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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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 *- Analysis of the final compromise text with a view to an agreement*

Delegations will find attached the provisional agreement on the above proposal, subject to the agreement by the Committee of Permanent Representatives, with a view to reaching a first-reading agreement with the European Parliament.

Changes compared to the Commission's proposal are marked in ***bold italics*** and deletions in ▌.

Lawyer-linguist revision will follow.

PUBLIC

DIRECTIVE *(EU) 2025/…* OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of…

amending Directive 2009/38/EC as regards the establishment and *operation* of European Works Councils and the effective enforcement of transnational information and consultation rights

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with Article 153(1), point (e) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 ***Opinion of 30 May 2024 (not yet published in the Official Journal)***.

2 OJ C ***, , p.*** .

3 ***Position of the European Parliament of ...***

Whereas:

(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at ***the*** appropriate levels, to be guaranteed information and consultation in good time and under the conditions provided for by Union law and national law and practices. Principle 8 of the European Pillar of Social Rights reaffirms the right of workers or their representatives to be informed and consulted on matters relevant to them.

(2) With ***regard*** to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council[4] seeks to give practical effect to these basic principles by setting minimum requirements for the information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

PUBLIC

[4] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28, ELI: http://data.europa.eu/eli/dir/2009/38/oj).

(3) ▌An evaluation of Directive 2009/38/EC published in 2018▌ confirmed ***its*** added value and relevance in principle***. Indeed, many of that Directive's provisions are sufficiently flexible to accommodate evolving technological and economic realities and various forms of undertakings or groups. For example, it applies to all Community-scale groups of undertakings, no matter under which legal arrangements the dominant influence between the controlling and the controlled undertakings forming such groups is exercised. Consequently, undertakings linked***, for instance, ***by franchise or license agreements can fulfil the definition of Community-scale group of undertakings, provided dominant influence is established***.

(3a) ***However, the evaluation*** also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.

(4) In 2023, the European Parliament, in accordance with Article 225 of the Treaty on the Functioning of the European Union (TFEU), adopted a legislative own-initiative resolution with recommendations on a revision of Directive 2009/38/EC[5] and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 ***TFEU***, on the need for and the content of measures to address the shortcomings of that Directive. The Commission has also collected evidence through a study involving a targeted online survey, stakeholder interviews, workshops, analysis of national case-law and of relevant provisions in the national laws of Member States.

[5] European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).

(5) Evidence shows that legal uncertainty regarding the concept of transnational matters has led to differences in interpretation and disputes. In order to ensure legal certainty and reduce the risk of such disputes, it is necessary to clarify that concept. To this end, it is appropriate to clarify that ▌ Directive ***2009/38/EC*** should not only cover cases where measures considered by management ***of an undertaking or group of undertakings*** can reasonably be expected to affect ***workers of that undertaking or group, or of its establishments,*** in more than one Member State, but also cases where such measures can reasonably be expected to affect ***their*** workers in only one Member State, but the consequences of those measures can reasonably be expected to affect ***their*** workers in at least one other Member State. This is necessary to cover cases where ***an undertaking envisages*** measures, such as lay-offs***,*** redundancies***, allocation of production activities or outsourcing of activities***, which ▌ explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting ***workers of that undertaking or of an undertaking belonging to the same group, or of its establishments,*** in another Member State, for instance due to changes in the cross-border supply chain or production activities***. The concept of transnational matters covers those*** measures ***which*** could ***affect employees in a*** substantial ***way, i.e. in a way which does not affect them in a trivial manner and does not only concern individual employees or ordinary operational decisions***. ***To this end, it should be clarified that the scope of the potential effects of transnational issues on the workforce and the level of management involved are to be taken into account to determine whether a matter falls within the competence of a European Works Council.***

PUBLIC

(6) The definitions of information and consultation in Directive 2009/38/EC include normative requirements. For the sake of coherence and legal clarity, it is appropriate to lay down those normative provisions in the articles laying down rights and obligations instead. ***The nomination and appointment of employees' representatives is governed by national law and practice. The national systems for the nomination and appointment of employees' representatives vary among Member States. Employees' representatives may be trade union representatives, where the national law and practice of a Member States provide for it.***

(6a) With a view to concluding an agreement establishing a European Works Council, central management is to negotiate with a special negotiating body representing employees. To increase legal certainty in that regard, it should be clarified that central management is required to convene a number of meetings with the special negotiating body sufficient for both parties to reach such an agreement.

