



Council of the European Union  
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WK 3852/2024 ADD 1 REV 1

**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
N° Cion doc.:	5837/24 + 5837/24 ADD 1 + 5837/24 ADD 2 + 5837/24 ADD 3 + 5837/24 ADD 4 + 5837/24 ADD 5
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 to the annex

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Delegations will find attached the comments received up to the text of the annex proposed in document 5837/24 ADD1. *With this REV1 the comments of PL were added.*

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

From: AT, DE, ES, FI, FR, NL, PL, RO

Updated: 27/03/2024 11:25

Commission proposal	Drafting Suggestions and Comments
ANNEX	
to the	
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	
{SEC(2024) 35 final} - {SWD(2024) 9 final} - {SWD(2024) 10 final} - {SWD(2024) 11 final}	
<u>ANNEX</u>	
Annex I to Directive 2009/38/EC is amended as follows:	
(1) point 1 is amended as follows:	

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(a) the introductory sentence is replaced by the following:	
<p>“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:”;</p>	
	<p>FR_Annex  <b>(Drafting Suggestions):</b>                      (a)"The competence of the European Works Council shall be determined in accordance with Article 1(3).                      The information provided to the European Works Council relates in particular to the structure, economic and financial situation, probable development of the activities, production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall cover, in particular, the situation and probable trend of employment, investments, substantial changes in organization, the introduction of new working methods or production processes, transfers of production, mergers, downsizing or closures of undertakings, establishments or important parts thereof, and</p>

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	<p>collective redundancies, <b>particularly with regard to the environmental consequences of such decisions.</b>"</p> <p>FR_Annex <b>(Comments):</b></p> <p>The problem concerns the lack of any possibility for EWCs to be informed and consulted on environmental issues, even though these issues, by their intrinsic transnational nature, are of definite interest to them.</p> <p>Currently, article L. 2343-2 lists the scope of EWC information, and contains no reference to environmental issues, as does 1. A) of the subsidiary requirements of Annex 1 of the 2009 directive.</p> <p>To remedy this difficulty, France is proposing to amend the definition of the scope of EWC information/consultation, drawing on the French definition in Article L. 2312-8 of the Labor Code, which states: "I. - The task of the social and economic committee is to ensure that employees are able to express their views collectively, so that their interests are constantly taken into account in decisions concerning the management and economic and financial development of the company, the organization of work, vocational training and production techniques,</p>

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	particularly with regard to the environmental consequences of these decisions."
(b) in point (a), the third subparagraph is replaced by the following:	
<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>ES_Annex  <b>(Drafting Suggestions):</b>                      “The consultation shall be conducted in such a way that the employees’ representatives can meet with the central management or any more appropriate level of management. The employees’ representatives shall be entitled to a reasoned written response to any opinion they might express prior to the adoption of the decision on the measures in question, provided their opinion was expressed within a reasonable time. <b>The duration of the time given to employees’ representatives to express their opinion must be sufficient to guarantee the effective exercise of the information and consultation rights under this Directive;</b>”;</p> <p>ES_Annex  <b>(Comments):</b>                      In order to guarantee the effectiveness of the consultation process, employees’ representatives must have enough time to become acquainted with the issue and be able to express an informed opinion. Although</p>

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	<p>establishing a fixed period might be discarded due to the diversity of different situations, requiring that this period is adequate in accordance to the objective of the consultation process seems necessary.</p>
(c) the following point (dd) is inserted after point (d):	
<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>DE_Annex <b>(Comments):</b> The added provision on gender balance requires further analysis.</p> <p>ES_Annex <b>(Drafting Suggestions):</b> “(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>ES_Annex <b>(Comments):</b> Conditioning the objective of attaining gender balance in the composition of the EWCs by introducing the limit of “as far as possible” might entail a lack of real efforts to achieve this objective. The expression “as far as</p>

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	<p>possible” is too indeterminate and broad. For all these reasons, its removal is proposed.</p> <p>FI Annex <b>(Comments):</b></p> <p>We support the objective of gender balance. However, we consider that there should be flexibility to take into account national circumstances and systems, for example gender distribution in different industries. There might be also legal and practical restrictions on how employers can interfere in the election of workers' representatives.</p> <p>PL Annex <b>(Comments):</b></p> <p>We would like to point out that achieving gender balance in the presidium (select committee members) may be particularly difficult. Pursuant to Art. 25 section 3 of the Polish Act on European Works Councils, the presidium consists of the chairman and no more than four members; members of the presidium should be based in different Member States. The relevant case law of the Court of Justice of the EU seems helpful here, according to which the 40% target applies provided it is legally and effectively enforceable and is without prejudice to national rules on the election of employee representatives</p> <p>RO Annex</p>

