Council of the European Union

Brussels, 31 May 2024
(OR. en)

10596/24

Interinstitutional File: 2024/0006(COD)

SOC 415
EMPL 239
GENDER 108
MI 560
COMPET 606
DATAPROTECT 228
CODEC 1406
IA 132

COVER NOTE

From:	European Economy and Social Committee
To:	General Secretariat of the Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights - *Opinion of the European Economic and Social Committee*

Delegations will find attached the opinion adopted by the European Economic and Social Committee on 30 May 2024 on the above.

Other language versions, if needed, will soon be available on the following website :

https://dmsearch.eesc.europa.eu/search/opinion

European Economic and Social Committee

OPINION

European Economic and Social Committee

European Works Council

Proposal for a directive of the European Parliament and of the Council amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights
(COM(2024) 14 final - 2024/0006(COD)

SOC/791

Rapporteur: **Sophia REISECKER**

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Advisors	Aline CONCHON (to Group II) Wolfgang GREIF (to the Group II rapporteur)
Referral	European Parliament, 26/2/2024 Council of the European Union, 29/2/2024
Legal basis	Article 153(1) and (2) of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	23/5/2024
Adopted at plenary session	30/5/2024
Plenary session No	588
Outcome of vote (for/against/abstentions)	128/101/12

1. Conclusions and recommendations

1.1 On the basis of existing opinions, the EESC welcomes the legislative steps taken by the European Commission to revise Directive 2009/38/EC with regard to minimum standards for setting up European Works Councils (EWCs) and ensuring their effective operation.

1.2 In line with previous opinions, the EESC recognises the aim to increase the effectiveness and implementation of EWC rights to provide legal certainty by clarifying key concepts of the EWC Directive. This especially concerns the definition of transnationality, appropriate resources available to EWCs, access to justice and increasing the Member States' commitment to provide for effective and sufficiently dissuasive sanctions for infringements of EWC rights.

1.3 The EESC is pleased by the Commission's aims to revise the standard for a more efficient and meaningful information and consultation process by proposing additions to the subsidiary requirements, to increase the frequency of regular EWC meetings and to introduce a reasoned response by management to the EWC opinions. It also recognises the strengthening of trade union representatives' role as assisting EWC experts.

1.4 The EESC particularly supports important amendments regarding the ability of EWCs and their members to fulfil their duties. This concerns in particular resources to be provided by management, the details of which have to be jointly determined in the relevant EWC agreement in connection to training, experts and legal representation and the intended clarifications on confidentiality.

1.5 While broadly endorsing the Commission's proposal and emphasising that the proposed revision of the Directive should improve the role of EWCs as tools for a trust-based social dialogue culture in companies which fosters competitiveness and quality jobs, the EESC recommends the following:

1.5.1 To ensure the highest possible level of legal certainty regarding the transnational scope of EWC competences, both recitals 12 and 16 of the current EWC Directive should figure within its main legal body.

1.5.2 To keep up with changes in corporate culture, the definition of 'controlling undertaking' should be amended so that companies that sell goods or provide services through franchise or licence agreements are also covered by the scope of the Directive.

1.5.3 To guarantee proper transposition and implementation, the Commission must make use of effective monitoring and implementation tools. The Commission could also consider creation of an expert group supporting the implementation.

1.5.4 To reflect climate change, demography and skill shortage transformations the scope of topics to be dealt with by the EWCs should be enhanced by incorporating issues like investment, training, occupational health and safety, data protection and climate transition into the subsidiary requirements of the Directive in order to encourage them to be included in the scope of issues to

be defined in EWC agreements. In addition, the EWCs should to be given the right to propose their own issues.

1.5.5 Regarding information provided by management in confidence, the EESC calls for additional clarification to ensure that companies comply with legal obligations and that EWC members can share information with national or local trade unions and worker representatives.

1.5.6 To protect existing well-functioning EWCs, the EESC calls to clearly indicate that 'pre-directive EWC agreements' can remain unchanged, as long as this is agreed between the EWC and central management and that there is consequently no obligation to renegotiate the 'regular' EWC agreements.

1.5.7 To safeguard standards in the case of the renegotiations of 'pre-directive EWC agreements' a non-regression clause should apply and the status quo should be maintained until a new agreement is concluded.

