlined

Areas of assistance

- 77% of the interviewees reported EWC assisted management:
- Communication
 - 'top-down' (to eliminate conflict; to encourage support for Mgtpolicy among local reps; to explain Mgtpractice; ensure accurate understanding)
 - 'bottom-up' (info from employees to central Mgt.);
 - Generating commitment
- Restructuring
 - Creating atmosphere
 - Substituting for the absence of local expertise or institutions
 - Recognizing that corporate restructuring often requires and agreed time table
 - Facilitating employment transfers between sites in different EU member states;
 - Examining the functioning of enterprises;
 - Examining projects we may have for the future (e.g. inclusion, diversity, youth unemployment, ageing, technology)

the average EWC

- **the management approach : the agenda**

- Information

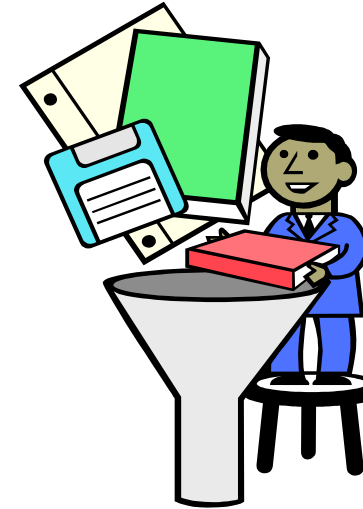
- Information

- Information

- **Information**



- balance sheet
 - new technology
 - marketing strategy
 - past trends in employment
 - structure of the company
- ⇒ powerpoint presentations (in English)



- **the management approach : checklist**
the average EWC



- 1st class hotel
- 1st class restaurant
- cultural activity
- open bar for the evening
- information opportunities
- high level management representatives, but never more than 2 at the same time
- chair
- what is local should stay local
- no confrontation

the average EWC

- **the management approach : negotiations**

- move your headquarters to the country with the weakest legislation
- insist on exact timing for information and consultation
- limit the number of relevant documents
- limit the definition of “international” to a certain number of employees in at least two countries
- say that you will “make an effort”
- threaten :
 - only refer to your own proposals
 - no more meetings before the end of the three year period
 - announce that reorganisations are planned for the near future



Consultation procedure



Information phase: data provided on plenary or after EWC Q's + time for EWC digest



Consultation process: 1 or more SC meetings on a discussed subject + inf check with local lvl



Position statement ("opinion") by the whole EWC, in writing, communicated to public



Response to the opinion and implementation of measures by central management

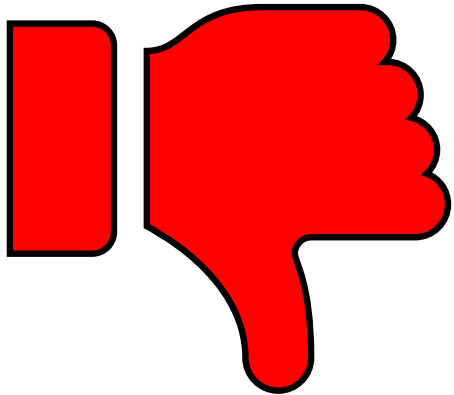


Confidentiality

...and secrecy

How to deal with them?





CONFIDENTIALITY

members of SNB or EWC and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence, even after expiry of their term of office