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	<p><b>(Drafting Suggestions):</b></p> <p>(dd) as far as possible, <i>and without prejudice to national laws on electing workers representatives</i>, women and men shall each comprise at least 40 % of European Works Council members, <i>and where applicable, at least 40 % of select committee members</i>;</p> <p>RO_Annex  <b>(Comments):</b>                      To ensure consistency with art. 1 (4)(b).</p>
(2) point 2 is replaced by the following:	
<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 undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.”;</p>	<p>AT_Annex  <b>(Drafting Suggestions):</b></p> <p>2. The European Works Council shall have the right to meet with the central management <del>twice</del> <b>at least once</b> 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>AT_Annex</p>

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	<p><b>(Comments):</b></p> <p>For AT the existing regulation to enable at least one meeting per year is sufficient.</p> <p>NL_Annex</p> <p><b>(Drafting Suggestions):</b></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 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>NL_Annex</p> <p><b>(Comments):</b></p> <ul style="list-style-type: none"><li>• Art. 6 requires that an EWC agreement contains “the format of the meetings”. It is logical to also have a rule for the format in the subsidiary requirements.</li><li>• For meaningful transnational information and consultation, it is important that employees’ representatives from different countries can meet physically to bridge differences in culture, language and</li></ul>

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	<p>industrial relations background and to also meet Central Management in person.</p> <ul style="list-style-type: none"> <li>• Meetings in person should therefore not be deleted completely in the pursue of more efficiency. We therefore propose to provide for a lower limit of at least one face-to-face meeting per year.</li> </ul>
<p>(3) in point 3, the first and second subparagraphs are replaced by the following:</p>	
<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</p>	

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<p>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>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.”;</p>	<p>RO_Annex (Comments): In order to ensure legal certainty, the expression "can reasonably be expected to" should be clarified.</p>
<p>(4) in point 5, the following sentences are added:</p>	<p>AT_Annex (Comments): EWCs have the right to consult experts, this also includes representatives of Union-level trade union organisations. Therefore it is not necessary to mention these representatives explicitly in point 5.</p>
<p>“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</p>	

Commission proposal	Drafting Suggestions and Comments
Works Council and meetings with the central management in an advisory capacity. The central management shall be informed in advance.”;	
(5) point 6 is amended as follows:	
(a) the following subparagraph is inserted between the third and fourth subparagraphs:	
<p>“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.”;</p>	<p>DE Annex (Drafting Suggestions):</p> <p>“The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings. [...]”;</p> <p>DE Annex (Comments):</p> <p>The notification obligation should be deleted. It is likely that the EWC will not be able to calculate the costs of legal assistance in advance. The central management’s interests are sufficiently protected by the fact that the costs for legal advice or representation are clearly limited to necessary and reasonable costs.</p>

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	<p>FI Annex (Drafting Suggestions):</p> <p>“The operating expenses of the European Works Council shall include reasonable costs of legal assistance. Operating expenses shall be notified to central management before they are incurred.”;</p> <p>FI Annex (Comments):</p> <p>We are critical of requirements that increase the obligations on companies to cover costs. We propose that the operating expenses of the European Works Council would include only the reasonable costs of legal assistance. There may be other different arrangements in different countries to cover the costs of legal representation and proceedings.</p> <p>RO Annex (Drafting Suggestions):</p> <p>“The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings. Operating expenses shall be notified [...] <i>and approved by the central management</i> before they are incurred.</p> <p>RO Annex</p>

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	<p><b>(Comments):</b></p> <p>The management should also approve these expenses, not just be notified before they are incurred.</p> <p>Consideration should be given to management's justified refusal to approve some expenses considered unreasonable.</p>
(b) the fourth subparagraph is replaced by the following:	
“In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council.”	
	<p>AT_Annex <b>(Drafting Suggestions):</b></p> <p style="text-align: right;"><b>End</b></p> <p>AT_Annex <b>(Comments):</b></p> <p style="text-align: right;"><b>End</b></p> <p>DE_Annex <b>(Drafting Suggestions):</b></p> <p style="text-align: right;"><b>End</b></p>

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	<p>DE_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p> <p>ES_Annex (Drafting Suggestions):</p> <p style="text-align: right;"><b>End</b></p> <p>ES_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p> <p>FI_Annex (Drafting Suggestions):</p> <p style="text-align: right;"><b>End</b></p> <p>FI_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p> <p>FR_Annex (Drafting Suggestions):</p> <p style="text-align: right;"><b>End</b></p> <p>FR_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p>

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	<p>NL_Annex (Drafting Suggestions):</p> <p style="text-align: right;"><b>End</b></p> <p>NL_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p> <p>PL_Annex (Drafting Suggestions):</p> <p style="text-align: right;"><b>End</b></p> <p>PL_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p> <p>RO_Annex (Drafting Suggestions):</p> <p style="text-align: right;"><b>End</b></p> <p>RO_Annex (Comments):</p> <p style="text-align: right;"><b>End</b></p>