1.5.8 To ensure that sanctions for non-compliance with EWC rights are effective and sufficiently dissuasive, the obligation put on Member States to define appropriate financial penalties should be proportionate and based on relevant criteria (e.g. a company's global turnover, comparable to those laid down in the GDPR).

1.5.9 Additionally, the EESC supports extending the right to require a court injunction to temporarily suspend a company decision until the process of informing and consulting the EWC has been properly completed.

1.6 The EESC calls on the legislative institutions to quickly proceed with revising the EWC Directive in line with the Commission's proposal, also taking into account the recommendations proposed in this opinion.

2. Introduction

2.1 On the basis of existing opinions, the EESC welcomes that the European Commission has taken legislative steps to revise Directive 2009/38/EC with regard to minimum standards for setting up European Works Councils (EWCs), and ensuring their effective operation[1].

2.2 The Commission's proposal in response to the respective European Parliament resolutions[2] can be seen to be the result of a broad process of political discussions, which included a two-stage social partner consultation, during which partners expressed opposing views on the need to revise this Directive, leading the Commission to decide on an EU legislative initiative[3].

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1 This positive approval of COM(2024) 14 final is in line with the Committee's recently adopted call to the Commission to take legal measures to increase the effectiveness of EWCs' work OJ C 228, 29.6.2023, p. 43 (2023, points 4.1.6 and 4.1.7).

2 P9_TA(2021)0508, 2021/2005(INI), P9_TA(2023)0028, 2019/2183 (INL).

3 While all trade union organisations in this European social partner consultation saw a need for a legally binding revision of the EWC legislation to address the Directive's shortcomings, most employer organisations argued against a revision, considering that the existing legislation was fit for purpose and that, based on the assumption that regulation that is too detailed might hinder effective information and consultation processes, no further regulatory burden should be put on multinational companies.

2.3 The Commission proposal is based on a comprehensive evaluation and in-depth studies of the current legal situation and the practices of established EWCs[4]. It provides substantial proposals for legal clarifications and changes, while aiming to further develop the broadly accepted positive effects of cross-border information and consultation of employees in companies, as well as for continuous business competitiveness of European companies, contributing to their ability to succeed in the market in a profitable way, creating value for themselves and for society at large and at the same time contributing to better decision-making by reinforcing mutual trust between management and the workforce.

2.4 The EESC has issued its views, in several opinions and adopted by a large majority[5], that:

- acknowledges EWCs' positive contribution to companies' long-term economic, social and environmental objectives over decades, especially in the context of both the digital and green transitions;
- stresses the need for EWCs to be given a larger role to improve their ability to anticipate change in the event of large company transformations and in transnational restructuring processes; and
- at the same time, calls for substantially increasing the effectiveness and implementation of EWC rights, for improvements to be made in the area of sanctions for infringements of EWC rights, and facilitating better access to justice.

2.5 In this vein, the EESC takes positive note of the fact that the Commission has taken legally binding steps to tackle detected and proven elements which can be considered as shortcomings in the existing EWC Directive to:

- avoid unjustified unequal treatment in procedures for informing and consulting employees at transnational level;
- secure a level playing field for companies by providing legal clarity on the EWC Directive's key concepts, and by ending a patchwork of situations caused by national transposition laws that are too diverse, and dealing with the co-existence of various types of EWC agreements;
- ensure a more effective and meaningful process for information and consultation of the EWCs before the adoption of a company decision on transnational matters, without prejudice to the responsibilities of the management and within a reasonable timeframe*;*
- promote a more efficient and effective way of setting up EWCs, taking into consideration gender balance; and
- improve the appropriate resourcing available to EWCs and promote the effective enforcement of the Directive to improve compliance.

4 COM (2018) 292 final, ICF (2023).

5 See, in particular opinions OJ C 10, 11.1.2021, p. 14 (2020, points 5.4 and 5.9); OJ C 56, 16.2.2021, p. 10 (2020); OJ C 341, 24.8.2021, p. 23 (2021, point 3.9), which refer to improving the implementation of the EWC Directive; and OJ C 228, 29.6.2023, p. 43 (2023, points 1.6, 4.1.6 and 4.1.7), which calls, with a majority of two thirds, for a revision of the EWC Directive (see the amendments tabled by members of the Employers' Group attached to the opinion, partly expressing employer representatives' fundamental opposition to a revision of the Directive).

