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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
N° Cion doc.:	ST 5837 2024 ADD 1 + ST 5837 2024 ADD 2 + ST 5837 2024 ADD 3 + ST 5837 2024 ADD 4 + ST 5837 2024 ADD 5 + ST 5837 2024 INIT
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

In view of the discussion of the Impact Assessment in the Social Questions Working Party, delegations find in annex a compilation of the Member States' answers to the questionnaire on the Impact Assessment.

Compilation of answers to the Questionnaire EWC Revision – IA

Replies to the questionnaire were submitted by:

BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SE, SK

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 Work Councils and the effective enforcement of transnational information and consultation rights Impact Assessment SWD(2024) 10 final	
Delegation	
Lead DG	DG LIFE.4
1. Are the policy context and the legal basis of the initiative explained clearly?	
<p>Yes: BG, CY, CZ, DE, DK, EE, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SE, SK</p> <p>No:</p> <p>To some extent/partly: ES</p> <p>Comments:</p> <p>ES: The document makes several references to the voluntary principle of the EWCs which might be confusing and sometimes contradictory to other parts of the text. It says that EWCs are established on a voluntary basis in accordance with the European Works Councils Directive (page 1), that This initiative does not seek to amend the voluntary principle (page 4), and that This initiative does not seek to amend the voluntary principle EWCs remain voluntary instrument (i.e. a request is needed either by workers or initiated by the management). (page 33)</p> <p>However, these statements are contradictory with what is said in reply to a RSB's comment: Regarding the 'voluntary nature' of EWCs, it was clearly explained that the launch of negotiations towards establishment of an EWC in accordance with the minimum requirements of the Directive becomes a legal obligation if the requisite number of employees makes a request to that effect, and that any outcome not involving setting up an EWC must be agreed by</p>	

both parties. While the principle of social partner autonomy remains a core tenet of the Directive, there is no opt-out from that obligation if employees wish to set up an EWC (page 56).

We consider the latter statement to be more accurate with Article 1(2) of the Directive. Even though we agree on the full respect of the autonomy of social partners, the references to the voluntary principle should be nuanced to make clear that where there is a request to set up of a EWCs or an alternate ICP, a negotiation must take place according to the Directive and that an ad hoc EWC based on subsidiary requirements is created in the absence of an agreement within 3 years and in other cases (recital 32 and Article 7).

2. Problem definition

- a) Are the problems and the underlying drivers clearly demonstrated and underpinned by evidence including comments and studies submitted by Member States or stakeholders during consultations carried out by the Commission?**
- b) Is any gap in evidence acknowledged?**

a) Are the problems and the underlying drivers clearly demonstrated and underpinned by evidence including comments and studies submitted by Member States or stakeholders during consultations carried out by the Commission?

Yes: BG, CY, DE, DK, EE, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: CZ, ES, LV, SE

Comments:

ES: In general, the problems are clearly demonstrated. However, the information is not clear as whether the problem of a low take-up rate of EWCs (or alternate I&C procedures “ICP”) is due to a shortcoming in effectiveness of the Directive. While there is a statement that says that The take up of EWCs has not been identified as a shortcoming in effectiveness of the legal framework (page 7), the last sentence of the same paragraph states that To the extent that factors contributing to a low take-up rate are linked to the effectiveness of the Directive, such as the possibility for delaying or blocking launch of negotiations of EWC agreement, they are addressed by this initiative.

Therefore, it is clear that the low take-up rate is linked to the legal framework to some extent

and should be considered a problem, if not as a whole (as it follows from the RSB comment - page 55), at least to the extent that is linked to a low rate of requests for their creation due to obstacles as a result of a shortcoming in effectiveness of the legal framework.

As regards the consequences of the unused potential of EWCs for both the employees and the affected companies, it is very well explained (page 8). However, some of them are missing in the problem tree (page 9). For example, as regards consequences for employees, the problem tree refers to lack of timely information and opportunities to provide opinions, missing the ultimate consequence that this has for the employment and working conditions, since they might not be able to anticipate and mitigate the consequences of the decisions.

The underlying drivers are well explained. As regards gender balance composition of EWCs, Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures (which is mentioned in page 27) could be taken into account since it should be logical that gender balance requirements in the composition of management should also apply with the necessary adaptations to employees' representatives.

As regards sanctions, just for information it should be noted that information on Spain (footnote num. 97, page 18) is not updated since the maximum scale for very serious infringements has been raised from 187.515 euros to 225.018 euros by Law 10/2021. Moreover, the public sector contracts regulation penalises non-compliance with labour law, including the law transposing the Directive, by exclusion from public contracts when final sanctions are imposed for very serious infringements.

