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WORKING DOCUMENT

From: General Secretariat of the Council
To: Delegations

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights - MS comments

Delegations will find attached the comments received to the text of the proposal contained in document 9079/24.

Comments by AT

- In general, it is emphasised that before the COREPER another Council working group should take place. There are still some open questions.

RE 10

- The wording in Re 10 should be adapted by referring to 'gender-**balanced** representation'.
- 'gender representation' seems too abbreviated, also in relation to the specific provisions in the articles.

*"(...) Therefore, it is necessary to lay down more effective and specific objectives regarding gender-**balanced** representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. (...)"*

Art 1 Para 4

- The formulation 'Can reasonably be expected to concern' could lead to legal uncertainty. Instead, the current definition of the Directive in force should be retained ('...where they concern...').

Art 5 Para 6

- In order to keep the costs at a reasonable level, MS should continue to be able to provide for a **limitation to one expert**. The second subparagraph should therefore not be deleted.

*"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.**"*

Art 6 Para 2a

- For AT, it is still unclear what measures the MS should take to influence the gender balanced composition of the EWC so that it fulfils these provisions.
- Neither the central management nor the special negotiating body have any influence on the composition of the EWC, as its members are appointed/elected by national works councils.
- National law already provides for a balanced representation of male and female employees in the special negotiating bodies. This balance is of great importance for AT.

*"2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall **aim agree and lay down the necessary arrangements for attaining, as far as possible, and** without prejudice to national laws **and practices** on electing employees' representatives, **to attain** 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."*

Art. 8a

Art. 8a Para 1

- The now deleted provision (previously in Art. 8 para. 2), according to which **central management does not have to pass on information in special cases** if this could cause damage to the company, should be **reinstated**.

“2. Each Member State 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 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.”

Art. 8a Para 2

- The obligation to **explain the reasons for the non-transmission** of information should be **deleted**, as it contradicts the objective of not transmitting the information.

~~“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.”;~~

Art. 11

- The **current penalty provision** should be maintained, without additionally specifying how the Member States should proceed when determining the level of penalty.

Art 11 Para 3a

- The first sentence is unclear. It is not clear who should have access to the procedure and in whose name.

*“3a. With respect to the rights conferred by this Directive and **in accordance with national law and practice**, Member States shall ensure effective access to administrative proceedings, where relevant, and to judicial proceedings **either for European Work Councils and special negotiating bodies**, or ~~on their behalf~~ for their members or representatives **on behalf of the European Works Councils and special negotiating bodies**. In particular, Member States shall provide that the reasonable costs of legal representation and participation in such proceedings are borne by the central management. Alternatively, Member States shall take other measures to avoid any de facto restriction of such access for reasons of lack of financial resources.”*

Art. 14b

- The transition period for this provision is unclear. In any case, it should be avoided that there are time gaps in the European representation of employees.

"Where negotiations pursuant to Article 5 are initiated [...] in a Community-scale undertaking or Community-scale group of undertakings [...] hitherto exempted under Article 14(1)(a) of this Directive, in the version in force on [OJ: insert date one day before the date referred to in Article 3 of this amending Directive], [...] ~~the period referred to in Article 7(1) indent three shall be reduced to two years~~. The initiation of negotiations does not affect the terms of the existing agreements in force."

Annex

Number 1

- The reference to 'green and digital change' seems unnecessary.

"The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, anticipation of change and management of restructuring processes ~~including those linked to the green and digital transitions~~, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies;"

Number 2

- The requirement that **at least one meeting per year** must take place is sufficient.

"2. The European Works Council shall have the right to meet with the central management ~~at least once per year twice a year~~, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. ~~At least one meeting per year shall be held in person~~. The local managements shall be informed accordingly."

