



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2024/0006 (COD)**

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WK 10018/2025 INIT

**LIMITE**

**SOC**

**EMPL**

**GENDER**

**MI**

**COMPET**

**DATAPROTECT**

**CODEC**

**IA**

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## **WORKING DOCUMENT**

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From: General Secretariat of the Council  
To: Delegations

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N° Cion doc.: 5837/24 INIT + ADD 1-5

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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  
- MS comments

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Delegations will find attached the comments received to the text of the preparations for the trilogues on the above Directive contained in document 17110/24

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WK 10018/2025 INIT

**LIMITE**

**EN**

## Comments by AT

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of **Austria**.

(Structured along the “table with order of discussion” of the Presidency Flash WK 483/2025)

### 1) We cannot support following EP amendments:

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### 2) We strongly prefer to keep the Council’s General Approach regarding:

#### TRANSNATIONAL MATTERS

- row **49, 49a und 49b**. EP amendments are too broad. Definitions would not only cover the employees of the undertaking in question, but also employees of suppliers or other contractors of this undertaking.

#### OTHER DEFINITIONS

- row **50, 51**
- row **52** Details of how the consultation is to be carried out are repeated in Line 92
- row **52a, 52b, 52c, 52 d and 52 e** These detailed and far-reaching provisions cannot be accepted (among others also the inclusion of franchise or licence agreements)

#### SPECIAL NEGOTIATION BODY

- row **37a and 37b** EP amendments are too detailed
- row **53b**
- row **55b and Zeile 58**

#### CONTENT OF AGREEMENT

- row **21** No to the EP amendment, it should be left to the result of the negotiations if a meeting between WC and central management is being held in person, hybrid or fully virtual.
- row **22** No to the EP amendment, which defines. Moreover, no to the definition of costs. Possible flexibility regarding the last sentence: MS discretion on the budget of WCs.

#### SUBSIDIARY REQUIREMENTS

- row **74a and 74b**
- row **76b to 76f** We cannot agree with the condition to apply the subsidiary requirements when the negotiation body is not convened on a regular basis, or the other conditions as suggested by the EP.

#### CONFIDENTIAL INFORMATION; NON- TRANSMISSION OF INFORMATION ON SPECIFIC GROUNDS

- row **25**
- row **79 and 80**
- row **81a**
- row **85**

#### OPERATION OF THE EWC; THE INFORMATION A CONSULTATION PROCEDURE FOR WORKERS

- row **28 to 28b**
- row **91** EP’s amendments on information are too detailed and prescriptive.
- row **92a to 92c** EP’s amendments are too detailed an not necessary.

#### ROLE AND PROTECTION OF EMPLOYEES’ REPRESENTATIVES

- row **30** EP amendment providing for the creation of mediation processes is not supported.
- row **94** the term “legal capacity” is unclear

## COMPLIANCE WITH THIS DIRECTIVE

- row **31** The EP amendment on the possibility to request a “preliminary injunction for a temporary suspension of the implementation of management decisions until an information and consultation procedure has taken place at the relevant level of management and representation and in such a way as to enable a reasoned response from the central management in accordance with this Directive” is unacceptable as it would potentially delay every management decision which is not consulted with the worker representatives, even if the confidentiality is endangered. The reference to fines of the GDPR cannot be accepted.
- row **103** The possibility of requesting a preliminary injunction for the temporary suspension of management decisions cannot be accepted. This might lead to situations where every management decision, which is not consulted with the EWC can be challenged and delayed with potentially important negative consequences for the undertaking.
- row **104a to 104d** We do not agree with the EP amendments (detailed penalties, increase of the amount according to the number of affected employees, exclusion of undertakings from entitlement to some or all public benefits for three year)
- row **105-106** the application of GDPR provisions on penalties is disproportionate and cannot be accepted.
- row **109a to 109b** these provisions are not necessary as they are already covered by row 111b of the general approach.
- row **113**

## RELATIONSHIP WITH OTHER COMMUNITY AND NATIONAL PROVISIONS, TRANSITIONAL PROVISIONS

- row **113b** The EPs amendment providing for arrangement for links between information and consultation of the EWC and the national representation bodies should be left to the decision of the EWC parties. Requiring a formal agreement is not necessary.
- row **119** keep the general approach (Written request from 100 employees from at least 2 MS or their representatives should be retained)

## EXISTING AGREEMENTS

- row **32a** the content is unclear, keep the text of the GA in recital 20.

## MONITORING; ART. 2

- row **121e to 121h** The legal status of such a ‘monitoring body’ is unclear. What specific functions should this body perform and what competences should it be granted? This would have to be defined in the Directive.
- row **128a** Cannot be supported. It is not understandable why the implementation of Art. 11 should be reported differently than the other articles.

## ANNEX

- row **34**
- row **142b** There should be no reference to “franchise”
- row **148**
- row **151a** In terms of content, more complementarity between national information and consultation procedures and procedures at EWC level can be supported. However, this cannot be formulated as an obligation, as national procedures are very different. The desire for more complementarity can possibly be included in a recital.

## Remaining provisions

- row **40**

3) We can show degree of flexibility regarding:

## CONTENT OF AGREEMENT

- row **22** Possible flexibility regarding the last sentence: MS discretion on the budget of WCs. (Keep the general approach for the rest of the row).

#### ROLE AND PROTECTION OF EMPLOYEES' REPRESENTATIVES

- row **98** Flexibility regarding the amendment of the EP that the members of the EWC shall receive training insofar it is necessary for and linked to the exercise of their duties
- row **99** Flexibility regarding the amendment of the EP (costs for training have to be borne by central management or any other appropriate level of management)

Just very shortly: AT supports the DE comments on the „Tendenzschutzklausel“.

## Comments by BE

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of Belgium

General remarks:

Belgium supports the objectives, which are to clarify the provisions of Directive 2009/38 and to improve the functioning of the European Works Council. BE stresses the importance in strengthening social consultation at European level. The objectives of this proposal for a Directive should be kept in mind in the trilogue negotiations.

### **4) We cannot support following EP amendments:**

- Row 25 and 80: BE cannot support the addition of “based on objective criteria”. The term ‘objective criteria’ is too vague and could lead to disputes. The same goes for ‘the duration of the confidentiality requirements’.
- Row 52a: For BE this proposal goes too far.
- Row 52e: In our opinion, this goes too far. One franchisee is another employer. This is a very sensitive subject.
- Row 58: We are not in favour of the addition of “and approved by”. This could be a source of dispute and constitute an obstacle to the functioning of the body.
- Row 76b: BE considers this formulation too vague.
- Row 68 & 20: BE is in favour of deleting row 68. This question of ‘representation’ already led to a lot of discussion. We understand that, for some countries, the concept of ‘advice’ also includes ‘representation’. Therefore, we believe it is preferable to stick with the solution set out in the Council’s General Approach. As far as Belgium is concerned, the Parliament's proposal does not correspond to the provisions of the Belgian Judicial Code.
- Row 81a & 25: this proposal risks putting the members of the Works Council in a difficult situation. They will be between the employer asking them to maintain confidentiality and the local worker representatives requesting information.
- Row 92b & 28a: This amendment goes beyond the initial objectives of this Directive. Moreover, this rule would be difficult to implement in practice. The reasons might even be secret. This rule will not improve the functioning of the Works Council. On the contrary, it risks leading to disputes.
- Row 104a - 106: These amendments concerning sanctions go too far. We do not have comparable sanctions in Belgium. Sanctions must remain proportional.

### **5) We strongly prefer to keep the Council’s General Approach regarding:**

- Row 18: Introducing such an addition does not align with the objectives of the Directive. It seems preferable for BE to stick to the compromise included in the Council Mandate.

- Row 21: This amendment seems too strict. It is up to the body to decide the format of the meeting (in-person, online, hybrid). In Belgium too, the rules have been relaxed since COVID."
- Row 34: The Council's proposal is clearer. The subsidiary provisions apply when there is no agreement. Therefore, it is important that they are very clear to avoid any discussion.
- Row 48 - 49b: There has been a lot of discussion on the notion of 'transnational' so far. And BE believes the Council has reached a balanced compromise. In addition, we consider the EP proposal for a definition less clear than that of the Council.
- Row 52: BE believes the Council's definition is clearer. In our view, the definition proposed by the Council should be retained.
- Row 55: BE believe the General Approach is a more realistic solution. In some sectors, there are more men than women, and vice versa.
- Row 74: BE believes the proposed formulation is too strict. This wording imposes an obligation to achieve results. What would happen if the 40% target is not reached? Will the EWC not work if target is not reached?
- Row 76: BE believes the Council's formulation is clearer.
- Row 76d: BE does not consider two years to be realistic. When there's an update, we would be able to support two years. In fact, we are aiming, among other things, at situations where an EWC is still operating according to the rules that existed before the first directive 94/45/EC (cf. text drafted by Tom, Row 32 and 121 C). But for the first implementation, the three-year deadline should be maintained.
- Row 91: BE believes this amendment is not bringing clarification; on the contrary it causes more confusion.
- Row 95: BE prefers the General Approach.
- Row 98: This addition does not seem necessary to us. The term 'linked to' risks leading to disussion.
- Row 103 ("apply for...accordinaly) & 31 ("the Member States should provide for a possibility.....accordance with this directive"): We are not sure if it is desirable that the court would intervene in the management of the company. Moreover, it would go beyond the objectives of the Directive.
- Row 32 and 121c: BE would like to keep this paragraph in the text.
- Row 124: BE prefers a transposition period of two years.
- Row 142b : BE prefers the text of the General Approach.
- Row 146: BE prefers the text of the General Approach.
- Row 148: ("when appropriate.... ordinary meetings"): This wording is not consistent with what was said earlier. It is important that the subsidiary provisions are as clear as possible. Therefore, we propose to keep the Council's wording.
- Row 150: BE prefers the text of the General Approach.

6) We can show degree of flexibility regarding:

BE can support the proposed amendments of rows 23, 28, 50a, 74b, 79, 96, 97a, 97b, 97c, 99, 113, 113b, 151a, 156.

BE can also support:

- Row 30: BE can support the proposed amendment at the end of the paragraph (“However, members of special negotiations bodies.....of employment.”)
- Row 37: BE can support the entire amendment.
- Row 53b: We are in favour of the addition of “joint or separate written”. This is also how it works in practice in BE.

7) We would like to receive more information from the European Parliament for these proposed amendments:

- Row 96 & 30: Can the European Parliament clarify why it wants to add “including the right to form and join trade unions” in this part of the text.
- Row 32: It is delicate to talk about a 'legal status.' This could imply that these bodies must have legal personality. This is not the case in Belgium. We can support this proposal only if it means that legal texts must continue to exist to regulate the functioning of these bodies. Any clarification on this would be welcome.
- Row 37b: The responsibility is in the amendment placed on central management. This is provided for in Article 4 of Directive 2009/38. This article is not amended by this proposed directive. So what is the point of this amendment?
- Row 51: Why does the European Parliament want to keep the definition from the Directive 2009/38.
- Row 58 & 22: The aim is for the experts to be able to help the EWC members. We would like to ask what the added value of the addition of “a representative of a recognised Community-level trade-union” is. In Belgium, there is no problem: the expertise of trade union officials is recognised. But we would be able to support this amendment.
- Row 76f: we would like to understand the reasoning behind this addition. Article 6 sets out the procedures for terminating the agreement. Of course, once the agreement has been terminated, a new request can be made and the negotiation procedure restarted. But with this addition it would mean that an EWC could never be terminated.
- Row 94: BE needs some clarification of the term 'legal capacity'. Should it be understood that the bodies, or the trade unions, must have legal personality? In Belgium, the consultation bodies and trade unions do not have legal personality. We can support this proposal if this term means that the representatives must have legal means to act.
- Row 109b: regarding “as subsistence and travel expenses” what should be understood under this amendment?
- Row 121e – 121h: Can the European Parliament explain why they added this in the text?

## Comments by CZ

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of Czechia.

Czechia would like to take this opportunity to call on PRES to do its utmost to safeguard the Council's general approach in the trilogues as much as possible; a significant departure from the general approach would probably make it impossible for Czechia to support the adoption of the Directive.

Please note that the assessment below is only preliminary; the acceptability of each (and in particular the final) compromise proposal will be assessed as a whole.

### 8) Czechia cannot support following EP amendments:

- **row 22** – We do not support the notion of “representatives of a recognised Community-level trade-union”; these representatives should not be favoured in any way and only the general reference to 'expert(s)' should be retained throughout the text. We do not support further expansion of the list of expenses.
- **row 25** – We do not support provision enabling disclosure of confident information to national or local work councils that may affect the situation of workers. Moreover, it is problematic to define what is meant by "that may affect the situation of workers". Almost every situation discussed in the EWC certainly has the potential to affect the situation of workers in some way.
- **row 28b** – In our opinion a representative of competent recognised Community-level trade union organisation can act as an expert under the Council's General Approach. We see no reason, however, why these representatives should be favoured over other experts, why they should participate in the meeting alongside another expert, when the cost of the participation of both persons would be borne by the company.

The EP proposal might be acceptable if the words „such as representatives of competent recognised Community-level trade union organisations“ were removed or replaced by „such as representatives of competent recognised Community-level trade union organisations or other experts“.

- **row 30** – We do not support the addition of the words "including the right to form and join trade unions“, as this should not be the subject of the revision of the Directive. As for the rest of the provision, we prefer the CGA.
- **row 31** - The wording adopted by the Council is sufficient. It is also unclear what is meant by "Other forms of sanctions should also be provided for, including administrative and judicial procedures.". As regards " preliminary injunction“, it should be for the Member State to decide what procedural means it will provide for in order to achieve the objective of the Directive.
- **row 32** – The added value is not clear; moreover, it has no support in the normative part of the Directive.
- **row 32a** - The EP proposal seems to extend the regulation to more cases than the CGA (however, we would appreciate a detailed explanation of what the impact of this proposal would be compared to the CGA).

- **row 51** – The right to information is not a right to consultation, i.e. many areas are only communicated to employee representatives and no follow-up discussion is expected. The addition of this definition goes beyond the concept of information.
- **row 52** - The text should not be a part of the normative part of the Directive, it does not have the characteristics of a definition. It might be reflected in the recitals.
- **row 52d and 52e** – We do not support that the Directive should also apply to companies operating directly or indirectly in the internal market selling goods or providing services through franchise or license agreements concluded with independent third-party companies in return for royalties.
- **row 55** - For objective reasons, it is not possible to achieve an exact representation of both sexes - 40% of the members of the EWC. We support gender equality, but we consider it necessary for the proposal to be practically feasible. The members of the EWC and its bodies are elected by employees. The elections are secret ballot. The employer cannot influence the composition of the candidates for membership of the EWC or its bodies. 40% gender representation on the EWC cannot be guaranteed and therefore this objective cannot be legally binding or enforceable.

Moreover, the last sentence is not supported by the operative part (and if such an obligation was established, it would create a disproportionate administrative burden).

- **row 55b** - In the case of the participation of a representative of a recognised Community-level trade union organisations, this is an excessive extension of the possibility to participate in the negotiations. If a representative of a recognised Community-level trade union organisation is to be considered an expert, his/her participation is admissible even under the Council proposal. However, it is not desirable for two experts (one of whom is a representative of a recognised Community-level trade union organisation) to attend the meeting and the costs of the attendance of both persons would be borne by the undertaking.
- **row 58** - This is an excessive extension of the possibility to participate in meetings at the expense of the company. On the issue of covering the costs of legal representation, including the costs of legal representation and participation in administrative or judicial proceedings, we consider that the introduction of such an arrangement would unjustifiably favour the position of EWC members and members of the special negotiating body vis-à-vis national employee representatives. We only support the payment of necessary costs related to the activities of the EWC and the special negotiating body which fulfil the purpose of informing and consulting employees.
- **row 76a, 76b** – We consider the term “regularly” unclear.
- **row 79 to 81a** - We not support the possibility that members of the EWC may arbitrarily decide to disclose to national or local works councils sensitive information that may affect the situation of employees. It is also problematic to define what is meant by 'that may affect the situation of workers'. Almost every situation discussed in an EWC certainly has the potential to affect the situation of workers in some way. And such a range of disclosures cannot be supported.
- **row 96** - The EP proposal refers to the rights to form and join trade unions. However, the purpose of this provision is to protect members of EWCs and special negotiating bodies from retaliation by the employer or the undertaking, not to give them new rights or to guarantee them rights which they already have under national law. We therefore do not consider the addition to be systematic and necessary.

- **row 99** - The obligation should be retained at central management level; it is then up to the company itself how it regulates the cost recovery process internally.
- **row 103** – We do not support the introduction of preliminary injunction; it is up to Member States to decide what procedural means they will establish to achieve the Directive's objective.
- **row 104a to 104d** - The wording of the CGA better reflects the different requirements of each Member State and does not interfere with the national competence to determine sanctions.
- **row 105 and 106** – We support the wording of the CGA, which is the result of a long discussions and fine-tuning of the different positions of several Member States within the SQWP.
- **row 109a and 109b** – We do not support further extension of the cost that should borne by the company. In our practice, it is not usual for the employer to pay the costs of legal assistance, representation and costs incurred for legal or administrative proceedings. The introduction of such an arrangement would unjustifiably favour the position of EWC and special negotiating body members vis-à-vis national employee representatives. We only support the payment of the necessary costs related to the activities of the EWC and special negotiating body which serve the purpose of informing and consulting employees.
- **row 113** – Formulations of this type (Member States are encouraged to) do not belong in the normative part of the text.
- **row 119** - The EP proposal abolishes the possibility of initiating negotiations on the basis of a written request from at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States. It is also unacceptable that the central management itself would have to start acting and adapting the agreement to the requirements of the new directive, even completely, one year after the entry into force of the amendment. The wording of the CGA is more flexible, as central management does not have to amend the agreement unless at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States request it or unless it decides to do so voluntarily. Thus, the EP proposal goes completely beyond the compromise in the CGA that was reached at the SQWP meeting.
- **row 121e** - We do not support the establishment of a monitoring committee. We consider a monitoring committee to be uneconomical and we do not consider its establishment necessary.
- **row 128a** - We oppose the introduction of additional administrative burdens for Member States; we are in favour of maintaining only the general obligation to notify the EC of laws and regulations implementing the Directive.
- **row 142a a 142b** - In particular, we disagree with the extension of the areas of information and consultation to include those relating to franchise networks. In our view, franchise networks are outside the scope of the EWC Directive.
- **row 146** - The wording of the CGA sufficiently balances the different requirements of the individual Member States. For objective reasons, it is not possible to achieve an exact representation of both sexes - 40% of the members of the EWC. We support gender equality, but we consider it necessary for the proposal to be practically feasible. The members of the EWC and its bodies are elected by employees. The elections are secret ballot. The employer cannot influence the composition of the candidates for membership of the EWC or its bodies. 40% gender representation on the EWC cannot be guaranteed and therefore this objective cannot be legally binding or enforceable.

Moreover, the term “the diversity of the workforce” is unclear.

- **row 148** - The wording of the CGA sufficiently balances the different requirements of the individual Member States and provides more flexibility.
- **row 150**
- **row 151a** – We do not support the requirement to coordinate procedures taking place at different levels. We would welcome explanation what is the exact purpose of the proposal and what added value this change could have.

9) Czechia strongly prefers to keep the Council’s General Approach regarding:

- **row 23** - The proposed amendment is not supported by the normative part of the text. Moreover, while the meaning of "gender-balanced representation" is clear, as are the Treaty's objectives regarding equality between men and women, the reference to "balanced, inclusive and diverse representation of employees" raises a number of questions and interpretative difficulties.
- **row 28** – however, we support the last sentence of the EP amendment (*In that context, it is important to ensure that Community undertakings or Community-scale groups of undertakings can take decisions effectively and do not result in undue delays in decisions taken by Community undertakings or Community-scale groups of undertakings*)
- **row 28a**
- **row 34** – We prefer the wording contained in the CGA, which provides more flexibility in convening plenary meetings.
- **row 49a and 49b**
- **row 50 and 50a** - The definition of employee representative has no added value.
- **row 74** – It is important to retain the words “as far as possible”.

10) Czechia can show a certain degree of flexibility regarding:

row 3, 4, 10, 11, 15, 16, 17, 18, 20, 21, 37, 37a, 37b, 48, 49, 52a-52c, 53a, 53b, 74b, 76d, 76f, 91, 92a, 92b, 92c (*if a representative of a recognised Community-level trade union organisation is considered as an expert whose participation is admissible even under the CGA*), 94, 95, 97a to 97c, 98, 113a, 113b, 120, 121, 151, 156.

## Comments by DE

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of Germany

Germany supports the general approach reached in the Council on 20 June 2024. In our view, the general approach is well-balanced and focuses on the objective of creating a clearer and more practical legal framework for European Works Councils to operate in. Thus, as a general line to take, we ask the Presidency to adhere to the general approach in the trilogue as closely as possible.

The following comments are based on a preliminary assessment of the amendments proposed by the European Parliament. Further examination of the proposals is ongoing; we maintain a general scrutiny reservation.

### 1) We cannot support following EP amendments:

- Rows 52c and 52e (Art. 3(2) of Directive 2009/38/EC): The extension of the presumptions for a dominant influence in the definition of “controlling undertaking” to include cases where an undertaking provides services through franchise or license agreements with independent third-party companies. Franchise or license agreements with structurally independent companies do not necessarily grant a dominant influence between licensor/licensee or franchisor/franchisee; the influence is not comparable to the cases described in Art. 3(2) of Directive 2009/38/EC in its current version. The Impact Assessment of the European Commission dealt with this in greater detail in Annex 11. Thus, the inclusion of the words “control over decisions” in Art. 3(1) is also not supported.
- Row 58 (Art. 5(6) of Directive 2009/38/EC): In line with the German position in the Council negotiations, it is not acceptable that expenses incurred by the special negotiating body need to be approved by central management in order to be reimbursable.
- Row 103 (Art. 11(2) of Directive 2009/38/EC): The extension of the procedures available to enable the rights and obligations deriving from the Directive to a possibility to request a preliminary injunction for the temporary suspension of decisions of the central management. The proposed amendment is very far-reaching and would apply as soon as a decision is challenged on the grounds stated in the amendment and regardless of the severity of the infringement of information and consultation rights.
- Rows 104a and 104b (Art. 11 (2) of Directive 2009/38/EC):  
The Council Mandate regarding penalties and sanctions should not be changed. The provisions on sanctions and financial penalties in the general approach are well-balanced and the result of intense discussions in the Working Party on Social Questions. The decision in the general approach to not lay down specific criteria for determining financial penalties should be upheld.
- Rows 104c and 104d (Art. 11 (2) of Directive 2009/38/EC):  
The proposal to exclude companies from an entitlement to public benefits, aids or subsidies or

public contracts could in our view have the detrimental effect of disadvantaging companies (groups) that have an EWC compared to companies (groups) that do not.

- Row 113 (Art. 11(4) of Directive 2009/38/EC): Member States should be at liberty to decide whether to introduce out-of-court mediation procedures regarding information and consultation rights of EWC. This decision should not be prejudiced by guidance in the directive.
- Rows 121d to 121h (new Art. 15a to be inserted in Directive 2009/38/EC): The proposed monitoring mechanism would create additional administrative burdens on Member States and the Commission without having a clear and feasible objective. It is not clear how practical problems arising in individual companies (groups) could be solved by such a monitoring committee. Established mechanisms (e.g. studies initiated by the European Commission) to monitor the functioning of the directive in practice seem better suited and sufficient.

## 2) We strongly prefer to keep the Council's General Approach regarding:

- Proposed amendments on the transitional provisions regarding application of older EWC agreements would require further in-depth examination. However, we would like to point out that the provisions agreed upon in the general approach were the result of complex and very detailed discussion and in our view are well-balanced.
- Row 50a: The effect of the proposed inclusion of trade unions in the definition of employee representatives would also need further scrutiny; it seems questionable whether trade unions have a role in all instances in which the directive refers to employee representatives.
- Row 76d: Germany is critical of the proposed reduction of the 36 month-negotiation period after which the subsidiary requirement apply if no agreement was reached to only 24 months. From the fact-finding done by the Commission (Impact Assessment) it transpires that practitioners (also) consider a 24 month-period as too short in view of the complexity of EWC negotiations.

## 3) We can show degree of flexibility regarding:

- Row 53a and 53b (Art. 5(1) of Directive 2009/38/EC): Germany can support amendments that aim at clarifying that the quorum of 100 employees for the establishment of an EWC can be reached either in a joint request or in several separate requests.
- Row 55 (Art.5 (2b) EBR-RL of Directive 2009/38/EC): Germany could support amendments that aim at specifying gender-balanced representation - in the same way as for the European Works Council - in a way that women and men each should hold at least 40% of the posts of member of the special negotiating body and to regulate the obligation to explain the reasons if this aim is not reached. The concrete terms of such a mechanism must ensure a practical and efficient framework for appointing the members of the special negotiating body.
- Row 55b (Art. 5(4) of Directive 2009/38/EC): Germany could support changes that emphasise the role of competent recognised Community-level trade unions in supporting the special negotiating body.

- Row 58 (Art. 5(6) of Directive 2009/38/EC): Germany supports the clarification that the costs to be reimbursed for the use of experts include a representative of a recognised Community-level trade-union.
- Rows 74b seq. (Art. 7(1) of Directive 2009/38/EC): Germany could support the clarification that the subsidiary rules apply with immediate effect in the cases stated in Art. 7(1).  
With regard to the further amendments in Art. 7(1) proposed by the EP:  
Row 76b: Germany could support application of the subsidiary requirements if the special negotiating body is not convened on a regular basis, if it is feasible to specify further what “on a regular basis” means. The Directive should be clear in this respect.  
Row 76e: Germany can also support the proposed amendment whereby the subsidiary rules apply if an agreement has been terminated and there is no new agreement within a defined time-frame. Whether in this circumstance 24 months are sufficient should be further examined.
- Row 81a (Art 8(new 3a) in Directive 2009/38/EC): Germany supports the inclusion of a provision that makes it clear that and under what conditions confidentiality requirements may not prevent EWC members from sharing information with national or local works councils. The flow of information between the different levels of employee representatives is crucial for the functioning of EWCs and employee representation at national/local level.

**Remark from the German delegation on Article 1, first paragraph, point (10), amending provision, numbered paragraph (6) concerning the addition of a paragraph 6 in Article 12 of Directive 2009/38/EC:**

With regard to the proposed addition of a new paragraph 6 in Article 12 as contained in the Commission’s proposal of a Directive amending Directive 2009/38/EC on European Works Councils and in the General Approach of the Council, the German delegation would like to emphasise the importance of maintaining this provision in the proposed Directive (row 115 in Doc. 17110/24). The proposed paragraph containing the possibility of exemptions for undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions is not a new element in the Directive. The same wording is currently contained in Article 8 (3) of Directive 2009/38/EC. The Commission proposal moves the provision to Article 12 which is consistent as Article 12 concerns the relationship with national provisions.

An exemption clause for companies pursuing ideological guidance has been an element of EWC law since the first EWC directive 94/45/EC. As the recitals of that directive stated “information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States”. Therefore 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. Similar

exemption clauses are contained in all EU directive on employee involvement. For the sake of coherence and taking account of the practices in Member States, this point should be retained in the EWC directive. We would like to urge the Presidency to take this into account in the upcoming trilogue meetings.

**List of Exemption clauses in EU law on involvement of employees relating to ideological guidance with respect to information and the expression of opinions**

**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**

**Recitals**

(...)

Whereas point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States;

**Article 8**

3. 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.

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**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 (Recast)**

**Article 8**

3. 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.

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**Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community**

**Recitals**

(24) Care should be taken to avoid affecting some specific rules in the field of employee information and consultation existing in some national laws, addressed to undertakings or establishments which pursue political, professional, organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions.

### **Article 3**

2. In conformity with the principles and objectives of this Directive, Member States may lay down particular provisions applicable to undertakings or establishments which pursue directly and essentially political, professional, organisational, religious, charitable, educational, scientific or artistic aims, as well as aims involving information and the expression of opinions, on condition that, at the date of entry into force of this Directive, provisions of that nature already exist in national legislation.

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## **Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees**

### **Article 8**

3. Each Member State may lay down particular provisions for SEs 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, on the date of adoption of this Directive, such provisions already exist in the national legislation.

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## **Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees**

### **Article 10**

3. Each Member State may lay down particular provisions for SCEs 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, on the date of adoption of this Directive, such provisions already exist in the national legislation.

## Comments by DK

Preliminary remarks to the European Parliament's amendments to the revision of the directive on European Works Councils

SQWP 20 January 2025

### General remarks

We would like to thank the Polish Presidency for the opportunity to provide preliminary remarks to the EP's amendments. Given the technical nature of the directive, however, more time is required to fully scrutinize the amendments before we can share our position on all of them. By the same token, we look forward to the Commission's reading of (several of) the EP's amendments, which will help inform our position. At this stage, we are therefore only able to share our preliminary remarks to some of the EP's amendments.

We want to preface our comments by stressing that we would want to see the compromise text reflect, to the greatest extent possible, the Council's general approach. Reminding of the thorough discussions in the working party, the GA strikes an important balance between improving the right to information and consultation of workers and respecting companies' ability to make timely and effective decisions. Ensuring that the revision will not introduce unnecessary administrative/economic burdens for businesses is indeed an important concern in the trilogue negotiations – not least in light of the EU's current agenda to maintain the EU's competitiveness.

Equally, it is significant to stress – and respect - that the EWC-Directive is about information and consultation and not on co-decision – and that the revision should not risk influencing or muddling up national regulation of information and consultation.

### Preliminary comments to specific EP amendments

**Row 50a:** DK could possibly accept the EP's suggestion to include a definition of "employees' representatives" We could support the suggested definition:

*(d) 'employees' representatives' means trade unions or the employees' representatives provided for by national law or practice;*

**Row 55** (gender-balance in the special negotiating body): In the spirit of compromise, DK would probably be able to accept the EP's suggestion to introduce a target of men and women holding at least 40% of the posts of the special negotiating body. If so, we could also accept the EP's suggestion to require the special negotiating body to give a written explanation in cases where the 40% target is not met.

**Row 76d:** DK could possibly, if need be, be flexible in terms of reducing the duration of time that the special negotiating body has to negotiate an agreement before the subsidiary requirements apply from three years to two years.

**Row 76f:** We are not sure of the rationale behind this amendment. Would the employees not have to request a new agreement?

**Row 92:** Seems too detailed. This must be negotiated under article 6. The corresponding article in the annex would be a fallback position.

**Row 96:** Seems unproblematic/self-evident.

**Row 103** (preliminary injunction): DK cannot accept the suggestion to include a possibility to apply for and terminate as well as to request a preliminary injunction for the temporary suspension of decisions of the central management. These sanctions are simply too far-reaching and could significantly affect the businesses and decision-making functions of the affected companies.

**Rows 104a-104b:** DK could perhaps be flexible on parts of the wording on penalties specified by the EP – as long as the penalties are effective, dissuasive, and proportionate. However, we believe it would be more appropriate to reflect the EP's suggestions in the recitals in line with the Common Position of the Council rather than in the operative articles.

**Row: 104c- 104d:** Questions on access to funding (social conditionality) and public contracts must be handled horizontally/in the respective legal acts.

**Row 109b:** We should stick to the clarification made by Council, as mention in row 111b.

**Row 119:** We would like clarification on how the EP's amendments regarding agreements that are already in force (article 14) differs from the Council's GA?

**Rows 121f-1021h (monitoring committee):** DK cannot support the EP's suggestion to establish a monitoring committee with representatives from each country due to the burdens such a committee would entail for Member States. We could be flexible if the monitoring committee consisted of the social partners and the Commission, excluding representatives from member states. However, it should in any case not set a precedent for future directives.

**Row 146:** We could probably show some flexibility in terms of compromising on language to ensure diversity in the make-up of EWCs and select committees, in so far as the text respects existing procedures for the appointment of representatives. The EP suggestions, however, are too prescriptive.

## Comments by EE

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of the **Estonian** delegation

### General remarks

Estonia is of the opinion that the starting point for negotiations is the General Approach (GA). The negotiations should be seen in the context of the need to boost Europe's competitiveness to reach a balanced outcome. We ask the Presidency to maintain the GA as much as possible, which is a well-balanced result of thorough negotiations in the Council.

At this stage there are very few EP amendments where we see some room for flexibility. In our view, many of the amendments proposed by the European Parliament are over-regulatory, prescriptive with excessive administrative and disproportionate financial burden, as well overly intervening into Member States legal systems.

We do not support the EP amendments and support the GA on substantive issues regarding *transnational matters, costs to be covered by employers/central management, mechanism of sanctions, mediation procedure, establishing a monitoring committee and a transposition period.*

Please see below the specific rows, some of them with justifications.

**1) We cannot support following EP amendments** rows 25, 32a, 33, 37a, 37b, 49a, 49b, 52a, 52c, 52e, 55, 55b, 74b, 76b, 76d, 76f, 81a, 85, 92a, 92b, 92c, 94, 96, 103, 104a, 104b, 104c, 104d, 109b, 121e, 121f, 121g, 121h, 128a, 151a.

**Row 25.** Sensitive information shared in confidence should not be disclosed to national or local work councils. The entrepreneurial economic interests prevail here and should be respected.