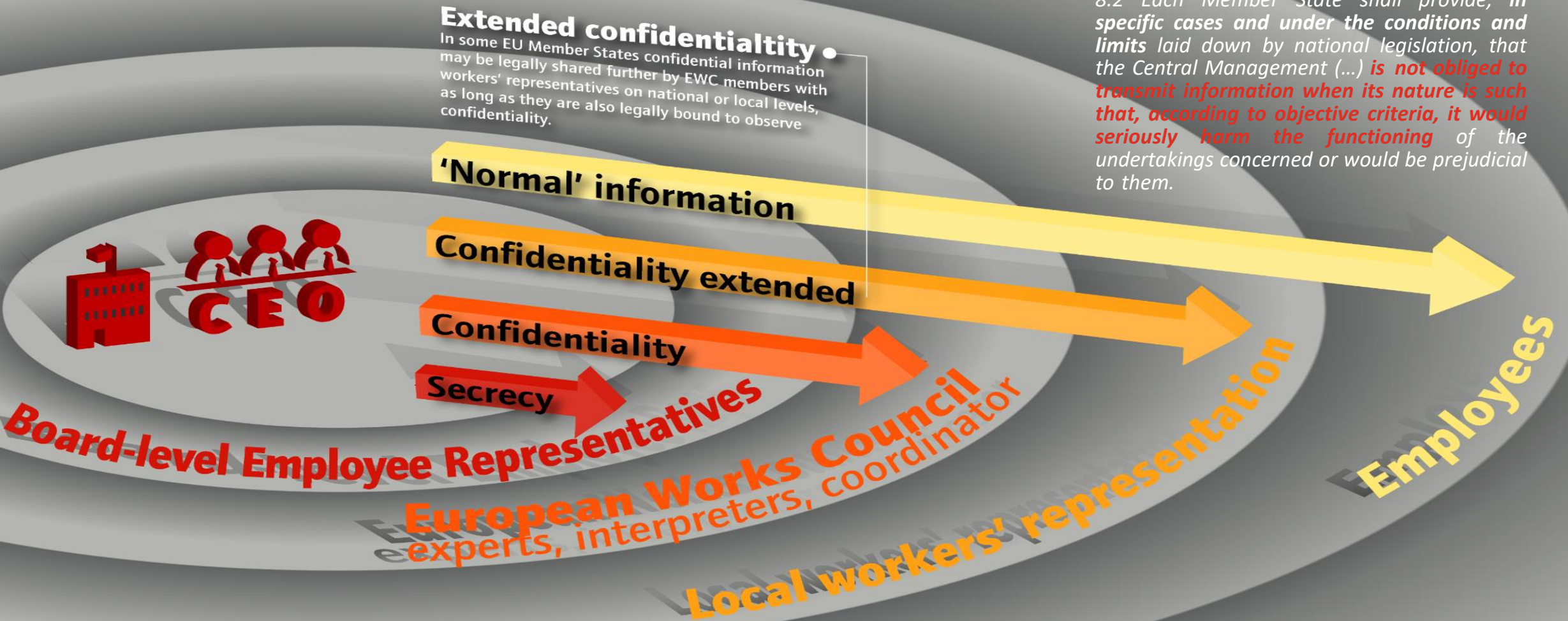
central management is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them

- can allow for early and relevant information
- must be announced “expressly”
- leaves too much freedom for the management
- what about the obligation to inform?
- what about confidentiality at management side?
- dispute resolution?

