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Brexit's impact on transnational employee representation. Regulatory changes and contested futures of European Works Councils

Keywords: European Works Councils, interest representation, Brexit, multinational companies, institutional change

Abstract

This study examines how Brexit reshaped the institutional foundations of European Works Councils (EWCs). Using historical institutionalism, the analysis conceptualises Brexit as a critical juncture that revealed and accelerated existing institutional dynamics. Drawing on 64 company cases, including 16 in-depth studies, it identifies five developmental outcomes – stability, limitation, exclusion, extinction and innovation/expansion. Most EWCs maintained stability through negotiated adaptation, while others experienced limitations, exclusion or innovation. Outcomes were mainly influenced by management strategies and orientations, national employment relations systems and transnational employee coordination. The findings show how macro-level institutional disruptions translate into negotiated meso-level institutional recomposition.

1 Introduction

European Works Councils (EWCs) emerged as part of the EU's effort to balance market liberalization with a social dimension, an initiative catalysed by the Maastricht Treaty in 1994. A key regulatory instrument was Directive 94/45/EC on EWCs, which granted representatives from various multinational corporations (MNCs) across Europe consultation and information rights, empowering them to advocate on behalf of European employees to corporate management. Since the 1990s, EWCs have been established in more than 1,000 MNCs operating in the EU. While EWCs primarily function as institutions for worker representation in Europe, many employers have also adopted them as mechanisms for managing employment relations within their firms (Marginson et al., 2004; Haipeter et al., 2019).¹

¹ The institutional framework of EWCs is defined by Directive 2009/38/EC (recasting 94/45/EC). Each EWC operates under an applicable national law transposing the Directive, which determines the legal basis and enforceability of the company-specific agreement. Article 4 requires the company's representative agent to be located within the EU; following Brexit, UK-headquartered companies were therefore required to designate a new representative agent in an EU Member State, otherwise responsibility shifted to the Member State employing the largest number of workers within the EEA (Zahn, 2024).

The UK Government's decision to exit the EU, following the 2016 referendum, disrupted the applicability of EU legislation for companies based or operating in the UK, including the legislation governing EWCs, as the UK is neither an EU member nor part of the European Economic Area. Brexit affected EWCs in MNCs with UK operations if they no longer met two threshold conditions specified in EWC legislation: operating sites in at least two European countries with a minimum of 150 employees each, and a total European company size of 1,000 employees. Furthermore, EWCs that had been originally established under UK transposition law were now required to designate a new "representative agent", i.e. a EU Member State whose law should apply to the EWC. Last but not least, Brexit opened a "window of opportunity" for employers to exploit legal ambiguities in renegotiating EWC agreements, potentially reducing UK mandates or rights. Approximately 16 % of all EWCs were established under UK national law and are directly impacted, while over 70 % of EWCs have UK-based representatives (De Spiegelaere and Jagodzinski, 2020). Consequently, Brexit affects nearly three-quarters of all EWCs. However, the full extent and implications of Brexit on the function, activities, and sustainability of EWCs remain largely unknown.

This paper fills this gap by examining how Brexit has transformed the institutional foundations of EWCs and the negotiations through which these changes were managed. Rather than focusing solely on the re-negotiation of agreements, the analysis investigates the broader trajectories of institutional *stability* and *change* that unfolded in response to the regulatory disruption caused by Brexit. Adopting an historical institutionalist perspective (Streeck and Thelen, 2005; Mahoney and Thelen, 2010), the paper conceptualises EWCs as firm-level institutions embedded in multilayered industrial relations architectures. This framework captures how actors interpret, negotiate, and transform the regulative structures of transnational employee representation.

We argue that the collapse of the regulatory pillar can lead to five distinct institutional outcomes for EWCs: stability, limitation, exclusion, extinction and innovation/expansion, each of which is caused by a specific combination of influential factors. Using a case study approach, we analyse 64 companies, including 16 in-depth cases, drawing on 99 interviews.

The following section provides a brief review of the current debate (Section 2), followed by the theoretical framework (Section 3), data and methods (Section 4), empirical findings (Sections 5 and 6), and the conclusion (Section 7).

2 EWCs: State of the Art

Since the 1990s, an extensive literature has examined European labour relations and multiple dimensions of EWCs relevant to this study. There is broad consensus that EWC structures and practices are shaped by multiple factors and evolve over time (Hann et al., 2017). In the context

of Brexit, particular attention has focused on factors influencing EWC activity and responses to crisis.

Activity, outcome and effectiveness of EWCs

Many studies emphasize the importance of relationships and interaction patterns – between EWC members, between the EWC and management, and between the EWC and trade unions (Lecher et al., 2001). Internal processes are relevant in that interaction and communication can foster an EWC culture or European identity that builds trust, shared understandings, and common expectations. A shared vision can positively influence the actions of EWC members and strengthen solidarity, understanding, and trust, which in turn facilitate collective action vis-à-vis management (Telljohann et al., 2009; Whittall et al., 2007).

The company and its management, on the other hand, can be regarded as the EWC's central negotiation partner. They are crucial for understanding how EWCs function (Hauser-Ditz et al., 2016), since corporate strategies and managerial attitudes toward employee representation significantly affect the activity and effectiveness of EWCs (Greer and Hauptmeier, 2015; Telljohann et al., 2009).

