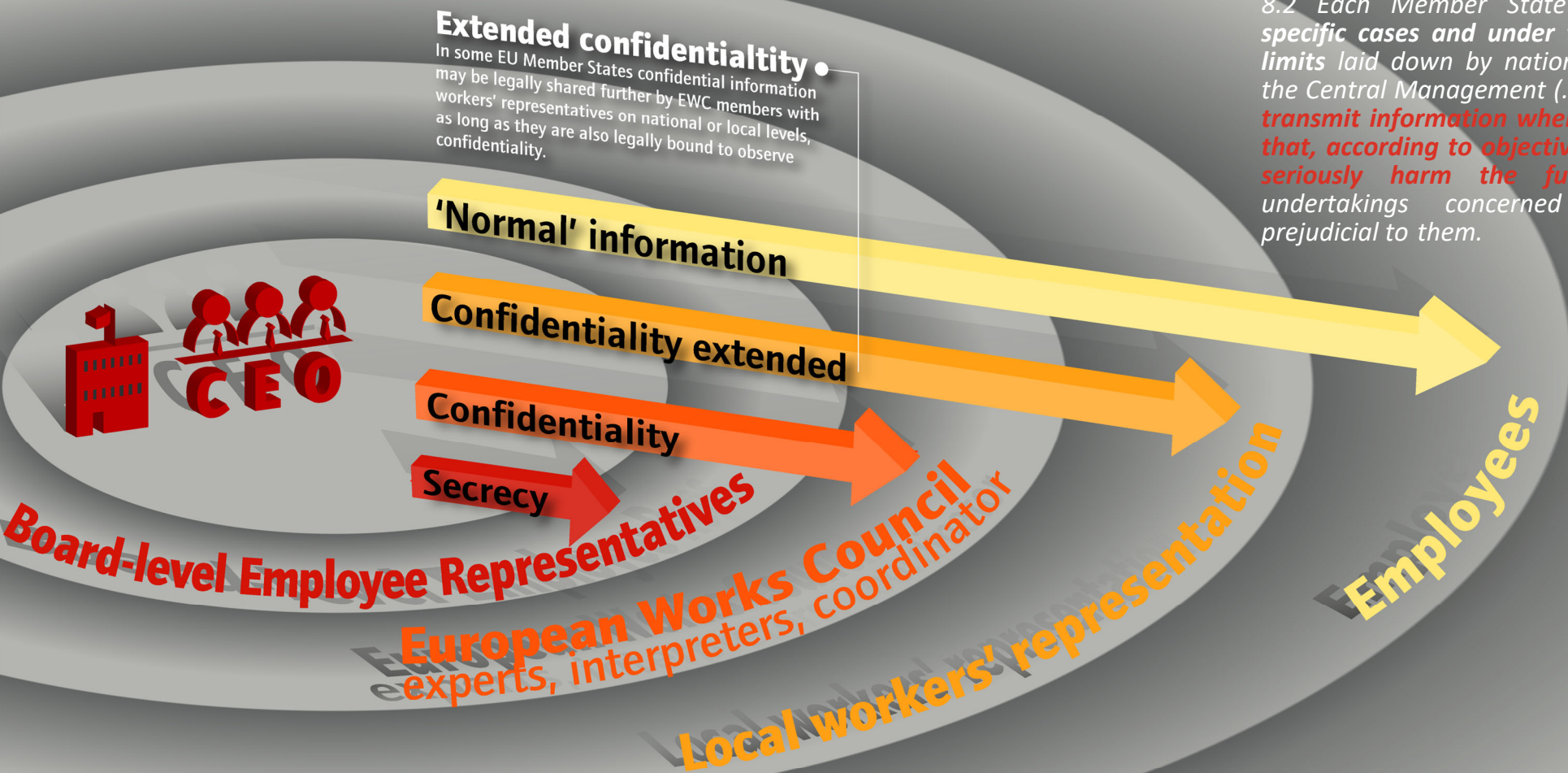




**Confidentiality
of
Information and
consultation.**

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.**

etui.

CIRCLES OF CONFIDENTIALITY

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).