SE: The problem definition and the underlying drivers do not take sufficient account of competitiveness and national co-determination.

b) Is any gap in evidence acknowledged?

Yes: BG, DE, DK, ES, FI, FR, IE, LU, PL

No: CY, EE, HR, HU, IT, NL, RO

To some extent/partly: CZ, SE, SK

Comments:

CZ: The CZ agrees with the method of the investigation. However, the Czech Republic has doubts as to whether the findings have been correctly appreciated by the Commission. Some of

the issues identified by Parliament and supported by the Commission are not considered necessary by the CZ to address, as the evidence has not shown that this is a real problem that needs to be addressed at the level of EU legislation.

DE: The IA elaborates on the limitations of information received from certain evidence sources and explains in detail the analytical tools used to minimise the effect of these limitations

DK: It would have been relevant to include statistics on how many of the EWCs represent workers in community-scale undertakings in male-dominated sectors vis-à-vis female-dominated sectors. This would have made it easier to assess whether the target of 40% of either gender in EWCs is realistically achievable, or even desirable, for most EWCs. For instance, if the gender ratio in an undertaking is greatly skewed (say, 95% men and 5% women) it would not be balanced to aim for 40% of either gender to be represented in the EWC. In such a case, the EWC would not reflect the gender composition of the undertaking.

ES: The underlying drivers of the low take-up rate of EWCs are based on the Evaluation of 2018. However, given the importance of knowing why there is a low take-up rate, we wonder if this was covered by the support study or more recent surveys.

It is not explained whether EWC agreements have been reached establishing standards below the subsidiary requirements. This information could be relevant for knowing whether these situations, as the case may be, are due to the need to reach an agreement and not waiting for the 3 year-period for the application of the subsidiary requirements established under Article 7(1).

SE: There is an acknowledgement regarding evidence and data limitations in the IA that certain key evidence sources are affected by selection-bias and that there is a risk of inaccurate self-reporting by stakeholders. It is not sufficient that the respective data sources are specified transparently to acknowledge possible biases. Gaps in evidence could have been further considered and explained.

3. Policy objectives

- a) **Coherence of the intervention logic: Do the objectives correspond to the problems?**
- b) **Are the objectives consistent with the broad policy strategies and other relevant policy initiatives?**
- c) **Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?**
- d) **Are objectives linked to measurable monitoring indicators?**

a) Coherence of the intervention logic: Do the objectives correspond to the problems?

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: LV, SE

Comments:

SE: For example, it is not sufficiently substantiated that an introduction of option 2c, regarding the objective of gender balance, would ensure an efficient and effective setting-up of EWCs. On the contrary, based on the evidence and the fact in the IA, such objectives could slow down the setting-up process.

Also, the IA does not clearly demonstrate why the number of disputes would decrease if EWC's litigation costs in disputes were to be borne by undertakings. See for example page 185-188.

b) Are the objectives consistent with the broad policy strategies and other relevant policy initiatives?

Yes: BG, CY, CZ, DE, DK, EE, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: ES, SE

Comments:

ES: In general, yes. However, as stated above, since we consider that low take-up rate of EWC/ICP linked to a shortcoming in effectiveness of the legal framework should have been defined as a problem, it should have been addressed by an objective. In this regard, we appreciate the inclusion of *increased number of employees in Union-scale undertakings who can rely on information and consultation rights under Directive 2009/38*, as an indicator of effectiveness in Policy area 1 (page 43).

The addition of an objective as regards the increasing of EWCs/ICPs or number of employees covered by them would have been helpful as regards the objective of the European pillar of

social rights which underlines, amongst others, as stated in page 1, *that information, consultation and participation of workers and their representatives at different levels play an important role in shaping economic transitions and fostering workplace innovation, in particular with a view to the ongoing twin transitions and the changes in the world of work.*

Additionally, this would align with what is said in page 20: *EWCs' potential should be fully exploited in the current context of the twin digital and green transitions and profound industrial transformations, bearing in mind the need to avoid unnecessary burdens, preserve competitiveness and the ability of undertakings to react to rapidly changing market circumstances, and the need to ensure adequate working conditions.*

SE: For example, non-legislative initiatives could have been further considered in line with the 2018 evaluation.

c) Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: LV, SE

Comments:

NL: Does the Commission expect more EWCs being set up? If yes: how many?

SE: At this point, only a preliminary assessment is possible before hearing how the articles are to be understood.

d) Are objectives linked to measurable monitoring indicators?

Yes: BG, CY, DK, EE, ES, FI, FR, HR, HU, IE, NL, PL, RO, SK

No:

To some extent/partly: CZ, DE, IT, LU, SE

Comments:

CZ: The CZ expresses doubts about the necessity and need to regulate certain issues (for example, the abolition of exceptions in Article 14 or the introduction of an obligation to pay legal costs for multinational enterprises).

