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General Secretariat

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2024/0006 (COD)**

Brussels, 27 March 2024

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WORKING DOCUMENT

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

Delegations will find attached the comments received to the text of the proposal contained in document 5837/24. *With this REV1 the comments of PL and SK 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, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IT, NL, PL, RO, SE, SK

Updated: 27/03/2024 11:10

	Commission proposal	Drafting Suggestions and Comments
1.	General comments	<p>CZ (Comments): CZ comments/suggestions are preliminary. CZ retains general scrutiny reservation and parliamentary scrutiny reservation. Further amendments are expected to be made during the course of the negotiation.</p> <p>DE (Comments): DE maintains its general scrutiny reservation. The following comments and drafting suggestions are the result of a first preliminary assessment of the amendments proposed by the European Commission. Modifications or further comments and drafting suggestions might become necessary after further analysis of the proposal.</p> <p>EE (Comments): We welcome the aim to improve the effectiveness of information and consultation at transnational level, ensure sufficient legal clarity and tackle shortcomings of the Directive.</p>

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		<p>However, the necessity of some of the amendments remains unclear to us and some amendments seem to be unnecessarily detailed, especially amendments regarding remedies that don't seem to sufficiently take into consideration the differences among Member States systems and intervene with procedural autonomy of Member States.</p> <p>SE (Comments): SE finds that there are still ambiguities in the proposal, therefore additional amendments may come at a later stage. Moreover, at this stage we focus on the operative part of the text.</p> <p>SK (Comments): The Slovak Republic supports the aim of the Directive and agrees that clear and uniform rules at the EU level are needed to improve the effectiveness of the current legislative framework for informing and consulting employees at the transnational level. In the line and spirit of the Council Conclusions on more democracy at work and green collective bargaining for decent work and sustainable and inclusive growth –approved in November last year (in particular recitals 22 and 23), we understand that the green and digital transitions, together with the other transformations</p>

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		<p>affecting the world of work, such as demographic changes and migration, make it necessary to take further steps to strengthen democracy at work.</p> <p>Existing EU law on information and consultation of workers needs to remain fit-for-purpose and consider the recent changes in the world of work.</p> <p>According to our statistical findings there is no EWC in the Slovak Republic established according to our national legislation, however several EWCs operate under jurisdiction of other EU Member States or even a third country.</p>
2.		
3.	2024/0006 (COD)	
4.		
5.	Proposal for a	
6.		
7.	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	
8.		

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	Commission proposal	Drafting Suggestions and Comments
9.	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	
10.		
11.	(Text with EEA relevance)	
12.		
13.	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
14.		
15.	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,	
16.		
17.	Having regard to the proposal from the European Commission,	
18.		
19.	After transmission of the draft legislative act to the national parliaments,	
20.		

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	Commission proposal	Drafting Suggestions and Comments
21.	Having regard to the opinion of the European Economic and Social Committee ¹ ,	
22.		
23.	Having regard to the opinion of the Committee of the Regions ² ,	
24.		
25.	Acting in accordance with the ordinary legislative procedure,	
26.		
27.	Whereas:	
28.		
29.	(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.	
30.		

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

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	Commission proposal	Drafting Suggestions and Comments
31.	(2) With respect to transnational matters, Directive 2009/38/EC of the European Parliament and of the Council ³ 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.	
32.		
33.	(3) While an evaluation of Directive 2009/38/EC published in 2018 ⁴ 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.	
34.		
35.	(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	

³ 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: <http://data.europa.eu/eli/dir/2009/38/oj>).

⁴ [COM\(2018\) 292 final](#).

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	<p>recommendations on a revision of Directive 2009/38/EC⁵ 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 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>	
36.		
37.	<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 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</p>	<p>CZ (Drafting Suggestions): [...] CZ (Comments): CZ considers the current definition appropriate and opposes proposed legal presumption. DE (Drafting Suggestions):</p>

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

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	<p>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>“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.”</p> <p>DE (Comments): A clarification on the interpretation of the term “can reasonably be expected” should be added in recital 5. This could use elements on the interpretation of the term that is used in Directive 2019/771 (cf. drafting suggestion).</p> <p>DK (Comments): Many member states find the concept of ‘reasonably be expected’ unclear. To clarify the concept, we suggest to consider expanding on the ‘chain of events’ concept, which the Commission expounded at the SQWP on the 26th of February, in the recital. Indeed, the question of whether a measure can be ‘reasonably expected to affect workers in another Member State’ may be more readily approached by asking whether the effect on workers can be traced through a chain of events.</p>

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		<p>We would also welcome, if the recital mentioned other examples of transnational matters than lay-offs and redundancies.</p> <p>ES (Drafting Suggestions):</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 considered by management can reasonably be expected, according to objective criteria, 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 but not limited to 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</p>

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		<p>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>ES (Comments):</p> <p>As the Commission explained, the expression “can reasonably be expected” is linked to objective criteria. In order for this link between both concepts to be taken into account when interpreting this Directive, it is important that the concept “objective criteria” is included.</p> <p>Moreover, regarding the last sentence of this recital, the following two modifications are proposed:</p> <ul style="list-style-type: none">- Including the expression “but not limited to” when identifying the possible situations that fall under transnational matters of article 1(4). This is due to the need of clarifying that the list of examples is merely illustrative, avoiding possible misinterpretations of the list being a comprehensive one.

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		<p>- Deleting the end of the sentence as its content might lead to interpretations that impose additional requirements to the impact of consequences.</p> <p>FI (Comments): We are critical of the ambiguous and broad concept of transnational matters. We wish to have more examples to clarify the proposed concept of transnational matters.</p> <p>FR (Drafting Suggestions): (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 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</p>

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		<p>those measures can reasonably be expected to substantially 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 substantially 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>FR (Comments): The amendments proposed in this recital stem from the proposals made by France in line 99, for point b) of Article 1(4) of the Directive.</p> <p>RO (Comments): It clarifies, to a certain extent, the concept of transnationality (by taking into account cases where management adopts measures that are explicitly aimed at one Member State, but may have</p>

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		<p>consequences for employees in another Member State), but does not ensure legal certainty. To this end, the expression "can reasonably be expected to" should be clarified, possibly by listing more concrete elements, which exemplify, without limiting.</p> <p>SE (Drafting Suggestions):</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 considered by management can reasonably be expected to substantially affect employees in more than one Member State, but also cases where such measures can reasonably be expected to substantially affect workers in only one Member State, but the consequences of those measures can reasonably be expected to substantially 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</p>

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		<p>nevertheless can reasonably be expected to have consequences substantially 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>SE (Comments): Please note our amendments and comment to Article 1(4).</p>
38.		
39.	<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>	
40.		
41.	<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</p>	<p>CZ (Drafting Suggestions): Members of special negotiating bodies may need experts to carry out their tasks under Directive 2009/38/EC. [...] With a view to ensuring such coverage, it should be clarified that central</p>

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	<p>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>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 ensure that management is not liable for manifestly disproportionate costs, costs without justifiable link to the provision of relevant [...] experts advice [...], or costs created by manifestly unfounded, frivolous, or vexatious claims. Moreover, Directive 2009/38/EC gives Member States discretion to lay down budgetary rules regarding the operation of special negotiating 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. [...]</p> <p>DE (Drafting Suggestions):</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</p>

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		<p>management is to bear costs incurred by member of special negotiation bodies [...]. 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>DE (Comments): The notification obligation should be deleted. It is likely that the special negotiating bodies will not be able to calculate the costs in advance. The central management's interests are sufficiently</p>

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		<p>protected by the fact that the costs for legal advice or representation are clearly limited to necessary and reasonable costs.</p> <p>FI (Drafting Suggestions):</p> <p>(7) Members of special negotiating bodies may need legal advice to carry out their tasks under Directive 2009/38/EC. It is however not sufficiently clear that they are entitled to the coverage of the associated costs. 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 costs to ensure that management is not liable for manifestly disproportionate costs, costs without justifiable link to the provision of relevant legal advice, or costs created by manifestly unfounded, frivolous, or vexatious claims. Moreover, Directive 2009/38/EC gives Member States discretion to lay down budgetary rules regarding the operation of special negotiating 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</p>

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		<p>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>FI (Comments): We are critical of requirements that increase the obligations on companies to cover costs. We propose that the recital (7) would not include the costs of legal representation and participation in administrative or judicial proceedings. There may be other different arrangements in different countries to cover these costs.</p> <p>RO (Drafting Suggestions): (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</p>

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		<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, <i>costs approved by the central management</i>. 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. <i>Consideration should be given to management's justified refusal to approve some expenses considered unreasonable</i>. 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>RO</p>

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		<p>(Comments):</p> <p>The management should also approve these expenses, not just to be notified before they are incurred.</p> <p>SE (Comments):</p> <p>Please note our comment to Article 11(4).</p>
42.		
43.	<p>(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 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>DE (Drafting Suggestions):</p> <p>(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 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 on the one hand and their</p>

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		<p>freedom to continue holding physical meetings and be provided with the necessary means therefor if they consider this necessary taking into account the need for a trustworthy and confidential environment for meetings that might allow for better perception of non-verbal elements of communication.</p> <p>DE (Comments): The recital should not only mention the advantages of virtual meetings but should also reflect the advantages that physical meetings can have and which will also have to be taken into account by the special negotiating committee.</p> <p>IE (Comments): Clarity around the use of virtual meetings is a positive development, not only due to the potential to reduce environmental impacts, but also the efficient sharing information sharing and consultation with the EWC.</p>
44.		
45.	(9) There can be uncertainty and disputes with respect to the coverage of certain expenses and access to certain resources also	<p>ES (Drafting Suggestions):</p>