It was recognized early on that EWCs are subject to a home-country effect (Marginson et al., 2004; Hertwig, 2015). National institutional systems and cultural patterns are central factors, as they provide different rights and resources and establish cultural norms that shape actors' expectations and behavior. This makes the EWC a composite of various national practices, in which the attitudes and actions of both managers and EWC members reflect their respective national institutions and cultural habits. This pattern is echoed in research on the *Societas Europaea*, showing that even formally supranational institutions remain strongly shaped by national employment relations systems and managerial strategies (Keller and Rosenbohm, 2024).

More recent research emphasize that EWCs form part of a transnational multi-level structure within companies, underlining the importance of the “articulation” between different levels and the interplay of various bodies of employee representation, like for instance local unions or works councils, company board level representation, national and international unions (Pulignano, 2017; Haipeter et al., 2019). Many EWCs depend heavily on the resources and rights of national works councils or trade unions. In many cases, the chairperson occupies several roles, such as local union representative, chair of the local or national works council, and member of the supervisory board. This interlinks actors and resources at global, European, national, and local levels, making EWC work a collective coordination effort rather than the outcome of a single coherent actor. At the micro level, such coordination depends on how employee representatives prioritise relationships with management, the workforce and trade unions, which may differ even under similar institutional conditions.

Brexit and EWC Responses to Crises

From an analytical perspective, Brexit represents a crisis for EWCs, as it challenges their legal basis and applicability. Research on EWCs during previous crises, such as the 2008/09 financial crisis, shows that such situations can increase their level of activity. In some cases, attempts to negotiate company-wide agreements across multinational enterprises failed due to weak structures, cultural contradictions, or a lack of integration. In some EWCs, solidarity persisted (Pernicka et al., 2017; Carley and Hall, 2006), while in others growing mistrust hindered integration (Mählmeyer et al., 2017).

There is, however, little empirical evidence on the specific impact of Brexit on EWCs. According to ETUI, around 70 % of affected companies employ staff in the UK, and one in eight has its headquarters there. About a quarter of companies headquartered outside the EEA (for example, firms from Japan or the United States) but active within the EEA had designated their UK subsidiary as the “representative agent” and established their EWC under UK law (Gumbrell-McCormick and Hyman, 2017).

Some assessments suggest that Brexit poses significant challenges for EWCs. First, there is considerable legal uncertainty concerning the validity of EWC agreements based on UK law after Brexit, raising the question of whether existing agreements will remain legally effective (Gumbrell-McCormick and Hyman, 2017). Second, it has been found that one in five managers involved with EWCs holds a negative attitude toward them; such companies might use Brexit as an opportunity to renegotiate or weaken EWC agreements. No data, however, are currently available on the status or content of Brexit-related renegotiations. Third, companies may attempt to apply pre-existing models of employee representation for non-EU countries to the UK, thereby curtailing the rights of UK employees or representatives. Precedents for this exist in some companies based in Switzerland, where “guest mandates” have been implemented. In such cases, representatives from non-EU countries do not have a formal right to EWC membership; they hold only consultative rights within the body. However, reliable empirical data on this aspect are also lacking (Gumbrell-McCormick and Hyman, 2017).

3 Theoretical Foundations

EWCs can be conceptualized both as *organisations* with distinct structures and objectives (Hauser-Ditz et al., 2016) and as company-specific *institutions* embedded in transnational industrial relations systems. As institutions, EWCs operate at a meso level (the MNC) and comprise regulatory agreements, routines and cultural patterns, resting on regulative, normative and cognitive pillars (Scott, 2001). In this study, we focus on the regulatory changes, i.e. the company-specific EWC agreements and the rights and resources they comprise, although regulatory elements certainly intermingle with normative and cognitive patterns of EWCs. To analyse Brexit’s effects on EWCs, we pursue two objectives. First, we examine and categorise changes in company-specific agreements, formal structures and participation rights. Building

on historical institutionalism (Streeck and Thelen, 2005; Mahoney and Thelen, 2010; Thelen, 2014) and the theoretical considerations by Frisone and Witzak (2026), we develop a typology of five institutional outcomes. Second, we explain these changes by analysing the factors and negotiation processes through which they emerge.

Institutional Stability and Change

Historical institutionalism analyses long-term institutional development, emphasising both structural stability and change through mechanisms such as critical junctures and gradual, endogenous adjustment (Thelen, 1999; 2004). In this perspective, Brexit can be seen not merely as an exogenous shock, but as a *critical juncture* – a period of heightened contingency and institutional openness in which multiple developmental paths become possible before a new path dependency is established (Capoccia and Kelemen, 2007).

A central tenet of historical institutionalism is its emphasis on temporality: institutions evolve asynchronously, producing non-linear and often unintended outcomes (Thelen and Kume, 1999; Pierson, 1996; Fioretos et al., 2016). Mahoney and Thelen (2010) identify four types of gradual institutional change that inform our analysis of stability and change in EWCs: They distinguish between *displacement*, in which existing institutional arrangements are replaced by other rules; *layering*, in which new rules or structures are introduced alongside existing ones; *drift*, in which institutions remain formally unchanged but gradually fulfil different functions due to changes in context; and *conversion*, in which actors reinterpret institutional rules to serve purposes other than those originally intended.