DE: Annex 13 sets out measurable monitoring indicators insofar as they exist for the policy options proposed.

ES: However, not only the number of employees covered by EWC/ICP is relevant but also the number of EWC/ICP.

IT: In Annex 13: “MONITORING AND EVALUATION”, table on page 216, section “*Indicators / results / success criteria v. baseline*”, last point: “*Number of judicial actions in Member States to enforce rights under the Directive (Success: to be determined based on qualitative assessment of each case)*”, a clarification is needed, as it is not clear what exactly is meant by the expression “*qualitative assessment of each case*”

SE: At this point, only a preliminary assessment is possible before hearing how the articles are to be understood, see page 53 and annex 13.

4. Subsidiarity & Proportionality

- a) **Is the Union's competence clearly established, and the legal basis?**
- b) **Does the IA analyse whether acting is consistent with the principle of subsidiarity? Are necessity and added value of EU action clearly demonstrated?**
- c) **Does the IA analyse whether acting is consistent with the principle of proportionality?**
- d) **Does the IA contain consideration of action already taken or planned by EU and Member States, if relevant?**

a) **Is the Union's competence clearly established, and the legal basis?**

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SK

No:

To some extent/partly: SE

Comments:

IT: Article 153(1)(e) in conjunction with Article 153(2)(b) TFEU

SE: For example, the proposed policy option 2c, regarding the objective of gender balance, do not consider nor explain the effects in relation to the autonomy of the social partners.

b) **Does the IA analyse whether acting is consistent with the principle of subsidiarity? Are necessity and added value of EU action clearly demonstrated?**

Yes: BG, CY, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, PL, RO, SE, SK

No:

To some extent/partly: CZ, LV, NL

Comments:

FR: The intrinsically cross boarding nature of EWCs is well highlighted.

IT: Common minimum requirements at EU level remain necessary to improve workers' right of information and consultation at transnational level across all Member States. Given the cross-border nature of the undertakings and groups within the scope of the Directive and the transnational nature of the matters subject to transnational information and consultation requirements, individual Member States cannot address the shortcomings of the current

framework in a coherent and effective manner.

NL: Policy area 4, promoting a more effective enforcement of the Directive: The choice of the Commission for option 4b, which entails rules for the Member States on the implementation of the obligation to provide for effective, dissuasive and proportionate sanctions, is not in line with the principle of subsidiarity. The Member States need to be able to implement administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, in coherence with their legal system and in line with the procedures and sanctioning of national employees' representation.

c) Does the IA analyse whether acting is consistent with the principle of proportionality?

Yes: BG, CY, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SK

No:

To some extent/partly: CZ, SE

Comments:

CZ: The Czech Republic considers some of the measures to be disproportionate.

DE: More information could have been provided on the adequacy of the criterion "turnover" that the proposal intends to introduce in the new criteria for determining penalties in the event of failure to comply with the national provisions transposing the directive.

FR: Maintaining the autonomy of companies, for example by ensuring that renegotiation of agreements remains at their initiative (or that of their employees).

IT: The impact assessment compared the policy options as to their proportionality relative to the baseline. The preferred option strikes a balance between the need to take sufficiently robust measures to achieve the policy objectives, reinforcing the framework for social dialogue in companies, while leaving unchanged the nature of the instrument and not altering provisions of the Directive that have proven effective in the past.

SE: See comment above. If EWC's litigation costs in disputes were to be borne by undertakings which could result in a deviation from Swedish labour dispute law. See for example page 185-188.

d) Does the IA contain consideration of action already taken or planned by EU and Member States, if relevant?

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IT, LU, NL, PL, RO

No:

To some extent/partly: IE, LV, SE, SK

Comments:

DE: The IA explains in detail the existing legislative framework at EU level, provides information on national transposition in relevant areas as well as initiatives from the European Parliament.

IT: The Commission published an evaluation of the Directive in 2018. This evaluation also found that the consultation of EWCs is sometimes ineffective. In response the Commission acted through non-legislative actions: continued financial support to social partners' projects, proposing a handbook for EWC practitioners, and engaging in a structured dialogue with Member States on enforcement

SE: See comment above.

5. Policy Options

- a) Does the IA identify all feasible policy options (regulatory and, where appropriate in accordance with the 2003 IIA, non-regulatory) to meet the objectives, including the “no EU action” option, alternatives to regulation and further harmonisation?
- b) Are the most affected subjects/stakeholders identified?
- c) Has the information on how the inputs from end-users and stakeholders informed the policy options been provided?
- d) If options favoured by stakeholders in open consultations are discarded, is thorough examination provided?

a) Does the IA identify all feasible policy options (regulatory and, where appropriate in accordance with the 2003 IIA, non-regulatory) to meet the objectives, including the “no EU action” option, alternatives to regulation and further harmonisation?