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	Commission proposal	Drafting Suggestions and Comments
	<p>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 minimum requirement in Article 10(4) of Directive 2009/38/EC.</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, although without prejudice to the minimum requirement in Article 10(1) of Directive 2009/38/EC, 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 minimum requirement in Article 10(4) of Directive 2009/38/EC.</p> <p>ES (Comments):</p>

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		<p>Not only should a minimum requirement be applicable to training costs. All the costs referred to in article 6.2.f) should be borne by central management, regardless of the range of coverage agreed by the involved parties in the EWC agreements. In order to clarify and protect this unwaivable right, the inclusion of a reference to article 10(1) in its proposed alternative wording -article where this minimum will be set- is necessary.</p> <p>FI (Drafting Suggestions):</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 technical subject-matter experts or legal experts – and the coverage of experts’ fees. The agreements should also address the provision of relevant training to the members of the European Works Council, and the</p>

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		<p>coverage of related expenses, without prejudice to the minimum requirement in Article 10(4) of Directive 2009/38/EC.</p> <p>FI (Comments):</p> <p>We are critical of requirements that increase the obligations on companies to cover costs. We propose that the recital (9) would not include the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. There may be other different arrangements in different countries to cover these costs.</p> <p>SE (Comments):</p> <p>Please note our comment to Article 11(4).</p>
46.		
47.	(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	<p>CZ (Drafting Suggestions):</p> <p>(10) The requirement in Directive 2009/38/EC to take into account, where possible, the need for a balanced representation of</p>

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	<p>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 Union⁶, 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</p>	<p>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 [...] appropriate provisions regarding gender balanced representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. To [...] reach gender balanced representation [...], due account should be taken of the gender composition of workers in the company as well as [...] the case-law of the Court of Justice of the European Union⁷, [...] according to which 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. [...] For similar considerations, it is appropriate, in addition, to require steps to</p>

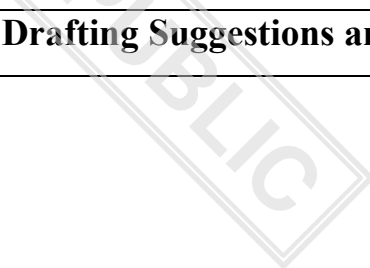
⁶ Judgment of the Court of Justice of 28 March 2000, *Badeck and Others*, C-158/97, ECLI:EU:C:2000:163.

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	<p>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>strive for a gender-balanced composition of the special negotiating body, to promote that objective already during the negotiation phase.</p> <p>DE (Comments): The provision on gender balanced representation needs to be further examined.</p> <p>FI (Comments): 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. These matters should also be taken into account in the recital (10).</p>
48.		

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49.	<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 management expressly refuses to commence negotiations.</p>	
50.		
51.	<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</p>	<p>CZ (Drafting Suggestions): (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</p>

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	<p>and facilitate the sharing of such information, while protecting business and workers' interests, including to avert growing risks such as industrial espionage.</p>	<p>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>Member States should provide for appropriate sanctions for members of European works councils, members of special negotiating committees or workers' representatives under the information and consultation procedure for breaches of confidentiality obligations in the handling of confidential information.</p> <p>CZ (Comments): CZ considers the draft directive to be one-sided and unbalanced in terms of the scope of the obligations for the central management of the company and the members of the EWC and EWC and employee representatives. We therefore consider it necessary to set out at least a framework of obligations and penalties arising from confidentiality obligations for members of the EWC and EWC and employee representatives (Article 8(1)). It should be borne in mind</p>

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		<p>that these persons can cause considerable damage to the undertaking by their actions and that breaches of these obligations should be fairly and properly sanctioned.</p> <p>DE (Drafting Suggestions):</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. Setting up adequate and proportionate 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>DE (Comments):</p>

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		Arrangements that safeguard confidentiality should be proportionate in order not to unnecessarily hinder the use of information by the EWC.
52.		
53.	<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>IE (Drafting Suggestions): (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 [...] has the potential to 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>IE (Comments): Suggest use of the word ‘would’ implies certainty of outcome. May create disputes.</p>

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		<p>Not clear at what point central management would specify ‘the reasons justifying the non-transmission of information’ and in what format.</p> <p>NL (Drafting Suggestions):</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. If the members of special negotiating bodies or of European Works Councils, or to employees’ representatives in the framework of an information and consultation procedure, require information from central management, and central management does not transmit this information, 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>NL (Comments):</p>

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		<ul style="list-style-type: none"> • We would like to change this obligation to inform EWC's to cases where the members of the EWC, SNB and employees' representatives ask the Central Management for information. • If this is not specified, this would entail that the Central Management should pro-actively inform the EWC that they have information that they cannot share, including the reasons justifying the non-transmission of information. • This could lead to unnecessary tension between the EWC and Central Management. <p>RO (Drafting Suggestions):</p> <p>(13) [...] For reasons of transparency and effective redress, central management should [...] be required to specify the reasons justifying the non-transmission of information.</p> <p>RO (Comments):</p> <p>Limiting the possibility of the central management not to transmit information to cases where its transmission would seriously harm the functioning of the undertaking generates a difference of treatment, more restrictive compared to the regulations on transmission of information under Directive 2002/14/CE, that can lead to non-unitary, ambiguous situations of different treatment of the same type of information request at national level.</p>

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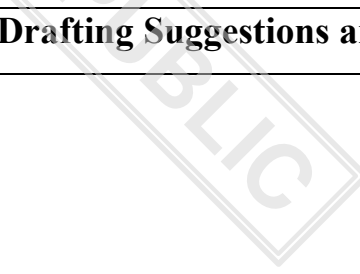
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		Not taking into account cases where transmission of information would be prejudicial may affect the interests of Community-scale undertakings / groups of undertakings.
54.		
55.	(14) With a view to increasing legal clarity, it is appropriate to lay 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.	
56.		
57.	(15) Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a way that enables worker's representatives to express their opinion prior to	

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	<p>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>	
58.		
59.	<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 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>NL (Drafting Suggestions): (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 specified that the central management is to cover the reasonable 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>

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		NL (Comments): <ul style="list-style-type: none"> To avoid unreasonable costs for training, “reasonable” has been added.
60.		
61.	(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 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.	CZ (Drafting Suggestions): (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 [...]. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior [...] alternative dispute resolution procedures required by law [...] should not deprive the parties of the right to apply to a court or administrative authority. CZ (Comments):

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		<p>CZ requests to modify the recital in accordance with the comment to Article 11(4).</p> <p>CZ does not support additional administrative burden and therefore proposes to delete special notification obligation.</p> <p>IE (Comments):</p> <p>The proposal invites Member States to speculate on how legal proceedings would progress in the absence of the facts of the dispute at hand.</p> <p>Ireland would welcome greater clarity from CION on the purpose of this reporting. Is it intended to issue guidance to individual MS if legal procedures are considered lacking?</p> <p>The effectiveness of remedies in MSs is protected as a general principle of EU law.</p> <p>The proposed amendments to Article 11 unnecessarily stray into such an established fundamental principle of EU law as developed through the case law of the CJEU.</p>

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		<p>New Article 11(4) interferes with the standard responsibility of MSs to decide on issues of ‘form and methods’ when transposing EU Directives.</p> <p>SE (Comments): Please note our comment to Article 11(4).</p>
62.		
63.	<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 on its annual turnover – and any</p>	<p>NL (Drafting Suggestions): (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. [...]</p> <p>NL (Comments):</p> <ul style="list-style-type: none"> • It is important that the Member States maintain the freedom to design remedies and sanctions in a way that is consistent with

	Commission proposal	Drafting Suggestions and Comments
	<p>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>their system of national employees’ representation and the legal system.</p> <ul style="list-style-type: none"> • The Netherlands has a well-developed and proven private-law system for (European) Works Council litigation, in which court instructions can ultimately lead to a sentence under criminal law. • This system is effective in achieving the directive's aim: information and consultation. • Pecuniary sanctions and a prescribed manner on how to determine the amount of the sanctions will be highly problematic for the Netherlands to implement, since this will have to lead to a completely different system. <p>SE (Drafting Suggestions):</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. [...]</p> <p>SE (Comments):</p> <p>Please note our amendments and comment to Article 11(2).</p>
64.		

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65.	<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/EC⁷, 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</p>	<p>CZ (Drafting Suggestions): [...]</p> <p>CZ (Comments): <u>CZ suggests deletion of the recital.</u> At the same time, the Czechia would welcome Commission’s clarification of the rules for concluding new agreements:</p> <ul style="list-style-type: none"> - Who is subject to the obligation to renegotiate an EWC agreement. - Will the rules of the revised Directive be binding for voluntary agreements (signed before the establishment of the EU framework for EWCs) and if so under what conditions? - Who will make the proposal and what will be the period for negotiating the agreement before the supporting rules (annex 1) are applied?

⁷ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64, ELI: <http://data.europa.eu/eli/dir/1994/45/oj>).