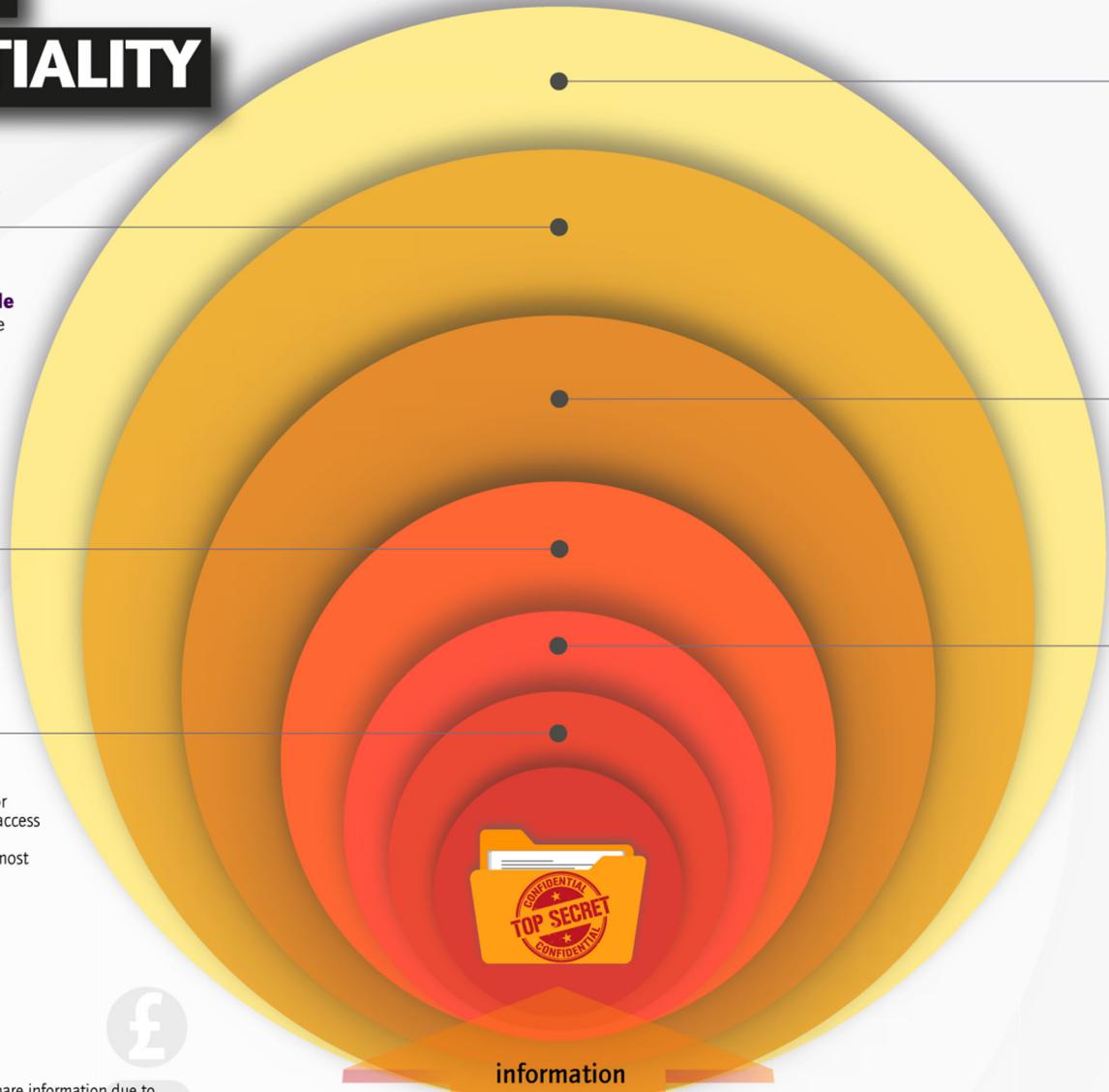
Stock market rules

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.

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).