Yes: BG, CZ, CY, DE, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SE, SK

No: DK

To some extent/partly: LV

Comments:

DE: The “no EU action” option is also included insofar as it is used as baseline for assessing and comparing policy options.

DK: “No EU action” is not elaborated as an option (only by its impact as base line). Further, in addressing the issue of voluntary agreements only a binding measure has been presented.

b) Are the most affected subjects/stakeholders identified?

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SK

No:

To some extent/partly: SE

Comments:

SE: The view of, and potential effect on, the national social partners could have been further considered.

c) Has the information on how the inputs from end-users and stakeholders informed the

policy options been provided?

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, NL, PL, RO, SE, SK

No:

To some extent/partly: LU

Comments:

IT: see annex 2

d) If options favoured by stakeholders in open consultations are discarded, is thorough examination provided?

Yes: BG, CY, DE, EE, FI, HR, HU, IE, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: CZ, ES, FR, SE

Comments:

CZ: The Czech Republic considers that the Commission has not always accurately assessed the information provided. In some cases, respondents' answers do not demonstrate the alleged problem.

DE: Such examination is contained in particular in Annex 11.

DK: Not applicable as no public consultation was conducted.

ES: - As regards the discarded option on reducing the negotiation deadline for the application of the subsidiary requirements (page 156) from 3 years to 18 months as suggested by the EP, even though the views of stakeholders are provided, data on the actual average length of the negotiation timeframe is missing. This could help making an evidence-based assessment as to whether the current timeframe is adequate or might lead to abuse.

- The same could be said as regards the discarded option on the Requirement to consult EWCs before the end of the information and consultation procedure at national or local level (page 159), where, apart from stakeholders' views, it would have been helpful to have more information on the actual sequencing of information and consultation at national and transnational level in EWCs or national laws.

- Additionally, as regards the option on gender balance objective of EWC (option 2c), it is not included among the discarded options, though the option presented is not as ambitious as the EP

proposal. Even though both options require the central management and the SNB to lay down the necessary arrangements for attaining the objective of gender balance in EWC members, the Commission proposal (which reflects option 2c of the IA) limits this obligation by adding the expression “as far as possible, and without prejudice to national laws on electing workers representatives”. Therefore, it is not accurate to say that the EP proposal is equal to option 2c as it follows from the box in page 27, and this should have been examined among the discarded options.

IT: see annex 11

SE: See comment above.

6. Analysis of impacts

- a) Are the positive and negative impacts of each policy option and for the ‘no EU action’ option, including the direct and indirect environmental, economic, and social impacts, clearly considered?
- b) Are impacts of different policy options expressed in a comparable format and compared against a clear set of criteria?
- c) Are impacts on the main groups of affected subjects/stakeholders clearly analysed, for each policy option, especially for the preferred option?

a) Are the positive and negative impacts of each policy option and for the ‘no EU action’ option, including the direct and indirect environmental, economic, and social impacts, clearly considered?

Yes: BG, CY, DE, DK, EE, FR, HR, HU, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: CZ, ES, FI, IE, LV, SE

Comments:

DE: The impacts are considered; where no impacts are expected, the IA explains the reasons for this assessment (Annex 12 section 1). However, more detail could have been provided on impacts to be expected from including the turnover criterion in the list of criteria to be considered when setting penalties for non-compliance.

ES: When analysing the economic impact of recurrent adjustment costs for undertakings with EWC -costs of operating EWCs- under policy option 3B, it is stated that this policy option would bring more clarity about the concept of transnational matters by amending the corresponding article in the operative part of the recast Directive. As a result, the risks for disputes and the need to involve legal experts should decrease, although it is not possible to monetise or quantify this impact (page 184). However, this impossibility to monetise or quantify the impact is somehow inconsistent with the following sentence included in the baseline column of the same page: According to the 2016 ICF study, 9 out of 22 consulted companies sought legal advice on the concept of transnational matters, for average costs of €15,000. Although the indicated amount might not be representative and might not be inclusive of all the potential saving linked to this result of policy option 3B, it could be adequate to include these calculations in the corresponding column.

FI: The IA does not take into account the scenario in which the amendment to the concept of transnational matters (policy option 3b) would not clarify the scope of EWC's information and consultation rights.