Raffaelli and Glynn (2015) introduce a fifth mode of institutional change, institutional *innovation*, capturing creative recombinations that reconfigure or expand existing institutions. Innovation refers to novel, useful and legitimate changes that may involve the creation of new institutions or the reconfiguration of existing ones, including novel practices.

The concept of *critical junctures* refers to brief periods of heightened contingency in which institutional arrangements may shift in multiple directions due to increased uncertainty and the availability of alternative trajectories (Capoccia and Kelemen, 2007), as in the case of Brexit. This concept is important because it recognizes that institutional change may happen rapidly and interest-driven (Micelotta et al., 2017). Accordingly, actors' capacity to act, interests, power and negotiations are important to understand how and why institutional change takes place (Steinmo et al., 1992). Historical institutionalism assumes that actors try to mold institutions according to their interests and may strategically exploit institutional ambiguity. Change therefore depends on the interests, power and strategies of opposing actors which may lead to distinct pathways of change – some incremental, others more rapid or transformative (Quack, 2006).

While historical institutionalism's concepts of the conditions as well as forms of institutional change are of central importance to our study, some adjustments are necessary with regard to

the field of EWCs. In the context of Brexit, we refer to the *critical juncture* strand of historical institutionalism while at the same time considering modes of gradual institutional change. Unlike historical institutionalism, however, we focus on meso-institutions at an organisational level – the individual EWC as an institution *inside* a specific MNC – but not national or even transnational institutions at the macro level. Accordingly, it appears necessary to adapt the typology of institutional outcomes and to use a concept that captures interest-driven and power-related negotiations as pathways to institutional change of stability of EWCs.

Typology of Institutional Outcomes Derived from Institutional Theory

To account for change and stability in EWCs, we suggest a typology which links the conceptual logic of historical institutionalism with insights from EWC research. It translates the modes of institutional change identified by Mahoney and Thelen (2010) and Raffaelli and Glynn (2015) into company-level institutional outcomes. Five institutional outcomes are central to our analysis: (1) *stability*, (2) *limitation*, (3) *exclusion*, (4) *innovation/expansion* and (5) *extinction* (see Table 1).

Similar to historical institutionalism, we assume that *stability* can be an important outcome despite changed context conditions. For instance, if both company management and EWC members see value in transnational dialogue, cooperation and exchange, an EWC can be stabilised even in the context of Brexit (Jepperson, 2021). Alternatively, actors may draw on specific power resources to sustain and stabilise the EWC, reflecting processes of institutional reproduction (Westerheide et al., 2025).

Our type *institutional limitation* (2) refers to a restriction of the rights or mandates of UK members. It overlaps with Mahoney and Thelen's (2010) modes of *drift* or *layering*, in which new rules or structures are introduced alongside existing ones or where institutions no longer fulfil their functions in the usual way. When UK members leave the EWC, general rules of mandatement may be retained, however, the original functioning of the body may be severely harmed as information flows and social relations may be disrupted.

The two types of institutional *exclusion* (3) and *extinction* (4) refer, respectively, to the removal of British representatives from the EWC and to the complete dissolution of the EWC. Exclusion may reflect either *conversion*, when existing institutional rules are reinterpreted to serve different interests, or *displacement*, when they are replaced by new arrangements (Mahoney and Thelen, 2010). By contrast, extinction corresponds to *displacement* in its most radical form, as the institution itself is abolished rather than reinterpreted. In such cases, formal EWC regulations may be supplanted by informal procedures designed largely in management's interests, often without enforceable employee rights to information or consultation. Finally, we interpret institutional *innovation* (5) as a development in which the EWC is expanded or reconfigured through new elements and practices that enhance its legitimacy (Raffaelli and Glynn, 2015). This may involve, for example, increased resources or competences for EWC

activities, new participatory procedures, or an extension of the EWC’s scope to include additional countries or sites previously unrepresented.

Table 1: Operationalization of EWC developments

Type	Regulatory outcome
1. Stability (‘reproduction’)	UK members remain in the EWC with the same rights.
2. Limitation (‘drift’ or ‘layering’)	UK members remain in the EWC, but with limited rights or a reduced number of mandates.
3. Exclusion (‘displacement’ or ‘conversion’)	UK members excluded from the EWC; no further links maintained
4. Extinction (‘displacement’)	Entire EWC is dissolved due to Brexit
5. Innovation / Expansion (‘innovation’)	<p>Involvement of UK members and improved conditions for EWC activities (e.g., extension of rights or areas of competence, increase in the number of seats, inclusion of new countries, additional meetings or resources).</p> <p>E.g. establishment of global works councils or introduction of new procedures.</p>

Source: Own compilation

Brexit as a Subject of Negotiation and Influencing Factors

Historical institutionalism emphasises that institutional change is shaped by the interests and power resources of the actors involved (Frisone and Witzak, 2026). Accordingly, change and stability in an EWC’s regulatory foundations can be understood as negotiated outcomes between management and employee representatives. EWCs are based on company-specific agreements concluded through negotiations conducted by a special negotiating body (SNB) established under the EU Directive.