Comments by CZ

Written comments by the Czechia on the second BE PRES compromise proposal for the revision of the EWC Directive

Referring to the discussion during the SQWG meeting on 29. 4. 2024, CZ presents following written comments and suggestions to the Belgian Presidency

1) Article 5 and corresponding Recital 7

Czechia suggests deletion of following sentence in Recital 7:

~~*“The provisions concerning the number of experts to be financed by the central management are therefore superfluous and should be repealed.”*~~

and suggests keeping the deleted second sentence in the second subparagraph of Article 5: **They may in particular limit the funding to cover one expert only.**

Justification: Limiting the funding to 1 expert is not an implicit principle that a Member State has the right to lay down budgetary rules for the functioning of the SNB. Should the rule of capping the cost per 1 expert be laid down by national regulations without any support in the Directive, we are afraid of an adverse reaction from workers' representatives.

2) Article 5 para 6

In order to make the relevant provisions of the Directive consistent, Czechia proposes to align the text in Article 5(6) with the text in Article 6(2)(f). Thus Czechia proposes replacing word in Article 5 “including costs of legal aid, if necessary...” by words “including the costs of legal experts... if necessary...”. The same applies to point 6 of the Annex.

3) Sanctions for failure to comply with the national provisions on confidentiality of information provided by the central management. (Article 11 + Recital 12)

Czechia understands that the provisions of Article 11 on confidentiality of information provided by the central management to members of SNB, EWC or employees' representatives must be read and applied in the context of Article 11(2)(b), and that therefore effective, proportionate and dissuasive sanctions may be applied for breaches of the obligation to maintain the confidentiality of information provided to members of SNB, EWC or employees' representatives. If such an interpretation is correct Czechia suggests short amendment in this regard in the end of Recital 12:

“General rules on penalties applicable in the event of failure to comply with the provisions adopted pursuant to this Directive shall also apply in cases of breaches of the rules on confidentiality of the information provided.”

4) **Balanced representation of employees with regards to their gender**

Czechia suggests short addition in Recital 10 to the effect that the objective of 40 % does not strictly applies in sectors or companies where one of the sexes is predominant:

*The requirement in Directive 2009/38/EC to take into account, where possible, the need for a balanced representation of employees with regard to their gender when determining the composition of European Works Councils has proven insufficient to promote gender balance. Women remain underrepresented in most European Works Councils. Therefore, it is necessary to lay down more effective and specific objectives regarding gender representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. To attain those objectives, it may in certain cases be necessary to give priority to the underrepresented sex in composing the European Works Council or its select committee. In accordance with the case-law of the Court of Justice of the European Union, 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. **It is also recognized that in highly gendered companies or sectors where the objective of 40% is neither factually nor legally achievable, the objective towards the efforts of central management and the special negotiating body will be directed, should be proportionate to the percentage of women and men in such companies and sectors.** Without prejudice to the national laws [...], the agreements should include arrangements to work towards a gender-balanced composition of the European Works Council. [...] This might include a growth path to a gender-balanced composition of the European Works Council, which might comprise intermediate progressive objectives. For similar considerations, it is appropriate, in addition, to require steps to strive for a gender-balanced composition of the special negotiating body, to promote that objective already during the negotiation phase.*

Comments by EE

We thank the PRES for the effort and for many amendments that are steps in the right direction. As we are still finalizing our national position, we need to keep the reservation on the text.

We are still not entirely satisfied with art 11 (3a) and would prefer this paragraph to be deleted. However, knowing that this is hardly the case, we support bringing at least more legal clarity into Article 11 par 3a in order to give a Member State a clear choice on equal footing between alternatives. The amendment was proposed as well by SE and supported by some other Member States in the last WP.

Article 11 par 3a:

3a. With respect to the rights conferred by this Directive, Member States shall ensure effective access to administrative proceedings, where relevant, and to judicial proceedings for European Work Councils and special negotiating bodies, or, on their behalf, their members or representatives. ~~In particular,~~ Member States shall provide that the reasonable costs of legal representation and participation in such proceedings are borne by the central management. ~~Alternatively, Member States shall~~ **or** take other measures to avoid any de facto restriction of such access for reasons of lack of financial resources.

Comments by ES

Following the meeting on April 29th, we sent the corresponding amendments to the compromise text presented by the PRE BE (document 9079/24).