IT: see annex 12

SE: As with policy-option 3c, a more in-depth discussion on the potential impacts on competitiveness regarding policy option 3b could have been performed.

b) Are impacts of different policy options expressed in a comparable format and compared against a clear set of criteria?

Yes: BG, CY, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SE, SK

No:

To some extent/partly: CZ, LV

Comments:

DE: The assessment in section 6 and Annex 12 of the IA appear to be sufficiently structured and to contain sufficient detail on the impacts, possibly with the exception of the amendments concerning penalties.

IT: see annex 12

c) Are impacts on the main groups of affected subjects/stakeholders clearly analysed, for each policy option, especially for the preferred option?

Yes: BG, CY, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: CZ, LV, SE

Comments:

IT: see annex 12

SE: See comments above regarding the objective of gender balance.

<p>7. Where relevant, are specific impacts¹ clearly presented, both in qualitative and quantified terms, for each option in a comparable manner and assessed on the basis of appropriate data and evidence?</p>
<p><input type="checkbox"/> a) <u>Economic impacts</u></p>
<p><input type="checkbox"/> aa) Impacts on competition</p>
<p>Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO No: To some extent/partly: SE Comments: IT: see annex 12 SE: Potentially additional costs for undertakings related to disputes (i.e., that EWC's litigation costs in disputes were to be borne by undertakings) are not clearly demonstrated.</p>
<p><input type="checkbox"/> ab) Impacts on consumers</p>
<p>Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IT, NL, PL, RO No: IE To some extent/partly: Comments: DE: The IA explains in sufficient detail why no impact on consumers is expected (Annex 12 section 1). IT: see annex 12</p>
<p><input type="checkbox"/> ac) Impacts on competitiveness</p>
<p>Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IT, LU, NL, PL, RO No: To some extent/partly: SE Comments:</p>

¹ For a detailed list of possible impacts see section 8 of the Commission's Impact Assessment Guidelines (footnote 2), see http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

IT: see annex 12

SE: Potentially additional costs for undertakings related to disputes (i.e., that EWC's litigation costs in disputes were to be borne by undertakings) are not clearly demonstrated.

ad) Impacts on Small and Medium Enterprises including micro-enterprises²

Yes: BG, CY, CZ, DE, EE, ES, FI, FR, HR, IT, LV, NL, PL, RO

No: IE

To some extent/partly:

Comments:

DK: Not relevant given that the proposal targets union-scale undertakings.

DE: The IA explains in sufficient detail why no impact on SMEs is expected due to the threshold for application of the directive.

IT: see annex 12

SE: Not relevant.

² Impact assessments should assess SME impacts, and should also analyse the case for allowing (a) exemptions for micro-enterprises with <10 employees and <€2 mio turnover or balance sheet, and (b) lighter regimes for SMEs. See http://ec.europa.eu/governance/impact/key_docs/docs/meg_guidelines.pdf.

b) Social impacts³

(for example impacts on employment and labour markets, social inclusion and protection of particular groups, public health and safety, etc.)

Yes: BG, CY, CZ, DE, DK, EE, FI, FR, HU, IT, NL, PL, RO, SK

No:

To some extent/partly: ES, IE, LU, LV, SE

Comments:

ES: Impacts on employment of option 3b are considered inconclusive given the interplay between employee involvement at national and transnational level and the non-binding nature of EWCs' opinions (page 198). However, the non-binding nature of EWC's opinions does not seem to be relevant, since the core nature of consultation procedures both at national and transnational levels is precisely that the opinions of employees' representatives are non-binding, but this does not affect the positive role of the consultation for anticipating and alleviating possible redundancies and retaining jobs.

IT: see annex 12

SE: See comments above. For example, the consequences for the undertakings in scope could have been further discussed and analysed.

c) Environmental impacts

(for example impacts on climate, air and water quality, use of the renewable or non-renewable resources, the likelihood or scale of environmental risks, use of energy etc.)

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, HU, IT, NL, PL, RO, SK

No: IE

To some extent/partly: DK, FR, LV

Comments:

DE: The IA explains in sufficient detail why no impact on the environment is expected (Annex 12 section 1).

FR: The absence of environmental issues from the list of matters on which the EWC must be consulted makes it difficult to monitor the environmental impact of company activities at

³ See also Guidance for assessing Social Impacts within the Commission Impact Assessment system (http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm)

European level.