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	<p>considerations of continuity for pre-existing agreements which initially motivated the exemption. That exemption should therefore be deleted.</p>	<ul style="list-style-type: none"> - Will the rules of the revised Directive be binding for agreements concluded under Articles 5 and 6 of the previous Directive? And if so, under what conditions? - Will a new agreement need to be negotiated? Who will make the proposal and what will be the period for negotiating the agreement before the subsidiary rules (annex 1) are applied? - Will the rules of the revised Directive be binding for agreements concluded between 5 June 2009 and 5 June 2011 and, if so, under what conditions? Will a new agreement need to be negotiated? Who will make the proposal and what will be the period for negotiating the agreement before the subsidiary rules are applied? - Will the rules of the revised Directive be binding on agreements concluded under the existing EWC Directive and, if so, under what conditions? Will a new agreement need to be negotiated? Who will make the proposal and what will be the period for negotiating the agreement before the subsidiary rules (Annex 1) are applied? <p>FI (Comments):</p> <p>We are critical of the proposals that concern agreements that have been earlier operate outside the scope of the Directive. We would</p>

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		appreciate more detailed clarification on what are the legal effects of deleting the Article 14.
66.		
67.	(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.	FI (Comments): We are critical of the proposals that concern agreements that have been earlier operate outside the scope of the Directive. We would appreciate more detailed clarification on what are the legal effects of deleting the Article 14.
68.		
69.	(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to Directive 2009/38/EC have the right to meet with central management once a year, to be informed and consulted on the progress of the business of the relevant Community-scale undertaking or Community-scale group of undertakings and its prospects. In order to strengthen the transnational information and consultation of those European Works Councils, it is appropriate to increase the number of such annual plenary meetings in the subsidiary requirements to two.	

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70.		
71.	(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.	
72.		
73.	(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.	
74.		
75.	(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.	

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76.		
77.	<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. 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>	
78.		
79.	<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</p>	

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	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.	
80.		
81.	(27) In accordance with Article 30(3) and Article 42(1) of Directive 2014/23/EU of the European Parliament and of the Council ⁸ , Article 18(2) and Article 71(1) of Directive 2014/24/EU of the European Parliament and of the Council ⁹ and Article 36(2) and Article 88(1) of Directive 2014/25/EU of the European Parliament and of the Council ¹⁰ , 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 integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the	

⁸ 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).

⁹ 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).

¹⁰ 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).

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	most economically advantageous tenders. However, this Directive does not create any additional obligation in relation to those Directives.	
82.		
83.	(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,	
84.		
85.	HAVE ADOPTED THIS DIRECTIVE:	
86.		
87.	Article 1	
88.		
89.	Directive 2009/38/EC is amended as follows:	
90.		
91.	(1) in Article 1, paragraph 4 is replaced by the following:	AT (Comments):

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		AT requests a precise definition of “transnational”. A transnational matter shall include workers of community scale entities or entities which operate in at least 2 member states. However, supplying companies shall not be included.
92.		
93.	<p>“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.</p>	<p>CZ (Drafting Suggestions): 4. Matters shall be considered to be transnational where they [...] 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.</p> <p>CZ (Comments): CZ insists on deleting the words “can be reasonably expected”. The legal presumption introduces legal uncertainty.</p> <p>DE (Comments):</p>

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		<p>In recital 5, clarification on the interpretation of the term “can reasonably be expected” should be added (cf. drafting suggestion on recital 5, row 37)</p> <p>ES (Drafting Suggestions):</p> <p>“4. Matters shall be considered to be transnational where they can reasonably be expected, according to objective criteria, 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.</p> <p>ES (Comments):</p> <p>We agree on the need to clarify the concept of transnational matters to address the existing uncertainty and reduce the risk of disputes. Having said that, it would be advisable to increase certainty as regards the expression “can reasonably be expected”. As the Commission explained, the expression “can reasonably be expected” is linked to objective criteria. In order for this link between both concepts to be taken into account when interpreting</p>

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		<p>this Directive, it is important that the concept “objective criteria” is included.</p> <p>IT (Drafting Suggestions):</p> <p>4. Matters shall be considered to be transnational where they can [...] 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</p> <p>IT (Comments):</p> <p>We doubt the opportunity to use the word “<i>reasonably</i>” that, in our view, could lead to legal uncertainty. On the one hand, it leaves discretion to the subjects of the provision in determining its applicability to their own case and, on the other hand, it risks bringing into the definition even issues that have only national impact.</p> <p>PL (Comments):</p> <p>PL supports the need to clarify the concept of transnational matters to address the existing uncertainty and reduce the risk of disputes.</p>

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		<p>RO (Comments):</p> <p>It clarifies, to a certain extent, the concept of transnationality (by taking into account cases where management adopts measures that are explicitly aimed at one Member State, but may have consequences for employees in another Member State), but does not ensure legal certainty. To this end, the expression "can reasonably be expected to" should be clarified, possibly by listing more concrete elements, which exemplify, without limiting.</p> <p>SE (Comments):</p> <p>.</p>
94.		
95.	Those conditions shall be deemed to be met where:	<p>CZ (Drafting Suggestions):</p> <p>[...]</p> <p>IT (Comments):</p>

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		<p>The purpose of this provision is to limit matters that, in line with row 93, may be considered within the scope of the directive, in order to deal with the current uncertainty and reduce the risk of litigation. However, the two proposed definitions seem not to fulfil this purpose due to their wording.</p>
96.		
97.	<p>(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;</p>	<p>CZ (Drafting Suggestions): [...]</p> <p>DE (Comments): See above, line 93</p> <p>EE (Comments): We worry that the current text doesn't bring enough legal clarity about something <i>being reasonably expected</i> – when matters should be considered transnational and when they should not according to point a. Although recital 5 brings some examples about the amendment, the concept of transnational matters still isn't clear</p>

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		<p>enough. Potentially almost any matter can have some impact on undertakings and workers, making almost any matter transnational.</p> <p>In addition, points (a) and (b) have a very complicated wording and the aim of these points is therefore difficult to understand.</p> <p>Additional specifications in recital 5 would be beneficial to provide legal clarity and prevent potential legal disputes, as is the aim of the proposal.</p> <p>IT (Drafting Suggestions):</p> <p>(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can [...] be expected to affect workers in undertakings or establishments in more than one Member State;</p> <p>IT (Comments):</p> <p>The inclusion of the word "reasonably" within the definition seems not appropriate. In our understanding, the case under consideration is one in which the undertaking's measure has (direct or indirect)</p>

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		<p>effects on employees in two or more Member States from the beginning. Otherwise, it would fall under (b).</p> <p>SE (Drafting Suggestions):</p> <p>(a) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to substantially affect workers in undertakings or establishments in more than one Member State;</p> <p>SE (Comments):</p> <p>SE does not consider the current clarification of the scope sufficient. It is still unclear what is to be considered as transnational matters. SE suggests adding the word <i>substantially</i>. SE is open to other suggestions along this line.</p>
98.		
99.	(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	<p>CZ (Drafting Suggestions):</p> <p>[...]</p>

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	<p>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.”;</p>	<p>CZ (Comments): CZ requests deletion of point (b). The provision introduces ambiguity and undermines the principle of legal certainty. It is not clear what measures taken in one MS may have impacts on workers in another MS.</p> <p>DE (Comments): See above, line 93</p> <p>FR (Drafting Suggestions): (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 substantially affected by the consequences of those measures.</p>

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		<p>FR (Comments):</p> <p>The draft directive extends the notion of transnational issues to questions which will have consequences for workers in another state. This new definition must not be a source of legal uncertainty so as to maintain the effectiveness of the information and consultation process.</p> <p>In addition, in order to better circumscribe the consequences of the concept of "reasonably likely to affect", the Commission must provide clarification by specifying, in particular, the case law on which it bases its use of this concept.</p> <p>The proposed amendment aims to clarify the concept of "consequences" for workers in the other Member State and avoid a considerable increase in the number of subjects potentially concerned and the risk of encroaching on the competences of national bodies.</p> <p>IT (Comments):</p>

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		<p>Although the use of 'reasonably' seems necessary in this case (which refers to the hypothesis in which the undertaking's measure does not have clear and certain, direct or indirect, effects on the employees of two or more Member States from the beginning), this proposed definition appears too broad.</p> <p>The wording could lead to giving relevance also to issues which should only be considered national.</p> <p>In a Community-scale undertaking or Community-scale group of undertakings it is likely to produce some minimal transnational effects/consequences, direct or indirect, for many (if not most) decisions, not necessarily falling within the scope. This would entail unnecessary economic costs and administrative burdens for companies, which could also impact on employment policies.</p> <p>To better balance the interests at stake, we could consider to add some elements in order to limit the applicability of the directive to objective and measurable parameters, in particular when such transnational effects/consequences are uncertain.</p> <p>SE (Drafting Suggestions):</p>

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		<p>(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to substantially 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 substantially affected by the consequences of those measures.”;</p> <p>SE (Comments): Please note our amendments and comment to Article 1(4)(a) above.</p>
100.		
101.	(2) in Article 2(1), points (f) and (g) are replaced by the following:	
102.		
103.	“(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;	
104.		