**Row 49a.** EP amendments regarding article 1, especially row 49a make the text unreasonably complicated. It is difficult to understand what exactly is the difference between points (a), (b) and (ba). Council Mandate is legally clearer.

**Rows 52a, 52c and 52e.** All these EP amendments are driving towards broadening scope of the Directive, which EE does not support.

**Row 55.** The EP amendment refers to an obligation to reach a gender-balanced representation. We support the Council Mandate, which provides flexibility referring to an obligation of effort (look at the row 146 – aiming at these percentages „as far as possible”).

**Row 55b.** We are not convinced that there is a practical need to make an amendment here. Current text provides for enough flexibility regarding the use of experts.

**Row 74b.** We are unsure about what practical problem is this amendment solving? Every Member State has its own rules when and how the legislation shall take effect. Therefore, we do not support the need for such an amendment.

**Row 76b.** The EP amendment leaves too much room for different interpretations and therefore causes unnecessary disputes. For example, what is “regular basis”?

**Row 76d.** We are hesitant about the necessity of the EP amendment. The three-year deadline is enough and not too long.

**Row 76f.** The EP amendment creates the situation where it is impossible to terminate the agreement without an obligation to start to apply subsidiary requirements. It means it is impossible to end the relationship. Once parties have entered into agreement (art 6) they cannot end it as they are obliged to follow the automatic application of subsidiary

requirements (art 7), even though they would like to end the agreement. This is not in conformity with the principles of contract law. What problem would this amendment solve?

**Row 81a.** Please see the justification under row 25.

**Row 92a.** We do not see the need for such a specific addition. The addition is over-regulatory.

**Row 92b.** In case of a dispute the EWC/representatives and the central management can communicate and the EWC/representatives can ask for the reasoning in writing already today. Establishing such obligation in the directive seems therefore unnecessary and over-regulatory.

**Row 92c.** We do not see the need for such a specific addition. Also, regarding the last sentence, it is questionable to obligate third parties to take part of the meetings. In addition to whether it is reasonable, it also raises questions what is the consequence if the third party is for example unable to take part in such a meeting?

**Row 94.** We do not support introducing the concept of “legal capacity” of members of SNB and EWC, as well employees’ representatives. It interferes into the principles of general provisions of civil law in a Member State. The categories of persons referred here are to be defined as natural persons. According to regulations in national law a natural person has an(a) active/passive legal capacity. In addition, legal capacity cannot be compared to legal personality/legal person who also have (passive) legal capacity. What is meant here under the term “legal capacity” and why is it necessary to use here?

**Row 96.** (See also row 30.) EE does not support EP amendment regarding the right to form and join trade unions. The right to form and join trade unions is the right not regulated under this directive and the right does not derive from the functions of the members of SNB, EWC and employees’ representatives. The right is not in conformity with the objectives of the directive and therefore, goes beyond the scope of the directive. Furthermore, under art 153.5 TFEU the EU cannot cover the right of association.

**Rows 103, 104a, 104b, 104c, 104d.** (See also rows 31, 105 and 106.) EP amendments are too detailed and over-regulatory. It is important that the directive leaves enough flexibility on procedural matters and determining the specific penalties. Otherwise, we intervene with the independence of courts as well as procedural autonomy of a Member State.

**Row 109b.** (See also rows 31a and 111b.) EE does not support that central management bares the judicial costs, the costs of legal representation and subsidiary costs. It is a disproportionate financial burden for employers and it is not in conformity with principles of covering costs in civil procedure in Estonia. Therefore, it is of utmost importance that the directive provides for a Member State an alternative to take other measures than obligation of the central management to bear the costs regarding covering the judicial/legal representation costs of SNB and EWC. Council mandate rows 31a and 111b text is legally clear and sound and provides for enough flexibility for all Member States and their different systems.

**Rows 121e, 121f, 121g and 121h.** We don’t see the need for establishing by a directive a special monitoring committee that would meet twice a year to ensure the correct application of the directive and to address implementation problems. We support the standard procedures to be followed for these purposes. The Commission is responsible for safeguarding the EU acqui. It is possible for example to create the expert committee, which supports transposing the directive correctly into national law, ad-hoc meetings for addressing implementation problems and also infringement procedures are possible.

**2) We support the Council’s General Approach regarding** rows 18, 20, 21, 22, 28, 29, 30, 31, 31a, 32, 33a, 34, 37, 51, 52, 58, 68, 74, 79, 80, 99, 105, 106, 111, 111b, 113, 119, 120, 121, 121a, 124, 142b, 146, 148, 150, 156.

**Row 18.** Transnational matters were thoroughly discussed in the Council and GA represents a balanced approach. EP proposal is confusing, it is opened to different interpretations and intends to broaden the scope of transnational concept.

**Rows 20 and 22.** (See also rows 58, 68 and 156.) EE does not support the coverage of costs of SNB and EWC for legal representation and participation in administrative or judicial proceedings. It is a disproportionate financial burden for employers and it is not in conformity with principles of covering costs in civil procedure in Estonia. Also, there is no specific and objective justification to mention expressly representatives of a recognised Community-level trade-union as experts in row 22.

**Row 21.** The parties should be free to agree the format of the meeting.

**Row 29.** (See also row 99.) It is important to keep the word *reasonable costs* in order to keep the burden of central management balanced.

**Row 30.** (See also rows 96 and 113.) EE supports keeping the GA in row 30 which refers inter alia to national law in guaranteeing access to proceedings. In addition, the GA wording is much clearer, including the wording on prior out-of-court settlement. EE does not support EP amendments regarding the right to form and join trade unions, encouraging mediation and providing alternative dispute mechanisms. The right to form and join trade unions is the right not regulated under this directive. Furthermore, under art 153.5 TFEU the EU cannot cover the right of association. Providing mediation and alternative dispute mechanisms is in the competence of a Member States and should not be provided in this directive.

**Row 31.** (See also rows 103, 104a, 104b, 104c, 104d, 105 and 106.) EE strongly supports the GA regarding penalties. EE does not support EP amendments regarding the injunction to suspend a management decision. The EP amendments go beyond necessary regulation and intervene into the procedural autonomy of a Member State.

**Rows 31a and 111b.** (See also row 109b.) EE strongly supports keeping recital 18a and paragraph 3a in the GA as it stands. EE does not support that central management bears the cost of legal representation and participation in the proceedings. Therefore, it is of utmost importance that the directive provides for a Member State an alternative to take other measures than obligation of the central management to bear the cost regarding covering the judicial cost of SNB and EWC.

**Row 34.** The obligation to have in-person meetings more than one increases the burden of employers. Digital means of communication are not exceptional measures and their use should be allowed for more than one meeting, limiting the burden on employers.

**Rows 51 and 52.** EP amendments are already covered in article 9 rows 91 and 92.

**Row 58.** (See also rows 20, 22, 68 and 156). Council Mandate provides for enough flexibility. We can't give our support to establish an obligation for the central management to bear costs regarding legal representation and participation in administrative or judicial proceedings. Taking into consideration the amendments as a whole, we must keep in mind that the amendments rise administrative and financial burden for employers. It also remains unclear why would it be necessary to point out trade union representatives specifically.

**Row 68.** (See also rows 20, 22 and 156.) Similarly, to the comment in row 58, this amendment should also be deleted for the text to be consistent. We can't support the principle establishing an obligation for the central management to bear costs regarding legal representation and participation in administrative or judicial proceedings.

**Row 99.** (See also row 29.) It is important to keep the word *reasonable costs* in order to keep the burden of central management balanced.

**Rows 105 and 106.** (See also rows 31, 103, 104a, 104b, 104c and 104d.) We support the Council Mandate. The term "financial penalties" provides us with the necessary flexibility for implementing necessary penalties. Pecuniary sanctions refers more to criminal measures, also according to our Penal Code. The EP amendments are too detailed and intervene with the independence of our courts as well as procedural autonomy of MS.

**Row 113.** (See also row 30.) We support Council Mandate. There is no need for such EP's addition. Member States already can develop mediation procedures in case necessary and depending on their laws and practices. Furthermore, directives do not usually establish

suggestions for Member States („encouraged to develop”), making the amendment odd and unusual for a directive.

**Row 124.** We strongly support the Council Mandate. One year transposition period is too short. Legislative drafting takes more time, especially taking into consideration the timeline of an obligatory standard legislative procedure, as well a need to involve interest groups and partners in the legislative process.

**Row 146.** We prefer the Council Mandate, which provides flexibility aiming at these percentages „as far as possible”.

**3) We can show degree of flexibility regarding:** rows 3, 4, 10, 11, 14-17, 23, 26, 28a, 28b, 38, 40, 48, 49, 50a, 53b, 67, 76, 81, 86a, 88, 90, 91, 92, 95, 98, 113b, 115, 121c, 125, 126, 127, 128, 151.

**Row 50a.** We are not convinced that the definition of “employees’ representatives” is necessary and justified to add. We are of the opinion that it might cause extra confusion instead of legal clarity. However, even in case the definition should be included in the text, then it is very important to keep the equal reference to employees’ representatives in accordance with national law and not only to trade unions.

## Comments by ES

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/38/EC 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.**

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of SPAIN:

### **1. Concept of Transnational Matters (article 1.4.a and b and ba) and Recital 5).**

The EP proposes amendments to Article 1.4(a) and (b) and adds a new subparagraph (ba) and a new paragraph, as well as amending Recital 5 of Directive 2009/38/EC.

The red line for ES is ensuring that the definition of “transnational matters” does not weaken the existing definition in Article 1.4 and Recital 16 of the current Directive. Therefore, any EP amendment that narrows this concept would be unacceptable.

During the Council negotiations, we supported requiring objective criteria to define "can reasonably be expected", which the Council General Approach applies across Article 1.4. Therefore, we had positively assessed the objective delimitation in Recital 5.

However, the EP removes the phrase "can reasonably be expected to" in paragraph (a) but adds subparagraph (ba), which includes it for measures that may affect workers in another MS. At the same time, it removes the objective delimitation of reasonability proposed by the Council in Recital 5.

It is therefore difficult to assess whether the EP’s proposals expand or restrict the scope of “transnational matters”. Before taking a position, further clarification from the EP is needed regarding the objectives and reasoning behind these changes.

The same applies to the new paragraph 4a proposed by the EP, which essentially incorporates Recital 16 of the current Directive, but with a slight modification. It appears that paragraph 4a could help apply the concept more objectively, but this was the intention behind the rest of the proposal’s provisions. Therefore, before determining whether this inclusion expands the scope of “transnational matters” in favour of workers’ rights to information and consultation, clarification from the EP should be sought regarding the rationale for this amendment.

### **2. Role of Trade Unions and Experts (Articles 2.1.d, 5.4, 9.3.c, 10.1 and 10.2).**

We can support the EP’s amendments.

### **3. Gender-Balanced Composition of the Special Negotiation Body and the European Works Council (Articles 5.2(b) and 6.2a).**

Article 5.2(b): The EP strengthens the obligation of gender parity in the SNB, requiring that at least 40% of positions be occupied by women and men, with a written explanation required if this target is not met.

Article 6.2a: The EP removes the phrase “as far as possible,” which previously weakened the obligation to include measures in the EWC agreement to achieve gender-balanced representation.

We support EP’s amendment.

#### **4. Information and Consultation Rights & Confidentiality (Articles 2, 8, and 9 of Directive 2009/38/EC)**

Article 2.1(f): Strengthens the definition of “information” by requiring that it be adequate and provided in sufficient time for representatives to examine it in detail, assess its impact, and prepare consultations.

Article 2.1(g): Modifies the definition of “consultation” to include clearer requirements on how and when it must occur to allow workers’ representatives to express an opinion before company decisions are made.

Articles 8.1, 8.2 y 8.3a): It is specified that the prohibition on disclosing confidential information is subject to objective legal limits. The central management is required to determine the duration of confidentiality requirements. An exception to the confidentiality obligation is introduced for members of the EWC who disclose information to national or local works councils when the information may affect workers' conditions.

Article 9.2: The requirements for "information" are strengthened, as it must not only be "appropriate" but also "necessary and sufficient." Additionally, it must enable the EWC to consult with representatives at the national and local levels. The adjective "meaningful" is added concerning the consultations for which preparation is required.

Article 9.3 Unlike the General Approach, it is no longer required to consider the "degree" of urgency of the matter when establishing the reasonable timeframe within which the EWC must issue its opinion. New subparagraphs (a), (b), and (c) are added in Article 9.3.

Expert assistance: The EWC is allowed to request the assistance of experts of its choice. Experts may include representatives of recognised trade union organisations at the EU level. The participation of experts as advisors during meetings is guaranteed.

Conclusion:

- The amendments to the definitions of "information" and "consultation" are not very significant, as they reflect content already set out in the articles. However, there would be no objections to supporting them.
- The amendment to Article 9.2 is viewed positively as it reinforces "information" and considers the consultations that the EWC must conduct with its national-level representations.
- Regarding the urgency of the matter when determining the reasonable timeframe for issuing an opinion under Article 9.3, ES argued for the need to include a reference to the effective exercise of consultation to prevent excessively short deadlines that would hinder meaningful consultation. The new paragraph 3(a) proposed by the EP seems to introduce greater safeguards for urgent procedures, which would only be required in duly justified and

exceptional cases, ensuring effective information and consultation. Therefore, in principle, this amendment could be supported.

- The new paragraph 3(b) proposed by the EP appears more related to the scope of application and the concept of "transnational issues" rather than the information and consultation procedure, so it might be better placed in another article. Nonetheless, the requirement for central management to provide a justified written explanation for refusing to conduct an information and consultation process, including the absence of transnational issues, is viewed positively, and thus can be supported.
- There are no objections to paragraph 3(c) regarding the EWC's ability to request expert assistance.

## **5. Appropriate Measures in Case of Non-Compliance with the Directive (Article 11).**

We support the EP's amendments regarding the strengthening administrative and judicial protection under the Directive, addressing one of the key issues of the current Directive.

However, we cannot support the reference to Regulation 2016/679 aimed at ensuring that the amounts of the financial penalties are equivalent to those established in Article 83(4) and (5) of Regulation 2016/679 on the protection of personal data. These amounts are set at fines of up to €10 million or €20 million, or up to 2% or 4% of the total worldwide annual turnover of the preceding financial year.

ES shares the objective of establishing deterrent sanctions but considers that these amendments are overly prescriptive compared to how sanctions are addressed in other Directives in the field of labour and employment. These amendments would limit the discretion of Member States in designing a balanced, autonomous, and nationally tailored system of fines and sanctions.

Similarly, it is also deemed inappropriate to link the regulatory sanctions framework of this Directive to the provisions of a Regulation whose protected legal subject matter differs and is subject to potential future amendments that would be debated outside the EPSCO framework.

## **6. Pre-Existing Agreements (Article 14).**

This is one of the key articles of the revised Directive, as most EWCs are already constituted based on pre-existing agreements, meaning the practical effect of the Directive will largely depend on this provision.

The EP's amendment is positively valued as it ensures that central management is obliged to initiate negotiations, without requiring a minimum number of workers to request them. It is essential to guarantee that, after a transitional period, the Directive's minimum standards apply, making pre-existing agreement provisions contrary to the Directive no longer applicable.

However, the EP's amendment only refers to compliance with Article 6 concerning the minimum content of EWC agreements. It is unclear whether pre-existing agreements must also comply with other provisions, such as confidentiality requirements (Article 8) or consultation procedures (Article 9). The omission of the obligation to respect the Directive's minimum requirements is problematic. Clarification should be sought on how compliance with these requirements will be ensured.

## **7. Frequency of EWC Meetings (Recital 8 and Annex 1.2 of the Directive).**

We support the EP's amendment.

#### **8. Supervision – Monitoring Committee (New Article 15).**

The EP introduces a new Article 15, which provides for the creation of a monitoring committee to ensure the proper implementation of the Directive and resolve practical issues.

We can support the EP's amendment. However, this proposal is notable as no other directive has established such a committee. The monitoring and enforcement of directives fall under the Commission's responsibilities, although it may be assisted by expert groups including Member State representatives and European social partners as observers. This committee goes beyond that and raises questions about its necessity and practical functioning.

#### **9. Amendments to the Definition of "Controlling Undertaking" and Franchise Workers (Article 3.2).**

The definition of "controlling undertaking" is amended to expand the criteria for determining when a company exercises a dominant influence over others, adding "control over decisions".

The definition of a "Community-scale group of undertakings" is also expanded, broadening the Directive's scope to include franchised companies, adding the following provision specifying the circumstances in which a company is deemed to exercise a dominant influence over another:

We support the EP's amendment as it broadens the scope of transnational information and consultation rights to groups of companies formed by franchises.

#### **10. Crews of seagoing vessels (Article 10.3.2c of Directive 2009/38/EC).**

The EP introduces a set of provisions to ensure the appropriate participation of crews of seagoing vessels, which are almost identical to those included in the Council's General approach. The GA merely incorporated the provision already present in the existing Directive, which the proposal had mistakenly omitted.

We can support the EP's amendment.

## Comments by FI

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are hereby sending you the position of **Finland**.

### General comments

In general, Finland considers that the compromise should, as far as possible, be in line with the Council's GA. However, we have below listed some examples of which amendments tabled by the European Parliament are problematic in our view and where there might be some room for flexibility.

#### 4) We cannot support following EP amendments:

- row 49, 49a and 49b – concerning the concept of transnational matters
- 52a, 52c, 52e (the definition of controlling undertaking)
- row 92 b - FI does not support changes that would increase administrative burden on companies except when strictly necessary.
- row 92 c - EWCs' should not have a unilateral right for to request experts to be present in meetings with the central management. This should be agreed together with the EWC and the central management.
- row 94 – if the terms “legal capacity” would mean that EWCs and special negotiation bodies should be given legal personality.
- row 148 – the form of meetings should be decided by works councils and companies themselves.

#### 5) We strongly prefer to keep the Council's General Approach regarding:

- row 55 and 58 – concerning special negotiation body
- row 74 – flexibility regarding the content of agreement is important for us.
- row 85 - requiring member states to make non-transmission of information subject to prior administrative or judicial authorisation. The directive should not require member states to establish new administrative or judicial procedures.
- row 31 and 103 – concerning a possibility to request a preliminary injunction for the temporary suspension of decisions of the central management where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements. These suggestions are too far reaching. FI cannot accept changes that would weaken companies' decision-making capacity or require new administrative or legal procedures.
- rows from 104a to 111b – we do not support the EP's suggestions. The Council text regarding the administrative or judicial procedures and how the costs connected to these processes should be handled, provides a balanced solution and should be safeguarded.
- row 124 – we support the GA and the 2 years transition period.
- 142b – we do not support including franchise companies into the scope of the Directive.
- row 146 – the deletion of “as far as possible” and thus removing flexibility is problematic for us.

#### 6) We can show degree of flexibility regarding:

- row 50a

- row 53 b
- row 79
- row 91 – if some flexibility could be preserved, for instance by leaving a word “appropriate” in the text.
- row 113 - not as such, but if the additional text of the EP could be moved to the recitals were it might suit better.

PUBLIC

## Comments by FR

### **FR comments on EP mandate on the 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 (Text with EEA relevance)**

*Document ST 17110 2024 INIT*

#### Row 31 :

The French authorities are opposed to the European Parliament's amendment mentioning legal action as one of the sanctions applicable in the event of non-compliance with the Directive. In fact, the aim of such actions is to obtain compliance and compensation for the damage caused, which is different from sanctions. This assimilation of legal action to sanctions is problematic and should be removed from the text.

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#### Row 49a :

The French authorities are opposed to the European Parliament's amendment extending the scope of transnational matters to the third situation proposed by Parliament. They consider that it would be advisable to avoid an inflation of the subjects potentially concerned at European level, and thus competition with national information and consultation procedures. Moreover, the hypotheses covered by this third situation are not specified.

#### Row 49b :

The French authorities consider that the clarifications provided by the European Parliament's amendment on determining the transnational nature of a matter are welcome. The amendment is acceptable.

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#### Row 52 :

The French authorities are opposed to the introduction of a response injunction for the central management, prior to the adoption of a decision. Such an injunction would run the risk of blocking decision-making processes within companies. The European Parliament's position on this point seems reasonable, as it makes the requirement for a reasoned written response conditional on the opinion of employee representatives being delivered within a reasonable timeframe. The European Parliament's amendment comes close to the wording adopted by the Council. However, it seems preferable to the French authorities, particularly in anticipation of the transposition of the text, to retain the wording of the general approach, which details the consultation procedure in recital 15 rather than in the operative part of the text. For these reasons, the French authorities are opposed to the European Parliament's amendment and reiterate their support for the general approach.

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#### Rows 52a and 52e :

The French authorities are opposed to the European Parliament's amendment (row 52a) which proposes to include employees of undertakings linked by contractual agreements to the ordering undertakings referred to in row 52e (on the definition of the concept of controlling undertaking within the meaning of the debated text). This amendment would appear to extend the application of the directive to companies linked by contractual agreements to client companies, in particular third-party companies linked by franchising or licensing agreements. This could create legal uncertainty and complicate the scope of the directive. The French authorities are in favor of applying the duty of care to groups, and support an explicit exemption for subsidiaries to avoid any uncertainty as to the obligations they would be subject to.

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Row 55 :

The French authorities are opposed to the amendment introducing a numerical target for a balanced representation of women and men in the composition of the special negotiating body (SNB). Indeed, while they support the objective of such a balanced representation in the composition of the EWC, they deem important that this objective takes account of the reality of the workforce in the companies and sectors concerned. So, rather than a numerical target, a proportionate representation requirement would be more appropriate, in particular to take account of existing imbalances in sectors or professions that are heavily feminized or masculinized. This type of provision must be sufficiently flexible to take account of national legal frameworks and rules on employee representation. The last sentence of the European Parliament's amendment does not provide the flexibility needed to overcome the reservations of the French authorities.

Row 58 :

The French authorities consider that the Parliament's proposals on the possible use of representative trade unions recognized at EU level as experts provide clarification and a framework for the system. The French authorities also consider as reasonable the Parliament's proposal that the costs must be approved by the central management. However, as far as the SNB is concerned, the French authorities point out that, under national legislation, when it does not have legal personality, the SNB cannot have its own budget. National legislations must therefore be respected in this respect. Subject to this reservation, the French authorities may consider this amendment acceptable.

However, on this row see also following item as regards assumption of costs of representation and participation in legal or administrative proceedings.

Rows 20, 22 and 58 :

The French authorities are opposed to the European Parliament's amendment, which maintains the Commission's proposal that central management should bear the costs of representation and participation in judicial or administrative proceedings. As far as legal proceedings are concerned, this provision interferes with the provisions of the French law<sup>1</sup>, which provides for a decision by the judge at the end of each proceeding on the procedural costs incurred in the course of that proceeding. The French authorities wish to exclude judicial proceedings from the scope of the provision, or to provide for an arrangement that preserves the role of the judge in determining which party is liable for the costs incurred in these proceedings, as provided for in the general approach.

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Row 68 :

The French authorities are opposed to the European Parliament's amendment providing that the agreement establishing the EWC must provide for the allocation of resources to the EWC for the purposes of legal representation of the EWC or its members. The wording of this provision is problematic in that it distinguishes between the action of the EWC and that of its members on its behalf, whereas it is the same action, as the action of the EWC is necessarily exercised by its members, in compliance with its statutes.

Row 74 :

The French authorities are opposed to the European Parliament's proposal. The wording of the general approach is better adapted to the diverse realities of companies: it allows for a degree of flexibility by making the numerical objective of 40% a target to aim for.

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<sup>1</sup> Articles 696 and 700 of the Code of Civil Procedure and article L761-1 of the Code of administrative justice.

Rows 76a to 76f :

The French authorities reserve their position on the European Parliament's amendments. They are currently analyzing the implications of the 24-month time limit (instead of 36 months under the provisions of Directive 2009/38/EC) before application of the subsidiary requirements (line 76d)), as these are new elements not discussed by the Council. They emphasize, however, that these amendments are in line with the effective application of the directive's provisions and the widespread introduction of EWCs.

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Rows 79 to 81 :

The French authorities reserve their position on the European Parliament's amendments.

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Row 85 :

The French authorities are opposed to the introduction of prior administrative or judicial authorization to justify the non-disclosure of certain informations by central management. The risk of judicialization would be too great, which could lead judicial bottlenecks and thus slow down and block discussions. The specific remedy provided for in line 109 (amending article 11 §3 of the 2009 directive) seems sufficient to ensure compliance with the directive's obligations on this point.

Others rows 82 to 86a :

The French authorities reserve their position on the European Parliament's amendments.

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Rows 91, 92a, 92b and 92c :

The European Parliament's amendments are acceptable to the French authorities in that they specify the process for informing/consulting workers.

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Rows 30 and 94 :

The French authorities are opposed to the European Parliament's amendment concerning the powers of SNB members and employee representatives. The European Parliament expressly states that members of the special negotiating body, members of the European works council and employee representatives must have the legal capacity to collectively represent the interests of the employees of a Community-scale undertaking. The wording of this provision is ambiguous, insofar as the legal capacity of the members of these bodies need not be specified, since they are natural persons. It may therefore give rise to uncertainty as to the scope of this capacity, which must not evade the rules governing representation of the bodies in question (EWC and SNB). The coherence of provisions referring to the action of representatives needs to be better ensured, so as not to confer a capacity to act on individual members of the EWC and SNB, regardless of the representation rules of these bodies.

Row 99 :

The French authorities point out that a certain degree of flexibility must be retained when it comes to covering expenses, in order to recognize cases such as those in France, where the EWC has its own budget.

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Row 103 :

The French authorities have reservations about the European Parliament's amendments to the provisions of §2 a) of Article 11: the latter expressly provide for an action for temporary suspension of central management decisions in the event of breach of the information and consultation obligations laid down in the Directive. If the possibility of summary proceedings could mean that French law complies with this obligation, the French authorities will need to carry out an in-depth analysis of this point. In any case, the wording of the provision is both

confusing and excessively prescriptive (adding the condition of promptness to that of effectiveness, which is redundant), therefore it should be reviewed.

Rows 104c and 104d :

The French authorities are opposed to the creation of new sanctions, based on the exclusion from certain benefits, aid or public subsidies, and from public contracts. Such sanctions could indeed considerably weaken companies, with ultimately harmful consequences for employees. In addition, it is important to respect national legislations, some of which already provide for a range of penalties for the offence of obstruction.

Rows 105 and 106 :

The French authorities are fairly open to more objective criteria for sanctions, and to raising the level of financial penalties. However, the introduction of sanctions proportional to sales or payroll may prove difficult, as such data are not always accessible. It also seems important that penalties remain within reasonable proportions, which does not seem to be the case with the calculation methods proposed by Parliament for financial penalties. As explained above, Member States should be able to incorporate these sanctions into their own legal systems, as most of them have national staff representative bodies (« IRP »), hence sanctions for offence of obstruction, which may take different forms in different countries. The French authorities are therefore opposed to the Parliament's proposals and support the Council's general approach.

Rows 109b :

The French authorities are opposed to the European Parliament's amendment, which stipulates that costs incurred in judicial proceedings relating to the communication of confidential information must be borne by the central management. In fact, this provision interferes with French law, which provides for a judge's decision on the costs of proceedings (see comments for rows 20, 22 and 58). The French authorities therefore prefer the wording of the general approach, which respects the principle of the procedural autonomy of Member States.

Row 111 :

The French authorities have reservations about the absence of the Council's amendments which were clarifying the scope of the provision. To ensure that the text is perfectly clear, it would be advisable to specify which procedures the provision refers to.

Row 113 :

The French authorities are opposed to the European Parliament's version, which takes up the Commission's proposal by providing an incentive to use alternative dispute resolution methods. This provision is problematic insofar as it states that the decision resulting from a compulsory alternative dispute resolution procedure must not be binding on the parties, whereas the agreement resulting from an amicable settlement, once concluded, shall be binding on the parties and prevent from submitting to the Courts the points on which it was reached. The French authorities prefer the wording used in the general approach, which is more appropriate and rightly reserves the right to take legal action for the party concerned.

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Rows 119 to 121c :

Generally speaking, the French authorities consider that the gradual abolition of the exemption from application of the Directive to companies which concluded agreements before its entry into force is a solution in favor of harmonizing obligations and rules. A transitional period before the new provisions come into force is necessary, to respect the autonomy given to the social partners to negotiate and revise these agreements.

Row 119 :

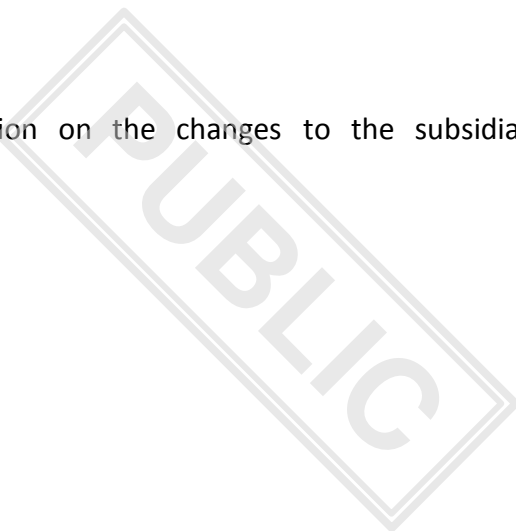
Given what is stated above, the French authorities can support the wording proposed by the Parliament, which provides for the opening of negotiations, one year after the entry into force of the new directive, to amend existing agreements by means of addenda, and to incorporate

the aspects relating to information and consultation which would not have been provided for and which are covered by the new directive.

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Annexe 1 :

The French authorities are reserving their position on the changes to the subsidiary requirements, which are currently being analyzed.



## Comments by HR

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of **(CROATIA)**

### 1) We cannot support following EP amendments:

- **row 33:** The right to organise is already regulated by national law and international treaties in force. A more detailed explanation of this is given in the commentary to the EP amendment to Article 1(1)(8) of the proposed Directive (Article 10(3)(1) of Directive 2009/38/EC). We support the Council's compromise solution.
- **row 50a:** we do not support the EP amendment. With regard to the definition of the term "employee representatives", it is proposed to retain the valid text of Article 2, paragraph 1, point d), so that this term denotes the representatives of workers determined by national law and/or practice. Namely, the worker's representative (s) in the context of this Directive is not a union, but the worker's representative(s) who, acting on the proposal of a certain union or on the proposal of a qualified number of a certain group of workers, is appointed or elected by all workers in free and direct elections by secret ballot.
- **row 58:** we do not support the EP amendment. Given that the current provision in Article 4 (3) already prescribes the possibility of seeking help from experts chosen by the negotiating committee, which may include representatives of competent recognized trade union organizations, reasonable costs also mean reasonable costs of representatives of competent recognized trade union organizations.
- **row 94:** we do not support the EP amendment. We propose to maintain the Commission proposal so that this term denotes workers' representative(s) as determined by national law and/or practice.

This means that a workers' representative (s) in the context of this Directive is not a trade union, but rather workers' representative(s) who, acting on the proposal of a particular trade union or on the proposal of a qualified number of a particular group of workers, is appointed or elected by all workers in free and direct elections by secret ballot.

- **row 96:** we do not support the EP amendment. The right to trade union association is already regulated by national law and international treaties in force.

Workers can freely and unhindered exercise their right to associate for the purpose of collective bargaining and the conclusion of collective agreements at different levels. However, the purpose of worker participation in the sense of worker participation in decision-making, including at the transnational level, is the original right of every worker.

Regardless of whether he is a union member or not, the right of every worker is to give a specific person (not an interest group), a mandate to represent the interests of the workers.

Therefore, prescribing the possibility of interest-based association in an union for persons who are already appointed or elected representatives of the workers, has no justified purpose and is contrary to the purpose of worker participation already achieved at the transnational level.

In addition, in case of prescribing the possibility of interest-based association of persons who are already appointed or elected representatives (members of special negotiating bodies, members of European works' councils, representatives of workers within the framework of the procedures referred to in Article 6(3) of the Directive), two issues arise:

1. What would be the purpose of the activities of such interest trade union associations in which only workers' representatives are members (members of special negotiating bodies, members of the European Works Council, workers' representatives within the framework of the procedures referred to in Article 6(3) of the Directive), especially if the existing and newly proposed rights for trade union representatives to participate in the sessions of these bodies and the European Works Council are taken into account?

2. What would be the rights and duties of such workers' representatives if it is taken into account that the workers have already given them a mandate to represent them before the employer through the very process of appointment or election, and such a mandate does not have to include an expression of workers' will that their representative, on their behalf, would additionally join certain interest trade union associations.

- **row 104c:** we do not support the EP amendment. The principle according to which penalties must be effective, dissuasive and proportionate has been accepted.

However, the question of proportionality of the penalty arises, the real and financial consequences of which are difficult to assess and therefore to prescribe by law. It seems that there is a risk that the penalty could significantly hinder the performance of activities and limit the freedom of entrepreneurship.

- **row 104d:** we do not support the EP amendment. The principle that penalties must be effective, dissuasive and proportionate has been accepted.

However, the question of the proportionality of the penalty arises, the real and financial consequences of which are difficult to assess and therefore to prescribe by law. It seems that there is a risk that the penalty could significantly hinder the performance of activities and restrict the freedom of enterprise.

## 2) We strongly prefer to keep the Council's General Approach regarding:

In general, we prefer the text of the Council's General Approach.

## 3) We can show degree of flexibility regarding:

In general, we prefer the text of the Council's General Approach.