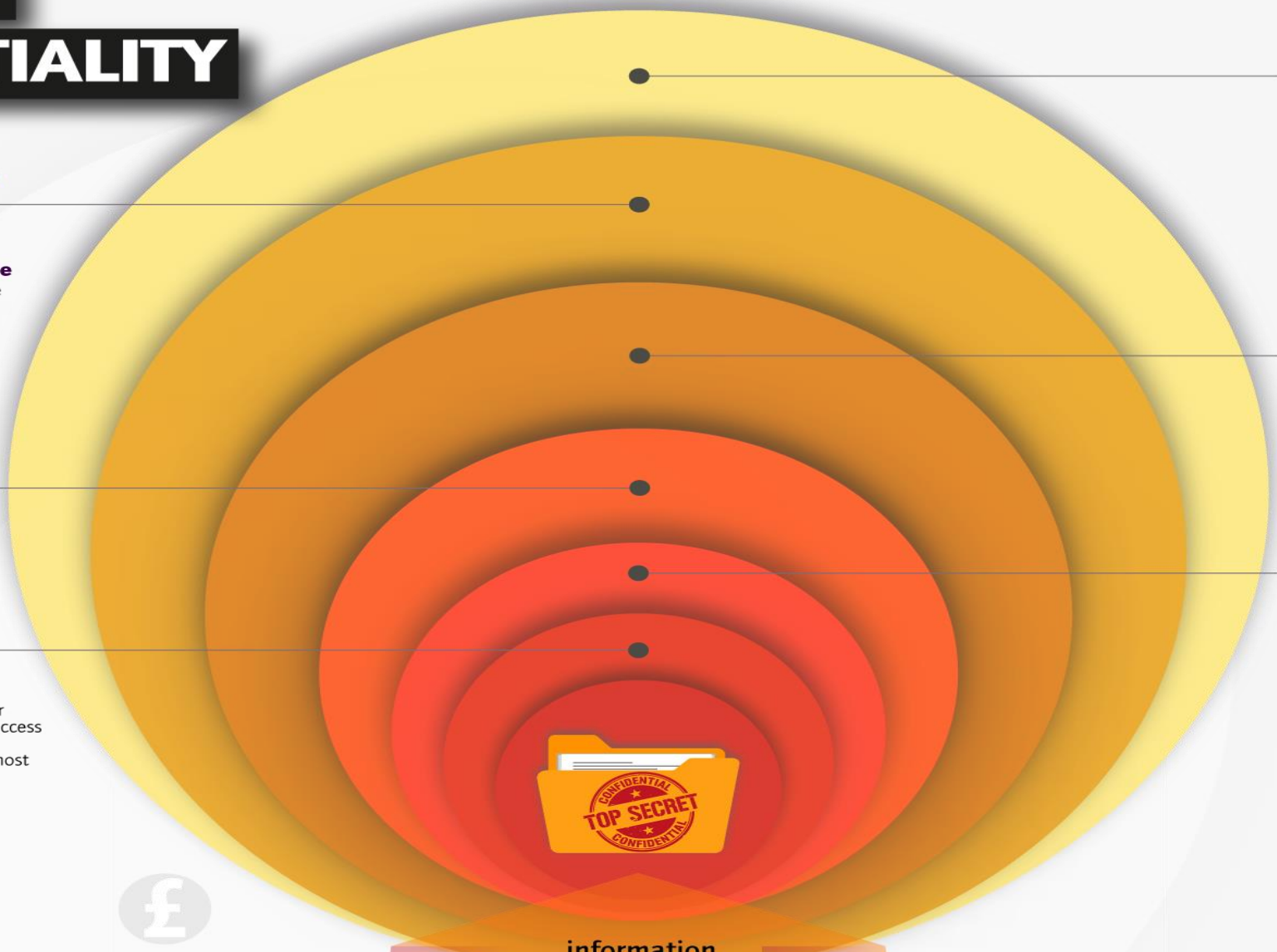
EWC: CONFIDENTIALITY AND SECRECY

8.1 (...) members of European Works Councils and any experts who assist them **are not authorised to reveal any information which has expressly been provided to them in confidence.**

8.2 Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the Central Management (...) **is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.**



CIRCLES OF CONFIDENTIALITY




General public
Such information has often already been made public by the company beforehand and can thus be shared broadly.



Employee representatives
A next level of confidentiality concerns information that can be shared only with employee representatives within the company (such as the local or group works council or the EWC).



EWC Select Committee
Management may sometimes prefer to give information only to the Select Committee. This is highly controversial and makes communication problematic between the Select Committee and the rest of the EWC.

CENTRAL MANAGEMENT

The central management is the source of information and decides whether to label information as confidential or to refuse to disclose it altogether. The management must take these decisions **based on the law and within its boundaries**. Management's decision regarding confidentiality or withholding information **can be challenged in court**.



Internal company information
Information on this level can be shared with all employees **inside** of the company, but not with the outside world.



EWC Council
Information may only be discussed between EWC members (for a specific period).



BLER
Board-level employee representatives
As members of the supervisory or management boards they have access to all information that the other directors receive (including the most secret company data).

Stock market rules

Management often argues that they cannot share information due to limitations imposed by stock market regulation. Stock market laws are often not harmonised with rules on workers' information and consultation. Only in a few countries (e.g. France) does stock market regulation explicitly take priority over workers' rights to information and consultation. **Important:** stock market regulation is addressed to actors who are **outside** of the company.