IT: See annex 12

SE: Not relevant.

d) Regulatory costs (including administrative burdens and compliance costs, especially for businesses or business operators)

Yes: BG, CY, CZ, DE, DK, EE, FI, HU, IE, IT, PL, RO

No:

To some extent/partly: ES, FR, LU, LV, NL, SE

Comments:

ES: As regards compliance costs of Policy option 2b (page 170), it is said that the legal clarification that central management have to bear reasonable costs of legal advice only exists in NL and it is therefore possible that such clarification at EU-level would lead to additional requests for legal advice from employees' representatives in the future. However, the lack of data does not allow for a precise estimation of these costs. In this case, it would have been helpful to have some more data on potential legal costs using the experience in NL or an estimate of the number of legal disputes. Even though in page 175 it is said that legal disputes in the policy area are not frequent, this assessment is quite vague and could have been brought to page 170.

FR: Even if average costs are clearly indicated, this does not necessarily allow companies whose sales are far from this average to project their costs.

IT: See annex 12

NL: Costs for union-scale undertakings:

Undertakings with a voluntary agreement might face costs to set up an EWC. Since those undertakings already have a pre-directive EWC, it will probably be relatively uncomplicated to transform the existing agreement into a new agreement. The costs will then be significantly lower than the costs for establishing an EWC "from scratch", the EUR 148.000 as mentioned by the Commission.

Undertakings that have an EWC agreement which needs to be adapted to comply with the requirements of the revised directive, will use the regular renegotiation procedure that most EWCs have built in in their EWC agreements. When this is not possible within the two years'

adaptation term, the term of regular renegotiation will probably be advanced, and a new term will start. This means that it is not a (full) additional renegotiation. This will lower the costs.

SE: See comments above.

e) Impacts on individual Member States / regional or local authorities

Yes: BG, CY, CZ, DK, ES, FI, IT, NL, PL, RO, SK

No: IE

To some extent/partly: DE, EE, FR, LU

Comments:

EE: The IA provides an overview of Member States' transposition of the EWC directive and general information about where EWC's are mainly located. However, additional country-specific information would be beneficial. For example, according to IA, EWC's are mainly located in 7 Member States. At the same time, it remains unclear, how much are employees in other Member States impacted because of an EWC representation (even if there may be one or no EWC body established in some Member States, then the employees might still be represented by an EWC).

DE: The IA provides information on which/how many Members States will have to amend their laws.

IT: See annex 12

f) Impacts on third countries/ international aspects

Yes: BG, CY, CZ, DE, DK, ES, FI, IT, NL, RO

No: EE, IE, PL

To some extent/partly:

Comments:

DE: The IA describes the extent to which the directive and the proposed amendment will apply to companies located outside the EU if they operate and employ workforce in the EU.

EE: We couldn't detect specific information regarding impacts on third countries/international aspects.

IT: See annex 12

g) Impacts on fundamental rights

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IT, LU, NL, PL, RO, SK

No:

To some extent/partly: IE, SE

Comments:

ES: As regards the impact on the principles of non-discrimination and of equality between men and women of option 2c (page 180), the positive benefits could be better explained based on evidence or studies of the European Agency for Gender Equality. Additionally, it is not clear enough why the impact is considered as moderate and not significant. It might be because the attainment of the gender balance objective is not binding. If this is the case, it would need to be further explained. Moreover, no reference has been made to article 20 of the revised European Social Charter which recognises the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

IT: See annex 12

SE: See comment to question 4 a) above.

8. Opinion of the Impact Assessment Board⁴ (IAB) of the Commission

a) Are all comments and recommendations of the IAB (as presented in its latest opinion) considered in the Impact Assessment report?

Yes: BG, CY, DK, ES, FI, FR, IE, RO

No:

To some extent/partly: CZ, DE, LU, NL, SE

Comments:

EE: We couldn't find the opinion of the IAB from the link on footnote.

NL: The RSB requests an improvement: the report should make clear from the outset that the increase in the uptake of EWCs does not motivate the initiative (p. 55, point 3). In its reply, the Commission indicates that it has been explicitly clarified that the policy objectives do not include an increased creation of EWCs.

On p. 4 of the IA, evaluation of the Directive, the low creation rate of EWCs is indicated as a challenge. In chapter 3 and 4 of the IA, the Commission does not clarify why the increase of the number of EWCs is not an objective of the proposal.

SE: See comments above about the objective of gender balance and about additional costs for undertakings related to disputes.

⁴ Available by searching by Commission DG and date of publication at the following website http://ec.europa.eu/governance/impact/ia_carried_out/cia_2012_en.htm

9. Monitoring, transposition, compliance

- a) Will the proposed indicators enable the intended effects to be measured? Are those responsible for monitoring (and compliance) identified?
- b) Are operational monitoring and evaluation arrangements proposed?
- c) Does the IA contain information on the impact of the transposition deadline proposed in the context of MS legislative processes?

a) Will the proposed indicators enable the intended effects to be measured? Are those responsible for monitoring (and compliance) identified?