PUBLIC

(7) Members of special negotiating bodies may need legal advice ▌ to carry out their tasks under Directive 2009/38/EC. It is however not sufficiently clear that they are entitled to the coverage of the associated legal fees. With a view to ensuring such coverage, it should be clarified that central management is to bear costs incurred by member of special negotiation bodies, which the latter should be required to notify in advance. It is appropriate to limit that obligation to reasonable legal costs to ensure that management is not liable for manifestly disproportionate costs, costs without justifiable link to the provision of relevant legal advice ▌ , or costs created by manifestly unfounded, frivolous, or vexatious claims. Moreover, Directive 2009/38/EC gives Member States discretion to lay down budgetary rules regarding the operation of special negotiating ***bodies*** and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating ***body's*** functions must be borne by the central management. Therefore, the provisions referring to the number of experts to be funded by central management are redundant and should be deleted. ***Where the precise amount of the expenses is not known in advance an estimate of the costs including information about the nature of the cost should be notified to central management.***

PUBLIC

(8) Directive 2009/38/EC requires the parties to a European Works Council agreement to determine the venue of meetings of the European Works Council. It is appropriate to specify that they are to determine also the format of such meetings***, be it in-person, online or hybrid***, notably to avoid any doubt about their freedom to agree that some or all of the meetings be held in a virtual environment, using online meeting tools, reducing the environmental footprint of meetings in line with Union, national and companies' emission reduction targets, while ensuring meaningful ***and efficient sharing of*** information and consultation at lower environmental and financial costs ***on the one hand, and the possibility to hold physical meetings which can offer a trustful and confidential environment for meetings and gives the opportunity for exchanges in person.***

(9) There can be uncertainty and disputes with respect to the coverage of certain expenses and access to certain resources also during the operation of European Works Councils. In accordance with the principle of autonomy of the parties, it is appropriate to require that certain types of financial and material resources be determined specifically in the European Works Council agreements, namely the possible ***assistance*** of experts – such as ***representatives of recognised Union-level trade union organisations,*** technical subject-matter experts or legal experts –***,*** the coverage of experts' fees ***and their possible*** participation in ***meetings***. The agreements should also address the provision of relevant training to the members of the European Works Council, and the coverage of related expenses, without prejudice to the minimum requirement ***provided for*** in Article 10(4) of Directive 2009/38/EC.

(10) The requirement in Directive 2009/38/EC to take into account, where possible, the need for a balanced representation of employees with regard to their gender when determining the composition of European Works Councils has proven insufficient to promote gender balance. Women remain underrepresented in most European Works Councils. Therefore, it is necessary to lay down more effective and specific objectives regarding gender representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. To attain those objectives, it may in certain cases be necessary to give priority to the underrepresented sex in composing the European Works Council or its select committee. In accordance with the case-law of the Court of Justice of the European Union[6], such positive action is possible, in accordance with the principle of equal treatment of men and women, provided that the measures taken to achieve the gender balance objective do not automatically and unconditionally give priority to persons of a certain gender but allow to take into account other criteria, such as merits and qualifications and the procedure for election established by the relevant laws. Parties to European Works Council agreements should therefore be afforded the flexibility necessary to respect the legal and factual limitations to the positive action. For similar considerations, it is appropriate, in addition, to require steps to strive for a gender-balanced composition of the special negotiating body, to promote that objective already during the negotiation phase.

[6] Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.

(11) Evidence shows that the initiation of negotiations is sometimes delayed beyond the period of six months set out in Directive 2009/38/EC. In some cases, management neither takes steps nor expressly refuses to commence negotiations following a request to set up a European Works Council. It should therefore be specified that the subsidiary requirements laid down in Directive 2009/38/EC apply where the first meeting of the special negotiating body is not convened within six months following a request to establish a European Works Council, irrespective of whether central management expressly refuses to commence negotiations.

(12) When sharing sensitive information with members of European Works Councils, members of special negotiating bodies, or employees' representatives in the framework of an information and consultation procedure, management has the possibility to provide that such information is shared in confidence and should not be disclosed further. ***To prevent the excessive use of such confidentiality restrictions and align with the corresponding provision on confidential information in Directive 2002/14/EC, they should be possible only in the legitimate interest of the undertaking concerned. The existence of such a legitimate interest should be assessed on the basis of objective criteria to be laid down by Member States in their national law. Moreover,*** when sharing information in confidence, central management should be required to provide at the same time a reasonable justification***. The confidentiality should be upheld only for as long as the reasons for it persist***. Setting up adequate arrangements to safeguard the confidentiality of sensitive information can instil trust and facilitate the sharing of such information, while protecting business' and workers' interests, including to avert growing risks such as industrial espionage.