## Comments by HU

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the ~~position~~ **first and preliminary observations** of Hungary

- *also noting that our observations below reflect only our preliminary position, and we reserve the right to reconsider it in light of further explanations from the Parliament.*

### 1) We cannot support following EP amendments:

- row 30 - Provisions relating to collective bargaining, freedom to organise and freedom of association may be laid down in an act adopted on the legal basis of Article 153(1)(f) TFEU by unanimity. Modifications of Treaty competences cannot be the subject of political will and a directive to be adopted by qualified majority.
- row 31 - the administrative sanctions under the GDPR Regulation are excessive in relation to this Directive, therefore not supportable

Operative part:

- 55, 74, 76, 80, 85, 96 - Provisions relating to collective bargaining, freedom to organise and freedom of association may be laid down in an act adopted on the legal basis of Article 153(1)(f) TFEU by unanimity. Modifications of Treaty competences cannot be the subject of political will and a directive to be adopted by qualified majority.
- 104c, 104d, 105 and 106: – we cannot accept differentiation between intentional and negligent infringements. There is no such discrimination under Hungarian administrative law.
- 113, 121d, 121e, 121f, 121h - excessive administrative burden and generates additional costs for Member States;

Annex:

- 146,

### 2) We strongly prefer to keep the Council's General Approach regarding:

- row 18, 23, 26, 31a, 33a,

Operative part:

- row 81, 81a, 86a, 88, 90, 92, 99, 111a, 111b, 124, 127,

Annex:

- row 150, 151,

### 3) We can show degree of flexibility regarding:

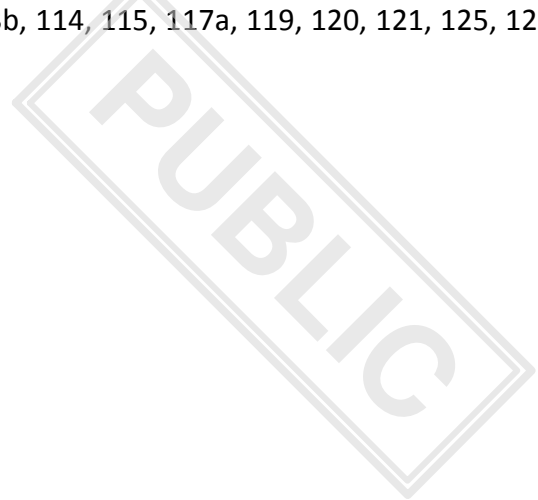
- Row 4, 10, 11, 14, 15, 16, 17, 20, 21, 25, 27, 28 (if the decision is taken by the central management), 28a, 28b, 29, 32, 32a, 33, 34, 37, 37a, 37b, 38, 40, 121, 121a, 121b, 121c,

Operative part:

- row 48, 49, 49a, 49b, 50, 50a, 51, 52, 52a, 52b, 52c, 52d, 52e, 53a, 52b, 53a, 53b, 55a, 55b, 58, 67, 68, 70, 71, 72, 74a, 74b, 76a, 76b, 76c, 76d, 76e, 76f, 79, 91, 92a, 92b, 92c, 94, 95, 98, 103, 104a, 104b, 109a, 109b, 111, 113a, 113b, 114, 115, 117a, 119, 120, 121, 125, 126, 128, 128a,

Annex:

- 142a, 142b, 145, 148, 151a, 156,



## Comments by IE

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of **Ireland**

We would like to thank the Polish Presidency for the opportunity to provide our preliminary remarks. Ireland supports the general approach reached in the Council on 20 June 2024 and wishes to see the compromise text reflect, to the greatest extent possible, the Council's general approach.

### 1) We cannot support following EP amendments:

- 18 – PROBLEMATIC, EP amendments do not add value and are potentially confusing.
- 49a – PROBLEMATIC, this language is superfluous/ does not add value to text.
- 50a – PROBLEMATIC, the Directive does not have competency regarding Trade Union recognition.
- 52a – PROBLEMATIC, widening of scope of Directive by introducing new elements.
- 52c – PROBLEMATIC, widening of scope of Directive by introducing new elements.
- 52e - PROBLEMATIC, widening of scope of Directive by introducing new elements.
- 53b – PROBLEMATIC, Change of scope. Separate written request is a new element which would dramatically change the scope of the Directive.
- 55b – PROBLEMATIC, Assigning Trade Union representatives is not within the competence of this Directive.
- 58 – PROBLEMATIC, Refences to Trade Union representatives is not acceptable as is beyond the competence of this directive. (SNB negotiations)
- 22 – PROBLEMATIC, Whether Trade Union or not is not relevant to EWC under this Directive. Inclusion of the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings, undermines Ireland's existing system of access, i.e., Workplace Relations Commission, Labour Court and Arbitration, without the need for legal representation.
- 25 – PROBLEMATIC, EWC Directive does not have the competence to deal with issues of confidentiality in a transnational environment. Issue of 'forum shopping' arises. Language is not conducive to legal certainty. National legislation on confidentiality must be respected.
- 85 – PROBLEMATIC, Prescriptive language. 'may' make such dispensation is preferable.
- 30 – PROBLEMATIC, the "the right to form and join trade unions" is outside the competence of the EWC Directive.
- 31 – PROBLEMATIC, IE's view is that while financial penalties should be provided for, that having other forms of sanctions which could be provided for and could be linked to annual turnover, for example, is a more proportionate response to MS obligation to provide for effective, dissuasive and proportionate sanctions. Use of GDPR level fines is not proportionate. Use of injunctions also out of proportion and may impede business decision making / competitiveness.
- 103 – PROBLEMATIC, Use of injunctions is not proportionate in an information and consultation procedure. Preventing business operations is outside the competence of this directive. EP amendments are unnecessary. MS must provide effective remedies.

- 104a - PROBLEMATIC Competence to ensure sanctions are dissuasive rests with MS
- 104b – PROBLEMATIC, Matters related to penalties should be left to MS discretion. No equivalence in respect of fine levels.
- 104c - PROBLEMATIC, as above at 104b.
- 104d - PROBLEMATIC, as above at 104b.
- 105 – PROBLEMATIC, while financial penalties may be provided for, it is MS obligation and competence to provide for effective, dissuasive and proportionate sanctions. Use of GDPR Regs fines is not proportionate.
- 106 – PROBLEMATIC, referring to fine levels set out in GDPR Directive is not a proportionate response to infringement of an Information and consultation procedure, as set out in the context of EWCs. Remedies and sanctions should remain in competence of MS.
- 109b - PROBLEMATIC, Ireland already has systems in place, such as the use of Arbitration, paid for by the Minister, which can be availed of without costs being incurred. Council mandate new provision at 3a (line 111b) is preferable.
- 121e - PROBLEMATIC
- 121f - The normal supervision and enforcement, by CION, of MS application of Directives should apply.
- 121g – Does not add value. The normal supervision and enforcement, by CION, of MS application of Directives should apply.
- 121h – As above.
- 128a – PROBLEMATIC, the normal mechanisms should apply.

**2) We strongly prefer to keep the Council's General Approach regarding:**

- 51 – PROBLEMATIC, not part of definition of Information and consultation.
- 52 – PROBLEMATIC, not part of definition of Information and consultation.
- 20 – PROBLEMATIC, legal advice should be sufficient in respect of special negotiating bodies. Legal representation should not be required.
- 21 – PROBLEMATIC, Language in EP amendment is too prescriptive. Language in Council mandate adequately reflects the importance of in-person meetings.
- 31a – Council Mandate provision at recital 18a is ACCEPTABLE, providing a balanced approach to ensuring EWC access to judicial or administrative proceedings.
- 68 – PROBLEMATIC, Inclusion of the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings, undermines Ireland's existing system of access, i.e., Workplace Relations Commission, Labour Court and Arbitration, without the need for legal representation.
- 79 – PROBLEMATIC, the term 'objective criteria' is subjective in this instance. EWC Directive does not have the competence to deal with issues of confidentiality in a transnational environment. National legislation on confidentiality must be respected.
- 80 – PROBLEMATIC, National legislation on confidentiality must be respected. The term 'objective criteria' is problematic. The provision of "in agreement with central management" is preferable.
- 81 – PROBLEMATIC, the issue of who considers the justification provided to have become obsolete arises. The provision of "in agreement with central management" is preferable.

- 81a – PROBLEMATIC, EWC Directive does not have the competence to deal with issues of confidentiality in a transnational environment. Issue of ‘forum shopping’ arises.
- 86a – ACCEPTABLE, (as central management can decide when the reasons justifying confidentiality have become obsolete)
- 94 – PROBLEMATIC, the change in wording is unnecessary and changes meaning. In Ireland an EWC does not have a legal personality. Language in EP amendment is superfluous and confusing.
- 95 – PROBLEMATIC, EP amendment is superfluous, does not add clarity and is confusing as a result.
- 96 – PROBLEMATIC, Provisions regarding the right to form and join trade unions are not within the competence of this directive.
- 98 – PROBLEMATIC, Language used in EP amendment is not legally sound and superfluous to the text. (...and ‘linked to’ the exercise of rep. duties).
- 99 – PROBLEMATIC, the costs and expenses outlined should be agreed by Central Management.
- 31a – PROBLEMATIC, the provisions as set out at Council Mandate recital 18a, are preferable, as they allow MS to achieve the goals of the Directive by means appropriate to their national systems.
- 119 – PROBLEMATIC, EP amendments do not add value to the text. Preferable that provision whereby negotiations can be initiated at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.
- 120 – PROBLEMATIC, Does not add value to the process.
- 121 – PROBLEMATIC, Does not add value to the process.
- 32 – PROBLEMATIC, Language added by EP is superfluous if exemption is deleted.
- 32a – PROBLEMATIC, this new Recital is superfluous and does not add clarity.
- 142b – PROBLEMATIC, widening of scope of Directive by introducing new elements.
- 146 – PROBLEMATIC, Language is too prescriptive. Gender balance should be an objective and where possible.
- 148 – PROBLEMATIC, Language is too prescriptive. At least one meeting per year is thought acceptable.
- 150 – PROBLEMATIC, Language in EP amendment is overly broad. Council mandate is preferable.
- 151 - PROBLEMATIC, Language in EP amendment provides less clarity.
- 151a – PROBLEMATIC, this may conflate national and Transnational information procedures. These are separate systems and should remain so.

### 3) We can show degree of flexibility regarding:

- 48 – ACCEPTABLE, However, change of language re ‘management ‘in’ the Community scale undertaking risks broadening definition of ‘management’ beyond the central management, which is necessary in a transnational context.
- 49 – ACCEPTABLE, as in line 48 above.
- 49b - ACCEPTABLE
- 37b – ACCEPTABLE
- 55 – PROBLEMATIC, Percentage used is too prescriptive. Attaining a particular percentage should be an objective.

- 23 – SUPPORTIVE, Objective of gender balance in the EWC is to be welcomed.
- 67 – ACCEPTABLE, However, Council Mandate text provides more clarity.
- 74 – ACCEPTABLE, objective of gender balanced EWCs
- 74b – PROBLEMATIC, allowing a window for engagement and agreement with management would be preferable. (rather than subsidiary requirements applying immediately)
- 76 – ACCEPTABLE,
- 76b – PROBLEMATIC, no definition of ‘regular basis’ provided.
- 76d – ACCEPTABLE
- 76F - ACCEPTABLE
- 26 – ACCEPTABLE, however the text added in the Council Mandate provides useful further clarity.
- 28 – ACCEPTABLE
- 28a – PROBLEMATIC, Language is too prescriptive.
- 28b – PROBLEMATIC, Language is too prescriptive.
- 88 – ACCEPTABLE,
- 90 - ACCEPTABLE,
- 91 – PROBLEMATIC, The EP amendments are unnecessary and increase uncertainty in the text.
- 92 – ACCEPTABLE
- 92a – PROBLEMATIC, the provision is superfluous to the text.
- 92b – PROBLEMATIC, the new provision is unnecessary and may increase uncertainty in the text.
- 92c – PROBLEMATIC, the new provision is unnecessary.
- 29 – ACCEPTABLE, however, use of ‘reasonable’ in Council Mandate preferable.
- 111 – ACCEPTABLE
- 111b – PROBLEMATIC, the provision added in Council Mandate line 111b (3a) is a more balanced and proportionate response to the need to ensure access to justice for an EWC.
- 113 – ACCEPTABLE, preferable that out of court alternative dispute resolution mechanisms are utilised in advance of legal proceedings. Ireland provides cost free access to the services of the Workplace Relations Commission, Labour Court, and use of Arbitration to enable the resolution of disputes.
- 113b – PROBLEMATIC, Superfluous. Does not add to existing paragraph.
- 114 – ACCEPTABLE
- 115 – ACCEPTABLE
- 121a – ACCEPTABLE
- 121c – ACCEPTABLE
- 33 - ACCEPTABLE
- 33a - ACCEPTABLE
- 37 - ACCEPTABLE
- 37a - ACCEPTABLE
- 121b – ACCEPTABLE
- 121c - ACCEPTABLE
- 124 – ACCEPTABLE
- 125 – ACCEPTABLE
- 126 – ACCEPTABLE
- 127 – ACCEPTABLE
- 128 – ACCEPTABLE

- 34 - ACCEPTABLE
- 35 – ACCEPTABLE
- 156 - ACCEPTABLE
- 3 – ACCEPTABLE
- 4 – ACCEPTABLE
- 10 – ACCEPTABLE
- 11 – ACCEPTABLE
- 14 -17 – ACCEPTABLE
- 37b – ACCEPTABLE
- 38 – ACCEPTABLE
- 40? - ACCEPTABLE



	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Formula			
G 1	2024/0006 (COD)	2024/0006 (COD)		2024/0006 (COD)
	Document Stage			
G 2	Proposal for a	Proposal for a		Proposal for a
	Document Type			
3	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL		DIRECTIVE (EU) .../2024 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of...
	Document Purpose			
4	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	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		amending Directive 2009/38/EC as regards the establishment and <del>functioning</del> <b>operation</b> of European Works Councils and the effective enforcement of transnational information and consultation rights
	EEA Relevance			
G 5	(Text with EEA relevance)	(Text with EEA relevance)		(Text with EEA relevance)
	Formula			

	Commission Proposal	EP Mandate	IE Response	Council Mandate
6	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
		Citation 1		
7	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 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 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,
		Citation 2		
8	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,		Having regard to the proposal from the European Commission,
		Citation 3		
9	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,		After transmission of the draft legislative act to the national parliaments,
		Citation 4		
10	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , _____	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , _____		Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> , _____

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	1. OJ C [...], [...], p. [...].	1. OJ C [...], [...], p. [...].		1. OJ C [...], [...], p. [...], , p. .
	Citation 5			
11	Having regard to the opinion of the Committee of the Regions <sup>1</sup> , _____ 1. OJ C [...], [...], p. [...].			Having regard to the opinion of the Committee of the Regions <sup>1</sup> , _____ 1. OJ C [...], [...], p. [...], , p. .
	Citation 6			
12	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,		Acting in accordance with the ordinary legislative procedure,
	Formula			
13	Whereas:	Whereas:		Whereas:
	Recital 1			
14	(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at all 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	(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at all 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		(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at <b>all</b> the appropriate levels, <del>to be</del> 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

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	of workers or their representatives to be informed and consulted on matters relevant to them.	of workers or their representatives to be informed and consulted on matters relevant to them.		European Pillar of Social Rights reaffirms the right of workers or their representatives to be informed and consulted on matters relevant to them.
Recital 2				
15	<p>(2) With respect to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council<sup>1</sup> 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.</p> <p>_____</p> <p>1. 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 (Recast) (OJ L 122, 16.5.2009, p. 28, ELI: <a href="http://data.europa.eu/eli/dir/2009/38/oj">http://data.europa.eu/eli/dir/2009/38/oj</a>).</p>	<p>(2) With respect to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council<sup>1</sup> 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.</p> <p>_____</p> <p>1. 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 (Recast) (OJ L 122, 16.5.2009, p. 28, ELI: <a href="http://data.europa.eu/eli/dir/2009/38/oj">http://data.europa.eu/eli/dir/2009/38/oj</a>).</p>		<p>(2) With respect <del>regard</del> to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council<sup>1</sup> 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.</p> <p>_____</p> <p>1. 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 (<del>Recast</del>) (OJ L 122, 16.5.2009, p. 28, ELI: <a href="http://data.europa.eu/eli/dir/2009/38/oj">http://data.europa.eu/eli/dir/2009/38/oj</a>).</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Recital 3			
16	<p>(3) While an evaluation of Directive 2009/38/EC published in 2018<sup>1</sup> confirmed that Directive's added value and relevance in principle, it also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.</p> <p>_____</p> <p>1. COM(2018) 292 final.</p>	<p>(3) While an evaluation of Directive 2009/38/EC published in 2018<sup>1</sup> confirmed that Directive's added value and relevance in principle, it also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.</p> <p>_____</p> <p>1. COM(2018) 292 final.</p>		<p>(3) While an evaluation of Directive 2009/38/EC published in 2018<sup>4</sup> confirmed that <del>Directive's</del> <b>sits</b> added value and relevance in principle, it also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.</p> <p>_____</p> <p>1. COM(2018) 292 final.</p>
	Recital 4			
17	<p>(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<sup>1</sup> and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the need for and the content of measures to address the</p>	<p>(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<sup>1</sup> and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the need for and the content of measures to address the</p>		<p>(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<sup>1</sup> and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European</p>

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	<p>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.</p> <p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>	<p>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.</p> <p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>	<p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>	<p><del>Union</del>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.</p> <p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>
	Recital 5			
18	<p>(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 this Directive should not only cover cases where measures</p>	<p>(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 this Directive should not only cover cases where measures</p>	<p>PROBLEMATIC</p> <p>EP amendments do not add value and are potentially confusing.</p>	<p>(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 this Directive should not only cover</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>considered by management can reasonably be expected to affect employees in more than one Member State, but also cases where such measures can reasonably be expected to affect workers in only one Member State, but the consequences of those measures can reasonably be expected to affect workers in at least one other Member State. This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees in another Member State, for instance due to changes in the cross-border supply chain or production activities, where such measures could lead to substantial changes in work organisation or in contractual relations.</p>	<p>considered by management can reasonably be expected to affect employees in more than one Member State, but also cases where such measures can reasonably be expected to affect workers in only one Member State, but the consequences of those measures can reasonably be expected to affect workers in at least one other Member State. <u>Cases in which measures considered by management of the Community-scale undertaking or Community-scale group of undertakings are taken in a Member State other than that in which those effects are produced should also be covered.</u> This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees in another Member State, for instance due to changes in the cross-border supply chain or production activities, where such measures could lead to substantial changes in work organisation or in contractual relations.</p>	<p>PUBLIC</p>	<p>cases where measures considered by management <b>of an undertaking</b> can reasonably be expected to affect <b>its</b> employees in more than one Member State, but also cases where such measures can reasonably be expected to affect <del>workers</del><b>employees of that undertaking</b> in only one Member State, but the consequences of those measures can reasonably be expected to affect <del>workers</del><b>sits employees</b> in at least one other Member State. This is necessary to cover cases where undertakings envisage measures, such as lay-offs <del>and</del>, redundancies <b>or allocation of production activities and outsourcing of activities</b>, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees <b>of that undertaking</b> in another Member State, for instance due to changes in the cross-border supply chain or production activities, <del>where such</del>. <b>The concept of transnational</b></p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				<p><b>matters covers those</b> measures <b>which</b> could lead to <b>affect employees in a</b> substantial changes in work organisation or in contractual relations <b>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. The standard of reasonableness should be objectively ascertained, having regard to the nature and purpose of the measures that are envisaged and the circumstances of the case.</b></p>
	Recital 6			
19	<p>(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.</p>	<p>(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.</p>		<p>(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.</p>
	Recital 7			

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	Commission Proposal	EP Mandate	IE Response	Council Mandate
20	<p>(7) Members of special negotiating bodies may need legal advice or representation 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 representation, 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 body and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating board's functions must be</p>	<p>(7) Members of special negotiating bodies may need legal advice or representation 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 representation, 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 body and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating board's functions must be</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	<p>(7) Members of special negotiating bodies may need legal advice or representation 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 representation, 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 body<b>bodies</b> and European Works Councils based on</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	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.	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.	PUBLIC	subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating board'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. <b>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.</b>
	Recital 8			
21	(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, notably to avoid any doubt about their freedom to agree that some or all of the meetings be held in a virtual	(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, notably to avoid any doubt <del>about their freedom to agree that some or all of that</del> the <b><u>regular annual</u></b> meetings <b><u>of the</u></b>	PROBLEMATIC Language in EP amendment is too prescriptive. Language in Council mandate adequately reflects the importance of in-person meetings.	(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, <b>be it in-person, online or hybrid</b> , notably to avoid any doubt about their freedom to

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>environment, using online meeting tools, reducing the environmental footprint of meetings in line with Union, national and companies' emission reduction targets, while ensuring meaningful information and consultation at lower environmental and financial costs.</p>	<p><u><i>European Works Council and the select committee should take place in person, whereas additional meetings may</i></u> be held in a virtual environment, using online meeting tools <u><i>if so agreed,</i></u> reducing the environmental footprint of meetings in line with Union, national and companies' emission reduction targets, while ensuring meaningful information and consultation at lower environmental and financial costs.</p>	<p>PUBLIC</p>	<p>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 <b>and efficient sharing of</b> information and consultation at lower environmental and financial costs <b>on the one hand, and the possibility to hold physical meetings which can offer a trustworthy and confidential environment for meetings and gives the opportunity for exchanges in person.</b></p>
	Recital 9			
22	<p>(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</p>	<p>(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</p>	<p>PROBLEMATIC</p> <p>Whether Trade Union or not is not relevant to EWC under this Directive.</p> <p>Inclusion of the coverage of legal costs, including the costs of legal representation and of</p>	<p>(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</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>resources be determined specifically in the European Works Council agreements, namely the possible use of experts – such as technical subject-matter experts or legal experts – and the coverage of experts’ fees, and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. 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 in Article 10(4) of Directive 2009/38/EC.</p>	<p>resources be determined specifically in the European Works Council agreements, namely the possible use of experts – such as <b><u>representatives of a recognised Community-level trade-union</u></b>, technical subject-matter experts or legal experts – and the coverage of experts’ fees, and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. 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 in Article 10(4) of Directive 2009/38/EC. <b><u>Reasonable costs concern expenses that are related to the proper functioning and operation of the special negotiating body or the European Works Council, including the costs of experts, legal representation, participation in administrative and judicial proceedings and training. Member States may lay down budgetary rules regarding the operation of a European Works Council.</u></b></p>	<p>participation in administrative or judicial proceedings, undermines Ireland’s existing system of access, i.e., Workplace Relations Commission, Labour Court and Arbitration, without the need for legal representation.</p>	<p>financial and material resources be determined specifically in the European Works Council agreements, namely the possible <del>use</del><b>assistance</b> of experts – such as technical subject-matter experts or legal experts – and the coverage of experts’ fees, <del>and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings.</del> 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 <b>provided for</b> in Article 10(4) of Directive 2009/38/EC.</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Recital 10			
23	<p>(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<sup>1</sup>, 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</p>	<p>(10) <b><u>European Works Councils should promote a balanced, inclusive and diverse representation of employees.</u></b> 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<sup>1</sup>, such positive action is possible, in accordance with the principle of equal treatment of men and women,</p>	SUPPORTIVE	<p>(10) The requirement <b>provided for</b> 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 <del>gender</del><b>gender-balanced</b> 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<sup>1</sup>, such positive</p>

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	<p>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.</p> <hr/> <p>1. Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.</p>	<p>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.</p> <hr/> <p>1. Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	<p>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. <b>Without prejudice to the national laws and practices on electing and appointing employees' representatives, the agreements should include arrangements to work towards a gender-balanced composition of the European Works Council. This might include a growth path to a gender-balanced composition of the European Works Council, which could comprise intermediate progressive</b></p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				<p><b>objectives.</b> 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.</p> <hr/> <p>1. Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.</p>
	Recital 11			
24	<p>(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</p>	<p>(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</p>		<p>(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</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	of whether central management expressly refuses to commence negotiations.	management expressly refuses to commence negotiations.		request to establish a European Works Council, irrespective of whether central management expressly refuses to commence negotiations.
	Recital 12			
25	<p>(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. When sharing information in confidence, central management should be required to provide at the same time a reasonable justification. 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.</p>	<p>(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. <b><u>This should not apply to situations in which members of the European Works Council decide to reveal information to national or local work councils that may affect the situation of workers.</u></b> When sharing information in confidence, central management should be required to provide at the same time a reasonable justification <b><u>based on objective criteria</u></b>. Setting up adequate arrangements to safeguard the confidentiality of sensitive</p>	<p>PROBLEMATIC</p> <p>EWC Directive does not have the competence to deal with issues of confidentiality in a transnational environment.</p> <p>Issue of 'forum shopping' arises. Language is not conducive to legal certainty.</p> <p>National legislation on confidentiality must be respected.</p>	<p>(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. When sharing information in confidence, central management should be required to provide at the same time a reasonable justification. <b>The confidentiality should only be upheld as long as the reasons for it persist.</b> Setting up adequate arrangements to safeguard the confidentiality of sensitive information can instil trust and</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p>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.</p>		<p>facilitate the sharing of such information, while protecting business and <del>workers</del><b>employees'</b> interests, including to avert growing risks such as industrial espionage.</p>
Recital 13				
26	<p>(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.</p>	<p>(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.</p>		<p>(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 <b>in a balanced manner which allows for sufficient legal scrutiny, while not revealing protected information. The</b></p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				<b>dispensation from transmitting information applies as long as the reasons for it persist.</b>
	Recital 14			
27	(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 the Article concerning the relationship with other national provisions, because it pertains to the implementation of the requirements of Directive 2009/38/EC more broadly.	(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 the Article concerning the relationship with other national provisions, because it pertains to the implementation of the requirements of Directive 2009/38/EC more broadly.		(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 <del>the</del> 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.
	Recital 15			
28	(15) Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or	(15) Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or	ACCEPTABLE	(15) Effective transnational consultation requires a genuine dialogue between central management and European Works

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a way that enables worker's 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 before the latter adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty.</p>	<p>employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a <b><u>meaningful and timely</u></b> way that enables worker's representatives to express their opinion prior to the adoption of the decision, <b><u>which could include business plans, social plans, and process innovations where they may impact on redundancies</u></b>, and that opinions issued by European Works Councils or employees' representatives must receive a reasoned response from central management before the latter <b><u>or other competent organ of the Community undertaking or Community-scale group of undertakings</u></b> adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty. <b><u>In that context, it is important to ensure that Community undertakings or Community-scale groups of undertakings can take decisions effectively and do not result in undue delays in decisions taken by</u></b></p>	<p style="text-align: center;">PUBLIC</p>	<p>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 way that enables <del>worker's</del><b>employees'</b> 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 before the latter adopts its decision on the proposed measure at issue. <del>An explicit requirement to that effect should be laid down</del> <b>It is therefore important, taking into account the degree of urgency of the matter, that information and consultation take place in good time and that the European Works Council and the employees' representatives are given sufficient time to express their views in order to ensure the effective exercise of the rights provided for in Directive 2009/38/EC. Without prejudice to</b></p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><u>Community undertakings or Community-scale groups of undertakings.</u></p>	<p>PUBLIC</p>	<p>the possibility of Member States to provide for more stringent protective measures according to Article 153 paragraph 4 TFEU, this amending Directive should not prevent undertakings from adopting decisions in case the opinion of the European Works Council has not been provided within a reasonable time to ensure legal certainty.</p>
	Recital 15a			
28a		<p><u>(15a) In the case of a disagreement about whether to undertake an information or consultation procedure, there is a lack of guidance on how to resolve the negative effects that such disagreements may have on members of European Works Councils and employee representatives. Therefore, if there is a dispute with regard to whether an information and consultation procedure should be undertaken, the central management should provide duly substantiated grounds in writing specifying the reasons why the provisions in this</u></p>	<p>PROBLEMATIC Language is too prescriptive.</p>	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<u><i>Directive relating to information and consultation are not applicable.</i></u>		
	Recital 15b			
28b		<u><i>(15b) In the context of an information and consultation procedure, the European Works Council or the select committee should be able to request assistance and advice from experts of its choice, such as representatives of competent recognised Community-level trade union organisations. Such experts should be allowed to attend meetings of the European Works Council and meetings with the central management in an advisory capacity. Moreover, Member States can lay down budgetary rules for the operation of a European Works Council.</i></u>	PROBLEMATIC Language is too prescriptive.	
	Recital 16			
29	(16) In addition, 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	(16) In addition, 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		(16) In addition, 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

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>of the members of special negotiating bodies and the members of European Works Councils against retaliatory measures or dismissals. In order to avoid disputes, it should also be specified that the central management is to cover the costs of training of the members of the special negotiating body and of the European Works Council and other associated costs, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.</p>	<p>of the members of special negotiating bodies and the members of European Works Councils against retaliatory measures or dismissals. In order to avoid disputes, it should also be specified that the central management is to cover the costs of training of the members of the special negotiating body and of the European Works Council and other associated costs, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.</p>	<p>PUBLIC</p>	<p>to the protection of the members of special negotiating bodies and the members of European Works Councils against retaliatory measures or dismissals. In order to avoid disputes, it should also be specified that the central management is to cover the <b>reasonable costs of training and related expenses</b> of the members of the special negotiating body and of the European Works Council <del>and other associated costs</del>, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.</p>
	Recital 17			
30	<p>(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 that obligation. For that purpose,</p>	<p>(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 that obligation. For that purpose,</p>	PROBLEMATIC	<p>(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</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>Member States should be required to notify the Commission of how and under which circumstances the rightsholders can bring judicial, and where applicable, administrative procedures, in respect of all their rights under this Directive. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings.</p>	<p>Member States should be required to notify the Commission of how and under which circumstances the rightsholders, <u>including members of the special negotiation body and members of a European Works Council</u>, can bring judicial, and where applicable, administrative procedures, in respect of all their rights under this Directive, <u>including the right to form and join trade unions. In addition, Member States should develop mechanisms to encourage mediation and, where appropriate, provide for alternative dispute mechanisms.</u> Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings. <u>However, members of special negotiations bodies and members of European Works Councils should enjoy the same protection and guarantees equivalent to those provided to employees' representatives by national</u></p>	<p>The "the right to form and join trade unions" is outside the competence of the EWC Directive.</p>	<p>with those obligations. With regard to European Works Councils and special negotiating bodies, Member States should, in line with national law on their possible legal standing or the form of representation, guarantee to access to judicial proceedings or, where relevant, administrative proceedings to enforce the rights attributed to the European Works Councils and special negotiating bodies. Moreover, it should be clarified that the relevant procedures have to enable an effective enforcement, and that possible prior out-of-court settlement procedures cannot deprive rightsholders' of their right to bring legal proceedings. For the purpose of supervision by the Commission of the compliance of Member States with the above that obligation. For that purpose, Member States should be required to notify the Commission of how and under which circumstances the rightsholders can bring judicial, and, where applicable relevant,</p>

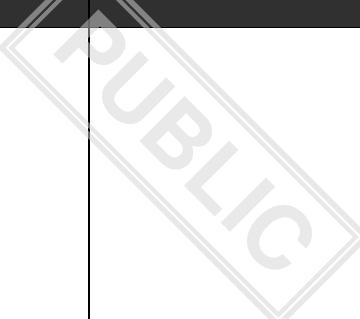
	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><u>law or practice applicable in their country of employment.</u></p>		<p>administrative procedures, in respect of all their rights under this <b>amending</b> Directive. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings.</p>
Recital 18				
31	<p>(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. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate sanctions. Pecuniary sanctions should be provided for in case of failure to comply with the information and consultation procedures set out in</p>	<p>(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 <u>regretfully</u> are often not sufficiently dissuasive, <u>effective or proportionate</u>. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate sanctions. <del>Pecuniary sanctions</del> <u>Financial penalties</u> should be provided for in case of failure to comply with the</p>	<p>PROBLEMATIC</p> <p>- IE's view is that while financial penalties <b>should</b> be provided for, that having other forms of sanctions which <b>could</b> be provided for and <b>could</b> be linked to annual turnover, for example, is a more proportionate response to MS obligation to provide for</p>	<p>(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. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate sanctions. <del>Pecuniary sanctions</del> <b>penalties. Financial penalties</b> should be</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>Directive 2009/38/EC. Other forms of sanctions could also be provided for. Pecuniary sanctions should be determined taking into consideration the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate.</p>	<p>information and consultation procedures set out in Directive 2009/38/EC. Other forms of sanctions <del>could</del><b>should</b> also be provided for, <b><u>including administrative and judicial procedures. In line with national law and practice, Member States should provide for a possibility to request a preliminary injunction in national courts or other competent authorities for a temporary suspension of the implementation of management decisions until an information and consultation procedure has taken place at the relevant level of management and representation and in such a way as to enable a reasoned response from the central management in accordance with this Directive. Financial.</u></b> <del>Pecuniary</del> sanctions should be determined taking into consideration the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate <b><u>and should be based on the administrative</u></b></p>	<p>effective, dissuasive and proportionate sanctions.</p> <ul style="list-style-type: none"> <li>- Use of GDPR Regs fines is not proportionate.</li> <li>- Use of injunctions also out of proportion and will impede business decision making / competitiveness.</li> </ul>	<p>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. <del>Pecuniary sanctions should</del> <b><u>In order to be effective, dissuasive and proportionate, penalties could</u></b> be determined taking into consideration <b><u>factors such as</u></b> the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, <del>in order to be effective, dissuasive and proportionate.</del></p>