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105.	(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management;”;	
106.		
107.	(3) Article 5 is amended as follows:	
108.		
109.	(a) in paragraph 2, point (b) is replaced by the following:	
110.		
111.	“(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or the Community-scale group of undertakings, in a manner that strives to achieve a gender-balanced representation, 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>DE (Comments): The provision on gender balanced representation needs to be further examined.</p> <p>ES (Drafting Suggestions): “(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or the Community-scale group of undertakings, in a manner that strives to achieve a gender-balanced representation, by allocating in respect</p>

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		<p>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. Arrangements will be done in order to attain, without prejudice to national laws on electing workers representatives, the objective of gender balance whereby women and men each comprise at least 40 % of members of the special negotiating body.</p> <p>ES (Comments): We think that the gender balance objective in the composition of the SNB should be at least as ambitious as that required for EWCs under Article 6(2a) for consistency reasons. Therefore, we propose a wording similar to Article 6(2a) for EWC.</p> <p>PL (Comments): PL recognizes the need to ensure balanced gender representation of the EWC composition, but at the same time recognizes the practical aspects related to this issue. The case-law of the Court of Justice of the European Union should also be taken into account.</p>

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		<p>SK (Comments): Overall SK supports the aim of improving the gender balance composition within the SNB and the EWCs as such. However, we would <u>not</u> be in favor of introducing a particular gender quota, moreover employees are free to select their representatives.</p>
112.		
113.	(b) paragraph 6 is amended as follows:	
114.		
115.	– in the first subparagraph, the following sentences are added:	
116.		
117.	“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 management before they are incurred.”;	<p>AT (Comments): Which consequences arise, if the notified costs are exceeded?</p> <p>CZ (Drafting Suggestions):</p>

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		<p>These expenses shall include reasonable costs of experts, including in the legal field insofar as necessary for that purpose. [...]</p> <p>Expenses shall be notified to central management before they are incurred.</p> <p>CZ (Comments): CZ does not share the Commission's interpretation that Article 47 of the EU Charter of Fundamental Rights of the European Union, which provides for the right to effective legal protection and a fair trial, <u>implicitly includes the right to reimbursement of costs and thus that the costs of legal aid are borne by the central management of the undertaking</u>. The provision of Article 47(3) of the EU Charter on free legal aid provides an obligation on the MS, not on the undertakings, which are responsible for the financial functioning of the EWCs. In Czech practice, it is not usual for the employer to pay the costs of legal aid, representation and costs incurred for legal or administrative proceedings. The introduction of such an arrangement would favour the position of EWCs and EWC members vis-à-vis national employee representatives. It may be problematic to know in advance the costs of legal representation</p>

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		<p>in administrative and judicial proceedings when the length and complexity of such administrative or judicial proceedings cannot be estimated. How would one proceed in such a case? Would an overall limit on the amount of costs be agreed or would reimbursement of costs be negotiated with management on a case-by-case basis to be reimbursed? What would happen if management refused to pay the costs - for example, in the middle of a lawsuit? CZ does not consider it fair that the company should pay the costs of legal proceedings against it.</p> <p>DE (Drafting Suggestions): “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. [...]”;</p> <p>DE (Comments): The notification obligation should be deleted. It is likely that the special negotiating bodies will not be able to calculate the costs for legal assistance in advance. The central management’s interests are</p>

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		<p>sufficiently protected by the fact that the costs for legal advice or representation are clearly limited to necessary and reasonable costs.</p> <p>DK (Drafting Suggestions):</p> <p>“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. An estimate/a range of the expenses shall be notified to central management before they are incurred.”;</p> <p>DK (Comments):</p> <p>One does not necessarily know the amount of expenses to be incurred in relation to the negotiations in the special negotiating body. For instance, it is difficult to know the costs of a lawsuit beforehand. Therefore, we would prefer if the text acknowledged this uncertainty.</p> <p>At the SQWP on February 26, the Commission stressed that the Charter on Fundamental Rights already obliges the central</p>

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		<p>management to pay for the expenses listed in this article; the article thus merely expresses an existing right/obligation.</p> <p>Article 47 in CFR states: ‘Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’</p> <p>It is clear from the article that there is an existing right to receive legal aid. However, in our interpretation, the article does not entail a right to have the counterpart pay for those legal expenses.</p> <p>Could the Commission clarify the relationship between the article and the CFR?</p> <p>EE (Drafting Suggestions): “These expenses shall include reasonable costs of experts, including for legal assistance, insofar as necessary for that purpose. Expenses shall be notified to central management before they are incurred.”;</p> <p>EE</p>

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		<p>(Comments):</p> <p>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. We don't see this amendment as explanatory, but substantial.</p> <p>Taking into consideration the amendments as a whole, we must keep in mind that the amendments rise administrative burden for employers. Removing this amendment is one possibility to try to strive for more balanced text regarding the rights and obligations from the views of both employers and employees.</p> <p>We are also on the opinion that article 47 of the Charter of Fundamental Rights of the EU doesn't cover the obligation to bear these costs. The aim of the Charter is to give everyone the right for fair trial and an effective remedy (e.g. judicial independence), not provide for bearing the costs of the representation and proceedings.</p> <p>FI</p> <p>(Drafting Suggestions):</p>

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		<p>These expenses shall include reasonable costs of experts, including for legal assistance, insofar as necessary for that purpose. Expenses shall be notified to central management before they are incurred.”;</p> <p>FI (Comments): We are critical of requirements that increase the obligations on companies to cover costs. We propose that the sentence would not include reasonable costs of legal representation and participation in administrative or judicial proceedings. There may be other different arrangements in different countries to cover these costs.</p> <p>IE (Comments): The proposed wording applies the ‘reasonableness’ qualifier to the costs and not the advice sought.</p> <p>The proposal may create more confusion as to what costs an SNB is entitled to.</p>

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		<p>A proposal that a member of the SNB can take court action, lose the case, have a court costs order made against them and still the employer (defendant) must pay the legal costs, would need more consideration.</p> <p>PL (Comments): PL supports the notification of legal costs. In practice in some cases the SNB will be able to submit only estimation of such costs.</p> <p>RO (Drafting Suggestions): 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 <i>and approved by the central management</i> before they are incurred.</p> <p>RO (Comments): The management should also approve these expenses, not just to be notified before they are incurred.</p>

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		<p>Consideration should be given to management's justified refusal to approve some expenses considered unreasonable.</p> <p>SE (Comments):</p> <p>SE, as several other MS, questions the right for a party to have its legal expenses paid by the counterpart, especially regarding judicial proceedings. SE is concerned that this would be detrimental to the objective of building trustful dialogue between the parties and would likely increase the number of disputes.</p> <p>Moreover SE, as other MS have already put forward, finds that the interpretation of Article 47 of the EU Charter of Fundamental Rights of the European Union and the proposal to increase the obligations on companies to cover costs for legal representation and participation in administrative or judicial proceedings may be questioned.</p> <p>Furthermore, SE would like to ask for clarifications on the following issues. How would central management proceed in a case when the costs of legal representation in administrative and judicial</p>

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		<p>proceedings cannot be known in advance (for example the length or complexity of such administrative or judicial proceedings is unknown)?</p> <p>Would an overall limit on the amount of costs be agreed or would reimbursement of costs be negotiated with management on a case-by-case basis to be reimbursed?</p> <p>What would happen if management refused to pay the costs - for example, in the middle of a lawsuit?</p> <p>SK (Comments):</p> <p>Like several other MS, we share concerns about the obligation of central management to bear the legal and expert costs associated with legal proceedings, which are mostly unknown in advance. In practice it may give rise to additional disputes between parties. The mention of certain approval by the central management could provide for a more balanced text.</p>
118.		
119.	– in the second subparagraph, the second sentence is deleted;	AT

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		<p>(Drafting Suggestions):</p> <p>In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.</p> <p>AT (Comments):</p> <p>To keep the costs within a reasonable margin, MS may foresee the restriction to one expert only. Therefore this subpara shall not be deleted.</p> <p>CZ (Drafting Suggestions):</p> <p>[...]</p> <p>CZ (Comments):</p> <p>CZ insists on preserving of the last sentence. The limitation of funding to 1 expert is not implicit in the principle that the Member State has the right to set budgetary rules for the functioning of the SNB. If the rule of limiting the costs to 1 expert were to be set by</p>

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		<p>national rules without a basis in the Directive, we are afraid of an unwanted reaction from representatives of employees</p> <p>EE (Drafting Suggestions): Amendment deleted.</p> <p>EE (Comments): We propose to keep the deleted sentence that gives Member States a clear right to limit the funding to cover one expert only. It is important for legal clarity and balancing the text.</p>
120.		
121.	(4) Article 6 is amended as follows:	
122.		
123.	(a) paragraph 2 is amended as follows:	
124.		
125.	– points (c) and (d) are replaced by the following:	
126.		
127.	“(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	

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	Council and national employee representation bodies, in accordance with the principles and requirements set out in Article 1(3) and Article 9;	
128.		
129.	(d) the format, venue, frequency and duration of meetings of the European Works Council;”;	<p>AT (Comments): The term “format” is unclear. AT requests to specify the term within a recital to clarify that this only refers to the possibility to hold online / hybrid / in-person meetings.</p>
130.		
131.	– point (f) is replaced by the following:	
132.		
133.	“(f) the financial and material resources to be allocated to the European Works Council, including at least with respect to the following aspects:	<p>AT (Drafting Suggestions): (f) the financial and material resources to be allocated to the European Works Council</p> <p>AT (Comments): As the central management has to bear the costs of legal representation of the EWC, the central management would finance</p>

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		<p>legal proceedings against itself. AT rejects this proposal. The legal provisions of the current directive were implemented in an extensive manner by AT, therefore AT prefers the provisions of the existing directive.</p> <p>CZ (Drafting Suggestions): “(f) the financial and material resources to be allocated to the European Works Council [...] may include:</p> <p>CZ (Comments): CZ insists that these costs are only an option and not an obligatory part of the agreement. Setting mandatory requirements for the content of the agreement is an infringement of the principle of contractual freedom of the parties to create the content of the agreements themselves.</p> <p>IT (Comments): This change, as well as the one proposed in line 117, could greatly increase the operating costs of EWCs borne by undertakings.</p>

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		<p>Furthermore, especially for the costs in rows 135 and 137, we are wondering if a ceiling should be set for the costs to be borne by the company.</p> <p>It would be advisable to find ways to keep the costs to be borne by companies within reasonable limits, making good use of the negotiation phase for the establishment of a European works council for this purpose.</p>
134.		
135.	<p>– the possible use of experts, including legal experts, to assist the European Works Council in the discharge of its functions;</p>	<p>AT (Drafting Suggestions): Deletion</p> <p>ES (Drafting Suggestions): – the possible use of experts, including legal experts, to assist the European Works Council in the discharge of its functions, without prejudice to the minimum requirement in Article 10(1);</p> <p>ES (Comments): Not only should a minimum requirement be applicable to training costs. All the costs referred to in article 6.2.f) should be borne by</p>