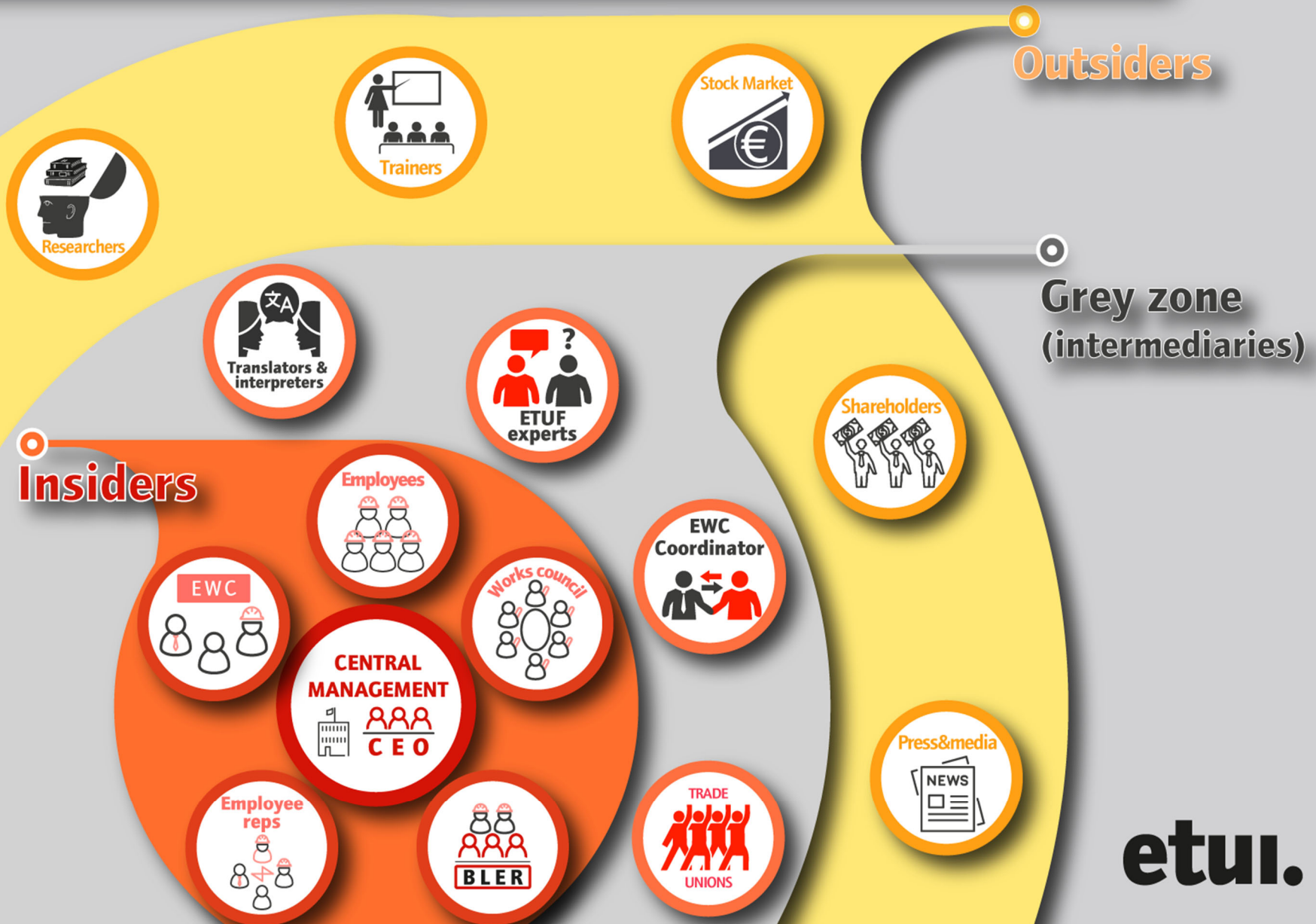
EWC Select Committee
 Management may sometimes prefer to give information only to the Select Committee. This is highly controversial and makes communication problematic between the Select Committee and the rest of the EWC.



CENTRAL MANAGEMENT
CEO
 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**.