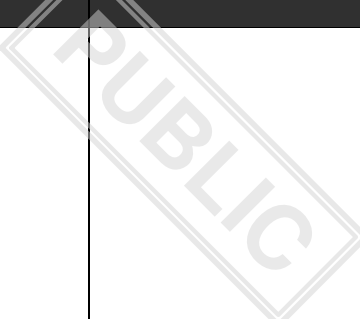
	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><u><i>finances referred to in Article 83(4) and (5), of Regulation (EU) 2016/679.</i></u></p>		
	Recital 18a			
31a				<p><b>(18a)</b> The special negotiating bodies, the European Works Councils and their members on their behalf should have the necessary means to cover the costs of legal representation and participation in judicial proceedings or, where relevant, administrative proceedings. 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 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</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				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.
	Recital 19			
32	<p>(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<sup>1</sup>, 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</p>	<p>(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<sup>1</sup>, 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 <b><u>and their legal status should be ensured by civil or collective labour law, depending on the different legal system of each Member State.</u></b> Directive 2009/38/EC does not provide the employees in the exempted undertakings with the possibility to request an establishment of a European</p>	<p>PROBLEMATIC</p> <p>Language added by EP is superfluous if exemption is deleted.</p>	<p>(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<sup>1</sup>, 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</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>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.</p> <hr/> <p>1. 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: <a href="http://data.europa.eu/eli/dir/1994/45/oj">http://data.europa.eu/eli/dir/1994/45/oj</a>).</p>	<p>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.</p> <hr/> <p>1. 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: <a href="http://data.europa.eu/eli/dir/1994/45/oj">http://data.europa.eu/eli/dir/1994/45/oj</a>).</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	<p>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. <b>The initiation and conduct of negotiations for the establishment of European Works Councils in such undertakings should follow the procedure as set out in this Directive while the period after which the subsidiary requirements come into force should be reduced to two years instead of three, in line with the</b></p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				<p><b>period applicable to the adaptation of existing European Works Council agreements.</b></p> <hr/> <p>1. 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: <a href="http://data.europa.eu/eli/dir/1994/45/oj">http://data.europa.eu/eli/dir/1994/45/oj</a>).</p>
	Recital 19a			
32a		<p><b><u>(19a) It is essential that all European Works Council agreements are governed by the same rights and obligations in order to ensure equal treatment of workers, access to the application of high Union standards, and legal certainty. With a view to creating a regulatory level-playing field governing the functioning of European Works Councils, the rights and obligations arising from Directive 2009/38/EC should be applicable to all European Works Council agreements and agreements on an information and</u></b></p>	<p>PROBLEMATIC</p> <p>This new Recital is superfluous and does not add clarity.</p>	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><u>consultation procedure concluded in accordance with Articles 5 and 6 of Directive 94/45/EC or with Articles 5 and 6 of this Directive.</u></p>		
	Recital 20			
33	<p>(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.</p>	<p><del>(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.</del></p>	ACCEPTABLE	<p>(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.</p>
	Recital 20a			
33a				<p><b>(20a) The same minimum requirements should apply to all Community-scale undertakings with European Works Councils operating under Directive 2009/38/EC. Member States</b></p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				<p>should notably provide transitional arrangements enabling the parties to European Works Council agreements or agreements on information and consultation procedures, concluded under Directive 94/45/EC or Directive 2009/38/EC 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], which are not in conformity with the revised requirements relating to the content of such agreements to negotiate adaptations. In any case, the parties to existing European Works Council agreements or agreements on information and consultation procedures should respect the applicable minimum requirements.</p>
	Recital 21			
34	(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to	(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to	ACCEPTABLE	(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>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.</p>	<p>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 <b><u>at least two. When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases without replacing ordinary meetings.</u></b><del>two.</del></p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	<p>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, <b>of which at least one needs to be in person.</b></p>
	Recital 22			
35	<p>(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.</p>	<p>(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.</p>		<p>(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.</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Recital 23			
36	(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.	(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.		(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.
	Recital 24			
37	(24) In some cases, existing European Works Council agreements or agreements on information and consultation procedures, 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, may not be in conformity with the revised requirements. 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.	(24) <del>In some cases,</del> Existing European Works Council agreements or agreements on information and consultation procedures, 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, may not be in conformity with the revised <del>requirements</del> <b>required contents of those agreements</b> . It is therefore appropriate to set out transitional arrangements enabling the parties to such agreements to negotiate <del>adaptations before the date of application</del> <b>addenda, without, however, requiring a complete re-negotiation</b> of the <del>transposition measures</del> <b>agreement. In order not to</b>	ACCEPTABLE	(24) <del>In some cases, existing European Works Council agreements or agreements on information and consultation procedures, 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, may not be in conformity with the revised requirements. It is therefore appropriate to set out transitional arrangements enabling the parties to such agreements to negotiate adaptations before the date of</del>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><i><u>allow for any interruption of the information and consultation of employees, the existing European Works Council agreement or agreement on information and consultation procedure is to remain in force during the negotiation of such addenda.</u></i></p>		<p>application of the transposition measures.</p>
Recital 24a				
37a		<p><i><u>(24a) If the central management initiates negotiations to supplement an existing European Works Council agreement or agreement on information and consultation procedures in accordance with the requirements of this Directive, there is no obligation to renegotiate the entire existing agreement. The amended requirements should be negotiated as an addendum within 2 years of the date of transposition of this Directive. Provision should be made for the subsidiary requirements specifically relating to the amended requirements to apply in the absence of an agreement on the addendum within that time limit.</u></i></p>	ACCEPTABLE	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Recital 24b			
37b		<p><b><u>(24b) It is necessary to ensure that the special negotiation body has the opportunity to meet regularly with the central management in order to be able to conduct meaningful negotiations. Where the conditions laid down in Article 7(1) are met, it should be clarified that it is the responsibility of the central management to initiate the establishment of a European Works Council according to the subsidiary requirements.</u></b></p>	ACCEPTABLE	
	Recital 25			
38	<p>(25) 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. That objective cannot be sufficiently achieved by the Member States alone, but because of the inherently transnational nature and scale of these requirements, it can better be achieved at Union level.</p>	<p>(25) 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. That objective cannot be sufficiently achieved by the Member States alone, but because of the inherently transnational nature and scale of these requirements, it can better be achieved at Union level.</p>		<p>(25) <b>Since the objectives</b><del>The overall objective of this Directive is to ensure, namely ensuring</del> 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. <del>That objective cannot be sufficiently achieved by the Member States alone, but because of the,</del> <b>but can rather, by reason of</b> inherently</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>Therefore, 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.</p>	<p>Therefore, 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.</p>	<p><b>PUBLIC</b></p>	<p>transnational nature and scale of <del>these</del> <b>those</b> requirements, it <del>can</del> <b>be</b> better <del>be</del> achieved at Union level. <del>Therefore</del>, 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.</p>
	Recital 26			
39	<p>(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</p>	<p>(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,</p>		<p>(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</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	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.	members of European Works Councils and employees' representatives exercising their functions, as well as the bearing of related costs by central management.	PUBLIC	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.
Recital 27				
40	<p>(27) In accordance with Article 30(3) and Article 42(1) of Directive 2014/23/EU of the European Parliament and of the Council<sup>1</sup>, Article 18(2) and Article 71(1) of Directive 2014/24/EU of the European Parliament and of the Council<sup>2</sup> and Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament and of the Council<sup>3</sup>, 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 effective implementation of the requirements under this Directive should be promoted through the</p>	<p>(27) In accordance with Article 30(3) and Article 42(1) of Directive 2014/23/EU of the European Parliament and of the Council<sup>1</sup>, Article 18(2) and Article 71(1) of Directive 2014/24/EU of the European Parliament and of the Council<sup>2</sup> and Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament and of the Council<sup>3</sup>, 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 effective implementation of the requirements under this Directive should be promoted through the</p>		<p>(27) In accordance with <del>Article 30(3) and Article 42(1) of Directive 2014/23/EU of the European Parliament and of the Council<sup>1</sup>, Article 18(2) and Article 71(1) of<sup>1</sup>, Directive 2014/24/EU of the European Parliament and of the Council<sup>2</sup> and Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament and of the Council<sup>3</sup>,</del> 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 effective implementation of the</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders. However, this Directive does not create any additional obligation in relation to those Directives.</p> <hr/> <p>1. 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).</p> <p>2. 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).</p> <p>3. 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).</p>	<p>integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders. However, this Directive does not create any additional obligation in relation to those Directives.</p> <hr/> <p>1. 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).</p> <p>2. 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).</p> <p>3. 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).</p>	<p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-45deg);">PUBLIC</p>	<p><del>requirements under this Directive should be promoted through the</del> integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders <b>can contribute to the effective implementation of the requirements under this Directive.</b> However, this Directive does not create any additional obligation in relation to those Directives.</p> <hr/> <p>1. 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).</p> <p>2. 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).</p> <p>3. 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</p>

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				Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).
	Recital 28			
41	(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 two years the application of the provisions adopted by Member States to comply with this Directive,	(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 two years the application of the provisions adopted by Member States to comply with this Directive,		(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 two years the application of the provisions adopted by Member States to comply with this Directive,
	Formula			
42	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:		HAVE ADOPTED THIS DIRECTIVE:
	Article 1			
43	Article 1	Article 1		Article 1
	Article 1, first paragraph			

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G	44	Directive 2009/38/EC is amended as follows:	Directive 2009/38/EC is amended as follows:	Directive 2009/38/EC is amended as follows:
		Article 1, first paragraph, point (1)		
G	45	(1) in Article 1, paragraph 4 is replaced by the following:	(1) in Article 1, paragraph 4 is replaced by the following:	(1) in Article 1, paragraph 4 is replaced by the following:
		Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), first subparagraph		
G	46	“ 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.	“ 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.	“ 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.
		Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph		
G	47	Those conditions shall be deemed to be met where:	Those conditions shall be deemed to be met where:	Those conditions shall be deemed to be met where:
		Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph, point (a)		

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48	(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in undertakings or establishments in more than one Member State;	(a) the measures considered by management <del>of</del> <u>in</u> the Community-scale undertaking or Community-scale group of undertakings <del>can reasonably be expected to</del> affect workers in undertakings or establishments in more than one Member State;	ACCEPTABLE However, change of language re ‘management ‘in’ the Community scale undertaking risks broadening definition of ‘management’ beyond the central management, which is necessary in a transnational context.	(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect <del>workers in undertakings or</del> <b>employees of that undertaking or group, or its establishments</b> in more than one Member State;
		Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph, point (b)		
49	(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in an undertaking or establishment in one Member State, and workers in an undertaking or establishment in another Member State can reasonably be expected to be affected by the consequences of those measures.;	(b) the measures considered by management <del>of</del> <u>in</u> the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in an undertaking or establishment in one Member State, and workers in an undertaking or establishment in <del>another</del> <u>at least one other</u> Member State can reasonably be expected to be affected by the consequences of those measures. <del>;</del> <u>or</u>	ACCEPTABLE However, change of language re ‘management ‘in’ the Community scale undertaking risks broadening definition of ‘management’ beyond the central management, which is necessary in a transnational context.	(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect <del>workers in an</del> <b>employees of that</b> undertaking or <del>establishment</del> <b>group, or its establishments</b> in one Member State, and <del>workers in an</del> <b>employees</b> in another Member State can reasonably be expected to be affected by the consequences of those measures.;

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				”
	Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph, point (ba)			
49a		<p><b><u>(ba) the measures considered by central management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in a Member State other than that in which those measures are being considered.</u></b></p>	<p>PROBLEMATIC</p> <p>This language is superfluous/ does not add value to text.</p>	
	Article 1, first paragraph, point (1), amending provision, numbered paragraph (4a)			
49b		<p><b><u>4a. In order to determine the transnational character of a matter, the scope of its possible effects on the workforce and the level of management and representation involved shall be taken into account. This shall include matters which are of concern to workers in terms of the scope of their potential impact in two or more Member States, as well as matters which involve the transfer of activities between two or more Member States.</u></b></p>	<p>ACCEPTABLE</p>	

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	Article 1, first paragraph, point (2)			
50	(2) in Article 2(1), points (f) and (g) are replaced by the following:	(2) in Article 2(1), points (d), (f) and (g) are replaced by the following <b><i>and a new subparagraph is added:</i></b>		(2) in Article 2(1), points (f) and (g) are replaced by the following:
	Article 1, first paragraph, point (2)(a)			
50a		<b><i>(d) ‘employees’ representatives’ means trade unions or the employees’ representatives provided for by national law or practice;</i></b>	PROBLEMATIC The Directive does not have competency regarding Trade Union recognition.	
	Article 1, first paragraph, point (2), amending provision, numbered paragraph (f)			
51	“ (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;	“ (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 <b><i>and is given at such time, in such fashion and with such content as are appropriate to enable employees’</i></b>	PROBLEMATIC Not part of definition of Information and consultation.	“ (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;

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		<p><u>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;</u></p>		
Article 1, first paragraph, point (2), amending provision, numbered paragraph (g)				
52	<p>(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management;;</p> <p>”</p>	<p>(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management; <u>at such time, in such fashion and with such content as enables employees’ representatives to express a prior opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which is to be taken into account within the Community-scale undertaking or Community-scale group of undertakings. Consultation is to take place in such a way as to enable employees’ representatives to obtain a</u></p>	<p>PROBLEMATIC</p> <p>Not part of definition of Information and consultation.</p>	<p>(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management;;</p> <p>”</p>

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		<p><u>reasoned written response in due time from the central management prior to the adoption of the decision provided the employee representatives expressed their opinion within a reasonable time in accordance with the first sentence;</u></p> <p style="text-align: right;">”</p>		
		Article 1, first paragraph, point (2a), subparagraph 1 a (new)		
52a		<p><u>For the purposes of point (c) of the first subparagraph, employees of controlling and controlled undertakings within the meaning of Article 3(2), point (ca), shall also be taken into account in the definition of a Community-scale group of undertakings;</u></p>	<p>PROBLEMATIC</p> <p>Widening of scope of Directive by introducing new elements.</p>	
		Article 1, first paragraph, point (2b)		
52b		<p><u>(2a) in Article 3, paragraph 1 is replaced by the following:</u></p>		
		Article 1, first paragraph, point (2b)(a)		
52c		<p><u>‘1. For the purposes of this Directive, ‘controlling undertaking’</u></p>	<p>PROBLEMATIC</p>	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><b><u>means an undertaking which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation, control over decisions or the rules which govern it.'</u></b></p>	<p>Widening of scope of Directive by introducing new elements.</p>	
		<p>Article 1, first paragraph, point (2c)</p>		
52d		<p><b><u>(2b) in Article 3(2), the following point is added:</u></b></p>		
		<p>Article 1, first paragraph, point (2c)(a)</p>		
52e		<p><b><u>(ca) operates directly or indirectly in the internal market selling goods or providing services through franchise or license agreements concluded with independent third-party companies in return for royalties where such agreements ensure a common identity, a common business name or concept and the application of uniform business methods.</u></b></p>	<p>PROBLEMATIC Widening of scope of Directive by introducing new elements.</p>	
		<p>Article 1, first paragraph, point (3)</p>		
53	<p>(3) <b>Article 5</b> is amended as follows:</p>	<p>(3) <b>Article 5</b> is amended as follows:</p>		<p>(3) <b>Article 5</b> is amended as follows:</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Article 1, first paragraph, point (3)(-a), first subparagraph			
53a		<b><u>(-a) paragraph 1 is replaced by the following:</u></b>		
	Article 1, first paragraph, point (3)(-a), second subparagraph			
53b		<b><u>'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.'</u></b>	PROBLEMATIC Change of scope. Separate written request is a new element which would dramatically change the scope of the Directive.	
	Article 1, first paragraph, point (3)(a)			
54	(a) in paragraph 2, point (b) is replaced by the following:	(a) in paragraph 2, point (b) is replaced by the following:		(a) in paragraph 2, point (b) is replaced by the following:
	Article 1, first paragraph, point (3)(a), amending provision, numbered paragraph (b)			
55	“(b) The members of the special negotiating body shall be elected or appointed in proportion to the number	“(b) The members of the special negotiating body shall be elected or appointed in proportion to the number	PROBLEMATIC	“(b) The members of the special negotiating body shall be elected or appointed in proportion

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	<p>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, 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;;</p>	<p>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, <b><u>whereby women and men each hold at least 40% of the posts of member of the special negotiating body,</u></b> 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; <b><u>If this objective is not reached, the reasons shall be explained in written by the special negotiating body;</u></b>;</p>	<p>Percentage used is too prescriptive. Attaining a particular percentage should be an objective.</p>	<p>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, 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;;</p>
		Article 1, first paragraph, point (3)(aa)		
55a		<p><b><u>(aa) in paragraph 4, the third subparagraph is replaced by the following:</u></b></p>		
		Article 1, first paragraph, point (3)(aa)(i)		

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55b		<i><b><u>'For the purpose of the negotiations, the special negotiating body may request assistance from representatives of competent recognised Community-level trade union organisations and, if needed, further experts. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.'</u></b></i>	PROBLEMATIC  Assigning role to Trade Union representatives is not within the competence of this Directive.	
		Article 1, first paragraph, point (3)(b)		
56	(b) paragraph 6 is amended as follows:	(b) paragraph 6 is amended as follows:		(b) paragraph 6 is amended as follows:
		Article 1, first paragraph, point (3)(b), first indent		
57	- in the first subparagraph, the following sentences are added:	- in the first subparagraph, the following sentences are added:		- in the first subparagraph, the following sentences are added:
		Article 1, first paragraph, point (3)(b), first indent, amending provision, first paragraph		
58	“ These expenses shall include reasonable costs of experts, including for legal assistance, insofar as necessary for that purpose, as well as reasonable costs of legal	“ These expenses shall include reasonable costs of experts, including <b><u>a representative of a recognised Community-level trade-union</u></b> , for legal assistance, insofar as necessary for that	PROBLEMATIC  References to Trade Union representatives is not acceptable as is beyond	“ “These expenses shall include reasonable costs of experts, including for legal assistance <del>assistanc</del> <b>experts</b> , insofar as necessary for that purpose, <del>as well</del>

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	representation and participation in administrative or judicial proceedings. Expenses shall be notified to central management before they are incurred.;	purpose, as well as reasonable costs of legal representation and participation in administrative or judicial proceedings. Expenses shall be notified to <u>and approved by</u> central management before they are incurred.;	the competence of this directive.	as reasonable costs of legal representation and participation in administrative or judicial proceedings. Expenses shall be notified to central management before they are incurred.;
	Article 1, first paragraph, point (3)(b), second indent			
59	- in the second subparagraph, the second sentence is deleted;	- in the second subparagraph, the second sentence is deleted;		- in the second subparagraph, the second sentence is deleted;
	Article 1, first paragraph, point (4)			
60	(4) Article 6 is amended as follows:	(4) Article 6 is amended as follows:		(4) Article 6 is amended as follows:
	Article 1, first paragraph, point (4)(a)			
61	(a) paragraph 2 is amended as follows:	(a) paragraph 2 is amended as follows:		(a) paragraph 2 is amended as follows:
	Article 1, first paragraph, point (4)(a), first indent			
62	- points (c) and (d) are replaced by the following:	- points (c) and (d) are replaced by the following:		- points (c) and (d) are replaced by the following:

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	Article 1, first paragraph, point (4)(a), first indent, amending provision, numbered paragraph (c)			
63	(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;	(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;		(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;
	Article 1, first paragraph, point (4)(a), first indent, amending provision, numbered paragraph (d)			
64	(d) the format, venue, frequency and duration of meetings of the European Works Council;”;	(d) the format, venue, frequency and duration of meetings of the European Works Council;”;		(d) the format, venue, frequency and duration of meetings of the European Works Council;”;
	Article 1, first paragraph, point (4)(a), second indent			
65	- point (f) is replaced by the following:	- point (f) is replaced by the following:		- point (f) is replaced by the following:

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph			
66	(f) the financial and material resources to be allocated to the European Works Council, including at least with respect to the following aspects:	(f) the financial and material resources to be allocated to the European Works Council, including at least with respect to the following aspects:		(f) the financial and material resources to be allocated to the European Works Council, including at least with respect to the following aspects:
	Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph, first indent			
67	- the possible use of experts, including legal experts, to assist the European Works Council in the discharge of its functions;	- the possible use of experts, including legal experts, to assist the European Works Council in the discharge of its functions;		- the possible use of experts, including legal experts, to assist the European Works Council in <b>relation to</b> the discharge of its functions;
	Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph, second indent			
68	- legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;	- legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;		- <del>legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;</del>
	Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph, third indent			

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69	- 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;”;	- 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;”;		- 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;”;
		Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), second subparagraph		
70	The requirement to determine the elements listed in the first subparagraph, as amended by [OP: insert reference to this amending Directive*], shall apply also with respect to European Works Council agreements concluded before [OP: insert date laid down in the second subparagraph of Article 2 of this amending Directive.].	<i>deleted</i>		<i>deleted</i>
		<i>Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), third subparagraph</i>		
71	_____			=====
		Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), fourth subparagraph		

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72	* [OP: insert OJ reference to this amending Directive.]”;	deleted		deleted
		Article 1, first paragraph, point (4)(b)		
73	(b) the following paragraph 2a is inserted :	(b) the following paragraph 2a is inserted :		(b) the following paragraph 2a is inserted :
		Article 1, first paragraph, point (4)(b), amending provision, numbered paragraph (2a)		
74	“ 2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall agree and lay down the necessary arrangements for attaining, as far as possible, and without prejudice to national laws on electing workers 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.; ”	“ 2a. The central management and the special negotiating body, when negotiating <del>or renegotiating</del> a European Works Council agreement, shall agree and lay down the necessary arrangements for attaining, <del>as far as possible</del> , and without prejudice to national laws on electing workers 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.”; ”	ACCEPTABLE	“ 2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall agree and lay down the necessary arrangements for attaining, as far as possible, and without prejudice to national laws <b>and practices</b> on electing <del>workers</del> <b>and appointing employees'</b> representatives, the objective of gender balance whereby women and men each comprise at least 40 % of European Works Council members, and

	Commission Proposal	EP Mandate	IE Response	Council Mandate
				where applicable, at least 40 % of select committee members.; ”
		Article 1, first paragraph, point (4a), first subparagraph		
74a		<b><u>(4a) in Article 7(1), introductory part is replaced by the following:</u></b>		
		Article 1, first paragraph, point (4a), second subparagraph		
74b		<b><u>In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply with immediate effect:’</u></b>	PROBLEMATIC  Allowing a window for engagement and agreement with management would be preferable.	
		Article 1, first paragraph, point (5)		
75	(5) in Article 7(1), the second indent is replaced by the following:	(5) in Article 7(1), the second indent is replaced by the following:		(5) in Article 7(1), the second indent is replaced by the following:
		Article 1, first paragraph, point (5), amending provision, numbered paragraph (—)		
76	“	“		“

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>— where the first meeting of the special negotiating body is not convened within six months following a request pursuant to Article 5(1);</p> <p>”</p>	<p>— where the first meeting of the special negotiating body is not convened within six months following a request pursuant to Article 5(1);</p>	<p>PUBLIC</p>	<p>— where the first meeting of the special negotiating body is not convened <b>by the central management</b> within six months following a request pursuant to Article 5(1);</p> <p>”</p>
		Article 1, first paragraph, point (5a)		
76a		<p><b><u>(5a)</u></b></p> <p><b><u>in Article 7(1), the following indent is inserted after the second indent:</u></b></p>	ACCEPTABLE	
		Article 1, first paragraph(5), amending provision, Article, first paragraph		
76b		<p><b><u>“— where the special negotiating body is not convened on a regular basis,’</u></b></p>	<p>PROBEMATIC</p> <p>No definition of ‘regular basis’ provided.</p>	
		Article 1, first paragraph, amending provision, Article, second paragraph		
76c		<p><b><u>(5b)</u></b></p> <p><b><u>in Article 7(1), the third indent is replaced by the following:</u></b></p>	ACCEPTABLE	
		Article 1, first paragraph(5), amending provision, Article, first paragraph		

	Commission Proposal	EP Mandate	IE Response	Council Mandate
76d		<i>'— where, after 24 months from the date of such a request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).'</i>	ACCEPTABLE	
		Article 1, first paragraph(5), amending provision, Article, second paragraph		
76e		<i>(5c) In Article 7(1), the following indent is added:</i>		
		Article 1, first paragraph(5), amending provision, Article, third paragraph		
76f		<i>'— where an agreement as laid down in Article 6 has been terminated and no new agreement has been concluded within 24 months after the last day of validity of that agreement.'</i>	ACCEPTABLE	
		Article 1, first paragraph, point (6)		
77	(6) Article 8 is replaced by the following:	(6) Article 8 is replaced by the following:		(6) Article 8 is replaced by the following:
		Article 1, first paragraph, point (6), amending provision, first paragraph		

	Commission Proposal	EP Mandate	IE Response	Council Mandate
78	<p>“</p> <p><b>Article 8</b></p> <p>Provision of information in confidence</p>	<p>“</p> <p><b>Article 8</b></p> <p>Provision of information in confidence</p>		<p>“</p> <p><b>Article 8</b></p> <p>Provision of information in confidence</p>
Article 1, first paragraph, point (6), amending provision, numbered paragraph (1)				
79	<p>1. Member States shall provide that 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 has expressly been provided to them in confidence by central management. In addition, central management may set up adequate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p>	<p>1. Member States shall provide that 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 has expressly been provided to them in confidence by central management <b><u>within the conditions and limits laid down by Union and national law and subject to objective criteria.</u></b> In addition, central management may set up adequate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p>	<p>PROBLEMATIC</p> <p>The term ‘objective criteria’ is subjective in instance.</p> <p>EWC Directive does not have the competence to deal with issues of confidentiality in a transnational environment.</p> <p>National legislation on confidentiality must be respected.</p>	<p>1. Member States shall provide that 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 has expressly been provided to them in confidence by central management. In addition, central management may set up <del>adequate</del><b>appropriate</b> information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p>
Article 1, first paragraph, point (6), amending provision, numbered paragraph (2)				

	Commission Proposal	EP Mandate	IE Response	Council Mandate
80	<p>2. When central management provides information in confidence in accordance with 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.</p>	<p>2. When central management provides information in confidence in accordance with 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 <u>reasons objective criteria</u> justifying the provision of information in confidence <u>and shall determine the duration of the confidentiality requirements</u>.</p>	<p>PROBLEMATIC</p> <p>National legislation on confidentiality must be respected.</p> <p>The term 'objective criteria' is problematic.</p> <p>The provision of "in agreement with central management" is preferable.</p>	<p>2. When central management provides information in confidence in accordance with 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.</p>
Article 1, first paragraph, point (6), amending provision, numbered paragraph (3)				
81	<p>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, in agreement with central management, the justification provided is considered to have become obsolete.;</p> <p>”</p>	<p>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, <del>in agreement with central management,</del> the justification provided is considered to have become obsolete.”;</p>	<p>PROBLEMATIC</p> <p>The issue of who considers the justification provided to have become obsolete arises.</p> <p>The provision of "in agreement with central management" is preferable.</p>	<p>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, <del>in agreement</del> <b>it has been agreed</b> with central management, <del>the justification provided is considered to have</del> <b>that the reasons justifying it have</b> become obsolete.;</p> <p>”</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Article 1, first paragraph, point (6), amending provision, numbered paragraph (3a)			
81a		<p><b><u>3a. Paragraph 1 shall not apply to members of the European Works Council who reveal information to national or local work councils that may affect the situation of workers where such information has been provided to them in confidence and is subject to national rules on confidentiality.</u></b></p>	<p>PROBLEMATIC</p> <p>EWC Directive does not have the competence to deal with issues of confidentiality in a transnational environment.</p> <p>Issue of 'forum shopping' arises.</p>	
	Article 1, first paragraph, point (7)			
82	(7) the following <b>Article 8a</b> is inserted:	(7) the following <b>Article 8a</b> is inserted:		(7) the following <b>Article 8a</b> is inserted:
	Article 1, first paragraph, point (7), amending provision, first paragraph			
83	<p>“</p> <p><b>Article 8a</b></p> <p>Non-transmission of information on specific grounds</p>	<p>“</p> <p><b>Article 8a</b></p> <p>Non-transmission of information on specific grounds</p>		<p>“</p> <p><b>Article 8a</b></p> <p>Non-transmission of information on specific grounds</p>
	Article 1, first paragraph, point (7), amending provision, numbered paragraph (1), first subparagraph			

	Commission Proposal	EP Mandate	IE Response	Council Mandate
84	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.	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.		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.
		Article 1, first paragraph, point (7), amending provision, numbered paragraph (1), second subparagraph		
85	A Member State may make such dispensation subject to prior administrative or judicial authorisation.	A Member <del>State may</del> <b>States shall</b> make such dispensation subject to prior administrative or judicial authorisation.	PROBLEMATIC Prescriptive language. 'may' make such dispensation is preferable.	A Member State may make such dispensation subject to prior administrative or judicial authorisation.
		Article 1, first paragraph, point (7), amending provision, numbered paragraph (2)		

	Commission Proposal	EP Mandate	IE Response	Council Mandate
86	<p>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.;</p> <p style="text-align: right;">”</p>	<p>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.;</p> <p style="text-align: right;">”</p>		<p>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.;</p>
		Article 1, first paragraph, point (7), amending provision, numbered paragraph (3)		
86a				<p><b>3. The dispensation according to paragraph 1 from transmitting information shall continue to apply until the reasons justifying it have become obsolete.;</b></p> <p style="text-align: right;">”</p>
		Article 1, first paragraph, point (8)		
87	<p>(8) <b>Articles 9 and 10</b> are replaced by the following:</p>	<p>(8) <b>Articles 9 and 10</b> are replaced by the following:</p>		<p>(8) <b>Articles 9 and 10</b> are replaced by the following:</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Article 1, first paragraph, point (8), amending provision, first paragraph			
88	<p>“</p> <p><b>Article 9</b></p> <p>Operation of the European Works Council and the information and consultation procedure for workers</p>	<p>“</p> <p><b>Article 9</b></p> <p>Operation of the European Works Council and the information and consultation procedure for workers</p>		<p>“</p> <p><b>Article 9</b></p> <p>Operation of the European Works Council and the information and consultation procedure for <del>workers</del><b>employees</b></p>
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (1), first subparagraph			
89	<p>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.</p>	<p>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.</p>		<p>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.</p>
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (1), second subparagraph			
90	<p>The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.</p>	<p>The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.</p>		<p>The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for <del>workers</del><b>employees</b>.</p>
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (2)			
91	<p>2. Information on transnational matters shall be given at such time, in</p>	<p>2. Information on transnational matters shall be given at such time, in</p>	PROBLEMATIC	<p>2. Information on transnational matters shall be</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>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.</p>	<p>such fashion and with such content as are <del>appropriate</del> <b><u>necessary and sufficient</u></b> to enable <b><u>the European Works Council</u></b> <b><u>to consult relevant</u></b> employees' representatives <b><u>at national and local level</u></b>, to undertake an in-depth assessment of their possible impact, and, where appropriate, prepare for <b><u>meaningful</u></b> consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.</p>	<p>The changes made to the Council mandate are unnecessary and increase uncertainty in the text.</p>	<p>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.</p>
<p>Article 1, first paragraph, point (8), amending provision, numbered paragraph (3)</p>				
92	<p>3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express an 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</p>	<p>3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express an 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</p>		<p>3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express <del>an</del><b>their</b> 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 <b>degree of</b> urgency of the matter. The employees' representatives shall be entitled to</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	level of management prior to the adoption of the decision on the measures in question, provided the employee representatives expressed their opinion within a reasonable time in accordance with the first sentence.	to the adoption of the decision on the measures in question, provided the employee representatives expressed their opinion within a reasonable time in accordance with the first sentence.		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 <del>employee</del> <b>employees'</b> representatives expressed their opinion within a reasonable time in accordance with the first sentence.
		Article 1, first paragraph(8), amending provision, numbered paragraph (3a)		
92a		<b><u>3a.</u></b> <i>In duly justified and exceptional cases, where the adoption of a decision requires urgency, management and employees' representatives shall carry out an effective information and consultation process in accordance with paragraphs 2 and 3 as quickly as possible. When appropriate and agreed upon, digital means of communication and coordination can be used for that purpose.</i>	PROBLEMATIC The provision is superfluous to the text.	
		Article 1, first paragraph(8), amending provision, numbered paragraph (3b)		
92b		<b><u>3b.</u></b> <i>If there is a dispute between the central management and the</i>	PROBLEMATIC	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<p><b><u>European Works Council or employees' representatives as to whether an information and consultation procedure is to be carried out, the central management shall provide duly substantiated grounds in writing for the reasons why the information and consultation requirements under this Directive or under agreements concluded pursuant thereto do not apply, including the reasons that justify the absence of transnational issues.</u></b></p>	<p>The new provision is unnecessary and may increase uncertainty in the text.</p>	
<p>Article 1, first paragraph(8), amending provision, numbered paragraph (3c)</p>				
92c		<p><b><u>3c. In so far as it is necessary for the European Works Council to carry out its tasks, the European Works Council or the select committee may request assistance from experts of its choice. Such experts may include representatives of competent recognised Community-level trade union organisations. At the request of the European Works Council, such experts shall be present at meetings of the European Works Council and meetings with the central management in an advisory capacity.</u></b></p>	<p>PROBLEMATIC</p> <p>The new provision is unnecessary.</p>	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Article 1, first paragraph, point (8), amending provision, fifth paragraph			
93	Article 10 Role and protection of employees' representatives	<b>Article 10</b> Role and protection of employees' representatives		Article 10 Role and protection of employees' representatives
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (1)			
94	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.	1. Without prejudice to the competence of other bodies or organisations in this respect, the <del>employees' representatives, including the</del> members of the special negotiating body <del>and</del> the members of the European Works Council, <del>and the</del> <b>employees' representatives</b> shall have the means <b>and legal capacity</b> 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.	PROBLEMATIC  The change in wording is unnecessary and changes meaning.  In Ireland an EWC does not have a legal personality.  Language in EP amendment is superfluous and confusing.	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.
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (2)			
95	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	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	PROBLEMATIC  EP amendment is superfluous, does not	2. Without prejudice to Articles 8 and 8a, the members of the European Works Council shall <del>have the right and necessary</del>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>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.</p>	<p>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, <b><u>and whenever it deems it necessary to perform its tasks deriving from this Directive,</u></b> in particular before and after the meetings with the central management.</p>	<p>add clarity and is confusing as a result.</p>	<p><del>means to</del> inform the <b>employees'</b> representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of <b>employees'</b> 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 <b>and shall have the necessary means to do so.</b></p>
Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), first subparagraph				
96	<p>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.</p>	<p>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, <b><u>including the right to form and join trade unions,</u></b> enjoy protection and guarantees equivalent to those provided for employees' representatives by the national legislation <del>and</del><b>and/or</b> practice in force in their country of employment.</p>	<p>PROBLEMATIC</p> <p>Provisions regarding the right to form and join trade unions are not within the competence of this directive.</p>	<p>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.</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), second subparagraph			
97	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.	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.		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.
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), second subparagraph a			
97a		<b><u>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</u></b>	ACCEPTABLE	<b>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</b>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
		<u>country other than that in which the shipping company is domiciled, when the meeting takes place.</u>		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.
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), fourth subparagraph			
97b		<u>Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.</u>	ACCEPTABLE	Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), fifth subparagraph			
97c		<u>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.</u>	ACCEPTABLE	In cases 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.
	Article 1, first paragraph, point (8), amending provision, numbered paragraph (4), first subparagraph			
98	4. In so far as this is necessary for the exercise of their representative	4. In so far as this is necessary for <u>and linked to</u> the exercise of their	PROBLEMATIC	4. In so far as this is necessary for the exercise of their