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		<p>central management, regardless of the range of coverage agreed by the involved parties in the EWC agreements. In order to clarify and protect this unwaivable right, the inclusion of a reference to article 10(1) in its proposed alternative wording -article where this minimum will be set- is necessary.</p>
136.		
137.	<p>– legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings;</p>	<p>AT (Drafting Suggestions): Deletion</p> <p>CZ (Drafting Suggestions): [...]</p> <p>CZ (Comments): CZ insists on the elimination of legal aid costs (representation and participation in judicial or administrative proceedings).</p> <p>EE (Drafting Suggestions): Deleted.</p> <p>EE</p>

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		<p>(Comments):</p> <p>Due to our proposal in row 117 (amendment in art 5 para 6), 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.</p> <p>ES</p> <p>(Drafting Suggestions):</p> <p>– legal representation and participation of the European Works Council, or of its members on its behalf, in administrative or judicial proceedings, without prejudice to the minimum requirement in Article 10(1);</p> <p>ES</p> <p>(Comments):</p> <p>See above.</p> <p>FI</p> <p>(Comments):</p> <p>We are critical of requirements that increase the obligations on companies to cover costs. We propose not to add the indent. There</p>

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		may be other different arrangements in different countries to cover these costs.
138.		
139.	– 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;”;	AT (Drafting Suggestions): Deletion
140.		
141.	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.].	AT (Drafting Suggestions): Deletion FI (Comments): We are wondering if this subparagraph could be moved to the Article 14a. In addition, we wish to have clarification about the relation of this sentence to Article 14a to be added.
142.		
143.	_____	
144.		
145.	* [OP: insert OJ reference to this amending Directive.]”;	

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146.		
147.	(b) the following paragraph 2a is inserted :	
148.		
149.	<p>“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.”;</p>	<p>AT (Comments): AT national law already requires to strive for an equal representation within the special negotiating body. AT supports the aim of equal representation, however, it is unclear how this quota shall be implemented without violating the freedom to agreement. Neither the central management, nor the special negotiating body can influence the composition of the EWC, as their members are appointed by the national works councils. Furthermore, it remains unclear what “necessary arrangements” shall be implemented by MS to influence the composition of the EWC.</p> <p>CZ (Drafting Suggestions): 2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall agree and lay down [...] appropriate arrangements to move [...], as far as possible, with due account taken to the gender</p>

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		<p>composition of workers in a sector concerned and without prejudice to national laws on electing workers representatives, towards 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.</p> <p>CZ (Comments): CZ requests the addition of a provision to the effect that in a sector where there is a significant predominance of one of the sexes, these rules shall apply appropriately according to the situation in the sector or industry concerned.</p> <p>DE (Comments): The added provision on gender balance requires further analysis.</p> <p>ES (Drafting Suggestions): “2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council</p>

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		<p>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.”;</p> <p>ES (Comments): 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 possible” is too indeterminate and broad. For all these reasons, its removal is proposed.</p> <p>FR (Drafting Suggestions): 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</p>

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		<p>whereby women and men each comprise at least 40 % of European Works Council members, and where applicable, at least 40 % of select committee members. In highly gendered companies where this objective is not factually and legally achievable, the objective must be to achieve representation proportionate to the percentage of women and men in the company."</p> <p>FR (Comments): France supports the objective of proportionate gender representation in the composition of the EWC, but it seems necessary to include a provision to take account of the reality of certain sectors or companies in which there is little gender diversity. The redaction put forward in the proposal remains an objective applying "subject to its being legally and factually feasible and without prejudice to national laws on the election of workers' representatives". However, it does not make it possible to know what rules apply when this threshold is not legally and factually feasible. It is</p>

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		<p>relevant if, whatever the reality of the distribution of women and men in the company, it sets the objective of achieving a more proportionate distribution within representative bodies.</p> <p>HU (Drafting Suggestions):</p> <p>“2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall agree and lay down the objective and 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 % concerning the composition of European Works Council members, and where applicable, at least 40 % of select committee members. The achievement of the objective shall be ensured by the autonomous parties in the particular working environment, using the means available, possibly including specific targets.”;</p> <p>HU (Comments):</p>

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		<p>The gender balance of employees in certain sectors, such as the industrial production environment, which is particularly affected by the Directive, is not achieved, which may be reflected in the composition of representative organisations. Furthermore, works councils are organisations set up by workers and employers, in which the autonomy of the parties must be respected. However, in all bodies such as the special negotiating bodies covered by the Directive, efforts should be made to ensure gender balance, but this should be ensured by the autonomous parties.</p> <p>The text shall reflect COM interpretation presented on the working party meetings on 26,28/02/2024 that there is no quota here, Member States only are obliged to make the best effort to ensure gender balance in the negotiating body and EWCs but it does not oblige MSs to change processes.</p> <p>[to be applied also in Annex I (1) c)]</p> <p>NL (Drafting Suggestions):</p>

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		<p>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 and measurable objectives for attaining, (...) without prejudice to national laws on electing workers representatives, and taking into account the gender composition in the Community-scale undertaking or Community-scale group, the objective of gender balance (...) in the European Works Council, and, where applicable, in the select committee. The select committee shall, as far as possible, be comprised of at least 40 % (...) of women and men each.</p> <p>NL (Comments):</p> <ul style="list-style-type: none"> The current proposal states that women and men should each comprise at least 40 % of European Works Council members. However, the composition of the EWC is not managed centrally. The EWC consists of members appointed/ elected by the employees' representatives or employees in the Member States. It is not possible to say Member State X should choose a female and Member State Y a male candidate.

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		<ul style="list-style-type: none"> • Also the gender composition in the company/sector can be imbalanced, which might make it impossible for some companies to achieve this. • Undertakings/EWC's could therefore easily fall back to the opt-out of "as far as possible". • Therefore, we suggest to remove the 40% target and the opt-out "as far as possible". • All undertaking have to make arrangements and set measurable objectives. Hence, we inserted a measurable effort obligation as an alternative. <p>PL (Comments): 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>SE (Drafting Suggestions): "2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council</p>

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		<p>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 [...] of European Works Council members, and where applicable, [...] of select committee members.”;</p> <p>SE (Comments): SE finds that a legislation on gender balance should <u>aim</u> for a better balance but oppose a detailed provision stating quotas or numbers. Such details may be contra productive. Moreover, safeguarding social partners autonomy nomination should remain a prerogative for the unions or employees depending on national law and practices.</p> <p>SK (Comments): SK supports the aim of improving the gender balance composition within the EWCs. However, we would <u>not</u> be in favor of introducing a particular gender quota, moreover employees are free to select their representatives. In our view, the feasibility of this provision in practice is questionable</p>

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		therefore we would support the deletion of the concrete number. Alternatively, we would support FR suggestion to amend the text.
150.		
151.	(5) in Article 7(1), the second indent is replaced by the following:	
152.		
153.	“— where the first meeting of the special negotiating body is not convened within six months following a request pursuant to Article 5(1),”;	<p>DE (Drafting Suggestions):</p> <p>“— where the first meeting of the special negotiating body is not convened by the central management within six months following a request pursuant to Article 5(1),”;</p> <p>DE (Comments):</p> <p>It should be clarified that it is the central management that convenes the meeting (cf. Art. 5(4)).</p>
154.		
155.	(6) Article 8 is replaced by the following:	
156.		
157.	“ <i>Article 8</i> Provision of information in confidence ”	

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158.		
159.	<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>DE (Drafting Suggestions):</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 adequate and proportionate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.</p> <p>DE (Comments):</p> <p>Arrangements for safeguarding confidentiality should be proportionate to avoid unnecessary difficulties for the EWC when accessing and using the information.</p> <p>ES (Drafting Suggestions):</p>

	Commission proposal	Drafting Suggestions and Comments
		<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 for justified reasons. 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>ES (Comments):</p> <p>In order to ensure the “effet utile” of the Directive and that employees’ representatives are able to exercise their rights under the Directive, it is important to prevent abuses on the obligation of confidentiality. Therefore, the following addition is proposed to make clear that confidentiality must be substantiated in justified reasons, in line with what already is established by recital 12 and paragraph 2 of this Article.</p>
160.		