PUBLIC

(13) The possibility of central management not to transmit information to the members of special negotiating bodies or of European Works Councils, or to employees' representatives in the framework of an information and consultation procedure, should be limited to cases where such transmission would seriously harm the functioning of the undertakings concerned. For reasons of transparency and effective redress, central management should also be required to specify the reasons justifying the non-transmission of information ***in a way which allows for sufficient legal scrutiny, while not revealing protected information. The dispensation from transmitting information applies for as long as the reasons for it persist.***

(14) With a view to increasing legal clarity, it is appropriate to lay down the provisions on the transmission of information in confidence and on the non-transmission of information in two separate Articles. In addition, the existing provision allowing Member States to lay down particular rules for undertakings pursuing the aim of ideological guidance should be moved to ***an*** Article concerning the relationship with other national provisions, because it pertains to the implementation of the requirements of Directive 2009/38/EC more broadly.

PUBLIC

(15) ***Decisions on transnational matters can have far-reaching consequences for employees, such as in the case of redundancies following from business plans, social plans, or process innovations.*** Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a ***meaningful and timely*** way that enables ***workers'*** representatives to express their opinion prior to the adoption of the decision and that opinions issued by European Works Councils or employees' representatives must receive a reasoned response from central management ***or any more appropriate level of management*** before the ▌ decision on the proposed measure at issue ***is adopted***. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty.

PUBLIC

(15a) In the context of information and consultation on transnational matters, it is important to ensure that Community undertakings or Community-scale groups of undertakings can take decisions effectively and that information and consultation does not result in undue delays in their decisions. It is also crucial that European Works Councils and employees' representatives are given adequate time to form, coordinate, and express their views on sometimes complex transnational matters, taking into account any agreed arrangements for linking information and consultation of the European Works Council and national employee representation bodies. To enable parties to reconcile those considerations in practice, the minimum requirements for the consultation process should remain sufficiently flexible, allowing them to schedule the process as appropriate in light of the respective circumstances and content of consultation. Therefore, rather than imposing a rigid timeframe for European Works Councils or employees' representatives to issue their opinion and for management to provide a reasoned response, it is appropriate to set out the principle that consultation is to take place within a reasonable time, taking into account the degree of urgency of the matter. This principle notably enables parties to expedite the consultation process in urgent situations. It should moreover be clarified, to the same end, that the requirement for management to provide a reasoned response prior to adopting a decision applies where the employees' representatives expressed their opinion within a reasonable time, considering all relevant circumstances such as the complexity and importance of the matter or management's interest in taking a speedy decision.

PUBLIC

(16) ***The*** provisions of Directive 2009/38/EC on the role and protection of employees' representatives should be amended to increase clarity and accuracy, in particular with regard to the protection of the members of special negotiating bodies and the members of European Works Councils against retaliatory measures or dismissals ***related to the exercise of their functions.*** Members of ▌ special negotiating ***bodies, members of*** European Works ***Councils and employees' representatives exercising their functions under an information and consultation procedure should enjoy, in*** the exercise of their ***functions, protection and guarantees equivalent to*** those ***provided for employees' representatives by national law or practice applicable in their country of employment***.

(16a) In order to avoid disputes, it should also be specified that the central management should be required to cover the reasonable costs of training and related expenses of the members of the special negotiating body and of the European Works Council, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.

PUBLIC

(17) In certain Member States, rightsholders under Directive 2009/38/EC encounter difficulties in bringing legal actions to enforce their rights. It is therefore necessary to strengthen Member States' obligation to ensure effective remedies and access to justice and the supervision by the Commission of their compliance with ***those obligations. With regard to rightsholders under the Directive, including European Works Councils and special negotiating bodies, Member States should, in line with national law on legal standing or the form of legal representation, guarantee access to judicial proceedings and, where relevant, administrative proceedings to enforce the rights under Directive 2009/38/EC. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement. Where Member States impose mandatory pre-judicial out-of-court settlement procedures, it is important to ensure that such requirements do not prevent parties from fully exercising their right of access to the judicial system nor make it in practice impossible or excessively difficult for them to exercise their rights under Union law, considering any delays, effects on time limits, costs, and other potential obstacles***[7]***. It should therefore be clarified in Directive 2009/38/EC that, where Member States make access to legal proceedings conditional upon prior implementation of an alternative dispute resolution, that procedure cannot prejudice or limit the right of the parties concerned to bring legal proceedings. Moreover, for the purposes of supervision by the Commission***, Member States should be required to notify the Commission of how and under which circumstances the rightsholders ***under Directive 2009/38/EC*** can bring judicial, and where ***relevant***, administrative procedures, in respect of all their rights under ***that*** Directive. ▌