Yes: BG, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IT, LU, NL, PL, RO

No:

To some extent/partly: IE, SE

Comments:

DE: The indicators seem to be suitable. However, some quantitative developments in the areas addressed by the proposal, e.g. the right to switch from voluntary agreements to the regime of the directive, will depend on a number of factors that cannot directly be addressed by the directive, e.g. choices made by employees.

ES: However, as stated in sections 1 and 2 above, it could be interesting to take account of the number of new EWC/ICP or at least of new requests for creation of EWC/ICP since the improvement of the effectiveness of the legal framework could have a positive impact on this.

SE: See page 53 and Annex 13

b) Are operational monitoring and evaluation arrangements proposed?

Yes: BG, CY, CZ, DK, EE, ES, FI, FR, IT, LU, NL, PL, RO, SE

No: HU

To some extent/partly: DE, IE

Comments:

DE: Certain general evaluation arrangements are mentioned, e.g. transposition checks or potential ad hoc surveys and studies.

c) Does the IA contain information on the impact of the transposition deadline proposed in the context of MS legislative processes?

Yes: BG, CY, DK, EE, FI, HU, IT, PL, RO, SK

No: CZ, DE, ES, LV, NL

To some extent/partly: FR, LU, SE

Comments:

CZ: The Czech Republic lacks information on the impact of the transposition deadline proposed in the context of MS legislative processes.

DE: The IA seems to only contain general assessments on transposition costs that do not directly address the short 1-year deadline in the proposal. The IA seems to be based on the assumption of a 2-year transposition deadline (p. 102) and to take into account the short transposition period of 1 year in the proposal.

ES: If we understood correctly, there is no specific information on the reason behind the proposed transposition deadline and its impact. Only page 53 says something as regards the monitoring: Taking into account a two-year transposition period and another transitional regime for the adaptation of existing agreements by the parties, the initiative could be evaluated 7 years after it enters into force. The two-year transposition references in the IA report contrast with the one-year transposition period set by article 2.1 of the proposal for the Directive.

IT: see annex 8,

10. Methodology

a) Is an appropriate methodology applied? Are the methodological choices, limitations and uncertainties made clear?

Yes: BG, CY, DE, DK, EE, ES, FI, FR, HU, IE, IT, LU, NL, PL, RO, SE

No:

To some extent/partly: CZ, SK

Comments:

Summary

Main issues regarding the Commission IA proposed to be discussed during the WP meeting when examining the Commission's IA:

CZ Summary:

The CZ agrees with the analytical methods used for the purposes of this impact assessment. However, the Czech Republic has doubts as to whether the findings have been correctly assessed by the Commission. Some of the changes proposed by Parliament and supported by the Commission are not considered necessary by the CZ to address, as the evidence has not shown that this is a real problem that needs to be addressed at the level of EU legislation.

The social partners themselves state that the alleged problems are not so common in practice. For example, the Commission notes (page 5) that shortcomings persist and that information and consultation of employees at transnational level is not always effective under the current EWC framework. At the same time, however, it acknowledges that the extent of the problem cannot be easily identified objectively, as the operation of transnational information and consultation depends on uncertain - often behavioural - variables specific to each company. The CZ considers that the Commission has not sufficiently demonstrated the need for legislative change.

The Czech Republic has similar doubts about the new obligation for employers to pay legal aid costs. Some indications about the lack of resources stem from a previous survey (in 2018), in which ca. 17 % of those EWC representatives who had experienced a dispute stated that the lack of resources was a reason for not bringing a dispute before a court. Nevertheless, mostly other reasons were given for not initiating a legal case. Another group of respondents (only 14.1%) said that lack of funds prevented access to court. A significantly higher number of respondents were concerned about the risk of damaging mutual trust with management (28.1%), uncertain outcomes (25%), and lengthy court proceedings (20.3%). Thus, the need for an established obligation to pay legal costs is not considered to be demonstrated by the C.

The Commission further notes that, given the low level of litigation at national level, no cases have yet been referred to the Court of Justice of the European Union for a preliminary ruling in relation to the 2009 Directive. The Czech Republic, unlike the Commission, considers the

situation where there is no need to go to court to be positive, as it shows that in practice the application of the provisions of the EWC Directive does not cause interpretative difficulties.

The Czech Republic does not consider that there is a proven need to revise Article 14 of the Directive. Some trade unions and EWC representatives express reservations about the need to renegotiate existing agreements. Employers' organisations favour the retention of exemptions and stress the autonomy of the parties and the need to maintain well-functioning information and consultation mechanisms. The Commission notes that the available evidence shows that the majority of Article 14 agreements (approximately 16 out of 28) are already in line with the existing Directive. A revision of the Directive is likely to require renegotiation to adapt the agreement to the new EU requirements. The Commission acknowledges (page 34) that there is no convincing evidence that the implementation of voluntary agreements would be less effective than EWC agreements.