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161.	<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>ES (Drafting Suggestions): 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 including an estimated duration for the reasons thereof where known.</p> <p>ES (Comments): In order to prevent abuses in case a duration for the reasons for confidentiality is known, this information should be provided along with the justifying reasons. This should facilitate determining whether the justification has become obsolete according to the following paragraph.</p>
162.		
163.	<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</p>	<p>ES (Drafting Suggestions):</p>

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	central management, the justification provided is considered to have become obsolete.”;	<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] becomes obsolete, according to objective criteria.”;</p> <p>ES (Comments):</p> <p>The obsolescence or outdatedness of the justification for confidentiality is an objective fact. Therefore, this outdatedness should be linked to objective criteria.</p>
164.		
165.	(7) the following Article 8a is inserted:	
166.		
167.	“ <i>Article 8a</i> Non-transmission of information on specific grounds	
168.		
169.	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	<p>AT (Drafting Suggestions):</p>

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	<p>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.</p>	<p>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 or would be prejudicial to them.</p> <p>AT (Comments): The phrase “or would be prejudicial to them”, originally in Art. 8 and now deleted in the proposal, shall remain in the text. The relation between Art. 8 and Art. 8a as well as Art. 16 and thus the implementation obligation of MS is unclear.</p> <p>IE (Comments): Ireland would welcome examples of specific cases the Commission has in mind regarding the proposal.</p>

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		<p>Member States are obliged to provide mechanisms to resolve related disputes. This would require that the information subject to non-transmission be shared with all parties or a third party.</p> <p>RO (Drafting Suggestions):</p> <p>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 <i>or would be prejudicial to them.</i></p> <p>RO (Comments):</p> <p>Limiting the possibility of the central management not to transmit information to cases where its transmission would seriously harm the functioning of the undertaking generates a difference of</p>

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		<p>treatment, more restrictive compared to the regulations on transmission of information under Directive 2002/14/CE, that can lead to non-unitary, ambiguous situations of different treatment of the same type of information request at national level.</p> <p>Not taking into account cases where transmission of information would be prejudicial may affect the interests of Community-scale undertakings / groups of undertakings.</p> <p>SE (Comments):</p> <p>It is paramount to maintain the reference to “conditions and limits laid down by national legislation” in the introductory part of this Article in order to safeguard the possibility of national solutions.</p>
170.		
171.	A Member State may make such dispensation subject to prior administrative or judicial authorisation.	
172.		
173.	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	<p>AT (Drafting Suggestions):</p> <p>When central management does not transmit information on the grounds referred to in paragraph 1, it shall inform the members of</p>

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	<p>information and consultation procedure of the reasons justifying the non-transmission of information.”;</p>	<p>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>AT (Comments): When the central management does not transmit information and then informs the members of the EWC of the reasons justifying the non-transmission it would cancel out the intention of the non-transmission. Thus, AT proposes to delete this provision.</p> <p>EE (Drafting Suggestions): 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.”;</p> <p>EE (Comments):</p>

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		<p>We propose to delete the obligation to provide a reasoning for the non-transmission of information. It is unclear how it's possible to provide a meaningful reasoning without giving away the information itself.</p> <p>ES (Drafting Suggestions):</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 including an estimated duration for the reasons thereof where known.”;</p> <p>ES (Comments): See above</p> <p>NL (Drafting Suggestions):</p>

	Commission proposal	Drafting Suggestions and Comments
		<p>2. When the members of special negotiating bodies or European Works Councils, or employees' representatives in the framework of an information and consultation procedure, require information from central management, and central management does not transmit this 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>NL (Comments):</p> <ul style="list-style-type: none">• We would like to change this obligation to inform EWC's to cases where the members of the EWC, SNB and employees' representatives ask the Central Management for information.• If this is not specified, this would entail that the Central Management should pro-actively inform the EWC that they have information that they cannot share, including the reasons justifying the non-transmission of information.• This could lead to unnecessary tension between the EWC and Central Management. <p>PL (Comments):</p>

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		<p>PL supports this obligation of Central Management to provide justification for non – transmission of information. It will help SNB or EWC decide if it is reasonable to take case into the court.</p>
174.		<p>ES (Drafting Suggestions):</p> <p>3. The non-disclosure right referred to in paragraph 1 will no longer be applicable if the justification provided is considered to have become obsolete.</p> <p>ES (Comments):</p> <p>Given that the non-disclosure of information is a restriction in information and consultation rights under the Directive, it must be interpreted restrictively and as an exception. The obsolescence of the reasons underlying non-disclosure of information must entail the transmission of information. This proposed paragraph intends to clarify this, leaving no doubt as to the possible decay of the non-disclosure right.</p>
175.	(8) Articles 9 and 10 are replaced by the following:	
176.		

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177.	<p><i>“Article 9</i></p> <p>Operation of the European Works Council and the information and consultation procedure for workers</p>	
178.		
179.	<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>	
180.		
181.	<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>	
182.		
183.	<p>2. Information on transnational matters shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of their possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.</p>	<p>EE</p> <p>(Drafting Suggestions):</p> <p>2. Information on transnational matters shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of their possible impact and, where appropriate, prepare for consultations with the Community-scale undertaking or Community-scale group of undertakings.</p>

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		<p>EE (Comments): We find the reference to a competent organ confusing. There is no reference to a competent organ in any of the other amendments. Since the reasoning behind referring to a competent here is unclear, then we propose to delete it.</p>
184.		
185.	<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 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>AT (Comments): The possibility of written statements by the EWC bevor the central management adopted a decision, is problematic. Furthermore, the tensions between these obligations (in line with Art. 11 para. 4 of this directive) and the reporting obligations of companies based on the EU law on market abuse, shall be considered.</p> <p>ES (Drafting Suggestions): 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</p>

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		<p>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 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.The employees’ representatives shall be entitled to a reasoned written response from the central management or any more appropriate level of management prior to the adoption of the decision on the measures in question, provided the employee representatives expressed their opinion within a reasonable time in accordance with [the first sentence] this paragraph.</p> <p>ES (Comments):</p> <p>In line with what is proposed under Annex I, paragraph 1(a), this addition is necessary in order to guarantee the effectiveness of the consultation process, employees’ representatives.</p> <p>Moreover, and as a result, the criteria to determine the reasonable time that employee representatives have to express their opinion</p>

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		<p>must include not only the one included in the first sentence <i>-taking into account the urgency of the matter-</i>, but also the one included in the new second sentence proposed <i>-sufficient to guarantee the effective exercise of the information and consultation rights under this Directive-</i>.</p> <p>FR (Drafting Suggestions):</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 employer shall be deemed to have taken note of the opinion delivered by the EWC and to have given a negative response to it on expiry of a period of one month from receipt of that opinion.</p> <p>FR</p>

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		<p>(Comments):</p> <p>The problem concerns the case where an EWC has issued an opinion, but the employer does not respond. Under French law, there is an obligation on the employer to respond, in Article L. 2312-5, para. 6 of the Labour Code, which states that "The employer shall give an account, giving reasons, of the action taken on the opinions and wishes of the committee."</p> <p>However, France has already made major changes to its legal framework for social dialogue at work in 2017, a framework that social players are in the process of making their own. This is why, for the sake of stability, the French authorities do not wish to modify it again, by introducing the same obligation for EWCs. The alternative proposal is that the absence of a response within a set timeframe should be considered as a negative opinion.</p> <p>It should be noted that this also echoes another provision of French law, since according to Article R. 2312-6 of the Labour Code, "the social and economic committee is deemed to have been consulted and to have given a negative opinion on expiry of a period of one month from the date stipulated in this article."</p>

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		If an expert is called in, the period referred to in the first paragraph is extended to two months".
186.		
187.	<i>Article 10</i> Role and protection of employees' representatives	
188.		
189.	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.	CZ (Drafting Suggestions): [...] CZ (Comments): CZ asks deletion of this provision as it is unclear who should provide the means and what is the relation with other (more concrete) provisions. Alternatively, if necessary, it could be included to a recital.
190.		ES (Drafting Suggestions): The operating expenses of the European Works Council shall be borne by the central management and include reasonable costs of legal assistance, representation and proceedings. Operating

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		<p>expenses shall be notified to central management before they are incurred.</p> <p>ES (Comments):</p> <p>Not only should a minimum requirement be applicable to training costs as provided by Article 10(4). In order to ensure that the EWC has the means required to apply the rights arising from this Directive, it is necessary to ensure that all the operating expenses are borne by central management, regardless of the range of coverage agreed by the involved parties in the EWC agreements. In order to clarify and protect this unwaivable right, the inclusion of a provision in this matter with identical wording to the one included in Annex I, paragraph 6, is proposed.</p>
191.	<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</p>	<p>CZ (Comments):</p> <p>CZ asks for clarification. What is meant by “<i>necessary means</i>”?</p> <p>Also, it would be useful to formulate the provision not from the point of view of EWC (as a “right” of EWC), but as an obligation.</p> <p>NL</p>

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	<p>procedure, in particular before and after the meetings with the central management.</p>	<p>(Drafting Suggestions):</p> <p>2. Without prejudice to Articles 8 and 8a, the members of the European Works Council shall [...] 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. The members of the European Works Council shall have the necessary means to fulfill this obligation.</p> <p>NL (Comments):</p> <ul style="list-style-type: none"> • We support the addition of 'necessary means', but prefer to maintain the current obligation to inform (“Without prejudice to Article 8, the members of the European Works Council shall inform ...”). We suggest to add ‘necessary means’ at the end. • The obligation that there is communication between the EWC and local employees’ representatives before the EWC meeting will enforce the link between information and consultation in the EWC and at national level. <p>SE</p>

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		<p>(Drafting Suggestions):</p> <p>2. Without prejudice to Articles 8 and 8a, the members of the European Works Council shall inform, and 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>SE</p> <p>(Comments):</p> <p>SE takes note, as have other MS, that the amended paragraph does no longer include any obligation for the EWC to inform the representatives. The wording in the Commission proposal only provides the EWC a <i>right and necessary means</i> to inform the representatives. The obligation to inform should be remain.</p>
192.		<p>RO</p> <p>(Drafting Suggestions):</p> <p><i>Without prejudice to Article 8 and 8a, the members of the European Works Council shall inform the representatives of the employees of</i></p>

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		<p><i>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, carried out in accordance with this Directive.</i></p> <p>RO (Comments): In addition to the right and necessary means, the members of the European Works Council have the responsibility to inform the representatives of the employees or, in the absence of representatives, the workforce as a whole. The revised text should preserve the provision from art. 10 paragraph 2 of Directive 2009/38/EC.</p>
193.	<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>	

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194.		
195.	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.	
196.		
197.	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.	
198.		
199.	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.”;	ES (Drafting Suggestions): [Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the] The costs of such training and related expenses