CONFIDENTIALITY: INSIDERS & OUTSIDERS



Outsiders

Grey zone
(intermediaries)

Insiders

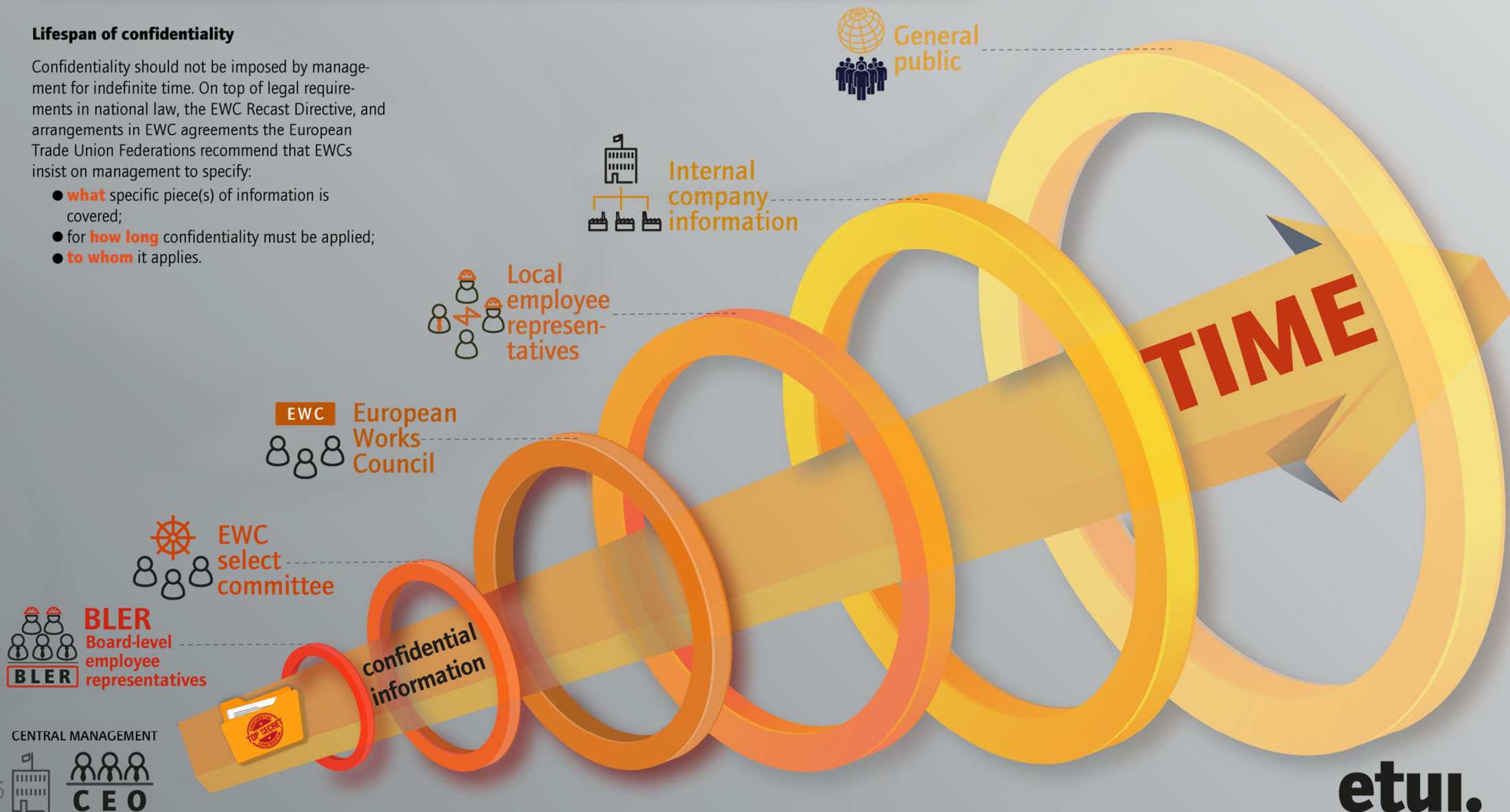
etui.

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.