[7] ***Judgment of the Court of Justice of 18 March 2010 in joined cases C-317/08, C-318/08, C-319/08 and C-320/08, Alassini and Others, ECLI:EU:C:2010:146.***

(18) The Commission's 2018 evaluation of Directive 2009/38/EC has shown that sanctions applicable in the case of non-compliance with transnational information and consultation requirements are often not sufficiently dissuasive***, effective or proportionate***. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate ***penalties. Financial penalties*** should be provided for in case of failure to comply with the information and consultation procedures set out in Directive 2009/38/EC. Other forms of sanctions could also be provided for. In order to be effective, dissuasive and proportionate***, penalties should be determined taking into consideration the gravity, duration, consequences and the intentional or negligent nature of the offence***. ***For the penalties to be dissuasive the turn-over of the sanctioned undertaking or group should be taken into account or it should be ensured that the applicable sanctions have a similarly dissuasive nature.***

PUBLIC

(18a) The special negotiating bodies, the European Works Councils and their members on their behalf should have the necessary means to cover the costs of legal representation and participation in judicial proceedings or, where relevant, administrative proceedings. Such costs may cover the travel and subsistence costs of participation in such proceedings of the member(s) acting on behalf of the body. The Member States should stipulate that those costs are to be borne by the central management in as far as those costs are reasonable or should take other equivalent measures in order to ensure that European Works Councils are not de facto prevented from participating in administrative or judicial proceedings due to a lack of financial resources. This could be done for example by requiring allocation of an appropriate operational budget to the European Works Council, by setting up of solidarity funds at national level, by providing insurances covering legal costs, by granting access to legal aid in certain circumstances or through other provisions in line with national laws and practices.

PUBLIC

(19) Undertakings with an agreement on the transnational information and consultation of employees concluded before 23 September 1996, that is to say prior to the date of application of Council Directive 94/45/EC[8], are exempted from the application of the obligations arising from Directive 2009/38/EC. The employee information and consultation bodies established under such agreements have been concluded and continue to operate outside the scope of Union law. Directive 2009/38/EC does not provide the employees in the exempted undertakings with the possibility to request an establishment of a European Works Council under that Directive. However, for reasons of legal clarity, equal treatment and effectiveness, employees and their representatives in all Community-scale undertakings or Community-scale groups of undertakings should in principle have the right to request the establishment of a European Works Council. Almost 30 years after a legislative framework setting minimum requirements for the transnational information and consultation of employees was first established at Union level, those reasons prevail over the considerations of continuity for pre-existing agreements which initially motivated the exemption. That exemption should therefore be deleted***, without prejudice to the legal status of such agreements, which continue to be governed by the applicable national rules***. ***The initiation and conduct of negotiations for the establishment of European Works Councils in undertakings with such agreements should follow the procedure as set out in Directive 2009/38/EC, while the period after which the subsidiary requirements come into force should be reduced from three to two years, in line with the period applicable to the adaptation of existing European Works Council agreements.***

[8] Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64, ELI: http://data.europa.eu/eli/dir/1994/45/oj).

(20) Moreover, for the same considerations, the same minimum requirements should apply to all Community-scale undertakings with European Works Councils operating under Directive 2009/38/EC and those in which a European Works Council agreement was signed or revised between 5 June 2009 and 5 June 2011. Therefore, the exemption of the latter undertakings from the application of Directive 2009/38/EC should also be deleted.

(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to Directive 2009/38/EC have the right to meet with central management once a year, to be informed and consulted on the progress of the business of the relevant Community-scale undertaking or Community-scale group of undertakings and its prospects. In order to strengthen the transnational information and consultation of those European Works Councils, it is appropriate to increase the number of such annual plenary meetings in the subsidiary requirements to two ***meetings held in person***.

(22) In addition, certain technical changes should be made to the subsidiary requirements set out in Annex 1 to Directive 2009/38/EC, to ensure consistency with the enacting terms.