2.6 In this opinion, the EESC comments primarily on the extent to which the objectives set out by the Commission in its proposal for the revision of existing legislation can be reached, and intends to raise open questions and give suggestions for additions or changes to this end.

3. General comments to the Commission's proposal

3.1 The EESC agrees with the European Commission's view that workers' right to information and consultation in undertakings is provided for in the EU Charter of Fundamental Rights[6]. These rights must be comprehensively and duly implemented and effectively enforced, and their effectiveness improved in law and practice. The EESC clearly underlines that EWCs have the purpose of transnational information and consultation, they are not bodies for negotiations or co-determination.

3.2 The EESC calls on the legislative institutions to quickly move forward in the procedure to revise the EWC Directive, with the aim of implementing effective transnational information and consultation rights and at the same time ensuring quality decision-making in multinational companies falling under the scope of the Directive.

3.3 The EESC is convinced that further developing the social *acquis* in line with the implementation of the European Pillar of Social Rights will contribute to stimulating Europe's democratic infrastructure.

3.4 The EESC supports the fact that the Commission aims to set a new standard with respect to a more efficient and meaningful information and consultation process by proposing substantial additions to the subsidiary requirements, alongside others concerning the frequency of regular EWC meetings and company obligations to ensure a proper follow-up of EWC opinions. It also notes the acknowledgment of the role of trade union representatives as assisting EWC experts and the clarification that costs for legal assistance should be included in the operating expenses to be borne by the management, which are to be jointly determined in the relevant EWC agreement.

3.5 The EESC also acknowledges the Commission's intention to clarify Member States' obligation to provide for effective and sufficiently dissuasive sanctions by transferring these essential requirements from the recitals to the corpus of the legal text of the Directive. This should promote effective enforcement of the Directive.

3.6 The EESC underlines that information and consultation at European and national/local level are separate but linked processes. While they may concern the same measure, different aspects could be addressed at the respective levels. The revision must not change the fact that the EWC Directive is without prejudice to provisions of national law on the information and consultation of employees at local level and that methods for linking national and European procedures must be provided for in EWC agreements for the sake of effectiveness, consistency and legal certainty.

6 Art. 27 EU Charter of Fundamental Rights.

3.6.1 The EESC welcomes the Commission's intention to clarify the presumption of transnationality regarding matters which are covered by EWC information and consultation rights and calls for both recitals 12 and 16 of the current EWC Directive, in which the transnational scope of EWC competences is laid down, to be transferred to the main body of the Directive.

3.7 The EESC supports the Commission's intention to provide clarifications of the Directive on issues such as efficient information and consultation, the concept of transnationality, the rights of EWC members and experts, the scope of EWC funding, setting up SNBs and participation at extraordinary meetings.

3.7.1 The EESC fully supports the goal to promote establishing EWCs in companies with a transnational dimension and stresses the need for improved support for all partners involved in practice. Integrating more business within the scope of the EWC Directive will contribute to significantly increasing the number of EWCs in the single market and their implementation in all sectors of our economies (commerce, hospitality, etc.).

3.7.2 To keep up with changes in corporate culture, the EESC also recommends amending the definition of 'controlling undertaking' in Article 3 of the Directive so that companies that sell goods or provide services through franchise or licence agreements are also covered by the scope of the Directive.

3.8 The EESC notes that, contrary to previous EWC Directives, the Commission's proposal no longer includes a separate article[7] which provides for an evaluation of the correct implementation of the revised provisions a couple of years after the entry into force, including the mandate to submit appropriate proposals for further development.

3.8.1 To guarantee proper transposition and implementation, the EESC calls on the Commission to make use of effective monitoring and implementation tools. The Commission could also consider establishing a dedicated expert group, composed of representatives of the European social partners, the Member States and the European Commission, to support the implementation of the Directive.

4. Comments on specific amendments of the Commission's proposal

4.1 **Scope of topics to be dealt with by the EWC:** Practical experience from the EWCs' work suggests that the range of subjects covered by information and consultation should not be restricted to the existing list mentioned in the subsidiary requirements. The current transformation of our societies under the combined effects of climate change, digitalisation, demography and skills shortages requires social dialogue to be stepped up in multinational companies. This social dialogue should focus on strategic topics, including but not limited to investment, training, occupational health and safety, data protection and the climate transition.