CONFIDENTIALITY: INSIDERS & OUTSIDERS

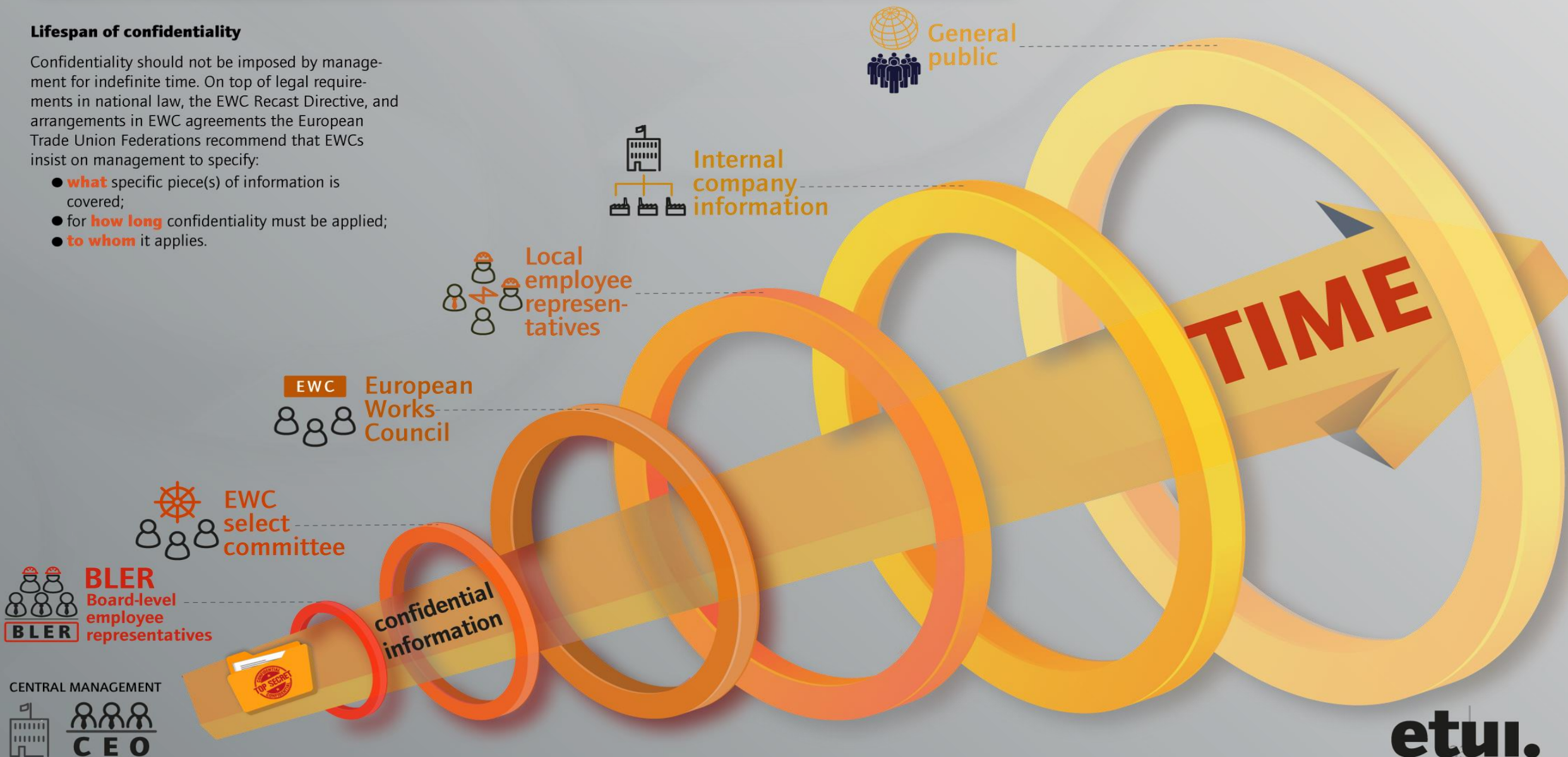


CONFIDENTIALITY: THE TIME DIMENSION

Lifespan of confidentiality

Confidentiality should not be imposed by management for indefinite time. On top of legal requirements in national law, the EWC Recast Directive, and arrangements in EWC agreements the European Trade Union Federations recommend that EWCs insist on management to specify:

- **what** specific piece(s) of information is covered;
- for **how long** confidentiality must be applied;
- **to whom** it applies.



General public

Internal company information

Local employee representatives

EWC European Works Council

EWC select committee

BLER Board-level employee representatives

CENTRAL MANAGEMENT
CEO

etui.

Why would management want to use confidentiality after all? => it is a tool



General legal reason behind confidentiality: market protection



The obligation to maintain confidentiality serves to protect the employer as an entrepreneur (competitor) in the market.