In the face of Brexit, those negotiations will somewhat *resume*, leading to *renegotiations* over the terms and structures of the EWC, yet in the face of the condition that an EWC is already in place with certain structures, rights and resources. Accordingly, we assume that in the context of Brexit, multiple processes of social dialogue and negotiations unfold (Steinmo et al., 1992). Based on their diverging interests and orientations, and by drawing on their respective power resources, both central management and EWC seek to advance their interests in processes of negotiations (Westerheide et al., 2025).

From an institutionalist perspective, Brexit triggered renegotiations through which actors reinterpreted existing rules and re-legitimised the formal foundations of EWCs, illustrating how institutions can be re-embedded and stabilised after disruption. However, these

negotiations are shaped by a range of contextual conditions. To explain these negotiation processes and the emergence of institutional outcomes, we draw on three decades of EWC research identifying the factors shaping EWC structures and practices. They can broadly be classified as *actor-related* and *structure-related* factors (Hann et al., 2017). Within an institutional framework, these factors reflect the contextual characteristics that condition how institutional change unfolds (Mahoney and Thelen, 2010; Micelotta et al., 2017).

Actor-related factors concern the strategies and orientations of the actors involved. They reflect “entrepreneurial” and practice-related triggers of institutional change (Micelotta et al., 2017). Managerial approaches and attitudes toward the EWC are decisive for whether it is recognised as a legitimate interlocutor or negotiation partner (Marginson et al., 2004; Greer and Hauptmeier, 2015). The EWC’s own strategies are equally relevant: strong, cohesive and well-coordinated EWCs with a pronounced European identity and shared culture (Telljohann et al., 2009) are better positioned to negotiate stability or even to seize opportunities for institutional innovation. Leadership and interpersonal relationships also matter: committed EWC chairpersons with strong ties to management, trade unions and employee representatives can act as institutional entrepreneurs who sustain or reshape institutional arrangements. The support of European and national trade unions further enhances the EWC’s capacity to act (Haipeter et al., 2019).

Structure-related factors refer to the organisational and institutional contexts in which EWCs are embedded (Hauser-Ditz et al., 2016). The company’s business structure, ownership form and corporate culture condition the extent to which EWCs can influence decision-making. Corporate restructuring, mergers or acquisitions often require EWC responses, while national institutions and traditions of industrial relations determine the legitimacy and resources available for EWC action (Marginson et al., 2004). regarding institutional theory, some of those factors are manifestations of triggers of institutional change that refer to changes in the institutional environment, which comes with restructuring, for instance (Micelotta et al., 2017).

4 Methods

The study was designed as an international comparative case study following Yin (2018), focusing on MNCs with EWCs in six countries, with particular emphasis on Germany, France and the United Kingdom. The six-country selection reflects both major EWC host countries and key cases of regulatory relevance in the post-Brexit context. Together, the UK, France, Germany, the Netherlands, Switzerland, and Japan account for a large share of multinationals with established EWCs and represent distinct regulatory constellations regarding national transpositions of the Directive. The 64 companies analysed correspond to approximately 5% of all active European and SE Works Councils currently recorded in the ETUI database, closely matching the sectoral and size distribution of the overall population (ETUI, 2022).² In addition

² In the ETUI EWC and SE Works Councils Database, there were approximately 1,250 active EWCs (October 2024; 1,018 EWCs and 242 SE Works Councils).

to the UK, which was most directly affected by Brexit, Germany and France were selected because both host a comparatively large number of MNCs with EWCs and, due to the size of their corporate sites, play a significant role within EWCs. Companies headquartered in the United States, Ireland and Japan were also included when their EU headquarters had formerly been located in the UK.

Case selection followed a two-stage procedure. In the first stage, between 2021 and 2023, a total of 23 expert interviews were conducted in Germany, France, the United Kingdom, Ireland and Belgium with representatives of national and European trade unions as well as consultancy organisations. In addition, email inquiries and LinkedIn searches were carried out to identify EWCs affected by Brexit. This yielded information on the post-Brexit institutional development of 64 EWCs. Companies were primarily from manufacturing and services, without intentional sectoral selection.

In the second stage, companies from this sample were contacted again to serve as anchor cases for the identified institutional outcomes. The aim was to cover all five theoretically derived institutional outcomes. Between 2023 and 2024, 76 problem-centred interviews were conducted with EWC chairs and members, managers and trade union representatives.

In total, 99 interviews were conducted. From the overall sample of 64 company cases, 16 contrasting case studies were selected: five in Germany, six in France and four in the United Kingdom. These cases represent different negotiation patterns and institutional outcomes. The case selection followed a contrastive principle designed to highlight differences and similarities between national and organisational contexts and to ensure theoretically grounded comparability. The analytical focus was on structural and practical changes in EWCs before and after Brexit. Respondents were also asked about the course of negotiations on regulatory adjustments and the role of key actor groups. All interviews were, where consent was given, recorded, anonymised and either transcribed or summarised in research memos. Data analysis followed Mayring's (2010) qualitative content analysis, supplemented by non-reactive document data.