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	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.	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.	Language used in EP amendment is not legally sound and superfluous to the text.	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.
Article 1, first paragraph, point (8), amending provision, numbered paragraph (4), second subparagraph				
99	Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed in advance.;	Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the costs of such training and related expenses shall be borne by the central management, <u>or any other appropriate level of management</u> , provided that the central management <u>or any other appropriate level of management</u> , has been informed in advance.;	PROBLEMATIC The costs and expenses outlined should be agreed by Central Management. The Directive regards transnational relationships. The issues are not local. The wording as per EP amendments could create disparity between managements in different MS.	Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the <b>reasonable</b> costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed <b>thereof</b> in advance.;
Article 1, first paragraph, point (9)				

	Commission Proposal	EP Mandate	IE Response	Council Mandate
100	(9) Article 11 is amended as follows:	(9) Article 11 is amended as follows:		(9) Article 11 is amended as follows:
	Article 1, first paragraph, point (9)(a)			
101	(a) paragraph 2 is replaced by the following:	(a) paragraph 2 is replaced by the following:		(a) paragraph 2 is replaced by the following:
	Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), first subparagraph			
102	“ 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 :	“ 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 :		“ 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 :
	Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), first subparagraph, point (a)			
103	(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner;	(a) adequate <b><u>administrative and judicial</u></b> procedures are available <b><u>and easily accessible</u></b> to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner, <b><u>to apply for and terminate including the possibility to request a preliminary injunction for the temporary suspension of decisions of</u></b>	PROBLEMATIC. Use of injunctions is not proportionate in an information and consultation procedure.  Preventing business operations is outside the	(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in a <del>timely</del> <b>and</b> effective manner;

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		<p><b><u>the central management where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements under this Directive or under agreements concluded pursuant thereto. The effects of the challenged decisions on employment contracts or employment relationships of the affected employees shall be suspended accordingly;</u></b></p>	<p>competence of this directive. EP amendments are unnecessary. MS must provide effective remedies.</p>	
		Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), first subparagraph, point (b)		
104	(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.	(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.		(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.
		Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (ba)		
104 a		<p><b><u>(ba) The penalties referred to in point (b) shall include:</u></b></p>	<p>PROBLEMATIC Competence to ensure sanctions are dissuasive rests with MS</p>	

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	Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (bb)			
104 b		<b><u>(bb) (i) financial penalties that are proportionate to the nature, gravity and duration of the undertaking's infringement and which shall increase in amount according to the number of affected employees;</u></b>	PROBLEMATIC  Matters related to penalties should be left to MS discretion.  No equivalence in respect of fine levels.	
	Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (bc)			
104 c		<b><u>(bc) (ii) orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including Union funds managed by the relevant Member States, for a period of up to three years;</u></b>	PROBLEMATIC  Matters related to penalties should be left to MS discretion.  No equivalence in respect of fine levels.	
	Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (bd)			
104 d		<b><u>(bd) (iii) orders excluding the undertaking from participating in a public contract as defined in Directive 2014/24/EU of the European Parliament and of the Council<sup>1</sup>.</u></b>  _____ <b><u>1. Directive 2014/24/EU of the European Parliament and of the Council of 26 February</u></b>	PROBLEMATIC  No equivalence in respect of fine levels.	

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		<p><u>2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).</u></p>		
	Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), second subparagraph			
105	<p>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 pecuniary sanctions, 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.</p>	<p>In the <del>event of failure to comply with the national provisions transposing the obligations under Article 9(2) and (3), Member States shall provide for pecuniary sanctions</del> <u>case of infringements as referred to in point (b) of this paragraph, which are not committed intentionally, the financial penalties referred to in point (a) of this paragraph, shall be substantive and equivalent to those provided for in Article 83(4) of Regulation (EU) 2016/679<sup>1a</sup>, 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.</u></p> <p>_____</p> <p><u>1a. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and</u></p>	<p>PROBLEMATIC</p> <p>While financial penalties may be provided for, it is MS obligation and competence to provide for effective, dissuasive and proportionate sanctions.</p> <p>Use of GDPR Regs fines is not proportionate.</p>	<p>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 pecuniary sanctions, 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 <b>financial penalties.</b></p>

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		<p><u>repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).</u></p>		
		Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), third subparagraph		
106	<p>For the purposes of point (b), of the first subparagraph, Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</p> <p>”</p>	<p><del>For the purposes of</del> <b><u>In the case of infringements as referred to in point (b), of the first subparagraph,</u></b> <del>Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and</del> <b><u>of this paragraph which are committed intentionally, the financial penalties referred to in point (a) of this paragraph shall be substantive and equivalent to those provided for in Article 83(5) of Regulation (EU) 2016/679.</u></b> <del>financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</del></p> <p>”</p>	<p>PROBLEMATIC</p> <p>Referring to fine levels set out in GDPR Directive is not a proportionate response to infringement of an Information and consultation procedure, as set out in the context of EWCs.</p> <p>Remedies and sanctions remain in competence of MS.</p>	<p><del>For the purposes of point (b), of the first subparagraph, Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</del></p> <p>”</p>
		Article 1, first paragraph, point (9)(b)		

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107	(b) paragraph 3 is amended as follows:	(b) paragraph 3 is amended as follows:		(b) paragraph 3 is amended as follows:
		Article 1, first paragraph, point (9)(b), first indent		
108	- the first subparagraph is replaced by the following:	- the first subparagraph is replaced by the following:		- the first subparagraph is replaced by the following:
		Article 1, first paragraph, point (9)(b), first indent, amending provision, numbered paragraph (3)		
109	“ 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.; ”	“ 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.; ”		“ 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.; ”
		Article 1, first paragraph(9), point (b), second indent, first subparagraph		

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109 a		- <u><i>the following subparagraph is inserted after the first subparagraph:</i></u>		
Article 1, first paragraph(9), point (b), second indent, second subparagraph				
109 b		<u><i>"The central management shall bear the judicial costs incurred in carrying out the procedures, the costs of legal representation and subsidiary costs such as subsistence and travel expenses for at least one employees' representative;"</i></u>	<p>PROBLEMATIC</p> <p>Ireland already has systems in place, such as the use of Arbitration, paid for by the Minister, which can be availed of without costs being incurred.</p> <p>Council mandate new provision at 3a is preferable.</p> <p><b>"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</b></p>	

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			<p>representatives.  <b>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 measures to avoid any de facto restriction of such access for reasons of lack of financial resources.”</b></p>	
	Article 1, first paragraph, point (9)(b), second indent			
110	- the following subparagraph is added:	- the following subparagraph is added:		- the following subparagraph is added:
	Article 1, first paragraph, point (9)(b), second indent, amending provision, first paragraph			
111	“ The duration of such procedures shall be compatible with the effective exercise of the information and	“ The duration of such procedures shall be compatible with the effective		“ The duration of such the procedures, <b>referred to in the first subparagraph</b> shall be compatible with the effective exercise of the

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	consultation rights under this Directive.;	exercise of the information and consultation rights under this Directive.;		information and consultation rights under this Directive.;
		”	”	
	Article 1, first paragraph, point (9)(ba)			
111 a				<b>(ba) the following paragraph 3a is added:</b>
	Article 1, first paragraph, point (9)(ba), amending provision, numbered paragraph (3a))			
111 b				<b>3a 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 measures to avoid any de facto restriction of such access for</b>

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				reasons of lack of financial resources. ”
	Article 1, first paragraph, point (9)(c)			
112	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:		(c) the following paragraph 4 is added:
	Article 1, first paragraph, point (9)(c), amending provision, numbered paragraph (4)			
113	“ 4. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.; ”	“ 4. <b><u>Member States are encouraged to develop out-of-court mediation procedures enabling both parties to find acceptable solutions.</u></b> Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.; ”	ACCEPTABLE  Preferable that out of court alternative dispute resolution mechanisms are utilised in advance of legal proceedings.  Ireland provides cost free access to the services of the Workplace Relations Commission, Labour Court, and use of Arbitration to enable the resolution of disputes.	“ 4. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall <del>neither result in a decision which is binding on</del> <b>not prejudice the right of</b> the parties concerned, nor otherwise prejudice their right to bring legal proceedings.; ”

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	Article 1, first paragraph, point (9a), first subparagraph			
113 a		<b><u>(9a) in Article 12, paragraph 2 is replaced by the following:</u></b>		
	Article 1, first paragraph, point (9a), second subparagraph			
113 b		<b><u>'2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6 in order to ensure good coordination between information and consultation processes within the European Works Council and those established at national level. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.'</u></b>	PROBLEMATIC  Superfluous. Does not add to existing paragraph.	
	Article 1, first paragraph, point (10)			
114	(10) in Article 12, the following paragraph is added:	<i>deleted</i>		(10) in Article 12, the following paragraph is added:
	Article 1, first paragraph, point (10), amending provision, numbered paragraph (6)			

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115	<p>“</p> <p>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.;</p> <p>”</p>	<p><i>deleted</i></p>		<p>“</p> <p>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.;</p> <p>”</p>
		Article 1, first paragraph, point (11)		
116	(11) Article 14 is deleted;	(11) Article 14 is deleted;		(11) Article 14 is deleted;
		Article 1, first paragraph, point (12)		
117	(12) the following Article is inserted:	(12) the following Article is inserted:		(12) the following Article is inserted:
		Article 1, first paragraph, point (12a)		
117 a				<b>(12a) the following Article is inserted:</b>

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	Article 1, first paragraph, point (12), amending provision, first paragraph			
118	<p>“</p> <p><b>Article 14a</b></p> <p>Transitional provisions</p>	<p>“</p> <p><b>Article 14a</b></p> <p>Transitional provisions</p>		<p>“</p> <p><b>Article 14a</b></p> <p>Transitional provisions</p>
	Article 1, first paragraph, point (12), amending provision, numbered paragraph (1)			
119	<p>1. Where, following the transposition of [OP: insert reference to this amending Directive], a European Works Council agreement or agreement on an information and consultation procedure concluded before [OP: 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 is not in conformity with any of the requirements applicable to that agreement as a consequence of the amendments provided for in [OP: insert reference to this amending Directive], central management shall initiate negotiations to adapt that agreement at the written request of at least 100 employees or their representatives in at least two</p>	<p>1. Where, <del>following the transposition of [OP: insert reference to this amending Directive]</del>, a European Works Council agreement or agreement on an information and consultation procedure concluded before [OP: 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 <del>is not in conformity with any of the requirements applicable to that agreement as a consequence of the amendments provided for in</del> <b>does not determine all the elements listed in Article 6(2), as amended by</b> [OP: insert reference to this amending Directive], central management shall initiate negotiations <del>to adapt that by ... [ from date of entry into force of this Directive] for the</del></p>	<p>PROBLEMATIC</p> <p>EP amendments do not add value to the text.</p> <p>Preferable that provision whereby negotiations can be initiated at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.</p>	<p>1. Where, following the transposition of <del>after</del> <b>[OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 1st subparagraph of this amending Directive]</b>[OP: insert reference to this amending Directive], a European Works Council agreement or agreement on an information and consultation procedure concluded before <b>[OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive]</b>[OP: 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</p>

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	<p>undertakings or establishments in at least two different Member States. Central management may also initiate such negotiations on its own initiative.</p>	<p><b><u>establishment of an addendum, determining the elements not determined by the existing European Works Council</u></b> agreement <del>at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.</del> Central management may also initiate such negotiations on its own initiative <b><u>or agreement on an information and consultation procedure.</u></b></p>	<p>PUBLIC</p>	<p>Directive is not in conformity with any of the requirements applicable to that agreement, as a consequence of the amendments provided for in entered into force on [OJ: insert date of entry into force of this amending Directive] with any of the elements and requirements of Article 6 [OP: insert reference to this amending Directive], central management shall initiate negotiations to adapt that agreement, at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States, <b>initiate negotiations to adapt that agreement to those elements and requirements of Article 6.</b> Central management may also initiate such negotiations on its own initiative. <b>Such negotiations may be limited to the provisions of the agreement that are not in conformity with those elements and requirements of Article 6.</b></p>
		Article 1, first paragraph, point (12), amending provision, numbered paragraph (2)		

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120	<p>2. Where the European Works Council agreement or agreement on an information and consultation procedure 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.</p>	<p>2. Where the European Works Council agreement or agreement on an information and consultation procedure contains procedural arrangements for its adaptation <del>or renegotiation, the adaptation,</del> <b><u>the establishment of the addendum</u></b> may be negotiated pursuant to those arrangements. Otherwise, the <del>adaptation</del> <b><u>establishment of the addendum</u></b> shall follow the procedure set out in Article 5 in conjunction with Article 13, second and third paragraphs.</p>	<p>PROBLEMATIC</p> <p>Does not add value to the process.</p>	<p>2. Where the European Works Council agreement or agreement on an information and consultation procedure 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.</p>
		Article 1, first paragraph, point (12), amending provision, numbered paragraph (3)		
121	<p>3. Where an adaptation procedure does not lead to an agreement within two years from the date of the respective request by employees or their representatives, the subsidiary requirements set out in Annex I shall apply.;</p>	<p>3. Where an adaptation procedure <b><u>initiated pursuant to paragraph 1</u></b> does not lead to an agreement <b><u>on the addendum</u></b> within two years <del>from the date</del> <b><u>following the initiation</u></b> of the <del>respective request by employees or their representatives</del> <b><u>negotiations</u></b>, the subsidiary requirements set out in Annex I <b><u>in respect of the elements not determined in the existing European Works Council agreement or agreement on an information and consultation procedure</u></b> shall apply.”;</p>	<p>PROBLEMATIC</p> <p>Does not add value to the process.</p>	<p>3. <del>Where</del> <b><u>When</u></b> an adaptation procedure <b><u>under this Article</u></b> does not lead to an agreement within two years from the date of the respective request by employees or their representatives <b><u>or from the date of initiation of the negotiations by the central management on its own initiative</u></b>, the subsidiary requirements set out in Annex I shall apply.;</p>

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	Article 1, first paragraph, point (12), amending provision, numbered paragraph (4)			
121 a				<p><b>4. This Article shall not have the effect of exempting the parties to European Works Council agreements or to agreements on information and consultation procedures from respecting the applicable minimum requirements in this Directive.</b></p> <p>”</p>
	Article 1, first paragraph, point (12a), amending provision, first paragraph			
121 b				<p><b>(12a) the following Article is inserted:</b></p> <p><b>Article 14b</b></p> <p>Different presentation due to IT issue to be solved</p>
	Article 1, first paragraph, point (12a), third subparagraph			

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121 c				<p>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) indent three shall be reduced to two years. The initiation of negotiations does not affect the terms of the existing agreements in force.;"</p>
		Article 1, first paragraph, point (12b), first subparagraph		
121 d		<p><b><u>(12b)</u></b> <i>The following Article is inserted:</i></p>		
		Article 1, first paragraph, point (12b), second subparagraph		
121 e		<p><b><u>'Article 15a</u></b> <b><u>Monitoring</u></b></p>		

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	Article 1, first paragraph, point (12b), third subparagraph			
121f		<b><u>1. To ensure the correct application of the Directive and to address and resolve practical problems arising from its implementation, a monitoring committee shall be established.</u></b>	PROBLEMATIC The normal supervision and enforcement, by CION, of MS application of Directives should apply.	
	Article 1, first paragraph, point (12b), fourth subparagraph			
121g		<b><u>The monitoring committee shall be composed by one representative per Member State, three representatives of each of the European social partners, and the Commission.</u></b>	PROBLEMATIC Does not add value. The normal supervision and enforcement, by CION, of MS application of Directives should apply.	
	Article 1, first paragraph, point (12b), fifth subparagraph			
121h		<b><u>The monitoring committee shall meet twice per year and shall be chaired by the Commission.'</u></b>	PROBLEMATIC The normal supervision and enforcement, by CION, of MS application of Directives should apply.	
	Article 1, first paragraph, point (13)			

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122	(13) <b>Annex I</b> is amended in accordance with the Annex to this Directive.	(13) <b>Annex I</b> is amended in accordance with the Annex to this Directive.		(13) <b>Annex I</b> is amended in accordance with the Annex to this Directive.
	Article 2			
123	Article 2	Article 2		Article 2
	Article 2(1), first subparagraph			
124	1. Member States shall adopt and publish, by [OP: insert date one year 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.	1. Member States shall adopt and publish, by [OP: insert date one year 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.		1. Member States shall adopt and publish, by <b>[OJ: please insert date: two years from the entry into force of this Directive]</b> <del>[OP: insert date one year from the entry into force of this Directive]</del> at the latest, the laws, regulations and administrative provisions <del>measures</del> necessary to comply with this Directive <b>[before....]</b> . They shall <del>forthwith</del> <b>immediately inform</b> the Commission <del>the text of those provisions thereof.</del>
	Article 2(1), second subparagraph			

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125	They shall apply those provisions from [OP: insert date two years from the date set out in the first subparagraph].	They shall apply those provisions from [OP: insert date two years from the date set out in the first subparagraph].		They shall apply those provisions <del>from</del> <b>measures from [OJ: please insert a date: two years from the date set out in the first subparagraph]</b> <del>[OP: insert date two years from the date set out in the first subparagraph].</del>
		Article 2(1), third subparagraph		
126	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.		When Member States adopt those <del>provisions</del> <b>measures</b> , they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. <b>The method of making such a reference shall be laid down by Member States</b> <del>shall determine how such reference is to be made.</del>
		Article 2(2), first subparagraph		
127	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.	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.		2. Member States shall communicate to the Commission <del>the text of the main</del> <b>their laws, regulations and administrative provisions of national law</b> <del>which they adopt in the field covered</del>

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				bywith regard to the application of this Directive.
	Article 2(2), second subparagraph			
128	Regarding the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by [OP: insert date in the first subparagraph of paragraph 1] of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with Article 11(2), (3) and (4) of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative proceedings, in respect of all the rights under this Directive	Regarding the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by [OP: insert date in the first subparagraph of paragraph 1] of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with Article 11(2), (3) and (4) of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative proceedings, in respect of all the rights under this Directive		RegardingWith regard to the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by <b>[OJ: please insert the date from the first subparagraph of paragraph 1]</b> <del>[OP: insert date in the first subparagraph of paragraph 1]</del> of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with Article 11(2), (3), <b>(3a)</b> and (4) of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative proceedings, in respect of all the rights under <del>this</del> <b>that</b> Directive.
	Article 2(2a)			
128 a		<b><u>2a. Member States shall notify the Commission of the measures taken</u></b>	PROBLEMATIC	

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		<u><i>pursuant to Article 11(2) at the earliest opportunity.</i></u>	The normal mechanisms should apply.	
	Article 3			
129	Article 3	Article 3		Article 3
	Article 3, first paragraph			
130	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.		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			
131	Article 4	Article 4		Article 4
	Article 4, first paragraph			
132	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.		This Directive is addressed to the Member States.
	Formula			
133	Done at Brussels,	Done at Brussels,		Done at Brussels,

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Formula			
G 134	For the European Parliament	For the European Parliament		For the European Parliament
	Formula			
G 135	The President	The President		The President
	Formula			
G 136	For the Council	For the Council		For the Council
	Formula			
G 137	The President	The President		The President
	Annex			
G 138	Annex	Annex		Annex
	Annex a			
138 a				<b>ANNEX – Subsidiary requirements</b>
	Annex a, first paragraph			
G 139	Annex I to Directive 2009/38/EC is amended as follows:	Annex I to Directive 2009/38/EC is amended as follows:		Annex I to Directive 2009/38/EC is amended as follows:
	Annex a, second paragraph			

	Commission Proposal	EP Mandate	IE Response	Council Mandate
140	(1) point 1 is amended as follows:	(1) point 1 is amended as follows:		(1) point 1 is amended as follows:
		Annex a, second paragraph, point (a)		
141	(a) the introductory sentence is replaced by the following:	(a) the introductory sentence is replaced by the following:		(a) the introductory sentence is replaced by the following:
		Annex a, second paragraph, point (a), amending provision, numbered paragraph (1)		
142	“ 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;; ”	“ 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;; ”		“ 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;; ”
		Annex a, second paragraph, point (aa)		
142 a		<b><u>(aa) in paragraph 1, the second subparagraph of point (a) is replaced by the following:</u></b>		<b>(aa) in point (a), the second subparagraph is replaced by the following:</b>
		Annex a, second paragraph, point (aa), amending provision, first paragraph		

	Commission Proposal	EP Mandate	IE Response	Council Mandate
142 b		<p><i><u>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, working conditions, skills and training policies including in franchise networks, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.</u></i></p>	<p>PROBLEMATIC</p> <p>Widening of scope of Directive by introducing new elements.</p>	<p>The information of the European Works Council 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, and substantial changes concerning organisation, anticipation of change and management of restructuring processes including those linked to the green and digital transitions, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies;</p>

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Annex a, second paragraph, point (b)			
143	(b) in point (a), the third subparagraph is replaced by the following:	(b) in point (a), the third subparagraph is replaced by the following:		(b) in point (a), the third subparagraph is replaced by the following:
	Annex a, second paragraph, point (b), amending provision, first paragraph			
144	<p>“</p> <p>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;;</p> <p>”</p>	<p>“</p> <p>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;;</p> <p>”</p>		<p>“</p> <p>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;;</p> <p>”</p>
	Annex a, second paragraph, point (c)			

	Commission Proposal	EP Mandate	IE Response	Council Mandate
145	(c) the following point (dd) is inserted after point (d):	(c) the following point (dd) is inserted after point (d):		(c) <b>in point (b)</b> , the following <del>point (d)</del> <b>subparagraph</b> is inserted after <del>point (d)</del> <b>the first subparagraph</b> :
		Annex a, second paragraph, point (c), amending provision, numbered paragraph (dd)		
146	“(dd) as far as possible, women and men shall each comprise at least 40% of European Works Council members and of select committee members;;”	“(dd) <del>as far as possible,</del> <b>European Works Council members and those of select committee shall represent the diversity of the workforce and</b> women and men shall each comprise at least 40% of European Works Council members and of select committee members;;”	PROBLEMATIC Language is too prescriptive. Gender balance should be an objective and where possible.	“(dd) <b>In doing so and</b> as far as possible, women and men shall each comprise at least 40% of European Works Council members and of select committee members;;”
		Annex a, 2 paragraph		
147	(2) point 2 is replaced by the following:	(2) point 2 is replaced by the following:		(2) point 2 is replaced by the following:
		Annex a, 2 paragraph, amending provision, numbered paragraph (2)		
148	“2. The European Works Council shall have the right to meet with the	“2. The European Works Council shall have the right to meet <b>in person</b>	PROBLEMATIC	“2. The European Works Council shall have the right to

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>central management 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.;</p> <p>”</p>	<p>with the central management <b><u>at least</u></b> 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.;</p> <p><b><u>When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases without replacing ordinary meetings.</u></b></p> <p>”</p>	<p>Language is too prescriptive.</p> <p>At least one meeting per year is thought acceptable.</p>	<p>meet with the central management 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. <b>At least one meeting per year shall be held in person.</b> The local managements shall be informed accordingly.;</p> <p>”</p>
	Annex a, 3 paragraph			
149	(3) in point 3, the first and second subparagraphs are replaced by the following:	(3) in point 3, the first and second subparagraphs are replaced by the following:		(3) in point 3, the first and second subparagraphs are replaced by the following:
	Annex a, 3 paragraph, amending provision, numbered paragraph (3), first subparagraph			
150	“	“	PROBLEMATIC	“

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	<p>3. Where there are exceptional circumstances or decisions which are likely 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.</p>	<p>3. Where there are exceptional circumstances or decisions which <u>may</u> <u>or</u> are likely 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.</p>	<p>Language in EP amendment is overly broad. Council mandate is preferable.</p>	<p>3. Where there are exceptional circumstances or decisions which are <del>likely</del> <b>reasonably to be expected</b> 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.</p>
Annex a, 3 paragraph, amending provision, numbered paragraph (3), second subparagraph				

	Commission Proposal	EP Mandate	IE Response	Council Mandate
151	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 directly concerned by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.; ”	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 <del>directly concerned</del> <b>affected</b> by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.;	PROBLEMATIC Language in EP amendment provides less clarity.	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 directly concerned by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.; ”
		Annex, 3 paragraph, amending provision, numbered paragraph (3a)		
151 a		<b><u>3a. Information and consultation procedures within the European Works Council shall be carried out without prejudice to those taking place at the national level. Where a procedure is already taking place at the national level, the European Works Council and the central management shall ensure that those procedures can complement each other with respect to the content and the timing of the procedures.</u></b>	PROBLEMATIC This may conflate national and Transnational information procedures.  These are separate systems and should remain so.	

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Annex a, 4 paragraph			
152	(4) in point 5, the following sentences are added:	(4) in point 5, the following sentences are added:		(4) in point 5, the following sentences are added:
	Annex a, 4 paragraph, amending provision, first paragraph			
153	“ 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.; ”	“ 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.; ”		“ 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.; ”
	Annex a, 5 paragraph			

	Commission Proposal	EP Mandate	IE Response	Council Mandate
154	(5) point 6 is amended as follows:	(5) point 6 is amended as follows:		(5) point 6 is amended as follows:
		Annex a, 5 paragraph, point (a)		
155	(a) the following subparagraph is inserted between the third and fourth subparagraphs:	(a) the following subparagraph is inserted between the third and fourth subparagraphs:		(a) the following subparagraph is inserted between the third and fourth subparagraphs:
		Annex a, 5 paragraph, point (a), amending provision, first paragraph		
156	“ The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings. Operating expenses shall be notified to central management before they are incurred.; ”	“ The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings, <u>and relevant training to members of the European Works Council</u> . Operating expenses shall be notified to central management before they are incurred.; ”	ACCEPTABLE	“ The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings <del>experts</del> [...]. Operating expenses shall be notified to central management before they are incurred.; ”
		Annex a, 5 paragraph, point (b)		
157	(b) the fourth subparagraph is replaced by the following:	(b) the fourth subparagraph is replaced by the following:		(b) the fourth subparagraph is replaced by the following:

	Commission Proposal	EP Mandate	IE Response	Council Mandate
	Annex a, 5 paragraph, point (b), amending provision, first paragraph			
158	<p>“</p> <p>In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council.</p> <p>”</p>	<p>“</p> <p>In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council.</p> <p>”</p>		<p>“</p> <p>In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council.</p> <p>”</p>

## Comments by IT

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the preliminary position of **ITALY** on the operative part.

We reserve the right to provide further comments after the clarifications from the EP. We thank the Presidency for the opportunity to share comments and invite her to safeguard the balance we manage to find after long discussions in the Council.

### 1) We cannot support following EP amendments:

- Row: 58 second amendment. To approve expenses in advance is not always possible. The expenses should in any case be reasonable.
- Row: 76b. Too generic and with the risk of possible misinterpretations.
- Row: 81a - The amendment could be problematic, as a risk to circumvent the confidentiality of information.
- Row: 99. Redundant.
- Row: 103, to be left to the competence of MS (we can be flexible only in including '*administrative and judicial*')
- Rows: 104a-104d, 105, 106, to be left to the competence of MS.
- Row: 109b, it can be excessively burdensome, we prefer 111b
- Row: 148, It is better to keep the minimum number of in-person meetings to one, for reasons of cost containment. We do not agree with the addition of the last period, because digitalization makes it possible to operate cost-effectively and facilitate work-life balance.

### 2) We strongly prefer to keep the Council's General Approach regarding:

- Rows: 49, 52c, 52e, 58, 67, 68, 74, 81, 86a, 96, 119, 120, 121, 121a-c, 121e-121h, 124, 146, 150. The Council's text seems clearer and more balanced.
- Row 85: The EP amendment could in principle provide legal certainty and uniformity among the Member States. That said, the additional administrative burden must be taken into account.
- Row: 94 we need further clarifications by the EP on what we mean with 'legal capacity'

### 3) We can show degree of flexibility regarding:

- Rows: 48, 49b, 50a, 51, 52, 53b, 55b, 74b, 76d, 76f, 79, 80, 91, 92a, 92b, 92c, 95, 98, 113, 113b, 114, 142b, 151, 151a, 156
- Rows: 51, 52 (maybe the integrations could be moved in some specific provisions later in the text)
- Row 55 if we add "**as far as possible**"
- Row: 52a (in any case to be preferably moved in art.2, para. 1, c)

## Comments by LT

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of the Lithuanian delegation

### General remarks

Lithuania is of the opinion that the starting point for negotiations is the General Approach (GA). The negotiations should be seen in the context of the need to reach a balanced outcome of the aim to ensure strong social dialogue and to boost Europe's competitiveness. We ask the Presidency to maintain the GA as much as possible, which is a well-balanced result of thorough negotiations in the Council.

At this stage there are very few EP amendments where we see some room for flexibility. In our view, many of the amendments proposed by EP are over-regulatory, prescriptive with excessive administrative and disproportionate financial burden, and in some cases intervening into Member States legal systems.

We do not support the EP amendments and support the GA on substantive issues regarding: costs to be covered, mechanism of sanctions, establishing a monitoring committee and a transposition period.

Please see below the specific rows, some of them with justifications.

- 1) **We cannot support following EP amendments** rows 25, 31, 32a, 33, 37a, 37b, 49a, 49b, 52a, 52b, 52c, 52e, 55, 74a, 74b, 76b, 76d, 76f, 81a, 85, 92a, 92b, 92c, 94, 103, 104a, 104b, 104c, 104d, 109a, 109b, 121d, 121e, 121f, 121g, 121h, 128a, 145, 151a.

**Rows 52a-e.** EP amendments are driving towards broadening scope of the Directive, which we do not support, especially inclusion of franchise or license.

**Rows 104a-d.** EP amendments are too detailed. For LT it is important that the directive leaves enough flexibility for MS.

**Rows 121e-h.** We don't see the need for establishing a special monitoring committee. The Commission is responsible for safeguarding the EU acqui and have all tools to do that.

- 2) **We support the Council's General Approach regarding** rows 18, 20, 21, 22, 26, 29, 30, 31, 31a, 32, 33, 33a, 34, 37, 51, 52, 58, 68, 79, 80, 86a, 88, 99, 105, 106, 111, 111a, 111b, 113, 119, 120, 121, 121a, 121b, 121c, 124, 142b, 146, 148, 150, 156.

**Rows 20 and 22.** We think it is a disproportionate financial burden for employers and might end up in conflict of interest for legal experts.

**Row 21, 34.** The parties should be free to agree the format of the meeting.

**Row 31.** LT strongly supports the GA regarding penalties. The EP amendments go beyond necessary regulation and intervene into the procedural autonomy of a Member State especially regarding the injunction to suspend a management decision.