It protects the company when it participates in commercial transactions, not in its role as an employer vis-à-vis employees



Protect the company



Stay ahead of the market competition



Keep its own know-how (technological, organizational, market)



Manage the supply chain (keep partners close, but not too close)



Maintain the customer relationships

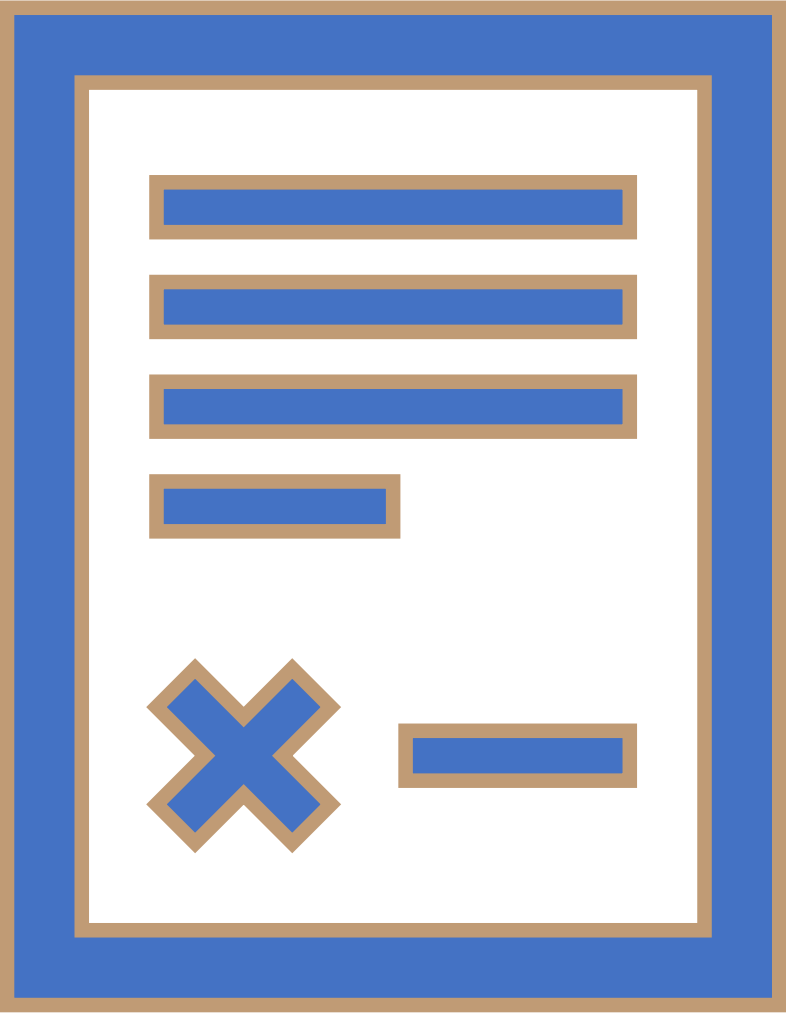


Develop the company culture



Operate HR to avoid turbulences among the staff (e.g. on salary system)

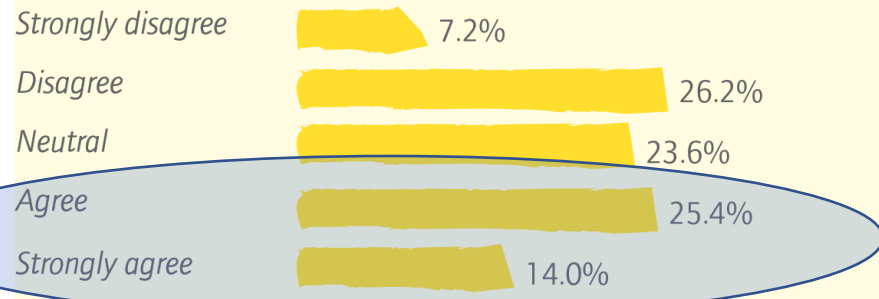
Confidentiality
shouldn't be
used against
EWC!