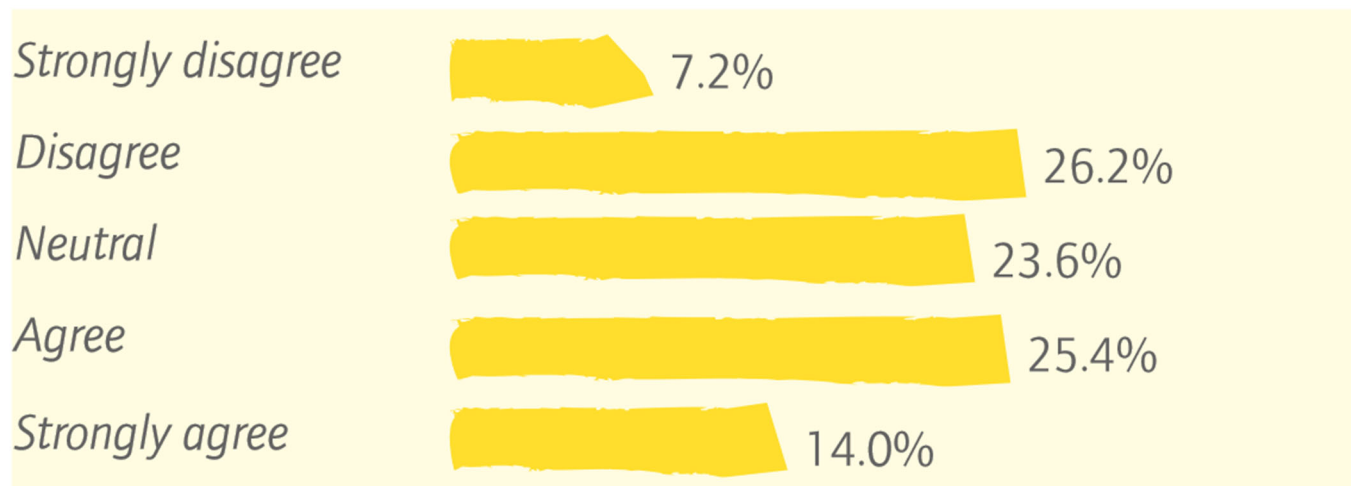


etui.

1. Withholding information

Management often refuses to share information...—

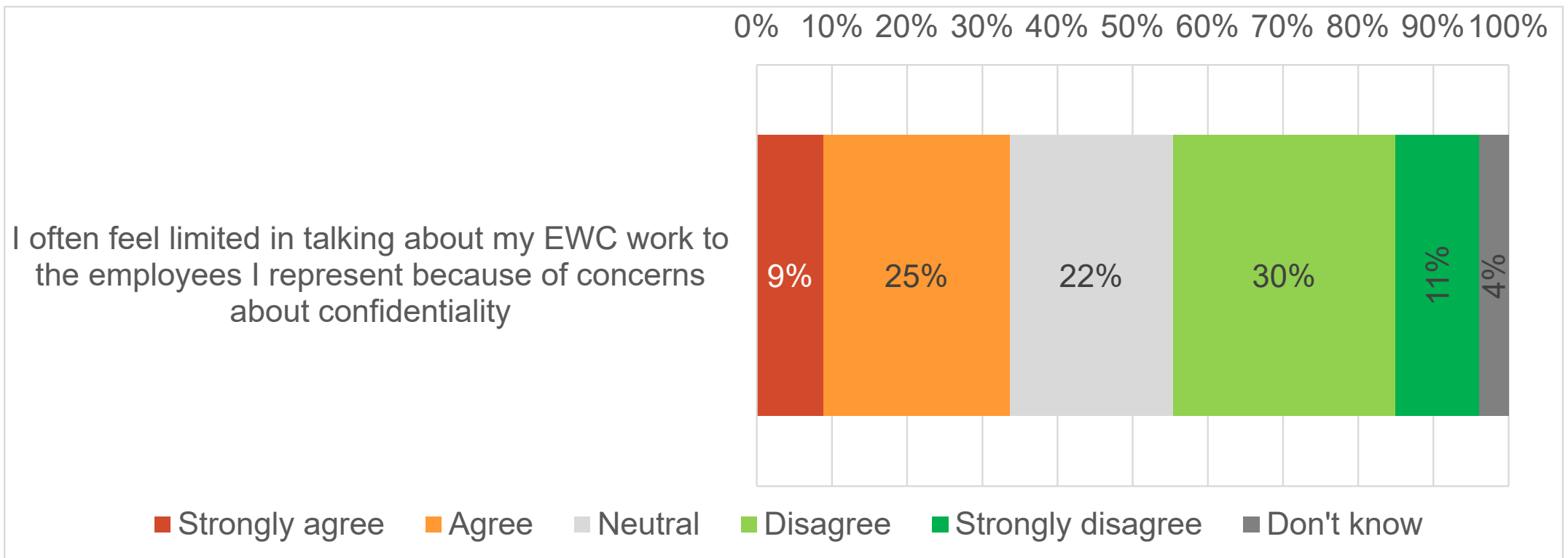
Management often refuses to give information on the grounds of confidentiality