4.1.1 The EESC would have expected these issues to also be incorporated into the subsidiary requirements of the amended EWC Directive and for the EWCs to be given the right to propose

7 See article 15 Directive 94/45/EC as well as article 15 Directive 2009/38/EC.

their own issues. However, to address company-specific circumstances, the EESC encourages the respective partners to also define the subjects to be addressed in each EWC agreement.

4.2 **Proposals to secure effective information and consultation:** The EESC understands the aim of clarifying that information is to be provided in a timely manner and that this should in principle take place at plenary meetings. The EESC takes positive note of the proposed new requirement that opinions expressed by EWCs during the consultation process must receive a reasoned written response from central management before a company decision on the measure in question is made. This requirement, which already exists in a broad number of established EWCs, must be without prejudice to the responsibilities of the management and carried out within a reasonable time. Respective information and consultation processes could be defined within individual EWC agreements.

4.3 **Number of EWC meetings:** The EESC welcomes the fact that the Commission is promoting extending social dialogue with EWCs by proposing two meetings per year (instead of one) between EWCs and central management in the subsidiary requirements. This should ensure at least two regular meetings becoming the standard in established EWCs.

4.4 **Appropriate resources available to EWCs:** The EESC supports amendments regarding the ability of EWCs and their members to fulfil their duties. In particular, this concerns resources to be provided by management for training, expertise (including when provided by a competent recognised Community-level trade union organisation), legal representation, and the ability to liaise with local employee representatives or, in their absence, the entire workforce. These costs should be notified to management in advance, to allow them to plan accordingly.

4.5 **Promotion of better gender-balanced EWCs:** The EESC welcomes the Commission's call for gender balance to be taken into account as far as possible in the composition of EWCs. By setting an ambitious target, the Commission sends an important message that women must be given an equal role in social dialogue.

4.6 **Access to justice:** The EESC acknowledges the Commission's proposals to ensure the possibility and capacity for all those with rights under the Directive to enforce their rights. It therefore welcomes the strengthening of Member States' obligation to ensure effective remedies and access to justice and the supervision of their compliance with that obligation. The EESC notes the Commission's approach on the role of alternative dispute resolution, which underlines that such mechanisms cannot prevent an issue being referred to a court or a tribunal. The EESC notes that various Member States have developed alternative dispute resolution mechanisms based on experience from existing mediation and conciliation mechanisms for social partner disputes. While respecting such national systems of prior out-of-court settlement procedures, it must be ensured that this does not infringe access to justice, which is guaranteed by fundamental rights (Article 47 CFR).

4.7 **Penalties and measures to improve enforcement:** As evidenced by a variety of research and the Commission's own assessment, in a number of Member States, penalties for non-compliance with EWC rights have been identified as being ineffective, disproportionate and not sufficiently dissuasive. The EESC welcomes the obligation put on Member States to define, in

line with Article 153 TFEU, appropriate financial sanctions, which should be effective, sufficiently dissuasive and proportionate, taking into account the company's size and finances.

4.7.1 The EESC calls for proportionate fines based on relevant criteria (e.g. a company's global turnover, comparable to those laid down in other recent EU legislation)[8]. In addition, the EESC supports extending the right to require a court injunction for the temporary suspension of a company decision until the EWC's process of informing and consulting has been properly completed, as has been applied in some countries.

4.8 **Removal of exemptions and adaption of existing agreements:** A number of the so-called voluntary EWC agreements concluded under Article 13 of the original EWC Directive 94/45/EC or concluded or revised during the transition period following adoption of the recast Directive 2009/38/EC work well, but others do not. There is no longer a justification for exempting the ca. 260 EWCs established as pre-directive agreements from the possibility to apply the standards set up in European legislation, nearly 30 years after its adoption.

4.8.1 While making provisions that all agreements could be covered by the new standards, the EESC considers it crucial to protect existing EWCs that are functioning well by ensuring that any changes for these bodies are not automatically mandatory and that existing provisions exceeding the amended annex I of 'pre-directive EWC agreements' can remain unchanged, as long as this is agreed between the EWC and central management and that existing agreements remain applicable under national transposition law. In the case of the renegotiations of 'pre-directive EWC agreements' a non-regression clause should apply and the status quo should be maintained until a new agreement is concluded. The EESC also calls on the Commission to explicitly clarify that there is no obligation to renegotiate the 'regular' EWC agreements (concluded in accordance with articles 5 and 6 of the previous EWC Directives) to which the amended Directive will automatically be applicable.