Withholding information

Management often refuses to share information...—

Management often refuses to give information on the grounds of **confidentiality**

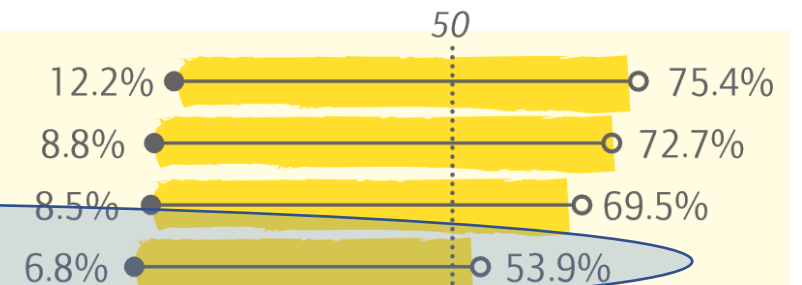


Almost 40% of EWC members think management often refuses to share information

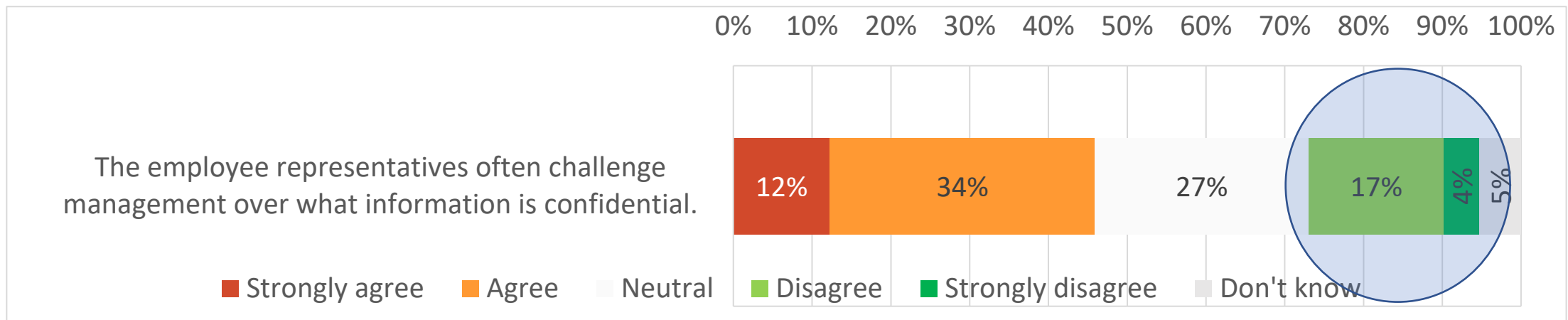
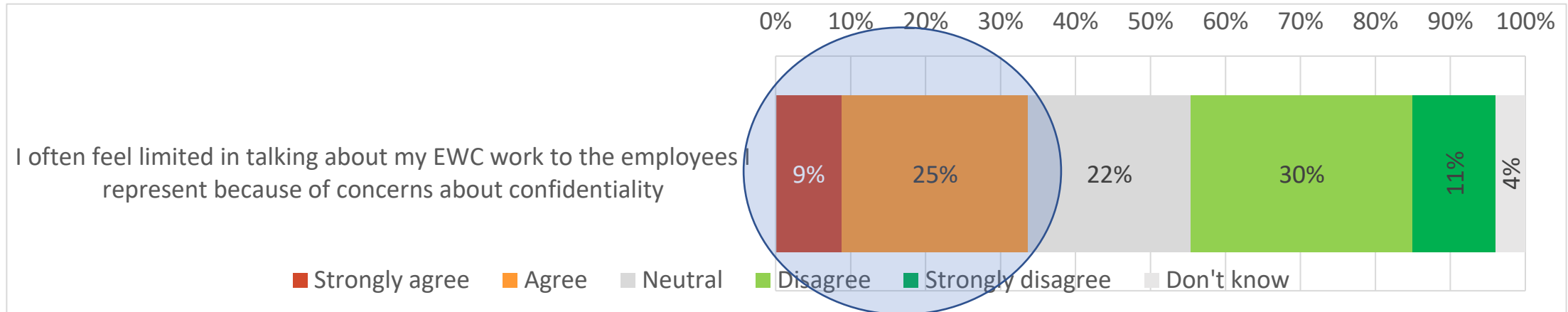
Training received



Need more training



Confidential information & challenging it



Source: De Spiegelaere, Jagodziński and Waddington (2021)

How to play it?