**Rows 51 and 52.** EP amendments are already covered in rows 91 and 92.

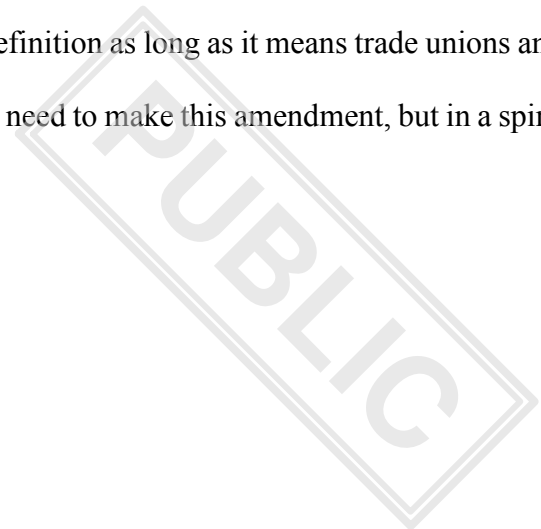
**Row 124.** We strongly support GA. One year transposition period is too short.

- 3) **We can show degree of flexibility regarding:** rows 3, 4, 10, 11, 14, 15, 16, 17, 23, 26, 27, 28, 28a, 28b, 30, 38, 40, 48, 49, 50a, 53b, 55b, 76, 81, 88, 90, 95, 96, 98, 113b, 115, 125, 126, 127, 128, 151.

**Row 30.** LT can show some flexibility in row 30 regarding the information to join trade unions.

**Row 50a.** LT can show some flexibility for the definition as long as it means trade unions and the employees.

**Row 55b.** We are not sure that there is a practical need to make this amendment, but in a spirit of compromise we can show some flexibility.



## Comments by LU

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of (Luxembourg)

### 1) We cannot support following EP amendments:

- Row 24- The amendment proposed by the European Parliament could be problematic because we think the representation should not be based on the gender of the respective people. Furthermore, the members of the special negotiating body are appointed by the members of the national staff delegation which have been duly elected by the national employees and the central management has no control over the national rules defining the selection of European working council (EWC) and special negotiating body members.
- Row 31- The amendment proposed by the European Parliament could be problematic as it goes even further than the European commission's proposal and the proposed approach would, in our view, tend to slow down the speed of decision-making processes in companies and could therefore slow down the ability of companies to react in important situations.
- Row 34- Amendment proposed by the European Parliament could be problematic (same comments as for recital 8).
- Row 55 Amendment proposed by the European Parliament could be problematic because we think the representation should not be based on the gender of the respective people. Furthermore, the members of the special negotiating body are appointed by the members of the national staff delegation which have been duly elected by the national employees and the central management has no control over the national rules defining the selection of European working council (EWC) and special negotiating body members.
- Row 74 Amendment proposed by the European Parliament could be problematic (see comments in line 55 on page 42)
- Row 105 The amendment proposed by the European Parliament could be problematic. The penalties proposed would be too high in our view.
- Row 106 The amendment proposed by the European Parliament could be problematic. The penalties proposed would be too high in our view (the penalties foreseen in article 83 (4) of the said regulation would be more realistic, we would therefore recommend the application of article 83 (4) of the said regulation).
- Row 146 Amendment proposed by the European Parliament could be problematic (see comments in line 55 on page 42)
- Row 148 Amendment proposed by the European Parliament could be problematic because we think it should be possible to organize all of the meetings, mandatory or not, in a virtual format. The modalities of the format of the meetings should be decided by the social partners. The amendment of the European Parliament is also not in line with the environmental footprint ambitions of the European Union.

We can show degree of flexibility on all other rows

## Comments by LV

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of **Latvia**

### **General remarks:**

Latvia currently could share only preliminary position regarding EP proposals.

Latvia strongly supports the wording of the proposal contained in the Council General approach, and almost in all rows is critical on the wording proposed by the European Parliament, which in many places is aimed at imposing an excessive administrative burden on national controlling authorities, as well as creating a disproportionate financial burden on the central management (employers). Additionally, the proposals of the European Parliament regarding penalties are so prescriptive and complicated, that it would be too difficult to carry out them, even impossible, and thus it cannot be supported. We believe that the mechanism/procedures and criteria for the application of sanctions should be left up to the Member States. LV at this moment could reflect only non-support for the EP proposals, especially:

1) wording proposed by the EP regarding costs to be covered by the central management, that is too broad and may impose a disproportionate financial burden for employer (row 29);  
2) the mechanism and procedures for the application of penalties, that should be left to the MS and proceeded at the national level (in rows 104a – 106 LV strongly supports the GA);  
3) the deadline for the transposition of the Directive (1 year) proposed by the EP is disproportionate, because the Member States may not have enough time even to adopt technical amendments, considering that the process of adopting of regulatory enactments is sufficiently time-consuming and different between Member States (in the row 124 LV strongly supports the GA). LV could be flexible only in the row 50a regarding 'employees' representatives' clarification and on couple of recitals.

#### 1) We cannot support following EP amendments:

- Rows: 20-23, 29-37b, 49a-50, 51-58, 68, 74-74b, 76a-76f, 81a, 85, 92a-92c, 96, 99, 103-106, 109a-109b, 113a-113b, 119-121, 121d-124, 128a, 142b, 146, 151a, 156.

#### 2) We strongly prefer to keep the Council's General Approach regarding:

- Same rows: 20-23, 29-37b, 49a-50, 51-58, 68, 74-74b, 76a-76f, 81a, 85, 92a-92c, 96, 99, 103-106, 109a-109b, 113a-113b, 119-121, 121d-124, 128a, 142b, 146, 151a, 156.

#### 3) We can show degree of flexibility regarding:

On all rows, which are not mentioned in 1) and 2).

## Comments by MT

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of Malta:

1) We strongly prefer to keep the Council's General Approach regarding:

- Rows 14-17
- Rows 18,20,21,22-23,

2) We can show degree of flexibility regarding:

- Rows 25-30, 31,32,38, 48-52a,53a-53b,55-55B
- Rows 58,67-68,70,74-74b,76-76F,79-81,85,86a,88,90-97,98,103-106,109a-109b,111,111a-112,113-114,119-121,121c-121d,121d-121h,124-128a,142a-142b,145-146, 148, 150-151, 156, 158.

## Comments by NL

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of *the Netherlands*

### 1) We cannot support following EP amendments:

- row 30
- row 31
- row 32a
- row 33
- row 49a
- row 50
- row 50a
- row 55b
- row 76b
- row 85
- row 96
- row 103
- row 104a
- row 104b
- row 104c
- row 104d
- row 105
- row 106
- row 113
- row 124
- row 128a

### 2) We strongly prefers to keep the Council's General Approach regarding:

- row 18
- row 21
- row 29
- row 48
- row 58
- row 74
- row 81
- row 92b
- row 99
- row 126
- row 148

### 3) We can show degree of flexibility regarding:

- row 20
- row 22

- row 23
- row 25
- row 28
- row 28a
- row 28b
- row 32
- row 34
- row 37
- row 37a
- row 37b
- row 49
- row 49b
- row 51
- row 52
- row 52a
- row 53b
- row 55
- row 74b
- row 76b
- row 80
- row 81a
- row 91
- row 92a
- row 92c
- row 94
- row 95
- row 98
- row 109b
- row 113b
- row 119
- row 120
- row 121
- row 142b
- row 146
- row 150
- row 151
- row 151a
- row 156



Clarification needed:

52d

52e

76f

79

121f

	Commission Proposal	EP Mandate	Council Mandate	Comment NL
Formula				
1	2024/0006 (COD)	2024/0006 (COD)	2024/0006 (COD)	
Document Stage				
2	Proposal for a	Proposal for a	Proposal for a	
Document Type				
3	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DIRECTIVE (EU) .../2024 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of...	
Document Purpose				
4	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	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	amending Directive 2009/38/EC as regards the establishment and <del>functioning</del> <b>operation</b> of European Works Councils and the effective enforcement of transnational information and consultation rights	
EEA Relevance				
5	(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)	
Formula				
6	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Citation 1				

7	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 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 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,	
Citation 2				
8	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
Citation 3				
9	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
Citation 4				
10	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  _____ 1. OJ C [...], [...], p. [...].	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  _____ 1. OJ C [...], [...], p. [...].	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  _____ 1. OJ C [...], [...], p. [...], p. .	
Citation 5				
11	Having regard to the opinion of the Committee of the Regions <sup>1</sup> ,		Having regard to the opinion of the Committee of the Regions <sup>1</sup> ,	

	_____		_____	
	1. OJ C [...], [...], p. [...].		1. OJ C [...], [...], p. [...], p. [...].	
Citation 6				
1 2	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
Formula				
1 3	Whereas:	Whereas:	Whereas:	
Recital 1				
1 4	(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at all 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	(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at all 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.	(1) Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union, workers or their representatives are, at <del>all</del> <b>the</b> appropriate levels, <del>to be</del> 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.	

	and consulted on matters relevant to them.			
Recital 2				
1 5	<p>(2) With respect to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council<sup>1</sup> 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.</p> <hr/> <p>1. 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 (Recast) (OJ L 122, 16.5.2009, p. 28, ELI: <a href="http://data.europa.eu/eli/dir/2009/38/oj">http://data.europa.eu/eli/dir/2009/38/oj</a>).</p>	<p>(2) With respect to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council<sup>1</sup> 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.</p> <hr/> <p>1. 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 (Recast) (OJ L 122, 16.5.2009, p. 28, ELI: <a href="http://data.europa.eu/eli/dir/2009/38/oj">http://data.europa.eu/eli/dir/2009/38/oj</a>).</p>	<p>(2) With <del>respect</del> regard to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council<sup>1</sup> 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.</p> <hr/> <p>1. 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 (Recast) (OJ L 122, 16.5.2009, p. 28, ELI: <a href="http://data.europa.eu/eli/dir/2009/38/oj">http://data.europa.eu/eli/dir/2009/38/oj</a>).</p>	
Recital 3				

1 6	<p>(3) While an evaluation of Directive 2009/38/EC published in 2018<sup>1</sup> confirmed that Directive's added value and relevance in principle, it also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.</p> <p>_____</p> <p>1. COM(2018) 292 final.</p>	<p>(3) While an evaluation of Directive 2009/38/EC published in 2018<sup>1</sup> confirmed that Directive's added value and relevance in principle, it also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.</p> <p>_____</p> <p>1. COM(2018) 292 final.</p>	<p>(3) While an evaluation of Directive 2009/38/EC published in 2018<sup>1</sup> confirmed that Directive's added value and relevance in principle, it also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, sanctions, and the interpretation of certain concepts.</p> <p>_____</p> <p>1. COM(2018) 292 final.</p>	
Recital 4				
1 7	<p>(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<sup>1</sup> and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning</p>	<p>(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<sup>1</sup> and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union, on the need for and the content of</p>	<p>(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<sup>1</sup> and the Commission undertook a two-phase consultation with the social partners, in accordance with Article 154 of the Treaty on the Functioning of the European Union TFEU, on the need for and the content of measures to address the shortcomings of that Directive. The</p>	

	<p>of the European Union, 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.</p> <p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>	<p>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.</p> <p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>	<p>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.</p> <p>_____</p> <p>1. European Parliament resolution of 2 February 2023 with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL)).</p>	
Recital 5				
18	<p>(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</p>	<p>(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 this Directive should not only cover</p>	<p>(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 this Directive should not only cover cases where measures</p>	<p>NL is not in favour of EP mandate because of unpractical consequences.</p>


<p>that this Directive should not only cover cases where measures considered by management can reasonably be expected to affect employees in more than one Member State, but also cases where such measures can reasonably be expected to affect workers in only one Member State, but the consequences of those measures can reasonably be expected to affect workers in at least one other Member State. This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees in another Member State, for instance due to changes in the cross-border supply chain or production activities, where such measures could lead to substantial</p>	<p>cases where measures considered by management can reasonably be expected to affect employees in more than one Member State, but also cases where such measures can reasonably be expected to affect workers in only one Member State, but the consequences of those measures can reasonably be expected to affect workers in at least one other Member State.</p> <p><u>Cases in which measures considered by management of the Community-scale undertaking or Community-scale group of undertakings are taken in a Member State other than that in which those effects are produced should also be covered.</u> This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees in another Member State, for instance due to changes in the cross-border supply chain or production activities, where such measures could lead to substantial</p>	<p>considered by management <b>of an undertaking</b> can reasonably be expected to affect <b>its</b> employees in more than one Member State, but also cases where such measures can reasonably be expected to affect <del>workers</del><b>employees of that undertaking</b> in only one Member State, but the consequences of those measures can reasonably be expected to affect <del>workers</del><b>its employees</b> in at least one other Member State. This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies <b>or allocation of production activities and outsourcing of activities</b>, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees <b>of that undertaking</b> in another Member State, for instance due to changes in the cross-border supply chain or production activities, <del>where such</del>. <b>The concept of transnational matters covers those measures which could lead to affect employees in a substantial changes in work organisation or in contractual relations way, i.e. in a way which does not affect them in a trivial manner and does not only concern individual</b></p>	
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	changes in work organisation or in contractual relations.	changes in work organisation or in contractual relations.	<b>employees or ordinary operational decisions. The standard of reasonableness should be objectively ascertained, having regard to the nature and purpose of the measures that are envisaged and the circumstances of the case.</b>	
Recital 6				
19	(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.	(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.	(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.	
Recital 7				
20	(7) Members of special negotiating bodies may need legal advice or representation 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	(7) Members of special negotiating bodies may need legal advice or representation 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	(7) Members of special negotiating bodies may need legal advice <del>or representation</del> 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	NL finds the EP mandate acceptable, but prefers the GA.

<p>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 representation, 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 body and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating board's functions must be borne by the central management. Therefore, the</p>	<p>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 representation, 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 body and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating board'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.</p>	<p>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 representation, 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 <del>body</del><b>bodies</b> and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating board'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. <b>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.</b></p>	
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Recital 9				
2 2	<p>(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 use of experts – such as technical subject-matter experts or legal experts – and the coverage of experts’ fees, and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. 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</p>	<p>(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 use of experts – such as <u>representatives of a recognised Community-level trade union</u>, technical subject-matter experts or legal experts – and the coverage of experts’ fees, and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. 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 in Article 10(4) of Directive 2009/38/EC. <u>Reasonable</u></p>	<p>(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 <del>use</del><b>assistance</b> of experts – such as technical subject-matter experts or legal experts – and the coverage of experts’ fees, <del>and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings.</del> 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 <b>provided for</b> in Article 10(4) of Directive 2009/38/EC.</p>	<p>The NL can accept the first insertion by the EP and is supportive of the second insertion.</p>

	<p>minimum requirement in Article 10(4) of Directive 2009/38/EC.</p>	<p><u>costs concern expenses that are related to the proper functioning and operation of the special negotiating body or the European Works Council, including the costs of experts, legal representation, participation in administrative and judicial proceedings and training. Member States may lay down budgetary rules regarding the operation of a European Works Council.</u></p>		
Recital 10				
2 3	<p>(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</p>	<p>(10) <u>European Works Councils should promote a balanced, inclusive and diverse representation of employees.</u> 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</p>	<p>(10) The requirement <b>provided for</b> 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 <del>gender</del><b>gender-balanced</b> representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. To</p>	<p>NL can accept the first insertion by the EP.</p> <p>NL attaches importance to retaining the amendment of the GA regarding the last sentence (<i>Without prejudice to the national ... intermediate progressive objectives</i>).</p>

<p>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<sup>1</sup>, 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</p>	<p>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<sup>1</sup>, 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</p>	<p>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<sup>1</sup>, 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.</p> <p><b>Without prejudice to the national laws and practices on electing and appointing employees' representatives, the agreements should include arrangements to work towards a gender-balanced composition of the European Works Council. This might include a growth path to a gender-balanced composition of the European Works Council, which</b></p>	
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	<p>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.</p> <p>_____</p> <p>1. Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.</p>	<p>require steps to strive for a gender-balanced composition of the special negotiating body, to promote that objective already during the negotiation phase.</p> <p>_____</p> <p>1. Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.</p>	<p><b>could comprise intermediate progressive objectives.</b> 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.</p> <p>_____</p> <p>1. Judgment of the Court of Justice of 28 March 2000, Badeck and Others, C-158/97, ECLI:EU:C:2000:163.</p>	
Recital 11				
24	<p>(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</p>	<p>(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</p>	<p>(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</p>	

	<p>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.</p>	<p>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.</p>	<p>establish a European Works Council, irrespective of whether central management expressly refuses to commence negotiations.</p>	
Recital 12				
2 5	<p>(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. When sharing information in confidence, central management should be required to provide at the same time a reasonable justification. Setting up adequate arrangements to safeguard the</p>	<p>(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. <u><i>This should not apply to situations in which members of the European Works Council decide to reveal information to national or local work councils that may affect the situation of workers.</i></u> When sharing information in confidence, central management should be required to provide at the same</p>	<p>(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. When sharing information in confidence, central management should be required to provide at the same time a reasonable justification. <b>The confidentiality should only be upheld as long as the reasons for it persist.</b> Setting up adequate arrangements to safeguard the confidentiality of sensitive information can instil trust and facilitate the sharing of such</p>	<p>NL accepts the first insertion, on the condition that the precision "where such information has been provided to them in confidence and is subject to national rules on confidentiality" of line 81A is added.</p> <p>NL can accept the second amendment made by the EP.</p>

	<p>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.</p>	<p>time a reasonable justification <u>based on objective criteria</u>. 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.</p>	<p>information, while protecting business and <del>workers</del> <b>employees'</b> interests, including to avert growing risks such as industrial espionage.</p>	
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Recital 13

<p>2 6</p>	<p>(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.</p>	<p>(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.</p>	<p>(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 <b>in a balanced manner which allows for sufficient legal scrutiny, while not revealing protected information. The dispensation from</b></p>	
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			<b>transmitting information applies as long as the reasons for it persist.</b>	
Recital 14				
2 7	(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 the Article concerning the relationship with other national provisions, because it pertains to the implementation of the requirements of Directive 2009/38/EC more broadly.	(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 the Article concerning the relationship with other national provisions, because it pertains to the implementation of the requirements of Directive 2009/38/EC more broadly.	(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 <del>the</del> 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.	
Recital 15				
2 8	(15) Effective transnational consultation requires a genuine dialogue between central management and European	(15) Effective transnational consultation requires a genuine dialogue between central management and European Works	(15) Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or	NL can support the first amendment made by the EP.  Regarding the second amendment, NL supports specification of which type of

<p>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 way that enables worker's 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 before the latter adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty.</p>	<p>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 <u>meaningful and timely</u> way that enables worker's representatives to express their opinion prior to the adoption of the decision, <u>which could include business plans, social plans, and process innovations where they may impact on redundancies</u>, and that opinions issued by European Works Councils or employees' representatives must receive a reasoned response from central management before the latter <u>or other competent organ of the Community undertaking or Community-scale group of undertakings</u> adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty. <u>In that context, it is important to ensure that Community undertakings or Community-scale groups of undertakings can take decisions effectively and do not result in</u></p>	<p>employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a way that enables <del>worker's</del><b>employees'</b> 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 before the latter adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down. <b>It is therefore important, taking into account the degree of urgency of the matter, that information and consultation take place in good time and that the European Works Council and the employees' representatives are given sufficient time to express their views in order to ensure the effective exercise of the rights provided for</b> in Directive 2009/38/EC. <b>Without prejudice to the possibility of Member States to provide for more stringent protective measures according to Article 153 paragraph 4 TFEU, this amending Directive should not prevent undertakings from adopting decisions</b></p>	<p>information the EWC should receive, but the text proposal should be slightly adjusted. Firstly, "social plans" should be taken out. It is possible that the EWC consultation finishes before the national social dialogue is completed. At this point, social plans could not be available. This could lead to a situation in which the EWC is bound to wait to give its opinion until the social plans in the Member States are finished, which could make the opinion meaningless. Secondly, it is not clear what is meant by "process innovations where they may impact on redundancies".</p> <p>Compromise: <i>which could include business plans, and an overview of the grounds for the decision, as well as the expected consequences of the decision for the employees and the measures envisaged for dealing with such consequences.</i></p> <p>The NL can accept amendment 3 and is supportive of amendment 4.</p>
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		<p><u>undue delays in decisions taken by Community undertakings or Community-scale groups of undertakings.</u></p>	<p>in case the opinion of the European Works Council has not been provided within a reasonable time to ensure legal certainty.</p>	
Recital 15a				
28a		<p><u>(15a) In the case of a disagreement about whether to undertake an information or consultation procedure, there is a lack of guidance on how to resolve the negative effects that such disagreements may have on members of European Works Councils and employee representatives. Therefore, if there is a dispute with regard to whether an information and consultation procedure should be undertaken, the central management should provide duly substantiated grounds in writing specifying the reasons why the provisions in this Directive relating to information and consultation are not applicable.</u></p>		<p>These are additional obligations for central management. This could become problematic, when the vision of the EWC and central management differ regularly.</p> <p>Possible compromise:</p> <p><b><i>In case the consultation procedure should be undertaken, at the request of the EWC the Central Management must provide an explanation in writing.</i></b></p>
Recital 15b				

2 8 b		<p><u><i>(15b) In the context of an information and consultation procedure, the European Works Council or the select committee should be able to request assistance and advice from experts of its choice, such as representatives of competent recognised Community-level trade union organisations. Such experts should be allowed to attend meetings of the European Works Council and meetings with the central management in an advisory capacity. Moreover, Member States can lay down budgetary rules for the operation of a European Works Council.</i></u></p>		<p>NL can accept this insertion.</p>
Recital 16				
2 9	<p>(16) In addition, 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</p>	<p>(16) In addition, 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. In order to</p>	<p>(16) In addition, 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. In order to avoid disputes, it should also be</p>	<p>For NL it is important to keep the word "reasonable" in the text.</p>

	<p>retaliatory measures or dismissals. In order to avoid disputes, it should also be specified that the central management is to cover the costs of training of the members of the special negotiating body and of the European Works Council and other associated costs, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.</p>	<p>avoid disputes, it should also be specified that the central management is to cover the costs of training of the members of the special negotiating body and of the European Works Council and other associated costs, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.</p>	<p>specified that the central management is to cover the <b>reasonable</b> costs of training <b>and related expenses</b> of the members of the special negotiating body and of the European Works Council <del>and other associated costs</del>, which is necessary for the exercise of their duties, where management has been informed of those costs in advance.</p>	
Recital 17				
30	<p>(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 that obligation. For that purpose,</p>	<p>(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 that obligation. For that purpose, Member States should be required to notify the Commission of how and under which</p>	<p>(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 <b>those obligations. With regard to European Works Councils and special negotiating bodies, Member States should, in line with national law on their possible legal standing or the</b></p>	<p>Regarding the first insertion, a clarification is requested. Why is there a need to mention specific rightsholders?</p> <p>NL does not accept the second insertion. The right to form and join trade unions is a right that is not given by this Directive, and should not be disputed under the umbrella of this Directive.</p> <p>Regarding the third insertion, NL cannot accept this. It does not fit in with Dutch practice. In order to stay in line with our practice, it is necessary to keep the access to justice requirement sufficiently</p>

<p>Member States should be required to notify the Commission of how and under which circumstances the rightsholders can bring judicial, and where applicable, administrative procedures, in respect of all their rights under this Directive. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings.</p>	<p>circumstances the rightsholders, <u>including members of the special negotiation body and members of a European Works Council</u>, can bring judicial, and where applicable, administrative procedures, in respect of all their rights under this Directive, <u>including the right to form and join trade unions. In addition, Member States should develop mechanisms to encourage mediation and, where appropriate, provide for alternative dispute mechanisms</u>. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings. <u>However, members of special negotiations bodies and members of European Works Councils should enjoy the same protection and guarantees equivalent to those provided to employees' representatives by</u></p>	<p><b>form of representation, guarantee to access to judicial proceedings or, where relevant, administrative proceedings to enforce the rights attributed to the European Works Councils and special negotiating bodies. Moreover, it should be clarified that the relevant procedures have to enable an effective enforcement, and that possible prior out-of-court settlement procedures cannot deprive rightsholders' of their right to bring legal proceedings. For the purpose of supervision by the Commission of the compliance of Member States with the above obligation.</b> For that purpose, Member States should be required to notify the Commission of how and under which circumstances the rightsholders can bring judicial, and, where applicable, administrative procedures, in respect of all their rights under this <b>amending</b> Directive. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor</p>	<p>open to fit into the national systems. Additionally, these new alternative mechanisms leads to more efforts for Member States.</p> <p>NL can support <i>However... their country of employment</i>. The legal protection of the EWC/SNB-members does not only apply to cases of legal/administrative procedures, but is a general protection. It should therefore be in an separate paragraph.</p>
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		<u><a href="#">national law or practice applicable in their country of employment.</a></u>	prejudice rights-holders' right to bring legal proceedings.	
Recital 18				
3 1	<p>(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. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate sanctions. Pecuniary sanctions 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. Pecuniary sanctions should be determined taking into consideration the size and financial situation of the Community-scale undertaking or group – for example, based</p>	<p>(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 <u><a href="#">regretfully</a></u> are often not sufficiently dissuasive, <u><a href="#">effective or proportionate</a></u>. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate sanctions. <del>Pecuniary sanctions</del> <u><a href="#">Financial penalties</a></u> 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 <del>could</del> <u><a href="#">should</a></u> also be provided for, <u><a href="#">including administrative and judicial procedures. In line with national law and practice, Member States should provide for a possibility to request a preliminary injunction in national courts or other</a></u></p>	<p>(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. Therefore, it is appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate <del>sanctions. Pecuniary sanctions</del> <b>penalties. Financial penalties</b> 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. <del>Pecuniary sanctions should</del> <b>In order to be effective, dissuasive and proportionate, penalties could</b> be determined taking into consideration <b>factors such as</b> the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and</p>	<p>NL accepts the first two amendments and supports the third amendment. However, the fourth insertion is unacceptable for NL. Administrative sanctions for disputes on employee representation do not fit in the Dutch legal system. To introduce this, NL would need to take drastic and costly measures, while there is already an efficient system in place. The fines in Regulation 2016/679 are out of proportion for this Directive.</p>

<p>on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate.</p>	<p><u><i>competent authorities for a temporary suspension of the implementation of management decisions until an information and consultation procedure has taken place at the relevant level of management and representation and in such a way as to enable a reasoned response from the central management in accordance with this Directive.</i></u> <del>Financial-Pecuniary</del> sanctions should be determined taking into consideration the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate <u><i>and should be based on the administrative fines referred to in Article 83(4) and (5), of Regulation (EU) 2016/679.</i></u></p>	<p>intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate.</p>	
Recital 18a			

3 1 a			<p><b>(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. 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 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.</b></p>	
Recital 19				
3 2	(19) Undertakings with an agreement on the transnational information and	(19) Undertakings with an agreement on the transnational information and consultation of	(19) Undertakings with an agreement on the transnational information and consultation of	NL supports EP mandate.

<p>consultation of employees concluded before 23 September 1996, that is to say prior to the date of application of Council Directive 94/45/EC<sup>1</sup>, 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</p>	<p>employees concluded before 23 September 1996, that is to say prior to the date of application of Council Directive 94/45/EC<sup>1</sup>, 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 <u>and their legal status should be ensured by civil or collective labour law, depending on the different legal system of each Member State</u>. 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</p>	<p>employees concluded before 23 September 1996, that is to say prior to the date of application of Council Directive 94/45/EC<sup>1</sup>, 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</p>	
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<p>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.</p> <p>_____</p> <p>1. 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: <a href="http://data.europa.eu/eli/dir/1994/45/oj">http://data.europa.eu/eli/dir/1994/45/oj</a>).</p>	<p>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.</p> <p>_____</p> <p>1. 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: <a href="http://data.europa.eu/eli/dir/1994/45/oj">http://data.europa.eu/eli/dir/1994/45/oj</a>).</p>	<p>exemption should therefore be deleted. <b>The initiation and conduct of negotiations for the establishment of European Works Councils in such undertakings should follow the procedure as set out in this Directive while the period after which the subsidiary requirements come into force should be reduced to two years instead of three, in line with the period applicable to the adaptation of existing European Works Council agreements.</b></p> <p>_____</p> <p>1. 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: <a href="http://data.europa.eu/eli/dir/1994/45/oj">http://data.europa.eu/eli/dir/1994/45/oj</a>).</p>	
<p>Recital 19a</p>			
<p>3 2 a</p>	<p><u><a href="#">(19a) It is essential that all European Works Council agreements are governed by the same rights and obligations in order to ensure equal treatment of workers, access to the application of high Union standards, and legal</a></u></p>		<p>NL cannot accept EP mandate. The principle that pre-directive agreements are no longer under the scope of the Directive, is a good compromise between the position of the trade unions (pre-directive EWC's automatically become EWC's under the Directive, as in the</p>



Recital 20a

3 3 a			<p><b>(20a) The same minimum requirements should apply to all Community-scale undertakings with European Works Councils operating under Directive 2009/38/EC. Member States should notably provide transitional arrangements enabling the parties to European Works Council agreements or agreements on information and consultation procedures, concluded under Directive 94/45/EC or Directive 2009/38/EC 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], which are not in conformity with the revised requirements relating to the content of such agreements to negotiate adaptations. In any case, the parties to existing European Works Council agreements or agreements on information and consultation procedures should respect the applicable minimum requirements.</b></p>	
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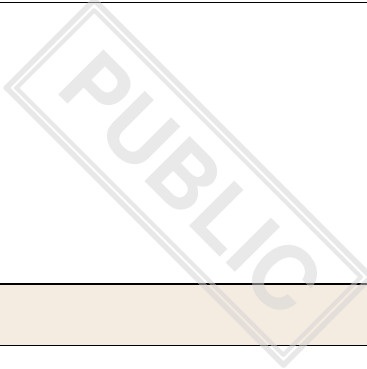
Recital 21

3 4	<p>(21) European Works Councils operating based on the subsidiary requirements set</p>	<p>(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to</p>	<p>(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to</p>	<p>NL supports the first insertion and accepts the second insertion.</p>
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	<p>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.</p>	<p>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 <u>at least two. When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases without replacing ordinary meetings.</u><del>two.</del></p>	<p>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, <b>of which at least one needs to be in person.</b></p>	
Recital 22				
3 5	<p>(22) In addition, certain technical changes should be made to the subsidiary requirements set out in Annex 1 to Directive 2009/38/EC, to</p>	<p>(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.</p>	<p>(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.</p>	

	ensure consistency with the enacting terms.			
Recital 23				
3 6	(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.	(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.	(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.	
Recital 24				
3 7	(24) In some cases, existing European Works Council agreements or agreements on information and consultation procedures, 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, may not be in conformity with the revised requirements. It is therefore appropriate to set out transitional arrangements enabling the parties to such	(24) <del>In some cases,</del> Existing European Works Council agreements or agreements on information and consultation procedures, 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, may not be in conformity with the revised <del>requirements</del> <u>required contents of those agreements</u> . It is therefore appropriate to set out transitional arrangements enabling the parties	(24) <del>In some cases, existing European Works Council agreements or agreements on information and consultation procedures, 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, may not be in conformity with the revised requirements. It is therefore</del> appropriate to set out transitional arrangements enabling the parties to such agreements to negotiate adaptations before the date of	NL can support the EP mandate.