5 Institutional developments in four EWCs

Looking at the whole sample of 64 EWCs, the distribution of institutional outcomes across home countries reveals clear national contrasts (Figure 1). Overall, institutional stability dominated with 32 of the 64 cases (50 %). Stability was particularly prevalent in Germany (58 %) and France (52 %), while institutional change was more frequent among UK-based multinationals. In the UK sample, stability and exclusion each accounted for around 40 % of cases, whereas limitation appeared in roughly 7 %. Obviously, in UK-based multinationals, more EWCs were negatively affected than in the other countries in our sample. This does not come as a surprise, as MNCs in the UK were obliged to introduce changes to transnational employment relations. Nevertheless, the large variety of institutional outcomes we observed

suggests that additional factors play a decisive role, as among UK-based EWCs, we also find stability, while in German or French ones, there are cases with weakened bodies, despite institutional stability being the dominant pattern (see table 2).

[Figure 1 about here, see Online Appendix]

In the following, we present four contrasting case studies illustrating divergent institutional outcomes (see Online Appendix for details).

Case Study 1 (TECH, UK) Exclusion of British Members

TECH is a US-headquartered multinational in the IT sector whose EWC was established under UK subsidiary requirements. Prior to Brexit, the UK served as the EWC's representative agent, and UK members played an integral role in transnational coordination. Following Brexit, the relocation of the legal base and management's unilateral approach resulted in the exclusion of UK representatives.

Brexit and the Regulatory Pillar

In 2020, Brexit introduced fundamental changes to TECH's EWC. With the UK no longer an EU member, TECH was required to relocate the EWC's legal base – i.e. to determine a new country as the representative agent – to remain compliant with the EU-Directive. The company moved its representative agent to Ireland and informed the EWC only via written notice – without prior consultation, reflecting a top-down replacement of the governing legal framework.

This unilateral step reflected TECH's broader management strategy towards the EWC, characterised by a hierarchical, US-style decision culture and limited regard for participatory negotiation. Of particular concern was the withdrawal of the mandates for UK representatives. Those were longstanding members who had previously played a key mediating role between US-based management and continental employee representatives. They had often bridged cultural differences between countries with strong co-determination traditions (e.g., Germany, France) and TECH's more centralised management logic. This loss marked not only a formal *exclusion* of UK delegates but also an abrupt substitution of institutional authority, consistent with a form of institutional displacement (Mahony and Thelen, 2010).

As management had taken its decisions unilaterally, there was no formal negotiation between the company and the EWC over the adaptation to Brexit. As a consequence, the EWC approached management with its own demands. The EWC proposed to retain UK members with the implementation of an "observer status". However, management rejected the EWC's request on legal grounds. Rather than initiating negotiations to adapt the agreement to Irish jurisdiction, the company chose to continue operating under the unchanged subsidiary

requirements, an instance of institutional non-adjustment (similar to *drift*), where external change is met with internal inertia.

Impact of Brexit on the EWC

The shift from UK to Irish jurisdiction had immediate effects. Following the exclusion of UK members, at least three EWC seats were removed. There is no indication from our interviews that they were reallocated, suggesting a net reduction in representation. Their removal reduced continuity and interfered with established mechanisms of coordination that had previously enabled pragmatic problem-solving.

Although both countries implement the EU Directive, Ireland's EWC law (Provision of Information and Consultation Act of 2006) provides weaker enforcement and accessibility. Representatives noted Irish dispute mechanisms as slower, less transparent, and costlier. Ireland lacks an equivalent to the UK's Central Arbitration Committee (CAC), and its Workplace Relations Commission (WRC) offers only limited redress for EWC-related issues.

The jurisdictional shift also caused procedural fragmentation. Though some training on Irish labour law was provided, representatives noted insufficient support in adjusting to the new legal framework. Requests for a negotiated agreement to replace the subsidiary model were rejected. The EWC thus continues under minimum standards, with limited tools to manage TECH's evolving transnational complexity. This can be regarded as another manifestation of institutional *drift*, as the structure formally persists but is functionally weakened.

However, following its general approach to comply with (minimum) standards, management agreed to the presence of an external expert during EWC meetings (as permitted under Article 10(4) of the recast Directive 2009/38/EC). Initially a one-time exception, this arrangement was later formalised. This selective reinterpretation of an existing procedural right illustrates a mild form of *conversion*, where rules are applied in new ways to sustain legitimacy while limiting substantive empowerment.

Practically, the loss of UK delegates and reliance on Irish subsidiary rules fragmented the EWC. Informal trust networks eroded, and management communication became formalised, confined to structured meetings. This undermined the EWC's responsiveness, particularly during restructuring. Management's legalistic approach and refusal to renegotiate a robust agreement reinforced power asymmetries. In the absence of enforcement mechanisms comparable to the UK's CAC or Employment Appeal Tribunal, the Irish framework provides few options to contest inadequate consultation or restricted access to strategic business information.

“Even if we solve the last issues, this will never be the best EWC agreement. Other companies have better structures. But we are not a traditional European company, we're part of an American IT corporation.” (E01_TECH_Chairman_EWC)

This statement reflects a broader redefinition of the council's collective identity. EWC members increasingly recognised their limited structural leverage in a company with no strong tradition of union representation. Although solidarity remained among members, the mechanisms for collective action had narrowed.

The TECH case points to the role of structural and actor-related factors: It highlights the vulnerability of EWCs and the power of management in determining representational practice. On the one hand, TECH management was rooted in US cultures of restrictive union representation and could hardly see the added value of transnational participation via an EWC.