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

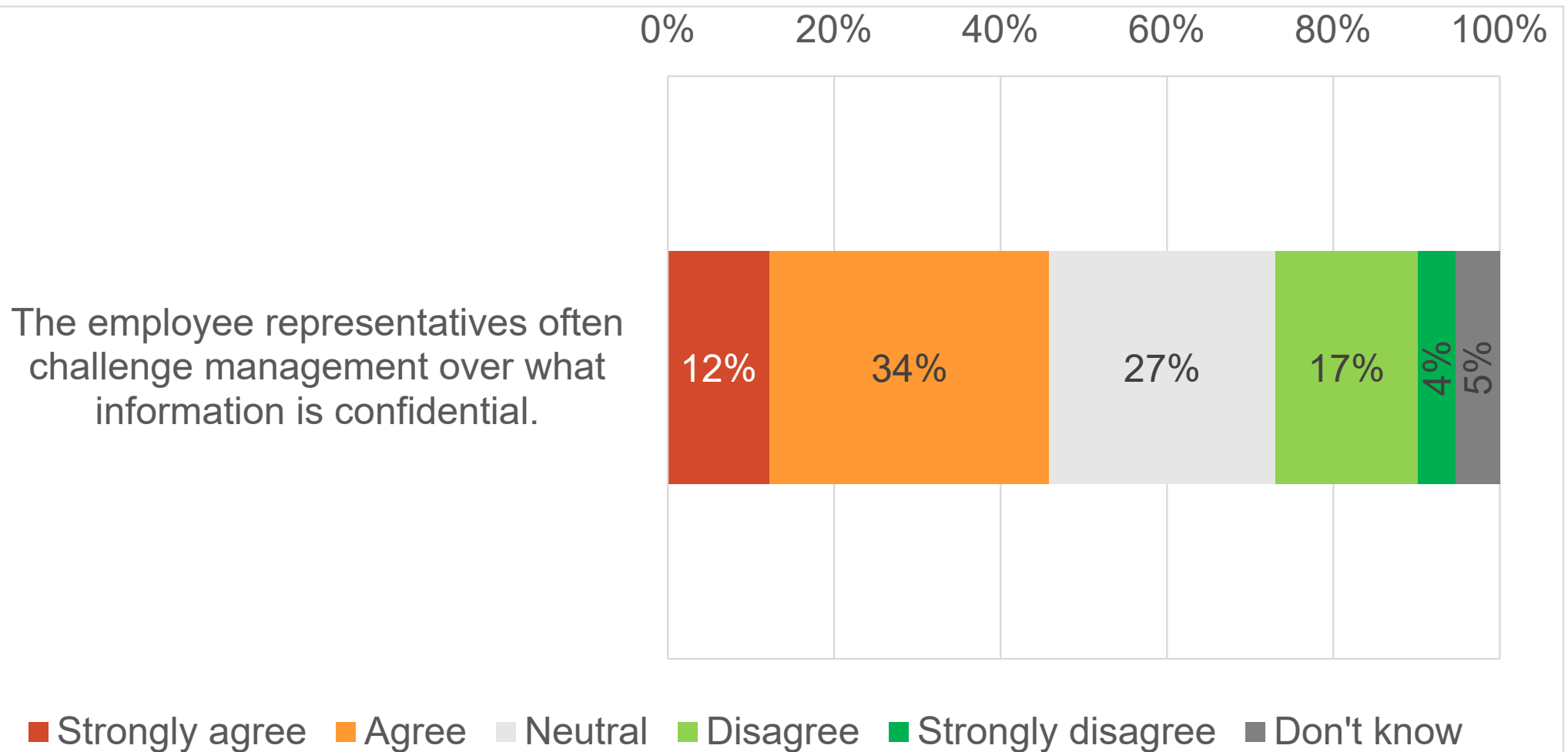
Source: De Spiegelaere and Jagodzinski (2019) *Can anybody hear us?*