4.9 **Proposals concerning confidentiality clauses:** The EESC considers it helpful to require management in any case to inform EWCs about the reasons justifying the confidentiality of the information shared. Measures are necessary to guarantee that fundamental rights to information and consultation are not undermined by unjustified restrictions in transmitting information. It must be ensured that both proper information and consultation of employee representatives take place and that the company can make decisions effectively, as well as maintaining justified confidentiality throughout the process.

4.9.1 The EESC calls for additional clarity to be brought by including a provision under which EWC members can share information with national or local trade unions and/or worker representatives in order to fulfil their duties to liaise with local representatives. This clarification needs to take into account that decisions on confidentiality of information made by management may need to ensure companies' compliance with any legal obligations. Any disclosure and sharing of confidential information to third parties is subject to the conditions and limits laid down by EU and national laws.

8 Possible reference could be Article 83(4) of Regulation (EU)2016/679.

Brussels, 30 May 2024.

The President of the European Economic and Social Committee
Oliver Röpke

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N.B.: Appendix overleaf.

APPENDIX to the OPINION
of the
European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected in the course of the debate (Rule 14(3) of the Rules of Procedure):

AMENDMENT 1

SOC/791
European Works Council

Replace the whole opinion presented by the SOC section with the following text (explanation/reason at the end of the document):

	Amendment
1.	**Conclusions and Recommendations**
1.1	A well-functioning social dialogue and meaningful involvement of workers, respecting the autonomy of social partners and taking into consideration specific circumstances of Member States' labour market systems and company-specific needs, is the best way to anticipate and manage change at work-place level.
1.2	The EESC considers that the revision of the Directive as proposed by the Commission[9] and especially as requested by the European Parliament would seriously overcomplicate European Works Councils' (EWC) functioning and run the risk of turning EWCs away from vehicles for constructive information and consultation at company level to ill-functioning and burdensome sources of disputes and legal uncertainty, thus impairing the much-needed spirit of cooperation and trust at work-place level.
1.3	The EESC proposes allowing the pre-directive agreements to exist respecting their specific legal status and without imposing mandatory requirements on them.
1.4	The EESC considers that the current definition of transnationality should not be changed, since the text of the definition rightly states that matters can only qualify as transnational if they concern at least two undertakings or establishments of the undertaking or group situated in two different Member States.
1.5	The EESC welcomes the view of the Commission that the EWC's are not co-decision bodies and should not delay the decision-making in companies.
1.6	The EESC considers that the directive should not prevent undertakings from adopting decisions within a reasonable time in a swift manner needed in a fast-changing business environment,

9 Proposal for a directive of the European Parliament and of the Council amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights, COM(2024) 14 final.

with full respect of national information and consultation procedures. The EESC stresses that consultation, meetings and contribution from EWC must also be possible through digital channels.

1.7 The EESC stresses that for the sake of protecting confidential business information and ensuring smooth decision-making it must be an exclusive competence of management to decide the confidential nature of information.

1.8 The EESC points out that as the existing Directive enables obtaining assistance of an expert, and therefore the use of additional experts should be subject to prior approval of management.

1.9 The EESC rejects the idea of central management covering the costs of legal representation and participation in administrative or judicial proceedings. These costs should be allocated, as currently is the case, according to national law.

1.10 The EESC regrets the approach of the Commission to encourage judicial intervention instead of promoting alternative dispute resolution mechanisms which can support negotiated solutions between social partners.

1.11 The EESC welcomes the proposal of the Commission regarding the setting of effective, dissuasive and proportionate sanctions which will remain the remit of the Member States, in line with EU legislative practice under the social policy chapter in the EU Treaty. In the same vein the EESC agrees with the Commission not to endorse the idea of GDPR-sized fines and the right of the workers to require a court injunction for the temporary suspension of a company decision as these are disproportionate measures for the scope of the Directive, and could seriously harm the competitiveness of European companies.