On the other hand, the EWC had no leverage to assert its interests, which was also due to the company's structural features: TECH's European operations are legally fragmented, centrally managed from the US; the EWC is only weakly integrated into national representation systems. Traditionally, the IT sector is short with external union backing to enforce negotiations. These organisational traits and conditions apparently limited the EWC's ability to mobilise support or invoke stronger national procedures.

The TECH case shows how Brexit, combined with jurisdictional arbitrage, can erode transnational worker representation, even under formal legal compliance, leaving EWCs at risk of becoming symbolic entities with little practical influence over corporate strategy.

Case study 2 (COMPUTE, France) Limitation driven by financial difficulties and a new management

COMPUTE is a French-headquartered multinational that operates as a Societas Europaea. Following major financial difficulties and a change in corporate governance, the company unilaterally terminated its EWC agreement and renegotiated a new arrangement under Directive 2009/38/EC. In the context of Brexit, UK representatives were retained only with restricted participation rights, resulting in institutional limitation.

Brexit and the regulatory pillar

The issue of UK representation arose during these contentious SNB talks. The SNB's employee side, composed of delegates from 15 countries unanimously supported the full retention of UK representatives (three members and three substitutes).

On the management side, bargaining was led by a US-based global HR Director and a French vice-director experienced in continental labour relations. The HR Director initially sought to exclude both the UK and Switzerland, arguing that neither were EU members and that their participation complicated coordination. This position reflected the company's broader financial and strategic priorities: cost reduction, centralisation, and managerial control over transnational information flows.

The negotiation context was asymmetric. The SNB had little leverage, financial difficulties and the threat of losing an agreement altogether constrained its bargaining power. Trade-union support existed but was fragmented, and coordination across countries remained limited. Facing management's insistence, the SNB finally accepted a compromise: UK and Swiss representatives were granted "guest status", allowed to attend meetings but without voting rights or access to country-specific information.

The new EWC formally meets the Directive's requirements but now operates with reduced scope and information access. The UK remains a major market, yet its representatives no longer receive regular updates on national developments. This outcome reflects a process similar to *drift*: the institution formally persists, but its substantive function erodes.

The compromise preserved symbolic continuity while significantly restricting participation rights, leading to *institutional limitation*. The institutional development highlights the role of structural and actor related factors, the latter comprising the SNB's weak negotiating power, internal divisions, and risk aversion amid financial instability; important structural factors were the corporate centralisation, financial crisis of the company, and the strong influence of a US managerial logic. Together, those factors shaped a path of institutional weakening through negotiated acceptance rather than open conflict.

Case Study 3 (STEEL, Germany) Stability due to social partnership and power balance

STEEL is a German-headquartered multinational in the engineering and steel sector with a long-standing tradition of codetermination. Its EWC is closely integrated into national employee representation structures and embedded in a strong social-partnership framework. In the context of Brexit, this institutional configuration facilitated the deliberate reproduction of existing arrangements and ensured the continued inclusion of UK representatives.

Brexit and the regulatory pillar

Despite the major corporate restructuring and mergers which affected distribution of seats in the EWC, Brexit produced almost no institutional disturbance. Already in June 2016, the British members approached the EWC chair to discuss the implications of Brexit. From the outset, there was a shared understanding among EWC members that the UK should remain fully integrated. Management also did not seek to negotiate any changes. Given STEEL's ongoing expansion in the UK and the company's long-standing cooperative culture, all parties swiftly agreed to safeguard UK participation. One senior manager observed:

"It would be crazy if I were to push the [...] people from the United Kingdom out of their seats at such a point. That would be a signal that goes completely against all principles and the idea of this company. [...] There are only two of them [UK EWC members] at the moment. It's not like there are forty. And it was absolutely clear that we wouldn't make a big deal out of it. Inclusivity is a very important corporate value for us." (E02_STEEL_MANAGEMENT)

A formal tripartite agreement between management, the central works council, and the EWC was signed during the first meeting after the referendum. This agreement institutionalised continuity by guaranteeing that UK members would retain identical rights and access to resources. At the October 2016 meeting, management reaffirmed this commitment and integrated additional UK business units.

The STEEL case demonstrates the outcome of *institutional stability*. Instead of renegotiation or rule reinterpretation, actors collectively reaffirmed existing arrangements. Brexit thus became a moment of institutional reproduction rather than change. The case points to the interplay of structural and actor-related factors: noteworthy is the alignment of managerial and employee views and interests, based on a robust social-partnership framework that is typical for many German-based corporations. On the one hand, management characterizes a positive attitude towards the EWC; on the other hand, employees have ample power - this holds even for the EWC because German representatives may be willing to use national co-determination rights for transnational affairs in processes of articulation (Haipeter et al., 2019). The EWC is led by committed actors, foremost the chair and steering committee.

Case Study 4 (HEALTH, Germany) From stability to innovation

HEALTH is a German-headquartered multinational in the chemical and pharmaceutical sector with a long-standing tradition of codetermination. Its EWC is deeply embedded in national representation structures and characterised by cooperative labour–management relations. In the context of Brexit, this configuration enabled employee representatives to use the regulatory disruption as a window of opportunity to expand the institutional scope of the EWC.