	<p>agreements to negotiate adaptations before the date of application of the transposition measures.</p>	<p>to such agreements to negotiate <del>adaptations before the date of application</del> <u>addenda, without, however, requiring a complete re-negotiation</u> of the <del>transposition measures</del> <u>agreement. In order not to allow for any interruption of the information and consultation of employees, the existing European Works Council agreement or agreement on information and consultation procedure is to remain in force during the negotiation of such addenda.</u></p>	<p>application of the transposition measures.</p>	
<p>Recital 24a</p>				
<p>3 7 a</p>		<p><u>(24a) If the central management initiates negotiations to supplement an existing European Works Council agreement or agreement on information and consultation procedures in accordance with the requirements of this Directive, there is no obligation to renegotiate the entire existing agreement. The amended requirements should be negotiated as an addendum within 2 years of the date of transposition of this Directive. Provision should be made for the</u></p>		<p>NL can support the EP mandate.</p>



	<p>undertakings and Community-scale groups of undertakings. That objective cannot be sufficiently achieved by the Member States alone, but because of the inherently transnational nature and scale of these requirements, it can better be achieved at Union level. Therefore, 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.</p>	<p>groups of undertakings. That objective cannot be sufficiently achieved by the Member States alone, but because of the inherently transnational nature and scale of these requirements, it can better be achieved at Union level. Therefore, 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.</p>	<p>Community-scale groups of undertakings. That objective cannot be sufficiently achieved by the Member States alone, but because of the, <b>but can rather, by reason of</b> inherently transnational nature and scale of <del>thesethose</del> requirements, it can be better achieved at Union level. Therefore, 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.</p>	
Recital 26				
39	<p>(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</p>	<p>(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</p>	<p>(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</p>	

	<p>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.</p>	<p>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.</p>	<p>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.</p>	
Recital 27				
40	<p>(27) In accordance with Article 30(3) and Article 42(1) of Directive 2014/23/EU of the European Parliament and of the Council<sup>1</sup>, Article 18(2) and Article 71(1) of Directive 2014/24/EU of the European Parliament and of the Council<sup>2</sup> and Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament and of the Council<sup>3</sup>, Member States are to take appropriate measures to ensure that in the</p>	<p>(27) In accordance with Article 30(3) and Article 42(1) of Directive 2014/23/EU of the European Parliament and of the Council<sup>1</sup>, Article 18(2) and Article 71(1) of Directive 2014/24/EU of the European Parliament and of the Council<sup>2</sup> and Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament and of the Council<sup>3</sup>, Member States are to take appropriate measures to ensure that in the performance of public</p>	<p>(27) In accordance with <del>Article 30(3) and Article 42(1)</del> of Directive 2014/23/EU <del>of the European Parliament and of the Council<sup>1</sup></del>, <del>Article 18(2) and Article 71(1)</del> of<sup>1</sup>, Directive 2014/24/EU <del>of the European Parliament and of the Council<sup>2</sup></del> and <del>Article 36(2) and Article 88(1)</del> of Directive 2014/25/EU of the European Parliament and of the Council<sup>3</sup>, 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</p>	

<p>performance of public contracts economic operators observe applicable obligations in the fields of social and labour law established by Union law. The effective implementation of the requirements under this Directive should be promoted through the integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders. However, this Directive does not create any additional obligation in relation to those Directives.</p> <hr/> <p>1. 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).</p> <p>2. 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).</p> <p>3. Directive 2014/25/EU of the European Parliament and of the</p>	<p>contracts economic operators observe applicable obligations in the fields of social and labour law established by Union law. The effective implementation of the requirements under this Directive should be promoted through the integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders. However, this Directive does not create any additional obligation in relation to those Directives.</p> <hr/> <p>1. 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).</p> <p>2. 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).</p> <p>3. 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</p>	<p>labour law established by Union law. The <del>effective implementation of the requirements under this Directive should be promoted through the</del> integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders <b>can contribute to the effective implementation of the requirements under this Directive.</b> However, this Directive does not create any additional obligation in relation to those Directives.</p> <hr/> <p>1. 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).</p> <p>2. 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).</p> <p>3. 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).</p>	
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	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).	Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).		
Recital 28				
4 1	(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 two years the application of the provisions adopted by Member States to comply with this Directive,	(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 two years the application of the provisions adopted by Member States to comply with this Directive,	(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 two years the application of the provisions adopted by Member States to comply with this Directive,	
Formula				
4 2	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	
Article 1				
4 3	Article 1	Article 1	Article 1	

Article 1, first paragraph				
4 4	Directive 2009/38/EC is amended as follows:	Directive 2009/38/EC is amended as follows:	Directive 2009/38/EC is amended as follows:	
Article 1, first paragraph, point (1)				
4 5	(1) in Article 1, paragraph 4 is replaced by the following:	(1) in Article 1, paragraph 4 is replaced by the following:	(1) in Article 1, paragraph 4 is replaced by the following:	
Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), first subparagraph				
4 6	“  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.	“  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.	“  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.	
Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph				


4 7	Those conditions shall be deemed to be met where:	Those conditions shall be deemed to be met where:	Those conditions shall be deemed to be met where:	
Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph, point (a)				
4 8	(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in undertakings or establishments in more than one Member State;	(a) the measures considered by management <del>of</del> <sup>in</sup> the Community-scale undertaking or Community-scale group of undertakings <del>can reasonably be expected to</del> affect workers in undertakings or establishments in more than one Member State;	(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect <del>workers in undertakings or</del> <b>employees of that undertaking or group, or its</b> establishments in more than one Member State;	NL is not supportive of deletion. Since it is not always clear from the start to what extent the envisaged measures affect the employees, referring to “ <i>what can be reasonably be expected</i> ” is a necessary addition.
Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph, point (b)				
4 9	(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in an undertaking or establishment in one Member State, and workers in an undertaking or establishment in another Member State can reasonably be expected to be affected by the consequences of those measures.;	(b) the measures considered by management <del>of</del> <sup>in</sup> the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in an undertaking or establishment in one Member State, and workers in an undertaking or establishment in <del>another</del> <sup>at least one other</sup> Member State can reasonably be expected to be affected by the consequences of those measures.”; <del>or</del>	(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect <del>workers in an establishment</del> <b>employees of that undertaking or establishments</b> in one Member State, and <del>workers in an undertaking or establishment</del> <b>their employees</b> in another Member State can reasonably be expected to be affected by the consequences of those measures.;	NL can accept the adjustments.

	”		
Article 1, first paragraph, point (1), amending provision, numbered paragraph (4), second subparagraph, point (ba)			
4 9 a		<u><i>(ba) the measures considered by central management of the Community--scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in a Member State other than that in which those measures are being considered.</i></u>	NL does not support EP mandate, which has unpractical consequences.
Article 1, first paragraph, point (1), amending provision, numbered paragraph (4a)			
4 9 b		<u><i>4a. In order to determine the transnational character of a matter, the scope of its possible effects on the workforce and the level of management and representation involved shall be taken into account. This shall include matters which are of concern to workers in terms of the scope of their potential impact in two or more Member States, as well as matters which involve the transfer of activities between two or more Member States.</i></u>	The NL can support EP mandate.

		”		
Article 1, first paragraph, point (2)				
5 0	(2) in Article 2(1), points (f) and (g) are replaced by the following:	(2) in Article 2(1), points (d), (f) and (g) are replaced by the following <u>and a new subparagraph is added</u> :	(2) in Article 2(1), points (f) and (g) are replaced by the following:	
Article 1, first paragraph, point (2)(a)				
5 0 a		<u>(d) ‘employees’ representatives’ means trade unions or the employees’ representatives provided for by national law or practice;</u>		<p>The NL cannot accept (d). This is not in line with Dutch practice. The employee representation in Dutch companies is the works council representation and not the trade union representation. On the basis of this definition, trade unions could claim rights, whereas in Dutch law these rights are only given to the works council.</p> <p>Possible compromise:</p> <p>‘employees’ representatives’ means employees’ representatives as meant by national law or practice</p> <p>Or:</p> <p>‘employees’ representatives’ means employees’ representatives as meant by</p>

			national law or practice, for example trade unions.
Article 1, first paragraph, point (2), amending provision, numbered paragraph (f)			
5 1	<p>“</p> <p>(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;</p>	<p>“</p> <p>(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 <u>and is 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;</u></p>	<p>“</p> <p>(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;</p> <p>NL supports the content but is not quite sure this is the right place for the text, since this part has been taken out of the definition of consultation in the Directive and has been moved to the operational part (Article 1, first paragraph, point (8), amending provision, numbered paragraph (2) and (3) – lines 91 and 92 of this document)</p>
Article 1, first paragraph, point (2), amending provision, numbered paragraph (g)			
5 2	<p>(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more</p>	<p>(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management;</p>	<p>(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central</p> <p>NL supports the content but is not quite sure this is the right place for the text, since this part has been taken out of the definition of consultation in the Directive and has been moved to the operational part (Article 1, first paragraph, point (8),</p>

<p>appropriate level of management;;</p>	<p>”</p> <p><u><i>at such time, in such fashion and with such content as enables employees’ representatives to express a prior opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which is to be taken into account within the Community-scale undertaking or Community-scale group of undertakings. Consultation is to take place in such a way as to enable employees’ representatives to obtain a reasoned written response in due time from the central management prior to the adoption of the decision provided the employee representatives expressed their opinion within a reasonable time in accordance with the first sentence;</i></u></p> <p>”</p>	<p>management or any more appropriate level of management;;</p>	<p>”</p> <p>amending provision, numbered paragraph (2) and (3) – lines 91 and 92 of this document)</p>
<p>Article 1, first paragraph, point (2a), subparagraph 1 a (new)</p>			

5 2 a		<p><u>For the purposes of point (c) of the first subparagraph, employees of controlling and controlled undertakings within the meaning of Article 3(2), point (ca), shall also be taken into account in the definition of a Community-scale group of undertakings;</u></p>		NL can support EP mandate.
Article 1, first paragraph, point (2b)				
5 2 b		<p><u>(2a) in Article 3, paragraph 1 is replaced by the following:</u></p>		
Article 1, first paragraph, point (2b)(a)				
5 2 c		<p><u>'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, control over decisions or the rules which govern it.'</u></p>		NL requires further clarification.
Article 1, first paragraph, point (2c)				

5 2 d		<u><i>(2b) in Article 3(2), the following point is added:</i></u>		
Article 1, first paragraph, point (2c)(a)				
5 2 e		<u><i>(ca) operates directly or indirectly in the internal market selling goods or providing services through franchise or license agreements concluded with independent third-party companies in return for royalties where such agreements ensure a common identity, a common business name or concept and the application of uniform business methods.</i></u>		NL requires further clarification.
Article 1, first paragraph, point (3)				
5 3	(3) Article 5 is amended as follows:	(3) Article 5 is amended as follows:	(3) Article 5 is amended as follows:	
Article 1, first paragraph, point (3)(-a), first subparagraph				
5 3 a		<u><i>(-a) paragraph 1 is replaced by the following:</i></u>		
Article 1, first paragraph, point (3)(-a), second subparagraph				



	<p>gender-balanced representation, 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;;</p>	<p><u>women and men each hold at least 40% of the posts of member of the special negotiating body</u>, 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;<u>. If this objective is not reached, the reasons shall be explained in written by the special negotiating body;</u>”;</p>	<p>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;;</p>	
Article 1, first paragraph, point (3)(aa)				
5 5 a		<p><u>(aa) in paragraph 4, the third subparagraph is replaced by the following:</u></p>		
Article 1, first paragraph, point (3)(aa)(i)				
5 5 b		<p><u>‘For the purpose of the negotiations, the special negotiating body may request assistance from representatives of competent recognised Community-level trade union organisations</u></p>		<p>NL cannot accept the EP mandate. The text puts the assistance from representatives of trade unions in the first place. Other experts can only be used if there is already a trade union expert. This means that there is either at</p>

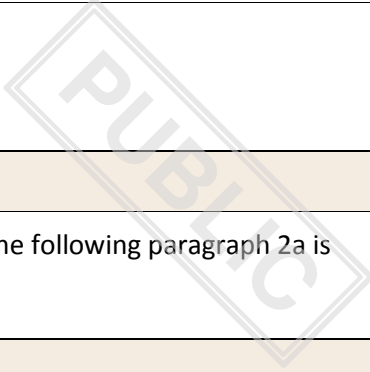
		<u>and, if needed, further experts. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.'</u>		least one trade union expert in the SNB, or no expert. The SNB should have freedom of choice for its experts.
Article 1, first paragraph, point (3)(b)				
5 6	(b) paragraph 6 is amended as follows:	(b) paragraph 6 is amended as follows:	(b) paragraph 6 is amended as follows:	
Article 1, first paragraph, point (3)(b), first indent				
5 7	- in the first subparagraph, the following sentences are added:	- in the first subparagraph, the following sentences are added:	- in the first subparagraph, the following sentences are added:	
Article 1, first paragraph, point (3)(b), first indent, amending provision, first paragraph				
5 8	“ These expenses shall include reasonable costs of experts, including for legal assistance, insofar as necessary for that purpose, as well as reasonable costs of legal representation and participation in administrative or judicial proceedings. Expenses shall be notified to central	“ These expenses shall include reasonable costs of experts, including <u>a representative of a recognised Community-level trade-union</u> , for legal assistance, insofar as necessary for that purpose, as well as reasonable costs of legal representation and participation in administrative or judicial proceedings. Expenses shall be notified to <u>and approved by</u>	“ “These expenses shall include reasonable costs of experts, including for legal assistance <del>and</del> <b>experts</b> , insofar as necessary for that purpose, <del>as well as reasonable costs of legal representation and participation in administrative or judicial proceedings.</del> Expenses shall be notified to central management before they are incurred.;	The NL can accept the first amendment. NL is not in favour of the second amendment. It is already a requirement that costs are necessary and reasonable. Approval of management gives unwilling management the possibility to obstruct the use of an expert they do not favour on the basis of cost.

	management before they are incurred.;	central management before they are incurred.;		
	”	”		
Article 1, first paragraph, point (3)(b), second indent				
59	- in the second subparagraph, the second sentence is deleted;	- in the second subparagraph, the second sentence is deleted;	- in the second subparagraph, the second sentence is deleted;	
Article 1, first paragraph, point (4)				
60	(4) Article 6 is amended as follows:	(4) Article 6 is amended as follows:	(4) Article 6 is amended as follows:	
Article 1, first paragraph, point (4)(a)				
61	(a) paragraph 2 is amended as follows:	(a) paragraph 2 is amended as follows:	(a) paragraph 2 is amended as follows:	
Article 1, first paragraph, point (4)(a), first indent				
62	- points (c) and (d) are replaced by the following:	- points (c) and (d) are replaced by the following:	- points (c) and (d) are replaced by the following:	
Article 1, first paragraph, point (4)(a), first indent, amending provision, numbered paragraph (c)				
63	(c) the functions and the procedure for information and	(c) the functions and the procedure for information and	(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;	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;	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;	
Article 1, first paragraph, point (4)(a), first indent, amending provision, numbered paragraph (d)				
6 4	(d) the format, venue, frequency and duration of meetings of the European Works Council;”;	(d) the format, venue, frequency and duration of meetings of the European Works Council;”;	(d) the format, venue, frequency and duration of meetings of the European Works Council;”;	
Article 1, first paragraph, point (4)(a), second indent				
6 5	- point (f) is replaced by the following:	- point (f) is replaced by the following:	- point (f) is replaced by the following:	
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph				
6 6	(f) the financial and material resources to be	(f) the financial and material resources to be allocated to the	(f) the financial and material resources to be allocated to the	

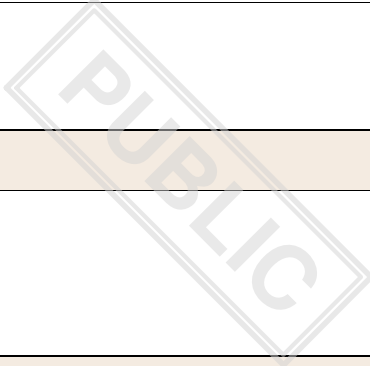
	allocated to the European Works Council, including at least with respect to the following aspects:	European Works Council, including at least with respect to the following aspects:	European Works Council, including at least with respect to the following aspects:	
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph, first indent				
6 7	- the possible use of experts, including legal experts, to assist the European Works Council in the discharge of its functions;	- the possible use of experts, including legal experts, to assist the European Works Council in the discharge of its functions;	- the possible use of experts, including legal experts, to assist the European Works Council in <b>relation to</b> the discharge of its functions;	
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph, second indent				
6 8	- legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;	- legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;	- <del>legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;</del>	
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), first subparagraph, third indent				
6 9	- the provision of relevant training to the members of the European Works Council, without prejudice to the minimum	- the provision of relevant training to the members of the European Works Council, without prejudice to the minimum	- 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;”;	

	requirement in Article 10(4), first subparagraph;”;	requirement in Article 10(4), first subparagraph;”;		
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), second subparagraph				
7 0	The requirement to determine the elements listed in the first subparagraph, as amended by [OP: insert reference to this amending Directive*], shall apply also with respect to European Works Council agreements concluded before [OP: insert date laid down in the second subparagraph of Article 2 of this amending Directive].	<i>deleted</i>	<i>deleted</i>	
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), third subparagraph				
7 1	_____		=====	
Article 1, first paragraph, point (4)(a), second indent, amending provision, numbered paragraph (f), fourth subparagraph				
7 2	* [OP: insert OJ reference to this amending Directive.]”;	<i>deleted</i>	<i>deleted</i>	



	”			
Article 1, first paragraph, point (4a), first subparagraph				
7 4 a		<u>(4a) in Article 7(1), introductory part is replaced by the following:</u>		
Article 1, first paragraph, point (4a), second subparagraph				
7 4 b		<u>In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply with immediate effect:’</u>		NL can accept EP mandate.
Article 1, first paragraph, point (5)				
7 5	(5) in Article 7(1), the second indent is replaced by the following:	(5) in Article 7(1), the second indent is replaced by the following:	(5) in Article 7(1), the second indent is replaced by the following:	
Article 1, first paragraph, point (5), amending provision, numbered paragraph (—)				
7 6	“ — where the first meeting of the special negotiating body is not convened within six	“ — where the first meeting of the special negotiating body is not convened within six months	“ — where the first meeting of the special negotiating body is not convened <b>by the central management</b>	


	months following a request pursuant to Article 5(1),; ”	following a request pursuant to Article 5(1),;	within six months following a request pursuant to Article 5(1),; ”	
Article 1, first paragraph, point (5a)				
7 6 a		<u>(5a)</u> <u>in Article 7(1), the following indent is inserted after the second indent:</u>		
Article 1, first paragraph(5), amending provision, Article, first paragraph				
7 6 b		<u>“— where the special negotiating body is not convened on a regular basis,’</u>		NL supports this amendment, but wonders if guidance is needed regarding the meaning of “a regular basis”.
Article 1, first paragraph, amending provision, Article, second paragraph				
7 6 c		<u>(5b)</u> <u>in Article 7(1), the third indent is replaced by the following:</u>		
Article 1, first paragraph(5), amending provision, Article, first paragraph				
7 6 d		<u>‘— where, after 24 months from the date of such a request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body</u>		NL does not support this amendment and wants to maintain the current 36 months/three years.



		<u>has not taken the decision provided for in Article 5(5).'</u>		
Article 1, first paragraph(5), amending provision, Article, second paragraph				
7 6 e		<u>(5c) In Article 7(1), the following indent is added:</u>		
Article 1, first paragraph(5), amending provision, Article, third paragraph				
7 6 f		<u>'— where an agreement as laid down in Article 6 has been terminated and no new agreement has been concluded within 24 months after the last day of validity of that agreement.'</u> ”		NL would like to receive some further clarification. What if, after the termination, neither central management nor employees representatives have made an attempt to negotiate an agreement? What if after the termination, a SNB has been set up and the three years negotiation time are still running?
Article 1, first paragraph, point (6)				
7 7	(6) Article 8 is replaced by the following:	(6) Article 8 is replaced by the following:	(6) Article 8 is replaced by the following:	
Article 1, first paragraph, point (6), amending provision, first paragraph				
7 8	“ Article 8	“ Article 8	“ Article 8 Provision of information in confidence	

	Provision of information in confidence	Provision of information in confidence		
Article 1, first paragraph, point (6), amending provision, numbered paragraph (1)				
7 9	<p>1. Member States shall provide that 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 has expressly been provided to them in confidence by central management. In addition, central management may set up adequate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p>	<p>1. Member States shall provide that 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 has expressly been provided to them in confidence by central management <u>within the conditions and limits laid down by Union and national law and subject to objective criteria</u>. In addition, central management may set up adequate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p>	<p>1. Member States shall provide that 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 has expressly been provided to them in confidence by central management. In addition, central management may set up <del>adequate</del> <b>appropriate</b> information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p>	<p>NL has a question regarding the amendment. What are the <i>conditions and limits laid down by Union</i> regarding information given by central management to the EWC?</p>
Article 1, first paragraph, point (6), amending provision, numbered paragraph (2)				
8 0	<p>2. When central management provides information in confidence in</p>	<p>2. When central management provides information in confidence in accordance with paragraph 1, it</p>	<p>2. When central management provides information in confidence in accordance with paragraph 1, it shall</p>	<p>NL supports EP mandate.</p>

	accordance with 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.	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 <del>reasons</del> <u>objective criteria</u> justifying the provision of information in confidence <u>and shall determine the duration of the confidentiality requirements</u> .	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.	
Article 1, first paragraph, point (6), amending provision, numbered paragraph (3)				
8 1	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, in agreement with central management, the justification provided is considered to have become obsolete.;"	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, <del>in agreement with central management,</del> the justification provided is considered to have become obsolete.";	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, <del>in agreement</del> <b>it has been agreed</b> with central management, <del>the justification provided is considered to have</del> <b>that the reasons justifying it have</b> become obsolete.;"	NL prefers GA.
Article 1, first paragraph, point (6), amending provision, numbered paragraph (3a)				

8 1 a		<p><u>3a. Paragraph 1 shall not apply to members of the European Works Council who reveal information to national or local work councils that may affect the situation of workers where such information has been provided to them in confidence and is subject to national rules on confidentiality.</u></p> <p>”</p>		NL finds the new text acceptable.
Article 1, first paragraph, point (7)				
8 2	(7) the following Article 8a is inserted:	(7) the following Article 8a is inserted:	(7) the following Article 8a is inserted:	
Article 1, first paragraph, point (7), amending provision, first paragraph				
8 3	<p>“</p> <p>Article 8a</p> <p>Non-transmission of information on specific grounds</p>	<p>“</p> <p>Article 8a</p> <p>Non-transmission of information on specific grounds</p>	<p>“</p> <p>Article 8a</p> <p>Non-transmission of information on specific grounds</p>	
Article 1, first paragraph, point (7), amending provision, numbered paragraph (1), first subparagraph				
8 4	1. Member States shall provide, in specific cases and under the conditions and limits	1. Member States shall provide, in specific cases and under the conditions and limits laid down	1. Member States shall provide, in specific cases and under the conditions and limits laid down by national	


	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.	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.	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.	
Article 1, first paragraph, point (7), amending provision, numbered paragraph (1), second subparagraph				
8 5	A Member State may make such dispensation subject to prior administrative or judicial authorisation.	<del>A Member State may</del> <u>States shall</u> make such dispensation subject to prior administrative or judicial authorisation.	A Member State may make such dispensation subject to prior administrative or judicial authorisation.	NL cannot accept the amendment and supports the GA. This would create a considerable administrative and financial burden for companies and for the Member States.
Article 1, first paragraph, point (7), amending provision, numbered paragraph (2)				
8 6	2. When central management does not transmit information on the grounds referred to in paragraph 1, it	2. When central management does not transmit information on the grounds referred to in paragraph 1, it shall inform the	2. When central management does not transmit information on the grounds referred to in paragraph 1, it shall inform the members of the special	

	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.;	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.;	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.;	
Article 1, first paragraph, point (7), amending provision, numbered paragraph (3)				
8 6 a			<b>3. The dispensation according to paragraph 1 from transmitting information shall continue to apply until the reasons justifying it have become obsolete.;</b>	
Article 1, first paragraph, point (8)				
8 7	(8) Articles 9 and 10 are replaced by the following:	(8) Articles 9 and 10 are replaced by the following:	(8) Articles 9 and 10 are replaced by the following:	
Article 1, first paragraph, point (8), amending provision, first paragraph				

8 8	“ Article 9 Operation of the European Works Council and the information and consultation procedure for workers	“ Article 9 Operation of the European Works Council and the information and consultation procedure for workers	“ Article 9 Operation of the European Works Council and the information and consultation procedure for <del>workers</del> <b>employees</b>	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (1), first subparagraph				
8 9	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.	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.	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.	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (1), second subparagraph				
9 0	The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.	The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.	The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for <del>workers</del> <b>employees</b> .	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (2)				
9 1	2. Information on transnational matters shall be given at such time, in such	2. Information on transnational matters shall be given at such time, in such fashion	2. Information on transnational matters shall be given at such time, in such fashion and with such content as	NL can accept the new text.

	<p>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.</p>	<p>and with such content as are <del>appropriate</del><u>necessary and sufficient</u> to enable <u>the European Works Council to consult relevant</u> employees' representatives <u>at national and local level</u>, to undertake an in-depth assessment of their possible impact, and, where appropriate, prepare for <u>meaningful</u> consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.</p>	<p>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.</p>	
<p>Article 1, first paragraph, point (8), amending provision, numbered paragraph (3)</p>				
<p>9 2</p>	<p>3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express an 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'</p>	<p>3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express an 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</p>	<p>3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express <del>an</del><b>their</b> 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 <b>degree of</b> 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</p>	

	<p>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 employee representatives expressed their opinion within a reasonable time in accordance with the first sentence.</p>	<p>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 employee representatives expressed their opinion within a reasonable time in accordance with the first sentence.</p>	<p>management prior to the adoption of the decision on the measures in question, provided the <del>employee</del><b>employees'</b> representatives expressed their opinion within a reasonable time in accordance with the first sentence.</p>	
<p>Article 1, first paragraph(8), amending provision, numbered paragraph (3a)</p>				
<p>9 2 a</p>		<p><u><b>3a. In duly justified and exceptional cases, where the adoption of a decision requires urgency, management and employees' representatives shall carry out an effective information and consultation process in accordance with paragraphs 2 and 3 as quickly as possible. When appropriate and agreed upon, digital means of communication and coordination can be used for that purpose.</b></u></p>		<p>NL can accept the new text.</p>
<p>Article 1, first paragraph(8), amending provision, numbered paragraph (3b)</p>				

9 2 b		<p><b><u>3b.</u></b> <i>If there is a dispute between the central management and the European Works Council or employees' representatives as to whether an information and consultation procedure is to be carried out, the central management shall provide duly substantiated grounds in writing for the reasons why the information and consultation requirements under this Directive or under agreements concluded pursuant thereto do not apply, including the reasons that justify the absence of transnational issues.</i></p>		<p>The NL cannot accept this amendment. These are additional obligations for central management. This could become problematic, when the vision of the EWC and central management differ regularly.</p> <p>Possible compromise:</p> <p><i>In case the consultation procedure is undertaken, at the request of the EWC the Central Management must provide an explanation in writing.</i></p>
Article 1, first paragraph(8), amending provision, numbered paragraph (3c)				
9 2 c		<p><b><u>3c.</u></b> <i>In so far as it is necessary for the European Works Council to carry out its tasks, the European Works Council or the select committee may request assistance from experts of its choice. Such experts may include representatives of competent recognised Community-level trade union organisations. At the request of the European Works Council, such experts shall be</i></p>		<p>NL supports the new text.</p>

		<u><a href="#">present at meetings of the European Works Council and meetings with the central management in an advisory capacity.</a></u>		
Article 1, first paragraph, point (8), amending provision, fifth paragraph				
9 3	Article 10 Role and protection of employees' representatives	Article 10 Role and protection of employees' representatives	Article 10 Role and protection of employees' representatives	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (1)				
9 4	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.	1. Without prejudice to the competence of other bodies or organisations in this respect, the <del>employees' representatives, including the</del> members of the special negotiating body <del>and</del> the members of the European Works Council, <u>and the employees' representatives</u> shall have the means <u>and legal capacity</u> 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.	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.	Regarding the first amendment; what is the reason for moving employees' representatives up in the sentence, and what are the consequences?  The NL supports the second amendment, but wonders if this is the right article to regulate the legal capacity?

Article 1, first paragraph, point (8), amending provision, numbered paragraph (2)

9 5	<p>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.</p>	<p>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, <u>and whenever it deems it necessary to perform its tasks deriving from this Directive</u>, in particular before and after the meetings with the central management.</p>	<p>2. Without prejudice to Articles 8 and 8a, the members of the European Works Council shall <del>have the right and necessary means to</del> inform the <b>employees'</b> representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of <b>employees'</b> 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 <b>and shall have the necessary means to do so.</b></p>	<p>The NL is supportive.</p>
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Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), first subparagraph

9 6	<p>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</p>	<p>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, <u>including the right to form and join trade unions</u>, enjoy</p>	<p>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'</p>	<p>NL is not supportive of the first insertion. The right to form and join trade unions is a right that is not given by this Directive, and should not be disputed under the umbrella of this Directive.</p> <p>The NL accepts the second insertion.</p>
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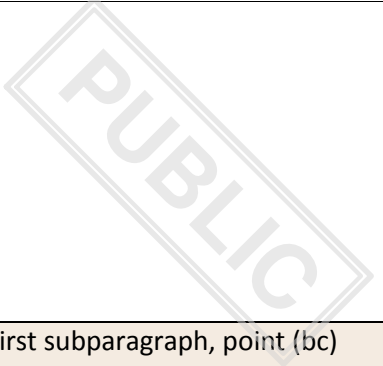
	equivalent to those provided for employees' representatives by the national legislation and practice in force in their country of employment.	protection and guarantees equivalent to those provided for employees' representatives by the national legislation <del>and</del> <i>and/or</i> practice in force in their country of employment.	representatives by the national legislation and practice in force in their country of employment.	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), second subparagraph				
9 7	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.	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.	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.	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), second subparagraph a				
9 7 a		<u><i>A member of a special negotiating body or of a European Works Council, or such a member's</i></u>	<b>A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a</b>	

		<u><i>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.</i></u>	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.	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), fourth subparagraph				
9 7 b		<u><i>Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.</i></u>	Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (3), fifth subparagraph				
9 7 c		<u><i>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</i></u>	In cases 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	

		<u>communication technologies shall be considered.</u>	and communication technologies shall be considered.	
Article 1, first paragraph, point (8), amending provision, numbered paragraph (4), first subparagraph				
9 8	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.	4. In so far as this is necessary for <u>and linked to</u> 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.	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.	NL can support the insertion.
Article 1, first paragraph, point (8), amending provision, numbered paragraph (4), second subparagraph				
9 9	Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed in advance.; ”	Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the costs of such training and related expenses shall be borne by the central management, <u>or any other appropriate level of management,</u> provided that the central management <u>or any other appropriate level of management,</u> has been informed in advance.; ”	Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the <b>reasonable</b> costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed <b>thereof</b> in advance.; ”	NL is not supportive of the EP mandate as it might lead to uncertainty on which level of management is responsible.
Article 1, first paragraph, point (9)				

100	(9) Article 11 is amended as follows:	(9) Article 11 is amended as follows:	(9) Article 11 is amended as follows:	
Article 1, first paragraph, point (9)(a)				
101	(a) paragraph 2 is replaced by the following:	(a) paragraph 2 is replaced by the following:	(a) paragraph 2 is replaced by the following:	
Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), first subparagraph				
102	“ 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 :	“ 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 :	“ 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 :	
Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), first subparagraph, point (a)				
103	(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner;	(a) adequate <u>administrative and judicial</u> procedures are available <u>and easily accessible</u> to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner, <u>to apply for and terminate including the possibility to request a preliminary injunction</u>	(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in a timely and an effective manner;	Not supportive of first insertion. Having two types of procedures leads to unnecessary costs.  NL supports insertion of “and easily accessible”.