2. Confidential information



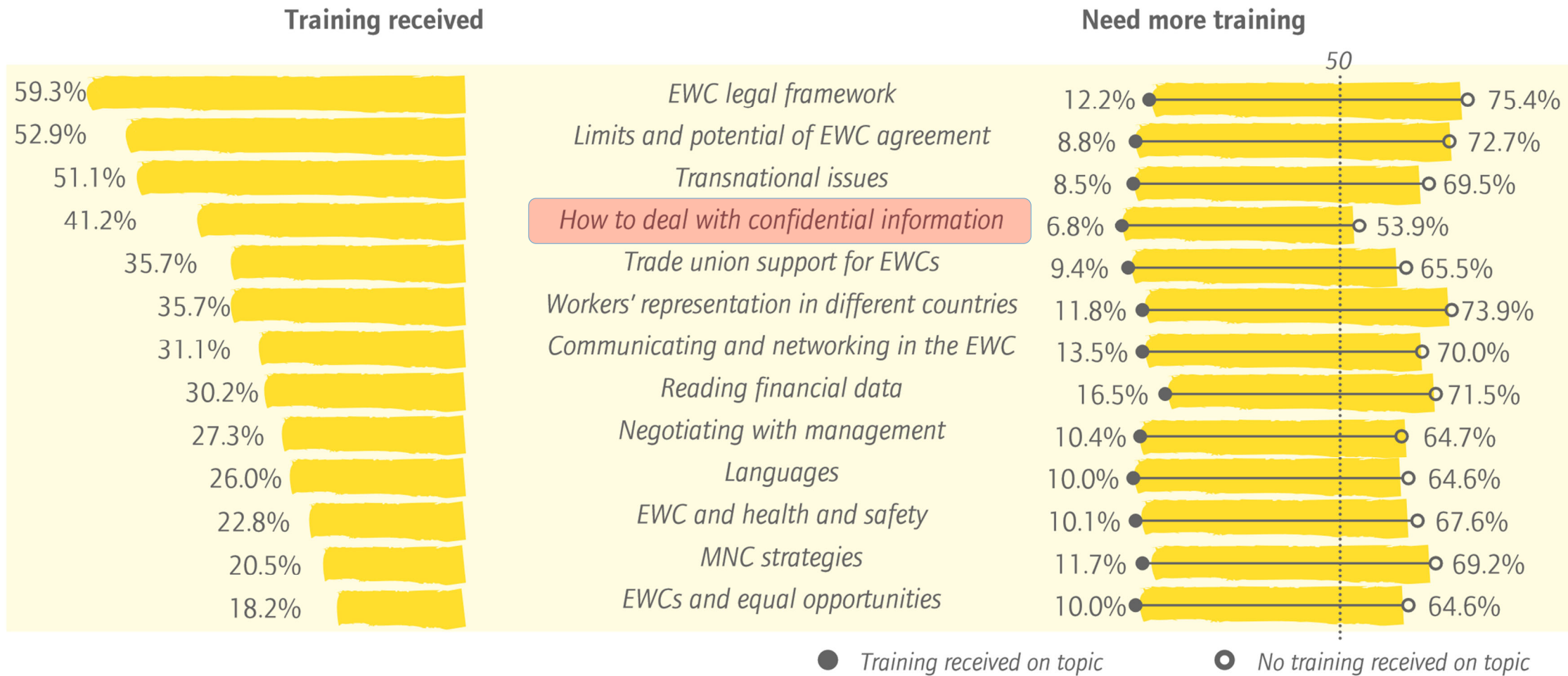
Source: De Spiegelaere, Jagodziński and Waddington (2021 forthcoming)

3. Challenging management



Source: De Spiegelaere, Jagodziński and Waddington (2021 forthcoming)

Training on confidentiality (EWC survey 2018)



Source: De Spiegelaere and Jagodzinski (2019) *Can anybody hear us?*

Main take-aways

- 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.