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		<p>shall be borne by the central management, provided that the central management has been informed in advance.</p> <p>ES (Comments):</p> <p>The use of the expression ‘without prejudice’ in this article as well as in article 6.2.f) can lead to misinterpretations. Considering this article 10.4 sets a minimum standard it seems unnecessary to make a reference to article 6.2.f).</p> <p>FR (Drafting Suggestions):</p> <p>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, or by the EWC itself, in accordance with national law and practices.</p> <p>FR (Comments):</p> <p>Under French law, the cost of training is the responsibility of the employer, for matters relating to health, safety and working conditions (Article L. 2315-18 al.6), but may also be the</p>

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		<p>responsibility, under certain conditions, of the Social and Economic Committee (CSE) from its operating subsidy (Article L2315-63).</p> <p>The purpose of the proposed amendment is to provide for the possibility that, depending on the type of training, the EWC may have to bear the cost when it has legal personality and a budget, as is the case in France.</p> <p>HU (Drafting Suggestions):</p> <p>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 and consulted in advance.”;</p> <p>HU (Comments):</p> <p>Consulting with central management ensures that decisions regarding training and related expenses are made in a collaborative and informed manner, promoting organizational efficiency and effectiveness.</p> <p>[to be applied also in Annex I (5) a)]</p>

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		<p>IE (Drafting Suggestions): 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 and agreed in advance.”;</p> <p>IE (Comments): Suggest agreement of appropriate training in advance is more in keeping with the intended ‘spirit of cooperation’ in the Directive and would serve to avoid disputes.</p> <p>NL (Drafting Suggestions): Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the reasonable costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed in advance.”;</p> <p>NL (Comments):</p> <ul style="list-style-type: none"> • To avoid unreasonable costs, “reasonable” has been added.

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200.		
201.	(9) Article 11 is amended as follows:	<p>AT (Comments):</p> <p>AT rejects the changes made to Art. 11. The existing measures are sufficient and it shall remain within the competencies of the MS to decide on punitive actions.</p> <p>FI (Comments):</p> <p>The Article should leave sufficient room for Member States to transpose the obligations arising from the Directive into national sanction system and legal or administrative procedures.</p>
202.		
203.	(a) paragraph 2 is replaced by the following:	<p>AT (Comments):</p> <p>AT rejects the changes made to Art. 11.</p>
204.		
205.	“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 :	<p>EE (Comments):</p> <p>We find the amendments regarding remedies and sanctions to be too specific and detailed, therefore we are hesitant about such</p>

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		<p>highly detailed and over-regulatory text. There should be more flexibility left for the Member States to decide.</p> <p>IE (Comments): The effectiveness of remedies in MSs is already protected as a general principle of EU law.</p> <p>The proposed amendments to Article 11 unnecessarily stray into such an established fundamental principle of EU law as developed through the case law of the CJEU.</p> <p>PL (Comments): A number of issues related to the practical establishment of remedies require clarification in the course of work on the draft directive. New content of art. 11 section 2 requires the introduction of a new category of claims that EWCs or SNBs will be able to bring to the court/administrative authority. When designing the system for protecting rights arising from the directive, the Government of the Republic of Poland will strive to ensure the adequacy of the measures to the intended goal, which is to improve the information and consultation system.</p>

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		<p>RO (Comments):</p> <p>Administrative or judicial procedures (applicable in a timely and efficient manner) as well as sanctions (effective, dissuasive and proportionate) should be provided for and implemented in a manner consistent with the national legal system, procedures and sanctions.</p>
206.		
207.	<p>(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective manner;</p>	<p>EE (Drafting Suggestions):</p> <p>(a) adequate administrative or judicial procedures are available to enable the rights and obligations deriving from this Directive to be enforced;</p> <p>EE (Comments):</p> <p>It remains unclear why is the reference to <i>administrative or judicial procedures</i> deleted. This specification should remain, otherwise it wouldn't be clear what kinds of procedures does the text cover and we would risk increasing legal uncertainty.</p>

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		<p>In addition, the meaning of <i>a timely and effective manner</i> leaves too much room for different interpretations.</p> <p>FR (Drafting Suggestions):</p> <p>(a) adequate procedures are available to enable the rights and obligations deriving from this Directive to be enforced in [...] an effective manner;</p> <p>FR (Comments):</p> <p>French authorities propose to delete the word “timely” which is redundant with the notion of effectivity already mentioned in the provision. We prefer to maintain only the notion of effectivity, which appears the most adequate to protect the legitimate interests of the applicant.</p>
208.		
209.	(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.	<p>EE (Drafting Suggestions):</p> <p>(b) penalties are applicable in cases of infringement of the rights and obligations deriving from this Directive.</p> <p>EE</p>

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		<p>(Comments):</p> <p>The question about which penalties to apply should be left to the Member States to decide and the directive shouldn't intervene with the procedural autonomy of Member States. In addition, the meaning of effectiveness, dissuasiveness and proportionality leave too much room for interpretation.</p>
210.		
211.	<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>CZ</p> <p>(Drafting Suggestions):</p> <p>In the event of failure to comply with the national provisions transposing the obligations under Article 8(1) and 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>CZ</p> <p>(Comments):</p> <p>The CZ considers the draft directive to be one-sided and unbalanced in terms of the scope of the obligations for the central management of the company and the members of the EWC and</p>

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		<p>EWC and employee representatives. Therefore, CZ considers necessary to set out at least a framework of obligations and penalties arising from confidentiality obligations for members of the EWC and EWC and employee representatives (Article 8(1)). It should be borne in mind that these persons can cause considerable damage to the undertaking by their actions and that breaches of these obligations should be fairly and properly sanctioned.</p> <p>NL (Drafting Suggestions): [...]</p> <p>NL (Comments):</p> <ul style="list-style-type: none"> • It is important that the Member States maintain the freedom to design remedies and sanctions in a way that is consistent with their system of national employees' representation and the legal system. • The Netherlands has a well-developed and proven private-law system for (European) Works Council litigation, in which court instructions can ultimately lead to a sentence under criminal law. • This system is effective in achieving the directive's aim: information and consultation. • Pecuniary sanctions and a prescribed manner on how to determine the amount of the sanctions will be highly

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		<p>problematic for the Netherlands to implement, since this will have to lead to a completely different system.</p> <p>SE (Drafting Suggestions):</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, [...] without prejudice to the possibility to provide for other types of sanctions in addition.</p> <p>SE (Comments):</p> <p>Please note our amendment and comment to Article 11(2)(b) subparagraph 3 below.</p>
212.		
213.	<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>EE (Drafting Suggestions):</p> <p>Deleted.</p> <p>EE (Comments):</p> <p>The paragraphs lists numerous mandatory criteria to be considered when determining penalties. We are concerned about such</p>

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		<p>obligation due to its strong intervening effect on the independence of our courts as well as the procedural autonomy of Member States.</p> <p>NL (Drafting Suggestions): [...]</p> <p>NL (Comments):</p> <ul style="list-style-type: none">• See row 211 <p>SE (Drafting Suggestions): [...]</p> <p>SE (Comments):</p> <p>SE is concerned that this provision entails an intervening effect on the independence of courts and the procedural autonomy of Member States and would appreciate a comment from the Commission regarding this matter.</p> <p>Based on the premise that sanctions must be effective, dissuasive and proportionate, other EU directives within the labor law aquis</p>

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		<p>leave it to the Member States to determine more detailed criteria for determining the size of the damages (see for example the platform directive and the directive on transparent and predictable working conditions.). It does not appear to be justified to deviate from this established order in the case of European Works Councils.</p> <p>It cannot be ruled out that, if the proposal is adopted, the additions regarding how financial compensation is to be determined may affect non-pecuniary damages as such and there is an added value in determining them in the same way as other employment rules in the Member State.</p> <p>In view of the different ways Member States regulate penalties and sanctions; the question of which sanctions should apply and how they should be designed should remain at Member State level.</p>
214.		
215.	(b) paragraph 3 is amended as follows:	<p>AT (Comments): AT rejects the changes made to Art. 11.</p>
216.		

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217.	– the first subparagraph is replaced by the following:	
218.		
219.	“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.”;	
220.		
221.	– the following subparagraph is added:	
222.		
223.	“The duration of such procedures shall be compatible with the effective exercise of the information and consultation rights under this Directive.”;	<p>CZ (Drafting Suggestions): [...]</p> <p>CZ (Comments): <u>CZ requests deletion of this provision.</u> CZ cannot interfere in the course of judicial or administrative proceedings and therefore it</p>

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		<p>cannot influence the length of judicial or administrative proceedings.</p> <p>FR (Drafting Suggestions): “The duration of [...] the procedures designed to protect the confidentiality of the information shall be compatible with the effective exercise of the information and consultation rights under this Directive.”;</p> <p>FR (Comments): Can the Commission specify what it means by "such procedures"? Is it referring to “administrative or judicial appeal procedures” or “procedures designed to protect the confidentiality of the information”? In any event, in the interest of legal certainty, a clarification is needed to better identify the procedures concerned (i.e. the procedures mentioned in the last subparagraph of article 11 of the directive actually in force).</p> <p>PL (Comments):</p>

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		PL would like to point out that issues related to the speed of court proceedings are the result of many factors, including in particular general provisions on court proceedings, technical and staffing capabilities of courts.
224.		
225.	(c) the following paragraph 4 is added:	
226.		
227.	<p>“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.”;</p>	<p>CZ (Drafting Suggestions):</p> <p>“4. Where Member States make access to judicial or administrative proceedings conditional upon the prior implementation of an alternative dispute resolution, [...] the parties concerned shall not be deprived of the right to apply to a court or administrative authority. ”;</p> <p>CZ (Comments):</p> <p>This formulation may lead to the interpretation that the outcome of alternative dispute resolution (arbitration, mediation) is not binding on the parties. Therefore, we recommend editing this provision, as it could cause great difficulties of interpretation in practice.</p>