DE Summary:

Main issues regarding the Commission IA proposed to be discussed during the WP meeting when examining the Commission's IA:

1. Regarding questions 4 c) and 6 a) see comments above
2. Regarding question 9 c) see comment above

DK Summary:

1. The impact assessment does not include statistics on how many of the EWCs represent workers in community-scale undertakings in male-dominated sectors vis-à-vis female-dominated sectors. This would have made it easier to assess whether the target of 40% of either gender in EWCs is realistically achievable, or even desirable, for most EWCs.
2. The impact assessment does not elaborate "no EU action" as an option.

EE Summary:

1. We see that the IA thoroughly reflects the main impacts.
2. The IA provides an overview of Member States' transposition of the EWC directive and general information about where EWC's are mainly located. However, additional country-specific information would be beneficial. For example, according to IA, EWC's are mainly located in 7 Member States. At the same time, it remains unclear, how much are employees in other Member States impacted because of an EWC representation (even if there may be one or no EWC body established in some Member States, then the employees might still be represented by an EWC).

ES Summary:

1. Some positive impacts of certain options may have been underestimated (in some cases due to alleged lack of evidence), such as on equality between men and women (option 2c), employment (option 3b) and reduction of litigation costs (option 3b).
2. Number of EWCs/ICPs or number of requests for their creation could have been considered as a problem, objective and an indicator of success in the monitoring, since they are partly linked to a shortcoming in the effectiveness of the legal framework.
3. More data could have been provided as regards some discarded options.
4. Option 2c on gender balance objectives does not completely align with EP proposal, contrary to what it seems to follow from the IA and to the fact that EP proposal has not been considered under the discarded options. Additionally, when analysing the impacts of option 2c, it is not clear whether the “as far as possible” expression that limits the actual obligation to attain the gender balance objective is taken into consideration.
5. There is no reference nor any justification to the limited transposition deadline to 1 year established by proposal.

FI Summary:

1. Whether the proposed amendment to the concept of transnational matters will provide legal clarity and effective process for information and consultation as described in the IA?
2. The impact of proposed transitional provisions on existing contracts.

FR Summary:

1. Lack of emphasis on France's position on environmental issues (a single sentence, without mentioning the intrinsically transnational nature of the question) despite an insistence on the importance of this topic.
2. Errors and inaccuracies regarding several aspects of French legislation that do not correspond to the way it really works (in particular with regard to legal costs and training for EWC members). Indeed, the impact assessment states (page 140 "EWC resources" paragraph) that "Some Member States have introduced a legal exemption from legal costs for EWCs", including France, which is not the case, as there is no derogation exempting them from these costs. Furthermore, the impact study indicates (page 154) that, with regard to taking training into account, "Four Member States (DE, FR, IE, PL) make general reference to 'costs' to be covered in addition to salary", whereas French legislation (Articles L. 2344-9 L. 2342-10-2) clearly states that EWC members "benefit, without loss of salary, from the training necessary for the exercise of their mandate".
3. Need to ensure that measures taken to redefine transnational issues are consistent with the chosen option (option 3b), which implies that they are not significantly extended.
4. As the study notes, the possibility for a judge to suspend a management decision in the event of a breach of information and consultation rights already exists in France, despite the absence of a specific injunction right for EWCs. The creation of such a right would entail far-reaching

changes to national legislation. This would run the risk of clogging up the courts and bringing a company's activities to a standstill.

LV Summary

1. Too short transposition period. Member States may not have enough time to go through the national legislative process, which is time consuming and differs from country to country.
2. The proposed model of sanctions based on the turnover of the undertaking is complicated and may cause certain concerns.

NL Summary

1. Explanation as to why the increase of the number of EWCs is not an objective
2. Subsidiarity in the choice of access to justice and sanctions
3. High estimation of costs for undertakings when renegotiating an existing agreement and when changing from a voluntary agreement to an EWC agreement under the directive

SK Summary

We would like to ask about the frequency of updates when it comes to the referred database www.ewcdb.eu

-is it updated by the EC based on statistics from national correspondents or information from the European or national social partners?

-some information does not seem to be correct, such as: sorting of EWsC according to the location of the central management / Country of headquarter.

According to the available ETUI statistics from 2023 on the website www.ewcdb.eu, there is 1 EWsC (active as of 31.12.2013) operating in Slovakia (with central management based in SK) called HTC Investments EWC. However, according to our findings, this EWC is no longer operating, and it was dissolved in 2018/2019.