1.12 EESC welcomes the approach of the Commission not to endorse the proposal of the Resolution of the European Parliament[10] regarding extension of the scope of the Directive to cover structurally independent undertakings such as those based on franchising agreements.

1.13 While the EESC does not welcome the proposed revision, it presents its views on a number of aspects included in the Commission proposal and European Parliament's resolution

2. Introduction: The process leading to the EC proposal

2.1 The EESC has always been a strong supporter of social dialogue at all levels of companies and other organisations. A well-functioning social dialogue and meaningful involvement of workers, respecting the autonomy of social partners and taking into consideration specific circumstances of Member States' labour market systems and company-specific needs, is the best way to anticipate and manage change at work-place level and thus face the challenges driven by economic, environmental and social transformations in the world of work.

2.2 As the business environment of European companies has over the years increasingly opened up and internationalised to face the challenges of Single Market and globalisation there has been a general need in companies to adapt the workers' involvement systems accordingly to better meet the company-level requirements.

3. The European Works Councils were rightly created to serve the purpose of providing a solid base for informing and consulting workers in multinational undertakings or groups. As a proof

10 Texts adopted - Revision of the European Works Councils Directive - Thursday, 2 February 2023 (europa.eu).

of this there are more than 350 well-functioning voluntary agreements concluded and agreed by social partners at company level[11]. These agreements are based on key concepts of the existing Directive as well as well-established company level practices.

3.1 The proposal of the European Commission to revise the European Works Councils Directive (European Works Councils are here referred to as EWCs), requested by the European Parliament[12], following calls by the European trade unions for such a revision, is in strong contradiction with the current reality in and feedback by the companies operating EWCs. Furthermore, this proposal does not take into account business realities and it is not coherent with the expressed European Union's policy approach aimed at protecting European companies' competitiveness and reducing regulatory barriers.

3.2 The EESC points out that Commission impact assessment did not conclude whether and to what extent exemptions under the voluntary EWC agreements concluded under Article 13 of the original EWCs directive 94/45/EC or concluded or revised during the transition period following adoption of the recast directive 2009/38/EC create legal uncertainties or prevent effective information and consultation in these undertakings.

3.3 The EESC regrets that the Commission's proposal is based on an impact assessment that ignores the real evidence from companies on the functioning of the EWCs and especially the cumulative impact of possible new obligations for companies. The EESC refers to the fact that while the employers have expressed serious doubts about the negative impact of the proposed revision on the competitiveness of European companies, also the Regulatory Scrutiny Board (RSB) has expressed doubts about the conclusions of the impact assessment conducted by the Commission[13]. Furthermore, the RSB considered that the Commission report is not sufficiently clear on the initiative´s scope, objectives and coherence with the subsidiarity principle, including full respect of the prerogatives of social partners and competences of Member States.

3.4 The EESC notes the views expressed in the amendments put forward by a number of Group I members for the opinion SOC/746 Democracy at work[14], where it is clearly stated that there are other ways than the revision of the Directive to promote the transnational social dialogue: 'Over the years European Works Councils (EWCs) have made a positive contribution to companies' long-term economic, social and environmental objectives. To increase their potential and effectiveness the EESC considers that there is need to further promotion of proper enforcement and guidance based on practical tools such as benchmarking with best practices. In this context, the EESC notes the European Parliament's recent resolution on the revision of the EWC Directive and calls on the Commission to take appropriate measures to promote the proper enforcement of the Directive in a timely manner.'

3.5 The EESC regrets that notwithstanding the concrete feedback on the ground from companies and their concerns of an obvious negative impact of the proposed amendments on the competitiveness of European companies, the European Commission has decided to launch the revision of the Directive in its current form instead of having considered alternative policy

11 As stated in Eurofound Study: "The evolution of some of the case study EWCs demonstrates that processes can improve over time as trust is built and both workers and employers gain a clearer understanding of the added value of transnational information and consultation. This process of building relationships, creating a joint understanding and developing effective procedures for information and consultation in a sense cannot be legislated and needs to be nurtured continuously so as not to threaten any progress made." https://www.eurofound.europa.eu/en/publications/2022/challenges-and-solutions-case-studies-european-works-councils .

12 https://www.europarl.europa.eu/doceo/document/TA-9-2023-0028_EN.pdf.