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		<p>IE (Comments): Ireland would welcome clarification that where parties voluntarily agree to the use alternative dispute resolution mechanisms, the outcomes of those procedures may be binding.</p> <p>New Article 11(4) interferes with the standard responsibility of MSs to decide on issues of ‘form and methods’ when transposing EU Directives. It is not clear why, for example, the arbitration procedure under Irish law for dealing with certain complaints should not be binding on the parties with a right of appeal on a point of law or on a point of mixed law and fact?</p> <p>On a point of law includes a point of mixed law and fact, e.g. the finding of the arbitrator on a point of fact could be appealed if it is an irrational finding.</p> <p>SE (Comments): SE finds this provision unclear and welcome further clarification on how this is expected to be implemented and whether it can affect</p>

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		<p>national legislation on legal alternative and voluntary arbitration procedures and arbitration clauses as well as mediation processes and settlement agreements within the competence of the social partners.</p> <p>SE would like to know what effect COM has envisaged on voluntary agreements on alternative dispute resolution mechanisms. Would a legal settlement between parties not be binding? Would one party be able to appeal such legal settlement?</p>
228.		
229.	(10) in Article 12, the following paragraph is added:	
230.		
231.	<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>PL (Comments): As this article is unclear to many Member states and national social partners, PL proposes to add some explanation in the preamble (e.g. recital 14).</p> <p>SK (Drafting Suggestions): .</p>

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		<p>SK (Comments): We would need more clarity what is meant by "ideological guidance." The insertion of this Para 6 into Article 12 has no explanation in explanatory memoranda nor on the preamble.</p>
232.		
233.	(11) Article 14 is deleted;	<p>AT (Comments): Clearer transitional provisions are needed to avoid gaps of transnational representation of workers.</p> <p>CZ (Drafting Suggestions): [...]</p> <p>CZ (Comments): CZ insists on retaining Article 14. The reason for removal of this exemption from the scope of the Directive is to ensure the same level of protection for employees in</p>

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		<p>multinational enterprises - but this will never be achieved anyway, as the draft revision of the Directive still allows for different procedures to be chosen in relation to the setting of the information and consultation procedure (setting up an EWC by agreement, setting up an EWC on the basis of the supporting measures in the Annex to the Directive, setting up another information and consultation procedure without setting up an EWC).</p> <p>However, the deletion of this exception undermines the contractual freedom of the parties by introducing new binding rules for information and consultation which will have to be incorporated into existing EWC agreements and the existing arrangements modified.</p> <p>The change will impose new increased administrative and financial costs on businesses.</p> <p>An example of a well-functioning EWC established under the agreement is the EWC in the CEZ Group, which has been in operation since 2007 and, at the supranational level, CEZ top management communicates with EWC members to fulfil its information and consultation obligations. The EWC of the CEZ has also been used as an example of good practice by Eurofound. EWC</p>

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		<p>meetings are held at regular agreed intervals. The CEZ Group fulfilled its legislative obligations to consult and inform even during the covid pandemic, when the attendance meetings were replaced by an appropriate alternative form. CZ refers to the requirement given to the commentary in the recital 19.</p> <p>DE (Comments):</p> <p>It should be ensured that arrangements pursuant to Article 14 stay in place during negotiations pursuant to Art. 5.</p>
234.		
235.	(12) the following Article is inserted:	
236.		
237.	<p>“Article 14a</p> <p>Transitional provisions</p>	<p>FI (Comments):</p> <p>We propose that the transitional provision from Article 6 be moved to Article 14a.</p>
238.		
239.	<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</p>	<p>CZ (Drafting Suggestions):</p> <p>[...]</p>

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	<p>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 undertakings or establishments in at least two different Member States. Central management may also initiate such negotiations on its own initiative.</p>	<p>CZ (Comments): CZ insists on retaining Article 14 and therefore does not support the new mechanism in Article 14a. It calls for the entire Article 14a to be deleted.</p> <p>DE (Comments): The transitional provisions need to be further examined.</p>
240.		
241.	<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>DE (Comments): This paragraph should be further examined, in particular with regard to the adequacy of having to set up a special negotiating body pursuant to Art. 14a (2) 2nd sentence in conjunction with Art. 5 and 13 if only individual elements of the agreement pursuant to Art. 6 need to be adapted.</p>

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242.		
243.	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.”;	
244.		
245.	(13) Annex I is amended in accordance with the Annex to this Directive.	
246.		
247.	Article 2	
248.		
249.	1. Member States shall adopt and publish, by [<i>OP: insert date one year from the entry into force of this Directive</i>] 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>AT (Drafting Suggestions): Member States shall adopt and publish, by [<i>OP: insert date one two years from the entry into force of this Directive</i>] 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>AT (Comments):</p>

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		<p>AT demands an implementation period of 2 years.</p> <p>CZ (Drafting Suggestions):</p> <p>Member States shall adopt and publish, by [<i>OP: insert date [...]</i> two years from the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>CZ (Comments):</p> <p>CZ insists on a standard transposition period of at least 2 years.</p> <p>CZ considers the transposition period of 1 year only to be very short and non-standard, also in view of the fact that this is a rather complex issue from a legislative, technical and legal point of view.</p> <p>In order to ensure the quality of transposition of the new Directive into national law, it is necessary for Member States to have sufficient time. Only a good transposition can achieve the objective of the proposed Directive, i.e. to ensure the effective functioning of the EWC.</p>

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		<p>DE (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date [...] two years from the entry into force of this Directive</i>] 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>DE (Comments):</p> <p>The transposition period should be at least two years. The Impact Assessment explains, that the options that were chosen for the proposed directives will require legislative work in many Member States. Analysis of the required changes and the legislative process itself require more time.</p> <p>A longer transposition period is also assumed by the COM in its Impact Assessment (p. 102).</p> <p>DK (Comments):</p> <p>A transposition deadline of at least two years is needed.</p>

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		<p>EE (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date two years from the entry into force of this Directive</i>] 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>EE (Comments):</p> <p>Generally, the transposition deadline is two years. We doubt the necessity and justification of the one-year deadline and worry that one-year period is not enough for the transposition process.</p> <p>ES (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date two years [one year] from the entry into force of this Directive</i>] 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>FI</p>

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		<p>(Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date two year from the entry into force of this Directive</i>] 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>FI</p> <p>(Comments):</p> <p>We propose an implementation period of two years instead of one year.</p> <p>FR</p> <p>(Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date [...]</i> two years from the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>FR</p> <p>(Comments):</p>

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		<p>Due to new elements introduced by the proposed directive and the potential impact on national provisions, we believe that a two-year transposition period is necessary.</p> <p>HU (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date one two year from the entry into force of this Directive</i>] 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>HU (Comments):</p> <p>Providing more time for member states to transpose the directive allows them to work more thoroughly and efficiently on implementing the legislation.</p> <p>Considering the complexity of the regulation, a two-year period is justified.</p> <p>IT (Comments):</p>

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	Commission proposal	Drafting Suggestions and Comments
		<p>Considering the scope of the revision, there is no reason to derogate from the two-year deadline generally used for transposing directives into national law.</p> <p>NL (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date two years from the entry into force of this Directive</i>] 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>NL (Comments):</p> <ul style="list-style-type: none">• One year to transpose the revision is too short, especially if the revision would require changes in legal remedies and sanctioning. <p>PL (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date one year two years from the entry into force of this Directive</i>] at the latest, the laws, regulations and administrative provisions</p>

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, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IT, NL, PL, RO, SE, SK

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	Commission proposal	Drafting Suggestions and Comments
		<p>necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>PL (Comments):</p> <p>Recognizing that the changes proposed in the project require an amendment not only to the Act on European Works Councils, but also to the provisions on civil procedure, the proposed deadline for implementing the directive should be assessed as too short. Especially in the case where the deadline for implementing Directive 2009/38/EC was set at 2 years, and the 2009 regulations did not require the introduction of an extensive system for securing the implementation of rights arising from the directive.</p> <p>RO (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date two years from the entry into force of this Directive</i>] 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>RO (Comments):</p>

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		<p>One-year period is not enough to cover the national stages of the transposition process (elaboration of the draft normative act, public consultation / consultation of social partners, consultation and interministerial approval, adoption, publication in the Official Journal of Romania).</p> <p>SE (Drafting Suggestions):</p> <p>1. Member States shall adopt and publish, by [<i>OP: insert date [...] two years from the entry into force of this Directive</i>] 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>SE (Comments):</p> <p>One year to transpose the directive is too short for the necessary processes in the Member States. There is no reason to not follow the normal two years' time frame.</p>
250.		
251.	They shall apply those provisions from [<i>OP: insert date two years from the date set out in the first subparagraph</i>].	

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	Commission proposal	Drafting Suggestions and Comments
252.		
253.	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.	
254.		
255.	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.	
256.		
257.	Regarding the amendments provided for in Article 1, point 8, of this Directive, Member States shall notify the Commission by [<i>OP: insert date in the first subparagraph of paragraph 1</i>] 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	<p>CZ (Drafting Suggestions): [...]</p> <p>CZ (Comments): CZ considers special notification obligation redundant and suggests deletion.</p>
258.		

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	Commission proposal	Drafting Suggestions and Comments
259.	Article 3	
260.		
261.	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
262.		
263.	Article 4	
264.		
265.	This Directive is addressed to the Member States.	
266.		
267.	Done at Brussels,	
268.		
269.	For the European Parliament For the Council	
270.		
271.	The President The President	