(23) Therefore, it is appropriate to amend Directive 2009/38/EC to bring all eligible undertakings within its scope, clarify some of its key concepts, improve the transnational information and consultation process, and ensure effective redress and enforcement.

PUBLIC

(24) ▌Existing European Works Council agreements▌ concluded under Directive 94/45/EC or Directive 2009/38/EC before the entry into force of the measures adopted by Member States to transpose this Directive, ***might not address*** the revised requirements ***for the content of those agreements***. It is therefore appropriate to set out transitional arrangements enabling the parties to such agreements to negotiate adaptations before the date of application of the transposition measures.

(25) ***Since*** the overall objective of this Directive is to ensure the effectiveness of the requirements of Directive 2009/38/EC regarding the information and consultation of employees of Community-scale undertakings and Community-scale groups of undertakings▌ cannot be sufficiently achieved by the Member States ***but can rather, by reason of*** inherently transnational nature and scale of ***those*** requirements, ***be*** better▌achieved at Union level▌, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

PUBLIC

(26) Pursuant to Article 27 of the United Nations Convention on the Rights of Persons with Disabilities, persons with disabilities are to be able to exercise their labour and trade union rights on an equal basis with others. As both the Union and its Member States are parties to that Convention, Directive 2009/38/EC and relevant national legislation are to be interpreted in accordance with that principle, for instance in relation to accessibility and reasonable accommodation for members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions, as well as the bearing of related costs by central management.

(27) In accordance with ▌ Directive 2014/23/EU[9], Directive 2014/24/EU ▌[10] and ▌ Directive 2014/25/EU[11] of the European Parliament and of the Council, Member States are to take appropriate measures to ensure that in the performance of public contracts economic operators observe applicable obligations in the fields of social and labour law established by Union law. The ▌ integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders ***can contribute to the effective implementation of the requirements under this Directive***. However, this Directive does not create any additional obligation in relation to those Directives.

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9 Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

10 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

11 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

(27a) When implementing Union law, Member States are to respect the rights set out in the Charter of Fundamental Rights of the European Union and to promote the application thereof in accordance with Article 51 of that charter, including the right to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

(28) In order to give employees' representatives and the central management in Community-scale undertakings or Community-scale groups of undertakings sufficient time to consider the revised minimum requirements and prepare for their application, it is appropriate to defer by ***one year*** the application of the provisions adopted by Member States to comply with this Directive,

HAVE ADOPTED THIS DIRECTIVE:

PUBLIC

Article 1

Directive 2009/38/EC is amended as follows:

(1) Article 1 ***is amended as follows:***

(a) paragraph 3 is replaced by the following:

'3. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues taking into account the possible effects on the workforce and the level of management involved.';

(b) paragraph 4 is replaced by the following:

'4. Matters shall be considered to be transnational where they can reasonably be expected to concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

Those conditions shall be deemed to be met where:

(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers ***of that undertaking or group, or its*** establishments in more than one Member State;

PUBLIC

(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers ***of that*** undertaking or ***group, or its establishments*** in one Member State, and ***their*** workers in ***at least one other*** Member State can reasonably be expected to be affected by the consequences of those measures. ▌ ';

(2) in Article 2(1), points (f) and (g) are replaced by the following:

'(f) "information" means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it;

(g) "consultation" means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management;';

(2a) in Article 3, paragraph 1 is replaced by the following:

'1. For the purposes of this Directive, 'controlling undertaking' means an undertaking which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation, or the rules and decisions which govern it.';

PUBLIC

(3) Article 5 is amended as follows:

(-a) paragraph 1 is replaced by the following:

'1. In order to achieve the objective set out in Article 1(1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the either joint or separate written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.';

(a) in paragraph 2, point (b) is replaced by the following:

'(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or the Community-scale group of undertakings, in a manner that strives to achieve a gender-balanced representation, ***whereby women and men each hold at least 40 % of the posts of member of the special negotiating body,*** by allocating in respect of each Member State one seat per portion of employees employed in that Member State, amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together***. If the objective of gender balance is not reached, the special negotiating body shall explain the reasons in writing to the workers. Failure to achieve the objective of gender-balance shall not prevent the creation of those bodies.';***

PUBLIC

(aa) in paragraph 4, the first subparagraph is replaced by the following:

'4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a sufficient number of negotiation meetings with the special negotiating body. It shall inform the local managements accordingly.';

(b) paragraph 6 is ***replaced by the following***:

'6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner. These expenses shall include reasonable costs of experts, including for legal ***experts***, insofar as necessary for that purpose [redacted]. Expenses shall be notified to central management before they are incurred.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body.