13 Regulatory Scrutiny Board Opinion 30.11.2023 SEC(2024)35 see e.g. https://data.consilium.europa.eu/doc/document/ST-5837-2024-ADD-2/en/pdf.

14 OJ C 228, 29/6/2023, p. 43.

measures.

4. **General remarks on the proposal of the Commission and the views of the European Parliament**

4.1 The EESC considers that the revision of the Directive as proposed by the Commission and especially as requested by the European Parliament would seriously overcomplicate EWCs´ functioning and run the risk of turning EWCs away from vehicles for constructive information and consultation at company level to ill-functioning and burdensome sources of disputes and legal uncertainty, thus impairing the much-needed spirit of cooperation and trust at work-place level.

4.2 While acknowledging the value of views of workers as an important element to improve the quality of decision-making the EESC stresses the need to ensure the swift decision-making in multinational companies which should be supported by smoothly operating structures for informing and consulting workers. In this regard the EESC welcomes the view of the Commission that the EWCs are not co-decision bodies and should not delay the decision-making in companies.

4.3 There are EWCs in some 1 000 companies today and another 2 600 companies are potentially concerned. The legal framework governing the functioning of EWCs deals with crucial issues for the social partners, and it should not be transformed into an overregulated framework based on a very legalistic approach that would discourage companies from creating new EWCs to avoid judicial risks.

4.4 Consequently, the EESC regrets that the Commission's proposal introduces a set of amendments that, holistically considered, would significantly overcomplicate EWCs´ functioning, thus undermining European companies' competitiveness. These negative effects are likely to serve as a disincentive to improve the take-up of EWCs. Adopting the EWC Directive as it is now proposed could also further deteriorate the attraction of investments from multinational companies within the EU in favour of other regions globally.

4.5 The provision of resources to act against the company, such as court costs and legal experts, promotes a judicial approach and risks to transform EWCs from valuable social dialogue forums between employees and management to highly confrontational bodies. Further, the new provisions for consultations, confidentiality, and transnationality, risk distorting the purpose of consulting and informing of employees and actually reduce the cooperation based on trust between the two parties which is essential for the functioning of EWCs.

5. **Specific remarks on key points of the Commission´s proposal**

5.1 *Existing pre-directive agreements*

5.1.1 The EESC deeply regrets the approach of the Commission regarding the voluntary information and consultation agreements concluded before the original EWCs directive 94/45/EC or concluded or revised during the transition period following adoption of the recast directive 2009/38/EC from June 2009 to June 2011. These well-functioning agreements should be respected and not unilaterally challenged. The pre-directive agreements are the result of negotiations between management and workers´ representatives and specifically tailored to the needs of both parties at undertaking level.

5.1.2 The EESC refers to the Commission impact assessment which did not conclude whether pre-directive agreements would create legal uncertainty or harm meaningful information and

consultation processes in companies.

5.1.3 Therefore, it would be against the spirit of constructive social dialogue and mutual trust between employers and employees within companies to allow workers' representatives unilaterally challenge the existence of voluntary well-working agreements.

5.1.4 The EESC proposes allowing the pre-directive agreements to exist respecting their specific legal status and without imposing mandatory requirements on them.

5.2 *Concept of transnationality*

5.2.1 Another issue of great concern for the EESC is the proposed concept of transnationality which could seriously lead to legal uncertainty by causing overlapping situations between national and transnational information and consultation processes.

5.2.2 The proposed wording suggests that the presumption of transnationality not only covers cases where measures considered by the management can reasonably be expected to affect workers in more than one Member State but it also covers cases where measures themselves only affect workers in one Member State but where the consequences of those measures will reasonably be expected to affect workers in another Member State. Such a structure creates a sphere of uncertainty and source of disputes as it would trigger a process to analyse an increased number of purely national management decisions in companies instead of focusing on real transnational cases.

5.2.3 The EESC considers that the current definition of transnationality should not be changed, since the text of the definition rightly states that matters can only qualify as transnational if they concern at least two undertakings or establishments of the undertaking or group situated in two different Member States.

5.3 *Information and consultation process and definition of information and consultation*

5.3.1 The EESC has serious doubts about some of the amendments proposed in the revision as they are prone to cause unnecessary delays and uncertainties in the decision-making of companies. The proposed Article 9 specifies that consultation is to enable employees´ representatives to express an opinion prior to the adoption of the decision and that such opinion must receive a reasoned response from central management before the latter adopts its decision on the proposed measure. The EESC considers the proposed process formalistic, burdensome and incompatible with widely agreed methods of communication in EWCs.