Brexit and the regulatory pillar

At HEALTH, Brexit served as a window of opportunity for the employee side to expand the institutional scope of the EWC. The initiative originated from the German EWC chair, a senior employee representative with extensive experience in codetermination, who is also a member of HEALTH’s supervisory board and maintains close ties with the central works council. Drawing on these networks, he proposed that the UK remain fully integrated after Brexit, arguing that other non-EU countries such as Switzerland had already been included under previous arrangements.

Management responded positively, consistent with its long-standing social-partnership philosophy and its view of the EWC as a constructive instrument for transnational dialogue. As the EWC chair explained:

“On the one hand it is a form of appreciation [by the company], but also a thoroughly pragmatic approach. When do you get the opportunity to reach, involve and inform all employee representatives in the countries in which you operate? Despite all the differences between the

countries, this is a body that, firstly, is accepted and, secondly, really fulfils its role – a give and take that works.” (E01_HEALTH_Chairman_EWC)

Negotiations were led jointly by the German EWC chair and the company’s European HR director. In early 2021, a supplementary agreement was signed that formally integrated Switzerland, Norway, Serbia, and the UK. The number of UK mandates and all participation rights were preserved. The supplementary agreement effectively codified what had already been practiced informally: a comprehensive, dialogue-oriented approach that transcends EU membership boundaries.

This outcome illustrates how institutional stability can be transformed into expansion when proactive agency meets supportive structures. On the actor side, the decisive factors included strong and legitimate employee leadership, high levels of mutual trust between management and labour, and a pragmatic orientation toward preserving cooperation. On the structural side, HEALTH’s deeply embedded system of codetermination, the strong role of trade unions, and a corporate culture grounded in social partnership provided a favourable context for institutional innovation. This dynamic underlines how cooperative labour–management relations and codified participation structures can turn potential shocks into opportunities for strengthening European-level employee representation.

[Table 2 about here, see Online Appendix]

6 Discussion

The findings show that Brexit generated diverse institutional outcomes within EWCs, ranging from *stability* to *exclusion* and, in a few cases, *innovation*, with no cases of *extinction*. These outcomes reflect different *modes of change*, foremost *institutional reproduction* where arrangements were deliberately reaffirmed (STEEL); *drift* where formal rules persisted but representational capacity eroded (TECH); *displacement*, since the EWC’s legal foundation moved from the UK to Ireland and UK representatives were removed, replacing both the governing framework and membership (COMPUTE); and *expansion* (HEALTH) where the scope of participation was enhanced (Streeck and Thelen, 2005; Mahoney and Thelen, 2010).

Our findings suggest that institutional outcomes are shaped by existing *national* as well as *company specific* employment relations (Ferner and Hyman, 1998; Marginson et al., 2004; Hauser-Ditz et al., 2016). Among *UK-based EWCs*, institutional *exclusion* and *stability* each occurred six times, with two *limitations* and one *innovation*. On the one hand, the legal situation made changes more likely: companies that had designated the UK as their representative agent had to relocate their legal base within the EU, most often to Ireland. On the other hand, rather conflictive employment relations and a negative attitude of management towards the EWC played a role. Limited union power and weak legal protections in the UK allowed management to pursue minimal compliance strategies that frequently led to the exclusion of UK members

and a weakening of the body (TECH). This combination of institutional weakness and managerial control meant that Brexit often accelerated pre-existing tendencies toward institutional decline and marginalisation.

In *Germany*, institutional *stability* prevailed (eleven cases), which was supported by codetermination rights and a social partnership approach typical for German employment relations (Ferner and Hyman, 1998). German works councils are, in large companies, full-time employee representatives, and hence, work highly professionalized; their roles overlap with supervisory boards, and EWC chairs (Haipeter et al., 2019) which provides additional power and strengthened coordination (STEEL and HEALTH). In some cases, notably in the chemical and pharmaceutical sectors, these same structures even enabled *expansion*, as EWCs used Brexit to integrate additional non-EU countries, representing an example of institutional innovation rather than mere continuity.

In *France*, outcomes were more diverse, with fourteen *stable* cases, six *limitations*, and seven *exclusions*. In contrast to German EWCs, weaker codetermination rights and stronger managerial discretion shaped the results in French companies. Management often held a negative stance towards the often conflictive approaches of employee representation (COMPUTE). Stability prevailed where management valued social dialogue, while limited engagement by unions or weak EWC leadership promoted exclusion and symbolic participation (Telljohann et al., 2009).

Although *stability* was the modal outcome, variation in institutional trajectories reflects the interaction of *actor* strategies and *structural* conditions captured by four explanatory factors. First, *national institutions* and *corporate cultures* mattered. Embedded systems of codetermination and social partnership, particularly in Germany, provided resources and routines that enabled stability and, in some cases, facilitated expansion (Marginson et al., 2004; Kotthoff, 2006). Second, the economic significance of UK operations within *corporate structures* influenced management's willingness to maintain representation. In firms where British sites played a central role in production or coordination, continued inclusion of UK representatives was more likely (Hauser-Ditz et al., 2016).

Third, *solidarity, trust, and leadership within EWCs* proved critical. Cohesive EWCs, supported by trade unions and chaired by experienced representatives with strong cross-level linkages, were able to draw on existing organisational capacities, transnational networks, and procedural experience to sustain inclusion. In contrast, fragmented or passive bodies lacked such capabilities and consequently experienced limitation or exclusion (Kotthoff and Whittall, 2014; Telljohann et al., 2009; Hann et al., 2017).