[redacted]';

PUBLIC

(4) Article 6 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) points (c) and (d) are replaced by the following:

‘(c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles and requirements set out in Article 1(3) and Article 9;

(d) the format, venue, frequency and duration of meetings of the European Works Council;’;

(ii) points (f) ***and (g) are*** replaced by the following:

‘(f) the financial and material resources to be allocated to the European Works Council, including at least with respect to the following aspects:

- the possible use ***and participation in meetings*** of experts, including ***of*** legal experts ***and of representatives of recognised Union-level trade union organisations***, to assist the European Works Council in ***relation to*** the discharge of its functions,

▌

- the provision of relevant training to the members of the European Works Council, without prejudice to the minimum requirement in Article 10(4), first subparagraph;

PUBLIC

(g) the date of entry into force of the agreement, its duration, its possible extension, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.';

(b) the following paragraph ▌ is inserted :

"2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall ▌ lay down the necessary arrangements ***and make all reasonable efforts*** for attaining, ▌ without prejudice to national laws ***and practices*** on electing ***and appointing employees'*** representatives, the objective of gender balance whereby women and men each comprise at least 40 % of European Works Council members, and where applicable, at least 40 % of select committee members. ***If the objective of gender balance is not reached, the European Works Council shall explain the reasons in writing to the workers. Failure to achieve the objective of gender-balance shall not prevent the creation of those bodies.';***

PUBLIC

(5) in Article 7(1), the second indent is replaced by the following:

‘— where the first meeting of the special negotiating body is not convened ***by the central management*** within six months following a request pursuant to Article 5(1),’;

(6) Article 8 is replaced by the following:

‘Article 8

Provision of information in confidence

1. Member States shall provide that***, subject to objective criteria,*** members of special negotiating bodies, members of European Works Councils or employees’ representatives in the framework of an information and consultation procedure, and any experts who assist them, are not authorised to reveal information which***, in the legitimate interest of the undertaking,*** has expressly been provided to them in confidence by central management. In addition, central management may set up ***appropriate*** information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.

2. When central management provides information in confidence in accordance with ***the applicable objective criteria laid down by Member States pursuant to*** paragraph 1, it shall inform the members of the special negotiating bodies or the European Works Councils, or the employees’ representatives in the framework of an information and consultation procedure of the reasons justifying the provision of information in confidence ***and shall determine the duration of the confidentiality requirements whenever possible***.

PUBLIC

3. The obligation referred in paragraph 1 shall continue to apply, wherever the persons referred to in paragraph 1 are, even after the expiry of their terms of office, until ***the reasons justifying it*** have become obsolete.';

(7) the following article ▌ is inserted:

'Article 8a

Non-transmission of information on specific grounds

1. Member States shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information to members of special negotiating bodies or European Works Councils, or employees' representatives in the framework of an information and consultation procedure, and any experts who assist them, when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned.

   A Member State may make such dispensation subject to prior administrative or judicial authorisation.

2. When central management does not transmit information on the grounds referred to in paragraph 1, it shall inform the members of the special negotiating bodies or the European Works Councils, or the employees' representatives in the framework of an information and consultation procedure of the reasons justifying the non-transmission of information.';

PUBLIC

(8) Articles 9 and 10 are replaced by the following:

‘Article 9

Operation of the European Works Council and the information and consultation procedure for workers

1. The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

   The same shall apply to cooperation between the central management and employees’ representatives in the framework of an information and consultation procedure for workers.

2. Information on transnational matters shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of their possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings***, taking into account any arrangements agreed in accordance with Article 6(2), point (c), for linking information and consultation of the European Works Council and national employee representation bodies.***

PUBLIC

3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express ***their*** opinion prior to the adoption of the decision and based on the information provided in accordance with paragraph 2, without prejudice to the responsibilities of the management, and within a reasonable time**,** taking into account the urgency of the matter. The employees' representatives shall be entitled to a reasoned written response from the central management or any more appropriate level of management prior to the adoption of the decision on the measures in question, provided the ***employees'*** representatives expressed their opinion within a reasonable time in accordance with the first sentence.