5.3.2 The EESC considers that the directive should not prevent undertakings from adopting decisions within a reasonable time in a swift manner needed in a fast-changing business environment, with full respect of national information and consultation procedures. Moreover, the EESC prefers the timing of the consultation to be defined within each EWC agreement, not by mandatory rules.

5.3.3 The EESC stresses that consultation, meetings and contribution from EWC must also be possible through digital channels. This is even more important if the minimum number of yearly meetings would be two, as suggested by the Commission proposal.

5.3.4 As regards the issues to be covered by the EWCs the EESC calls for a maximum flexibility for the management and EWCs to agree on the company-relevant issues.

5.4 *Confidentiality of business information*

5.4.1 Furthermore, the EESC points out problems linked to protection of confidential information

whereby the Commission´s proposal would harm business competitiveness, potentially conflict with other legal requirements (e.g. Market abuse regulation) and delay companies' decision-making.

5.4.2 The EESC stresses that for the sake of protecting confidential business information and ensuring smooth decision-making it must be the exclusive competence of management to decide the confidential nature of information. To stress and clarify this prerogative the EESC would like to see the possibility for Member States to impose prior administrative or judicial authorisation removed from Article 8.

5.5 *Experts and legal costs*

5.5.1 The proposed wording on experts and legal costs without prior approval of management is vague and could lead to unnecessary disputes. The EESC points out that as the existing Directive enables obtaining assistance of an expert, there is basically no need to change the text. If additional experts such as legal assistance would be needed, it should be for the management to approve the role and scope of expert and the ensuing costs.

5.5.2 Regarding legal costs, the EESC rejects the idea of central management covering the costs of legal representation and participation in administrative or judicial proceedings. Such a liability could lead to a situation where the company must pay in advance the legal costs of the EWC negotiating team in a potential dispute against the company. These costs should be allocated, as currently is the case, according to national law.

5.5.3 Furthermore, as the EWCs are representative of all workers of the undertaking, the participation of trade unions in EWCs in advisory capacity should respect diverse industrial practices across Europe. The right of trade union representatives to be present on every EWC irrespective of the number of trade union members in the company can in some cases be incompatible with national practices.

5.6 *Alternative dispute resolution mechanisms*

5.6.1 As regards dispute resolution the EESC regrets the approach of the Commission whereby Court intervention is prioritised to the detriment of alternative dispute resolution mechanisms. This approach undermines the existing and well-functioning national social partners' mediation and conciliation structures. Instead, the use of alternative dispute resolution mechanisms, with easy access and agreed by social partners as genuine element of well-functioning social dialogue systems should be encouraged in Member States, by the Member States and with the support of the European Commission.

5.7 *Sanctions*

5.7.1 The EESC welcomes the proposal of the Commission regarding the setting of effective, dissuasive and proportionate sanctions which will remain the remit of the Member States, in line with EU legislative practice under the social policy chapter in the EU Treaty. The EESC suggests that setting financial penalties should be restricted to cases involving clear and intentional abuse of the rules. In the same vein the EESC agrees with the Commission not to endorse the ideas of GDPR-sized fines and the right of the workers to require a court injunction for the temporary suspension of a company decision, as these are disproportionate measures for the scope of the Directive, and could seriously harm the competitiveness of European companies.

5.7.2 Finally, the EESC welcomes the approach of the Commission not to endorse the proposal of the Resolution of the European Parliament regarding extension of the scope of the Directive to

cover structurally independent undertakings such as those based on franchising agreements as this type of arrangement should not be taken into account to define ‘dominant influence’.

Reason
This text comprises an amendment which aims to set out a generally divergent view to an opinion presented by the section and is therefore to be described as a counter-opinion. It sets out the reasons why the EESC considers that the proposed revision of the EWC Directive – and in particular some proposals by the European Parliament - would seriously overcomplicate European Works Councils (EWC) functioning and run the risk of turning EWCs away from vehicles for constructive information and consultation at company level to ill-functioning and burdensome sources of disputes and legal uncertainty.

Outcome of the vote	
In favour:	104
Against:	125
Abstention:	11