Finally, *managerial strategy* toward transnational employee representation was decisive. Stability often resulted from management's positive orientation toward EWCs (Marginson et al., 2004; Keune and Marginson, 2013). Conversely, a negative management stance combined

with weak EWC power led to unilateral or compliance-oriented strategies and reduced EWC rights. Even though this *actor-related* factor is highly relevant, it is important to note that it strongly interacts with the previous factors: *managerial strategies* appeared to be highly influenced by *national* and *company-specific* industrial-relations cultures or company structures that rendered transnational employee coordination more relevant. In cases with strong EWCs, management had to respect employee power, limiting its scope to pursue institutional demise.

Positioned within three decades of research on EWCs, our findings may extend established literature on determinants of EWC effectiveness (Lecher et al., 2001; Marginson et al., 2004). Institutional outcomes were not mechanical effects of structural and actor-related factors under conditions of regulatory disruption, but products of strategic interaction within multilayered governance architectures where actors reinterpret and renegotiate rules (Lawrence and Suddaby, 2006) within asymmetric power relations.

The findings also add nuance to the understanding of gradual institutional change by demonstrating that similar external pressures can lead to divergent outcomes across contexts. A key insight is that Brexit acted less as an exogenous rupture whose outcome was essentially open, but as a catalyst that revealed and amplified *existing* institutional dynamics. Whether the outcome was positive or negative depended on existing structures and on how actors mobilised their capacities: where management had a negative attitude, pursued unilateral or compliance-oriented strategies, and where the EWC was weak from the outset, *exclusion* and *limitation* dominated. In contrast, a positive management stance, high EWC integration and union coordination enabled *stability* and even *innovation*. This finding underscores that institutional change is negotiated and *path dependent* rather than sudden and uniform (Streeck and Thelen, 2005; Mahoney and Thelen, 2010; Thelen, 2014). Its direction and intensity depend on the interplay between *agency* and *structure* (Streeck and Thelen, 2005).

Accordingly, *institutional stability* is itself an *active accomplishment* rather than the absence of change. Maintaining transnational representation after Brexit required deliberate negotiation, often involving amendments to EWC agreements, legal relocation, or the creation of hybrid structures. Stability thus represents a negotiated form of institutional reproduction achieved through strategic adaptation, “entrepreneurship” or “institutional work” rather than inertia (Micelotta et al., 2017).

7 Conclusion

Brexit significantly affected EWCs. In all examined cases, companies confronted a changed legal environment and responded through negotiations among employee representatives and management. Institutional developments ranged from *stability* to *exclusion*, with *innovation* in a smaller set of cases. These outcomes are best understood as *negotiated trajectories* that reflect distinct mechanisms of institutional change.

Beyond mapping variation, our study sheds light on the question why similar external pressures may produce very divergent outcomes: institutional change remains *path dependent*, negotiated, and shaped by power and ambiguity – perspectives prominent in both historical institutionalism and EWC research (Steinmo et al., 1992; Hann et al., 2017; Hauser-Ditz et al., 2016). Where EWC structures and cooperative labour relations were strong before Brexit, actors likely reproduced or broadened inclusive arrangements. Where managerial unilateralism met weak enforcement and fragmented representation, limitation and exclusion prevailed.

Overall, the discussion of Brexit as a stress test for EWCs contributes to institutional theory by illustrating how macro-level disruptions interact with meso-level negotiation processes. Rather than confirming existing literature, the study advances a dynamic understanding of institutional *stability* and change. Brexit did not simply disrupt EWC structures; it revealed the conditions under which institutions adapt, transform, or erode. The cases demonstrate that *institutional resilience or stability* in transnational employee representation is not a static feature but the product of ongoing negotiation. This insight provides a theoretical bridge between historical institutionalism and the study of transnational industrial relations as it helps explain how institutions evolve through *negotiated recomposition* rather than rupture.

The typology of five institutional outcomes translates abstract mechanisms – such as drift or displacement – into empirically observable organisational practices (e.g., allocation of EWC mandates and status, information rights, or consultation timing). Those operationalisations of institutional theory may inform comparative organisational research, as they offer an analytical tool for examining how EWCs navigate (regulatory) disruptions more broadly. Future studies could apply this typology to other *exogenous shocks* or *critical junctures*, such as technological transformation or regulatory change.

Brexit exposed both the fragility and adaptability of transnational employee representation in fragmented legal regimes. The 2025 EWC Directive revision improves consultation rights, expert-cost coverage and confidentiality rules, yet it does not limit managerial discretion to destabilize EWCs and therefore leaves existing power asymmetries largely intact. If shifts in managerial attitudes can even trigger the dissolution of long-standing agreements, employees lack effective means to secure their participatory rights because no non-regression clause exists. The study's primary focus on regulatory aspects restricts insight into everyday practice, coordination and influence on restructuring. Future longitudinal research should address normative and cognitive pillars (Scott, 2001), alternative typologies (Micelotta et al., 2017) and institutional work (Lawrence and Suddaby, 2006; Lawrence et al., 2011).

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