Article 10

Role and protection of employees' representatives

1. Without prejudice to the competence of other bodies or organisations in this respect, the employees' representatives, including the members of the special negotiating body and the members of the European Works Council, shall have the means required to apply the rights arising from this Directive, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.

PUBLIC

2. Without prejudice to Articles 8 and 8a, the members of the European Works Council shall have the right and necessary means to inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure, in particular before and after the meetings with the central management.

3. Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6(3) shall, in the exercise of their functions, enjoy protection and guarantees equivalent to those provided for employees' representatives by the national legislation and practice in force in their country of employment.

   This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6(3), the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties, and protection against retaliatory measures or dismissal.

PUBLIC

A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, shall be entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to Article 6(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.

Where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.

4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the ***reasonable*** costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed ***thereof*** in advance.';

PUBLIC

(9) Article 11 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Member States shall provide for appropriate measures in the event of failure to comply with the national provisions adopted pursuant to this Directive. In particular, they shall ensure that:

(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner;

(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.

In the event of failure to comply with the national provisions transposing the obligations under Article 9(2) and (3), Member States shall provide for ***dissuasive financial penalties***, to be determined considering the criteria listed in the third subparagraph of this paragraph, without prejudice to the possibility to provide for other types of sanctions in addition.

For the purposes of ***the first subparagraph***, point (b), Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence. ***In the case of financial*** sanctions***, they shall also take into account the annual turn-over of the sanctioned undertaking or group or ensure that the applicable sanctions have a similarly dissuasive nature.’;***

PUBLIC

(b) paragraph 3 is amended as follows:

(i) the first subparagraph is replaced by the following:

'3. Member States shall make provision for administrative or judicial appeal procedures which the members of the special negotiating body, European Works Council members or employees' representatives may initiate when the central management provides information in confidence in accordance with Article 8 or does not transmit information on specific grounds in accordance with Article 8a.';

(ii) the following subparagraph is added:

'The duration of ***the*** procedures ***referred to in the first subparagraph*** shall be compatible with the effective exercise of the information and consultation rights under this Directive.';

PUBLIC

(c) the following ***paragraphs are*** added:

'4 With respect to the rights conferred by this Directive, Member States shall ensure effective access to judicial proceedings or, where relevant, administrative proceedings for European Work Councils and special negotiating bodies, or, on their behalf, their members or representatives. Member States shall provide that the reasonable costs of legal representation and participation in such proceedings are borne by the central management or take other equivalent measures to avoid any de facto restriction of such access for reasons of lack of financial resources.

5. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall ***not prejudice or limit the right of*** the parties concerned ▌ to bring legal proceedings.';

PUBLIC

(10) Article 12 ***is amended as follows:***

(a) paragraph 2 is replaced by the following:

‘2. ***The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established, in the interest of good coordination between them, by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.’;***

(b) the following paragraph is added:

‘6. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.’;

(11) Article 14 is deleted;

PUBLIC

(12) the following ***articles are*** inserted:

‘Article 14a

Transitional provisions

1. Where, ***after [OJ: insert date from which the transposing provisions are to be adopted and published, set out in the Article 2(1), 1st subparagraph of this amending Directive***], a European Works Council agreement ▌ concluded before … [***OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive***] in accordance with Articles 5 and 6 of Directive 94/45/EC or Articles 5 and 6 of this Directive ***does not address,*** as a consequence of the amendments ***entered into force on … [OJ: insert date of entry into force of this amending Directive***]***, one or several of the elements and requirements of Article 6***, central management shall***,*** at the written request ***of the European Works Council or*** of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States***,*** ***initiate negotiations to adapt that agreement to that or those elements and requirements of Article 6***. Central management may also initiate such negotiations on its own initiative. ***Such negotiations may be limited to addressing in the agreement those elements and requirements of Article 6 that were inserted on … [OJ: insert date of entry into force of this amending Directive].***

PUBLIC

2. Where the European Works Council agreement ▌ contains procedural arrangements for its adaptation or renegotiation, the adaptation may be negotiated pursuant to those arrangements. Otherwise, the adaptation shall follow the procedure set out in Article 5 in conjunction with Article 13, second and third paragraphs.

3. ***When*** an adaptation procedure ***under this Article*** does not lead to an agreement within two years from the date of the respective request by employees or their representatives ***or from the date of initiation of the negotiations by the European Works Council or by central management on its own initiative***, the subsidiary requirements set out in Annex I shall apply.