		<u><i>for the temporary suspension of decisions of the central management where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements under this Directive or under agreements concluded pursuant thereto. The effects of the challenged decisions on employment contracts or employment relationships of the affected employees shall be suspended accordingly;</i></u>		NL supports the third insertion, except for the last sentence which is too far reaching and too prescriptive.
Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), first subparagraph, point (b)				
1 0 4	(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.	(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.	(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.	
Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (ba)				
1 0 4 a		<u><i>(ba) The penalties referred to in point (b) shall include:</i></u>		NL does not accept insertions (ba), (bb), (bc), and (bd).
Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (bb)				

1 0 4 b		<p><u><i>(bb) (i) financial penalties that are proportionate to the nature, gravity and duration of the undertaking's infringement and which shall increase in amount according to the number of affected employees;</i></u></p>		<p>NL does not accept insertions (ba), (bb), (bc), and (bd).</p>
<p>Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (bc)</p>				
1 0 4 c		<p><u><i>(bc) (ii) orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including Union funds managed by the relevant Member States, for a period of up to three years;</i></u></p>		<p>NL does not accept insertions (ba), (bb), (bc), and (bd).</p>
<p>Article 1, first paragraph(9), point (a), amending provision, numbered paragraph (1), first subparagraph, point (bd)</p>				
1 0 4 d		<p><u><i>(bd) (iii) orders excluding the undertaking from participating in a public contract as defined in Directive 2014/24/EU of the European Parliament and of the Council<sup>1</sup>.</i></u></p> <hr/> <p><u><i>1. 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).</i></u></p>		<p>NL does not accept insertions (ba), (bb), (bc), and (bd).</p>

Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), second subparagraph

1 0 5	<p>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 pecuniary sanctions, 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.</p>	<p>In the <del>event of failure to comply with the national provisions transposing the obligations under Article 9(2) and (3), Member States shall provide for pecuniary sanctions</del> <b>case of infringements as referred to in point (b) of this paragraph, which are not committed intentionally, the financial penalties referred to in point (a) of this paragraph, shall be substantive and equivalent to those provided for in Article 83(4) of Regulation (EU) 2016/679<sup>1a</sup>.</b> <del>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.</del></p> <p>_____</p> <p><b><u>1a. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).</u></b></p>	<p>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 pecuniary sanctions, 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 <b>financial penalties.</b></p>	<p>The starting point of the EP amendment is sanctions in line with Regulation 2016/679, which is not acceptable. The EP mandate is therefore not acceptable. Administrative sanctions for disputes on employee representation do not fit in with the Dutch legal system. To introduce this, NL would need to take drastic and costly measures, while there is already an efficient system in place. The fines in Regulation 2016/679 are out of proportion for this Directive.</p>
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Article 1, first paragraph, point (9)(a), amending provision, numbered paragraph (2), third subparagraph

1 0 6	<p>For the purposes of point (b), of the first subparagraph, Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</p> <p>”</p>	<p><i>For the purposes of <u>In the case of infringements as referred to in point (b)</u>, of the first subparagraph, Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</i></p> <p><u>and of this paragraph which are committed intentionally, the financial penalties referred to in point (a) of this paragraph shall be substantive and equivalent to those provided for in Article 83(5) of Regulation (EU) 2016/679.</u></p> <p><i>financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</i></p> <p>”</p>	<p>For the purposes of point (b), of the first subparagraph, Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.;</p> <p>”</p>	<p>The EP mandate is not acceptable. Administrative sanctions for disputes on employee representation do not fit in with the Dutch legal system. To introduce this, NL would need to take drastic and costly measures, while there is already an efficient system in place. The fines in Regulation 2016/679 are out of proportion for this Directive.</p>
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Article 1, first paragraph, point (9)(b)

1 0 7	<p>(b) paragraph 3 is amended as follows:</p>	<p>(b) paragraph 3 is amended as follows:</p>	<p>(b) paragraph 3 is amended as follows:</p>	
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Article 1, first paragraph, point (9)(b), first indent			
1 0 8	- the first subparagraph is replaced by the following:	- the first subparagraph is replaced by the following:	- the first subparagraph is replaced by the following:
Article 1, first paragraph, point (9)(b), first indent, amending provision, numbered paragraph (3)			
1 0 9	“  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.;  ”	“  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.;  ”	“  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.;  ”
Article 1, first paragraph(9), point (b), second indent, first subparagraph			

1 0 9 a		- <u>the following subparagraph is inserted after the first subparagraph:</u>		
Article 1, first paragraph(9), point (b), second indent, second subparagraph				
1 0 9 b		<u>"The central management shall bear the judicial costs incurred in carrying out the procedures, the costs of legal representation and subsidiary costs such as subsistence and travel expenses for at least one employees' representative;"</u>		NL can accept this insertion.
Article 1, first paragraph, point (9)(b), second indent				
1 1 0	- the following subparagraph is added:	- the following subparagraph is added:	- the following subparagraph is added:	
Article 1, first paragraph, point (9)(b), second indent, amending provision, first paragraph				
1 1 1 1	“ The duration of such procedures shall be compatible with the effective exercise of the information and consultation rights under this Directive.;	“ The duration of such procedures shall be compatible with the effective exercise of the information and consultation rights under this Directive.; ”	“ The duration of such <del>such</del> the procedures, <b>referred to in the first subparagraph</b> shall be compatible with the effective exercise of the information and consultation rights under this Directive.;	

	”		
Article 1, first paragraph, point (9)(ba)			
1 1 1 a			(ba) the following paragraph 3a is added:
Article 1, first paragraph, point (9)(ba), amending provision, numbered paragraph (3a))			
1 1 1 b			<p><b>3a 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 measures to avoid any de facto restriction of such access for reasons of lack of financial resources.</b></p> <p>”</p>

Article 1, first paragraph, point (9)(c)

1	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	(c) the following paragraph 4 is added:	
1				
2				

Article 1, first paragraph, point (9)(c), amending provision, numbered paragraph (4)

1	“ 4. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.;	“ 4. <u>Member States are encouraged to develop out-of-court mediation procedures enabling both parties to find acceptable solutions.</u> Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.;	“ 4. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on not prejudice the right of the parties concerned, nor otherwise prejudice their right to bring legal proceedings.;	The NL prefers the GA. In order to stay in line with our practice, it is necessary to keep the access to justice requirement sufficiently open to fit into the national systems. Additionally, these new alternative mechanisms lead to more efforts for Member States, especially where mediation is not a regulated form of dispute resolution for European Works Councils.
1	”	”	”	
3				

Article 1, first paragraph, point (9a), first subparagraph

1		<u>(9a) in Article 12, paragraph 2 is replaced by the following:</u>		
1				

3 a				
Article 1, first paragraph, point (9a), second subparagraph				
1 1 3 b		<p><b><u>'2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6 in order to ensure good coordination between information and consultation processes within the European Works Council and those established at national level. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.'</u></b></p>		NL can accept EP mandate.
Article 1, first paragraph, point (10)				
1 1 4	(10) in Article 12, the following paragraph is added:	<i>deleted</i>	(10) in Article 12, the following paragraph is added:	
Article 1, first paragraph, point (10), amending provision, numbered paragraph (6)				

1 1 5	<p>“</p> <p>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.;</p> <p>”</p>	<p><i>deleted</i></p>	<p>“</p> <p>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.;</p> <p>”</p>	
Article 1, first paragraph, point (11)				
1 1 6	(11) Article 14 is deleted;	(11) Article 14 is deleted;	(11) Article 14 is deleted;	
Article 1, first paragraph, point (12)				
1 1 7	(12) the following Article is inserted:	(12) the following Article is inserted:	(12) the following Article is inserted:	
Article 1, first paragraph, point (12a)				

1 1 7 a			(12a) the following Article is inserted:	
Article 1, first paragraph, point (12), amending provision, first paragraph				
1 1 8	“ Article 14a Transitional provisions	“ Article 14a Transitional provisions	“ Article 14a Transitional provisions	
Article 1, first paragraph, point (12), amending provision, numbered paragraph (1)				
1 1 9	1. Where, following the transposition of [OP: insert reference to this amending Directive], a European Works Council agreement or agreement on an information and consultation procedure concluded before [OP: 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 is not in conformity with any of the requirements applicable to	1. Where, <del>following the transposition of [OP: insert reference to this amending Directive]</del> , a European Works Council agreement or agreement on an information and consultation procedure concluded before [OP: 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 <del>is not in conformity with any of the requirements applicable to that agreement as a consequence of the amendments provided for in</del> <b>does</b>	1. Where, following the transposition of <del>after [OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 1st subparagraph of this amending Directive]</del> [OP: insert reference to this amending Directive], a European Works Council agreement or agreement on an information and consultation procedure concluded before <b>[OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive]</b> [OP: 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	NL can accept EP mandate.

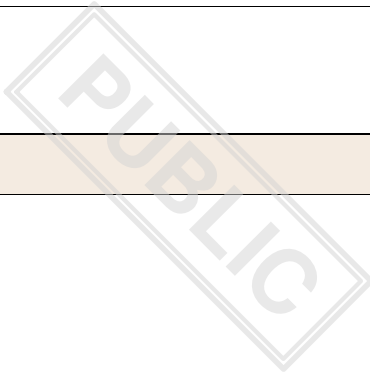
<p>that agreement as a consequence of the amendments provided for in [OP: insert reference to this amending Directive], central management shall initiate negotiations to adapt that agreement at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States. Central management may also initiate such negotiations on its own initiative.</p>	<p><u>not determine all the elements listed in Article 6(2), as amended by</u> [OP: insert reference to this amending Directive], central management shall initiate negotiations <del>to adapt that</del> <u>by ... [one year from date of entry into force of this Directive] for the establishment of an addendum, determining the elements not determined by the existing European Works Council</u> agreement <del>at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States. Central management may also initiate such negotiations on its own initiative</del> <u>or agreement on an information and consultation procedure.</u></p>	<p>Articles 5 and 6 of this Directive is not in conformity with any of the requirements applicable to that agreement, as a consequence of the amendments provided for in <b>entered into force on [OJ: insert date of entry into force of this amending Directive] with any of the elements and requirements of Article 6</b>[OP: insert reference to this amending Directive], central management shall initiate negotiations to adapt that agreement, at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States, <b>initiate negotiations to adapt that agreement to those elements and requirements of Article 6.</b> Central management may also initiate such negotiations on its own initiative. <b>Such negotiations may be limited to the provisions of the agreement that are not in conformity with those elements and requirements of Article 6.</b></p>		
<p>Article 1, first paragraph, point (12), amending provision, numbered paragraph (2)</p>				
<p>1 2 0</p>	<p>2. Where the European Works Council agreement or agreement on an information</p>	<p>2. Where the European Works Council agreement or agreement on an information and</p>	<p>2. Where the European Works Council agreement or agreement on an information and consultation procedure</p>	<p>NL can accept this insertion.</p>

	<p>and consultation procedure 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.</p>	<p>consultation procedure contains procedural arrangements for its adaptation <del>or renegotiation, the adaptation,</del> <u>the establishment of the addendum</u> may be negotiated pursuant to those arrangements. Otherwise, the <del>adaptation</del> <u>establishment of the addendum</u> shall follow the procedure set out in Article 5 in conjunction with Article 13, second and third paragraphs.</p>	<p>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.</p>	
<p>Article 1, first paragraph, point (12), amending provision, numbered paragraph (3)</p>				
<p>1 2 1</p>	<p>3. Where an adaptation procedure does not lead to an agreement within two years from the date of the respective request by employees or their representatives, the subsidiary requirements set out in Annex I shall apply.;</p>	<p>3. Where an adaptation procedure <u>initiated pursuant to paragraph 1</u> does not lead to an agreement <u>on the addendum</u> within two years <del>from the date</del> <u>following the initiation</u> of the <del>respective request by employees or their representatives</del> <u>negotiations</u>, the subsidiary requirements set out in Annex I <u>in respect of the elements not determined in the existing European Works Council agreement or agreement on an information and consultation procedure</u> shall apply.”;</p>	<p>3. <del>Where</del> <b>When</b> an adaptation procedure <b>under this Article</b> does not lead to an agreement within two years from the date of the respective request by employees or their representatives <b>or from the date of initiation of the negotiations by the central management on its own initiative</b>, the subsidiary requirements set out in Annex I shall apply.;</p>	<p>NL is supportive of the EP mandate.</p>

Article 1, first paragraph, point (12), amending provision, numbered paragraph (4)			
1 2 1 a			<p><b>4. This Article shall not have the effect of exempting the parties to European Works Council agreements or to agreements on information and consultation procedures from respecting the applicable minimum requirements in this Directive.</b></p> <p style="text-align: right;">”</p>
Article 1, first paragraph, point (12a), amending provision, first paragraph			
1 2 1 b			<p><b>(12a) the following Article is inserted:</b></p> <p><b>Article 14b</b></p> <p>Different presentation due to IT issue to be solved</p>
Article 1, first paragraph, point (12a), third subparagraph			
1 2 1 c			<p><b>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</b></p>

			<p>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) indent three shall be reduced to two years. The initiation of negotiations does not affect the terms of the existing agreements in force.;"</p>	
Article 1, first paragraph, point (12b), first subparagraph				
1 2 1 d		<p><u><a href="#">(12b) The following Article is inserted:</a></u></p>		
Article 1, first paragraph, point (12b), second subparagraph				
1 2 1 e		<p><u><a href="#">‘Article 15a</a></u></p> <p><u><a href="#">Monitoring</a></u></p>		
Article 1, first paragraph, point (12b), third subparagraph				
1 2 1 f		<p><u><a href="#">1. To ensure the correct application of the Directive and to address and resolve practical problems arising from its</a></u></p>		<p>NL needs more clarification. What exactly does the monitoring consist of? Is it directed to the responsibilities of the</p>

		<u>implementation, a monitoring committee shall be established.</u>		Member States, or of companies? The same applies to rows 121g and 121h.
Article 1, first paragraph, point (12b), fourth subparagraph				
1 2 1 g		<u>The monitoring committee shall be composed by one representative per Member State, three representatives of each of the European social partners, and the Commission.</u>		
Article 1, first paragraph, point (12b), fifth subparagraph				
1 2 1 h		<u>The monitoring committee shall meet twice per year and shall be chaired by the Commission.'</u>		
Article 1, first paragraph, point (13)				
1 2 2	(13) Annex I is amended in accordance with the Annex to this Directive.	(13) Annex I is amended in accordance with the Annex to this Directive.	(13) Annex I is amended in accordance with the Annex to this Directive.	
Article 2				
1 2 3	Article 2	Article 2	Article 2	
Article 2(1), first subparagraph				



1 2 4	<p>1. Member States shall adopt and publish, by [OP: insert date one year 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.</p>	<p>1. Member States shall adopt and publish, by [OP: insert date one year 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.</p>	<p>1. Member States shall adopt and publish, by <b>[OJ: please insert date: two years from the entry into force of this Directive]</b><del>[OP: insert date one year from the entry into force of this Directive]</del> at the latest, the laws, regulations and administrative provisions <b>measures</b> necessary to comply with this Directive <b>[before....]</b>. They shall forthwith <b>communicate to immediately inform</b> the Commission <del>the text of those provisions.</del><b>thereof.</b></p>	<p>NL strongly prefers the GA. One year is problematic; it is too short to implement a Directive.</p>
Article 2(1), second subparagraph				
1 2 5	<p>They shall apply those provisions from [OP: insert date two years from the date set out in the first subparagraph].</p>	<p>They shall apply those provisions from [OP: insert date two years from the date set out in the first subparagraph].</p>	<p>They shall apply those <del>provisions from</del> <b>measures from [OJ: please insert a date: two years from the date set out in the first subparagraph]</b><del>[OP: insert date two years from the date set out in the first subparagraph]</del>.</p>	
Article 2(1), third subparagraph				
1 2 6	<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States</p>	<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>When Member States adopt those <del>provisions</del> <b>measures</b>, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. <b>The method of making such a reference shall be laid down by</b></p>	<p>NL prefers EP mandate.</p>

	shall determine how such reference is to be made.		Member States shall determine how such reference is to be made.	
Article 2(2), first subparagraph				
1 2 7	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.	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.	2. Member States shall communicate to the Commission the <del>text of the main</del> <b>their laws, regulations and administrative</b> provisions of national law which they adopt in the field covered by <del>with regard to the</del> <b>application of</b> this Directive.	
Article 2(2), second subparagraph				
1 2 8	Regarding the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by [OP: insert date in the first subparagraph of paragraph 1] of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with Article 11(2), (3) and (4) of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative	Regarding the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by [OP: insert date in the first subparagraph of paragraph 1] of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with Article 11(2), (3) and (4) of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative proceedings, in respect of all the rights under this Directive	<del>Regarding</del> <b>With regard to</b> the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by <b>[OJ: please insert the date from the first subparagraph of paragraph 1]</b> <del>[OP: insert date in the first subparagraph of paragraph 1]</del> of the means by which the European Works Councils, the special negotiating bodies, and employees' representatives can, in accordance with Article 11(2), (3), <b>(3a)</b> and (4) of Directive 2009/38/EC, as amended, bring judicial proceedings, and where applicable, administrative proceedings, in respect of all the rights under <del>this</del> <b>that</b> Directive.	

	proceedings, in respect of all the rights under this Directive			
Article 2(2a)				
1 2 8 a		<u>2a. Member States shall notify the Commission of the measures taken pursuant to Article 11(2) at the earliest opportunity.</u>		The NL supports the GA version. This insertion would lead to an additional workload for the Member States. Furthermore, this already needs to be reported on the basis of the former article within two years.
Article 3				
1 2 9	Article 3	Article 3	Article 3	
Article 3, first paragraph				
1 3 0	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	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				
1 3 1	Article 4	Article 4	Article 4	

Article 4, first paragraph				
1 3 2	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	
Formula				
1 3 3	Done at Brussels,	Done at Brussels,	Done at Brussels,	
Formula				
1 3 4	For the European Parliament	For the European Parliament	For the European Parliament	
Formula				
1 3 5	The President	The President	The President	
Formula				
1 3 6	For the Council	For the Council	For the Council	
Formula				

1 3 7	The President	The President	The President	
Annex				
1 3 8	Annex	Annex	Annex	
Annex a				
1 3 8 a			<b>ANNEX – Subsidiary requirements</b>	
Annex a, first paragraph				
1 3 9	Annex I to Directive 2009/38/EC is amended as follows:	Annex I to Directive 2009/38/EC is amended as follows:	Annex I to Directive 2009/38/EC is amended as follows:	
Annex a, second paragraph				
1 4 0	(1) point 1 is amended as follows:	(1) point 1 is amended as follows:	(1) point 1 is amended as follows:	
Annex a, second paragraph, point (a)				

1 4 1	(a) the introductory sentence is replaced by the following:	(a) the introductory sentence is replaced by the following:	(a) the introductory sentence is replaced by the following:	
Annex a, second paragraph, point (a), amending provision, numbered paragraph (1)				
1 4 2	“  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;;  ”	“  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;;  ”	“  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;;  ”	
Annex a, second paragraph, point (aa)				
1 4 2 a		<u>(aa) in paragraph 1, the second subparagraph of point (a) is replaced by the following:</u>	(aa) in point (a), the second subparagraph is replaced by the following:	
Annex a, second paragraph, point (aa), amending provision, first paragraph				
1 4				NL can support the insertions of „skills and training policies” but questions why - „including in franchise networks?”has

<p>2 b</p>		<p><u><i>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, working conditions, skills and training policies including in franchise networks, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.</i></u></p>	<p>The information of the European Works Council 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, and substantial changes concerning organisation, anticipation of change and management of restructuring processes including those linked to the green and digital transitions, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies;</p>	<p>been added. What is the definition of <i>franchise networks</i>? Why are the developments in the franchise networks only relevant for training and skills and not for the other topics?</p>
<p>Annex a, second paragraph, point (b)</p>				

1 4 3	(b) in point (a), the third subparagraph is replaced by the following:	(b) in point (a), the third subparagraph is replaced by the following:	(b) in point (a), the third subparagraph is replaced by the following:	
Annex a, second paragraph, point (b), amending provision, first paragraph				
1 4 4	“ 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;; ”	“ 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;; ”	“ 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;; ”	
Annex a, second paragraph, point (c)				
1 4 5	(c) the following point (dd) is inserted after point (d):	(c) the following point (dd) is inserted after point (d):	(c) <b>in point (b)</b> , the following point <del>(d)</del> <b>subparagraph</b> is inserted after point <del>(d)</del> <b>the first subparagraph</b> :	

Annex a, second paragraph, point (c), amending provision, numbered paragraph (dd)

1 4 6	<p>“</p> <p>(dd) as far as possible, women and men shall each comprise at least 40% of European Works Council members and of select committee members;;</p> <p>”</p>	<p>“</p> <p>(dd) <del>as far as possible,</del><u>European Works Council members and those of select committee shall represent the diversity of the workforce and</u> women and men shall each comprise at least 40% of European Works Council members and of select committee members<del>;;</del>.</p> <p>”</p>	<p>“</p> <p>(dd) <b>In doing so and</b> as far as possible, women and men shall each comprise at least 40% of European Works Council members and of select committee members;;</p> <p>”</p>	<p>Supportive of the idea, but need for clarification:</p> <ul style="list-style-type: none"> <li>- is this confusing if the workforce of a company lacks diversity?</li> <li>- does diversity in this concept include other diversity than male/female?</li> </ul>
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Annex a, 2 paragraph

1 4 7	<p>(2) point 2 is replaced by the following:</p>	<p>(2) point 2 is replaced by the following:</p>	<p>(2) point 2 is replaced by the following:</p>	
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Annex a, 2 paragraph, amending provision, numbered paragraph (2)

1 4 8	<p>“</p> <p>2. The European Works Council shall have the right to meet with the central management twice a year, to be informed and consulted, on the basis of a report drawn up by the central management, on</p>	<p>“</p> <p>2. The European Works Council shall have the right to meet <u>in person</u> with the central management <u>at least</u> twice a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the</p>	<p>“</p> <p>2. The European Works Council shall have the right to meet with the central management 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</p>	<p>NL prefers the GA which offers more flexibility.</p> <p>But NL can support the EP's last insertion.</p>
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	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.;	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. <i>When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases without replacing ordinary meetings.</i>	undertaking or Community-scale group of undertakings and its prospects. <b>At least one meeting per year shall be held in person.</b> The local managements shall be informed accordingly.;	
Annex a, 3 paragraph				
1 4 9	(3) in point 3, the first and second subparagraphs are replaced by the following:	(3) in point 3, the first and second subparagraphs are replaced by the following:	(3) in point 3, the first and second subparagraphs are replaced by the following:	
Annex a, 3 paragraph, amending provision, numbered paragraph (3), first subparagraph				
1 5 0	“ 3. Where there are exceptional circumstances or decisions which are likely to affect the employees’ interests to a considerable extent, and urgency does not allow for	“ 3. Where there are exceptional circumstances or decisions which <i>may or</i> are likely to affect the employees’ interests to a considerable extent, and urgency does not allow for information or	“ 3. Where there are exceptional circumstances or decisions which are <del>likely</del> <b>reasonably to be expected</b> to affect the employees’ interests to a considerable extent, and urgency does not allow for information or	NL accepts EP insertion

	<p>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.</p>	<p>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.</p>	<p>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.</p>	
Annex a, 3 paragraph, amending provision, numbered paragraph (3), second subparagraph				
1 5 1	<p>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</p>	<p>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 <i>directly</i></p>	<p>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 directly concerned by the circumstances or decisions in</p>	<p>NL accepts EP insertion</p>

<p>be expected to be directly concerned by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.;</p> <p>”</p>	<p><del>concerned</del><u>affected</u> by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.;</p>	<p>question shall also have the right to participate where a meeting is organised with the select committee.;</p> <p>”</p>	
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Annex, 3 paragraph, amending provision, numbered paragraph (3a)

<p>1 5 1 a</p>	<p><u><b>3a. Information and consultation procedures within the European Works Council shall be carried out without prejudice to those taking place at the national level. Where a procedure is already taking place at the national level, the European Works Council and the central management shall ensure that those procedures can complement each other with respect to the content and the timing of the procedures.</b></u></p> <p>”</p>		<p>NL supports EP insertion</p>
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Annex a, 4 paragraph

1 5 2	(4) in point 5, the following sentences are added:	(4) in point 5, the following sentences are added:	(4) in point 5, the following sentences are added:	
Annex a, 4 paragraph, amending provision, first paragraph				
1 5 3	“  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.;  ”	“  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.;  ”	“  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.;  ”	
Annex a, 5 paragraph				
1 5 4	(5) point 6 is amended as follows:	(5) point 6 is amended as follows:	(5) point 6 is amended as follows:	
Annex a, 5 paragraph, point (a)				

1 5 5	(a) the following subparagraph is inserted between the third and fourth subparagraphs:	(a) the following subparagraph is inserted between the third and fourth subparagraphs:	(a) the following subparagraph is inserted between the third and fourth subparagraphs:	
Annex a, 5 paragraph, point (a), amending provision, first paragraph				
1 5 6	“  The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings. Operating expenses shall be notified to central management before they are incurred.;  ”	“  The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings, <u>and relevant training to members of the European Works Council</u> . Operating expenses shall be notified to central management before they are incurred.;  ”	“  The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings experts [...]. Operating expenses shall be notified to central management before they are incurred.;  ”	NL supports EP insertion
Annex a, 5 paragraph, point (b)				
1 5 7	(b) the fourth subparagraph is replaced by the following:	(b) the fourth subparagraph is replaced by the following:	(b) the fourth subparagraph is replaced by the following:	
Annex a, 5 paragraph, point (b), amending provision, first paragraph				

1 5 8	“ In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. ”	“ In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. ”	“ In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. ”	
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## Comments by PT

Following the request for written comments (doc. 17110/24 Preparations for trilogues on the Directive Amending Directive 2009/38/EC on European Works Councils), we are sending you below the position of **(Portugal)**

### 1) We cannot support following EP amendments:

- Row 21- The EP's proposal that the regular annual meetings of the European Works Council and the select committee should be face-to-face does not seem to us to be in line with environmental concerns, as it does nothing to reduce the environmental footprint.
- Row 22 - The EP's proposal to increase the costs compared to what is currently envisaged could prove unaffordable for the Portuguese business community.
- Row 31 - The amendment proposed by the EP broadens the scope of the rule, introducing the possibility of a precautionary procedure with suspensive effects that could lead to disproportionate costs for companies.
- Row 34 - The EP's proposal to increase the costs compared to what is currently envisaged could prove unaffordable for the Portuguese business community.
- Row 48 - The EP's drafting proposal is more restrictive.
- Row 49b - This addition proposed by the EP is very abstract and could raise doubts as to whether it will actually be implemented.
- Row 85 - The wording proposed by the EP is more restrictive, resulting in companies having to obtain prior administrative or judicial authorisation to be exempt from transmitting information in certain cases.
- Row 103 - The amendment proposed by the EP broadens the scope of the rule, introducing the possibility of a precautionary procedure with suspensive effects that could lead to disproportionate costs for companies. It also introduces judicial responsibility, in addition to administrative responsibility (namely requesting the introduction of a precautionary measure in national courts or other competent authorities for a temporary suspension of the implementation of management decisions, until there is consultation), which we do not think compatible with the Portuguese legal system.
- Row 109b - As for the EP's proposal, part of this is already provided for in our legal system, but with regard to legal costs and legal representation (which are not yet provided for in our legislation), they entail an additional cost for companies that can be unaffordable.
- Row 148 - The amendment proposed by the EP broadens the scope of the rule, introducing the possibility of a precautionary procedure with suspensive effects that could lead to disproportionate costs for companies.

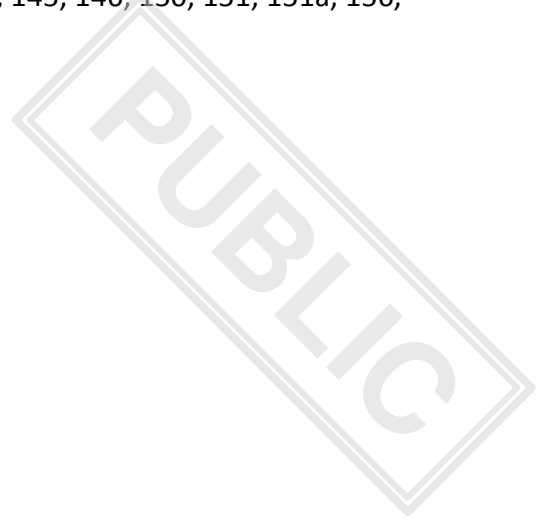
### 2) We strongly prefer to keep the Council's General Approach regarding:

- Rows 3, 14, 33, 48

### 3) We can show degree of flexibility regarding:

- Rows 4, 10, 15, 16, 17, 18, 20, 23, 25, 26, 27, 28, 28a, 28b, 29, 30, 32, 32a, 37, 37a, 37b, 38, 40, 49, 50, 50a, 51, 52, 52a, 52b, 52c, 52d, 52e, 55, 55a, 55b, 58, 67, 68, 74, 74a, 74b, 76, 76a, 76b, 76c, 76d, 76e, 76f, 79, 80, 81, 81a, 88, 90, 91, 92, 92a, 92b, 92c, 94, 95, 96, 98, 99,

104a, 104b, 104c, 104d, 105, 106, 111, 112, 113, 113b, 114, 115, 119, 120, 121, 121e, 121f,  
121g, 121h, 124, 125, 126, 127, 128, 128a, 142b, 145, 146, 150, 151, 151a, 156,



## Comments by RO

As a general remark, **we cannot support the EP amendments**. We consider these proposals create significant constraints to MS as opposed to the text from the GA and may lead to bottlenecks in transposition and application, with effects on the national legal systems.

- 1)** With regard to the effective implementation and expected incidence in national law, **we consider the following EP amendments to be problematic and therefore we cannot support them:**
- **2. Definitions - R52e** – this amendment aiming at extending the scope of the Directive to franchising, and this inclusion also effects the definition of 'Community-scale group of undertakings' and 'controlling undertaking' at **R52a, R52c** - we consider this amendment is rather unclear and leads to legal consequences also on effective enforcement (for these reasons we consider it as a **particularly problematic amendment**);
  - **3. Special negotiating bodies – gender balance - R55, R74, R146** - all these 3 amendments concern the obligation to ensure a gender balanced representation – in our opinion this obligation introduces a risk of deadlock in setting the special negotiating body, the European Works Council and the select committee, compared to the GA text that provides a degree of flexibility in this regard;
  - **3. Special negotiating bodies – costs of experts and legal assistance - R55b and R58** concerning the prioritization of representatives of trade union organizations recognized at Community level as experts - the amendment limits the freedom of the special negotiating body to choose its experts, incurring additional costs for the central management and difficulties in identifying representatives of trade union organisations;
  - **6. Confidential information - R81a** – the wording '*national or local work councils*' is unclear, as well as its correlation with the national employee representation structures and jeopardizes information confidentiality. In addition, employers have an obligation to inform and consult national employee representation structures in accordance with national laws transposing Directive 2002/14/EC, respecting national rules on confidentiality;
  - **6. non- transmission of information on specific grounds - R85** on the obligation to subject the refuse to transmit information to prior administrative or judicial authorisation – we consider it would impact on MS judicial and extra-judicial systems and would lead to bottlenecks in the functioning of courts/ delivery of judgments, given that national courts are overcrowded (**particularly problematic amendment**);
  - **7. the information a consultation procedure for workers - R92a, R92b** – here we are of the opinion that determining exceptional cases is rather unclear and difficult. This could lead to potential legal conflicts;
  
  - **9. Compliance with this directive - R103** on the possibility to apply to the courts for the temporary suspension of central management decisions for failing to comply with information and consultation requirements – in our opinion there is a direct impact on the legal system and major consequences for Community-scale undertakings/groups of undertakings (financial losses, hindering business development, etc.) (this is why we consider it as a **particularly problematic amendment**); as for **R104a and R104b** there is no margin of flexibility for MS and moreover there is an interference in setting their own sanctioning regimes; **R104c and R104d** concerning sanctions of exclusion from access

to public funds (R104c) and from participating in a public contract (R104d) we appreciate these aspects are not covered by the directive and require the review of the public procurement directives in case the freedom to provide services is not infringed (**particularly problematic amendment**); **R105 and R106** – wording that leads to legal uncertainty; **R113** – the proposal to develop out-of-court mediation procedures interferes with the mediation schemes (judicial or extra-judicial as an option for the MS);

- **12. Monitoring** - **R121e, R121f, R121g, R121h** – the new art 15a on monitoring represents in our opinion a constraining intention, as permanent monitoring is not required and COM evaluates implementation anyway and proposes revision measures; **R124** on 1-year transposition period is coercive regarding the duration, because one year is not sufficient to cover the national stages of the transposition process and could lead to the risk of non-transposition in due time (**particularly problematic amendment**).

2) As regards the other EP amendments, we **strongly prefer to keep the Council's General Approach.**

3) **At this stage,** following the analysis of the EP amendments, **we have not identified any issues/amendments on which we could show flexibility.**

## Comments by SE

Firstly, Sweden would like to underline that a compromise should be based on the Council's GA, which is a balanced text. Whereas the EP mandate contains elements that are too far reaching and far from balanced. Please find, in the bullet points below, the most problematic positions in the EP text and some of the vital elements in the Council text. Furthermore, Sweden would like to ask the Presidency to carefully consider how to best deliver on the EU focus on competitiveness. In the Letta and Draghi reports the overarching need to defend and strengthen European companies' competitiveness on a global market have been identified and this should also be considered when negotiating a possible revision of the EWC Directive. In this context it should be recalled that the Commission in its evaluation of the Directive in 2018 found that it was fit for purpose, changes in the current directive, must therefore be very well substantiated.

- SE cannot support the scope of the proposal in the EP mandate. The concept of transnational matters found a balanced solution in the Council text and must not be further broadened, recital 5 and article 1.4 in the GA should be safeguarded.
- The EP text on gender balance is too prescriptive and detailed. The Council text on gender balance in recital 10 and Article 5.2(b) and Article 6.2a are balanced and strive for gender balance within the EWC's and the special negotiating bodies while enough consideration is given to national practises of how employees and employee organisations elect their representatives.
- The EP text on confidential information is too far reaching. The Council position balanced the COM proposal regarding the provisions on confidential information in Article 8 and 8a and recital 13 ought to be safeguarded. Furthermore, it is essential that flexibility is maintained, and that prior administrative or judicial authorisation is not required for non-transmission of information.
- The EP text introduces preliminary injunctions (recital 18, article 11.2). This is too far reaching and problematic as it risks interfering with national systems of codetermination by suspending decisions that that have been negotiated with the social partners on national level and gives the EWC a right that goes beyond the purpose of the directive – information and consultation. Co-determination would require TFEU 153p2(f) which requires unanimity.
- The EP text on administrative fines on the base of Article 83(4) and (5) in Regulation 2016/679 is problematic and indeed unbalanced. The Council text balanced the COM proposal in Article 11 and should be safeguarded.
- The EP text includes undertakings who operates through franchise agreements. Possible inclusion of undertakings who operates thorough franchise agreements were analysed and discarded by the Commission in the IA, for good reasons. SE cannot support an inclusion of this in the text.
- The Council text stroke a well-balanced compromise regarding the EWC's right to administrative and judicial appeal procedures and how the costs connected to these procedures should be handled. This balance should be safeguarded.
- The time given to the MS to transpose the Directive should be two years, as in the Council position. SE cannot support a one-year deadline.

In summary we support the Presidency in safeguarding the balanced GA in the upcoming trilogues.

## Comments by SI

### **General comment:**

SI has been in principle very flexible towards all the EP's amendments.

However after the yesterday's discussion in the SQWP, SI reconsidered its position and shares below its preferences.

### **1) We cannot support following EP amendments:**

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### **2) We strongly prefer to keep the Council's General Approach regarding:**

- Row 52e
- Row 55b
- Rows 76d , 76 f
- Row 81a
- Row 85
- Row 96
- Row 124

### **3) We can show degree of flexibility regarding:**

The rows not mentioned above.

### **4) We need further clarifications from the EP (and the CLS on the last point):**

- Rows: 49, 49a, 49b (transnational matters)
- Row: 55 (special negotiating body)
- Row 94 (Does legal capacity equal legal personality?)
- Rows 121 e, f, g, h (Monitoring committee)