Challenge your management every time they impose confidentiality / secrecy



(Re)negotiate a confidentiality clause in your agreement or sign rules of procedure



Don't take all company confidentiality measures as carved in stone. Learn to be brave: law is on your side

- The use of confidentiality clauses, which are an **exception to normal information** rights, should be limited and justified on reasonable grounds.

- Management's labelling of information as 'confidential' is not the same as 'withholding information'.

- The **withholding of information** by management must be **strictly limited**, based on specific provisions in national law, and applied only when **'objective criteria'** threaten company interests.

- **EWCs are 'insiders'** in the company, not third parties.

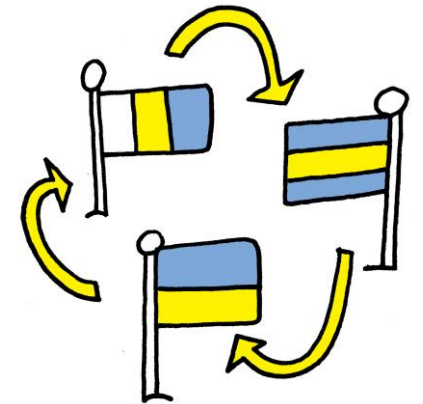
- EWCs have the **right to challenge management in court** on the imposition of a duty of confidentiality.

Transnationality

- matters that concern the group as a whole or at least two establishments situated in two different member states
- matters which, regardless of the number of countries involved are of importance for the workforce in terms of the scope of their potential effects (preamble)

- clear definition
- leaves the door open to matters that seem national
- allows for early information

- who has the burden of proof?
- how to ensure early treatment of the matters?





The EWC is supposed to only deal with matters of transnational relevance and focus on transnational issues only

Can single-country issues be transnational? How to avoid 'salami' restructurings?

Transnational matter: an easy way out

The question whether a management decision has a transnational character or not is all too often a source of conflict and prevents an EWC from functioning properly



- (decision affecting at least) 2 countries at the same time or a group as a whole
- Such understanding results in the '**salami tactics**' or '**crawling restructuring**'
- => strategy of implementing changes in countries one by one, not informing EWC
- => informing EWC itself is a confirmation of transnationality for the court and the penalties are small (it is viable not to inform)

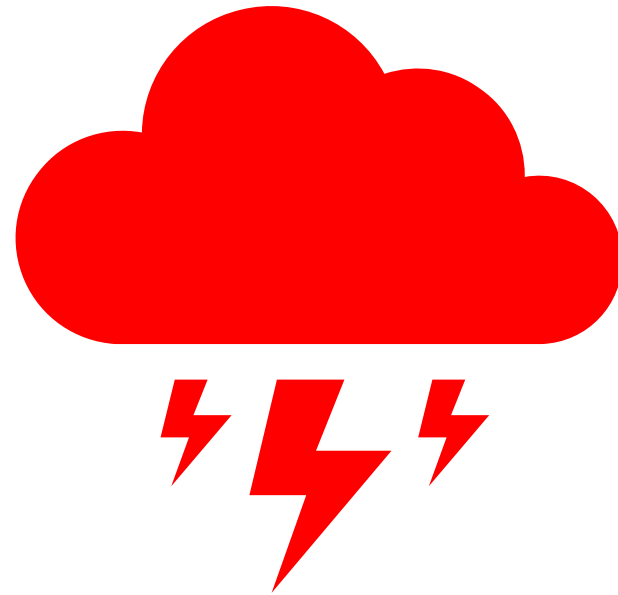
Directive

Transnationality: all matters concerning the whole company or at least two countries (by the scope of the effects or the level of management involved) are transnational

Why the problem?

The question whether a management decision has a transnational character or not is all too often a source of conflict and prevents an EWC from functioning properly

the threshold of transnationality is the key distinguishing factor between national level bodies of worker participation and the EWC



The EWC is supposed to only deal with matters of transnational relevance and focus on transnational issues only

Some
motivation
towards the
end

Grab the bull by the horns!



European Works Councils are the only legally-mandated bodies for transnational information and consultation with employees in the world

Stay inspired

Thanks for your attention
Cyprian Szyszka, ETUI



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