4. This Article shall not have the effect of exempting the parties to European Works Council agreements from respecting the applicable minimum requirements in this Directive.

PUBLIC

Article 14b

Formerly exempted undertakings

Where negotiations pursuant to Article 5 are initiated in order to conclude an agreement under this Directive in a Community-scale undertaking or Community-scale group of undertakings in which an agreement covering the entire workforce providing for the transnational information and consultation of employees was concluded prior to the date of application of Directive 94/45/EC and is still in force, the period referred to in Article 7(1) third indent shall be reduced to two years. The initiation of negotiations does not affect the terms of the existing agreements in force.';

PUBLIC

(13) Annex I is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by … [OJ: ***insert date: two years from the entry into force of this Directive***] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [OJ: ***insert date: one year from the date set out in the first subparagraph of this paragraph***]. ***However, they shall apply the provisions transposing Article 1, points 11 and 12, insofar as they relate to Article 14 and Article 14a(1), (2) and (3), from [OJ: please insert date one day after the date set out in the first subparagraph of this paragraph].***

When Member States adopt those ***measures***, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. ***The method of making such a reference shall be laid down by*** Member States ▌ .

PUBLIC

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

▌ Member States shall notify the Commission by ***[OJ: please insert the date from the first subparagraph of paragraph 1 of this Article]*** of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with ▌ Article 11(2) ***to (5)*** of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative proceedings, in respect of all the rights under ***Directive 2009/38/EC.***

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at ▌,

For the European Parliament	*For the Council*
The President	*The President*

PUBLIC

PUBLIC

ANNEX

Subsidiary requirements

Annex I to Directive 2009/38/EC is amended as follows:

(1) point 1 is amended as follows:

(a) the introductory sentence is replaced by the following:

'1. In order to achieve the objective set out in Article 1(1) and in the cases provided for in Article 7(1) and Article 14a, the establishment, composition and competence of a European Works Council shall be governed by the following rules:';

(b) point (a) ***is amended as follows:***

(i) the second subparagraph is replaced by the following:

'The information of the European Works Council on transnational matters shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, skills and training policies, anticipation of change and management of restructuring processes including those linked to the green and digital transitions, substantial changes concerning working conditions, notably to work organisation or contractual relations, the introduction of new working methods or production processes, as well as to transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies, including in controlled undertakings.';

(ii) ▌ the third subparagraph is replaced by the following:

'The consultation shall be conducted in such a way that the employees' representatives can meet with the central management or any more appropriate level of management. The employees' representatives shall be entitled to a reasoned written response to any opinion they might express prior to the adoption of the decision on the measures in question, provided their opinion was expressed within a reasonable time;';

(b) in point (b), the following ***subparagraph*** is inserted after ***the first subparagraph***:

'***In doing so and to the extent*** possible ▌ women and men shall each comprise at least 40% of European Works Council members and of select committee members***. Failure to achieve the objective of gender-balance shall not prevent the creation of the European Works Council. If the objective of gender balance is not reached, the European Works Council shall explain the reasons in writing to the workers.';***

(2) point 2 is replaced by the following:

'2. The European Works Council shall have the right to meet ***in person*** with the central management ***at least*** twice a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly. ***When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases for holding such ordinary meetings.'***;

PUBLIC

(3) point 3 ***is amended as follows***:

(a) the first ***and*** second ▌ subparagraphs are replaced by the following:

'3. Where there are exceptional circumstances or decisions which are ***reasonably to be expected*** to affect the employees' interests to a considerable extent, and urgency does not allow for information or consultation to take place at the following scheduled European Works Council meeting, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council, shall have the right to be informed in a timely manner. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, in order to be informed and consulted.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned or can reasonably be expected to be ***affected*** by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.'

PUBLIC

(b) the fifth subparagraph is replaced by the following:

'The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to Article 1(2), Article 8 and Article 8a.';

(4) ▌ point 5 ***is replaced by the following***:

'***The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks***. Such experts may include representatives of recognised Union-level trade union organisations. At the request of the European Works Council, such experts shall have a right to be present at meetings of the European Works Council and meetings with the central management in an advisory capacity. The central management shall be informed in advance.';

PUBLIC

(5) point 6 ***is replaced by the following***:

‘***6. The operating expenses of the European Works Council shall be borne by the central management.***

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

The operating expenses of the European Works Council shall include reasonable costs of legal ***experts***. Operating expenses shall be notified to central management before they are incurred.

▌

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council.’.

PUBLIC