Concept of transnational matters (art. 1.4)

Draft proposal

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

Those conditions shall be deemed to be met where:

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

b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to **substantially** affect **employees of that [...]** undertaking **or group**, or **its** establishments, in one Member State, and **their employees [...]** in another Member State can reasonably be expected to be **substantially** affected by the consequences of those measures.”;

Reasoning

This compromise text represents a step backwards in the concept of transnational issues, not only with respect to the current wording of Directive 2009/38/EC, but also with respect to the previous compromise text.

The substantial impact of the measures on workers that can reasonably be expected is a new parameter that restricts the definition of transnational issues and thus the subject matter of the Directive itself, which is why its inclusion is not admissible.

Transitional provisions (art. 14 a)

Draft proposal

1.Where, following the transposition of [OJ: insert reference to this amending Directive], a European Works Council agreement or agreement on an information and consultation procedure concluded before [OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive] in accordance with Articles 5 and 6 of Directive 94/45/EC or Articles 5 and 6 of this Directive is not in conformity with any of the **elements and**

requirements of Article 6 as a consequence of the amendments provided for in [OJ: insert reference to this amending Directive], central management shall, **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**, initiate negotiations to adapt that agreement **to the new legal framework [...]**. Central management may also initiate such negotiations on its own initiative. **Such negotiations may be limited to the provisions of the agreement that are not in conformity with the new legal framework.**

The non-negotiation of a new or partial agreement will not affect the applicability of the provisions contained in [OP: insert reference to this amending Directive]. Therefore, its provisions will apply after [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 case the agreement is in contradiction to the [OP: insert reference to this amending Directive].

Reasoning

Article 14a does not expressly and forcefully indicate the mandatory application of the revised Directive, after the transitional period has elapsed, and without prejudice to the non-conformity of existing agreements.

It should be established in this article that, in the event that no negotiations are opened after the deadline for transposition of the Directive, the Directive will apply in its entirety, with the provisions of pre-existing agreements that are contrary to the Directive no longer being applicable. In other words, Article 14a should expressly provide for the applicability of the minimum standards to existing agreements.

Appropriate measures: penalties (art. 11.2b)

Draft proposal

(9) Article 11 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

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

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

In the event of failure to comply with the national provisions transposing the obligations under Article 9(2) and (3), Member States shall provide for [...] **financial penalties, to be determined considering the criteria listed in the third**

subparagraph of this paragraph, without prejudice to the possibility to provide for other types of sanctions in addition.

For the purposes of 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 also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.”;

Reasoning

In order to remedy the shortcomings of the Directive identified in the Commission's evaluations of the Directive, it is necessary to bring back to this article the wording of the COM proposal in art 11.2, with the criteria for the graduation of penalties, as binding criteria to be adopted.

Provision of information in confidence (arts. 8 and 8a)

Draft proposal

“Article 8 Provision of information in confidence

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 [...] **appropriate** information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence [...].

2. When central management provides information in confidence in accordance with 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.**

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 ~~it has been agreed with central management that~~ the justification provided [...] has become obsolete.”;

“Article 8a Non-transmission of information on specific grounds

1. Member States shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information to members of special negotiating

bodies or European Works Councils, or employees' representatives in the framework of an information and consultation procedure, and any experts who assist them, when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned.

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

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

Reasoning

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.

On the other hand, the agreement of the central management and the EWC on the lapse of the reasons that justified the application of confidentiality is not considered appropriate.

Information and consultation procedure for employees (Recital 15)

The addition of the following paragraph to recital 15 is negatively assessed:

Draft proposal

~~Without prejudice to the possibility of Member States to provide for more stringent protective measures according to Article 153 paragraph 4 TFEU, this amending Directive should not prevent undertakings from adopting decisions in case the opinion of the European Works Council has not been provided within a reasonable time.~~

Reasoning

This new sentence added in the last text is not necessary because its content is already implicitly derived from Article 9.3, which exempts the central management from giving a reasoned written reply in case of non-compliance by the EWC with the reasonable time limit for issuing its opinion. Moreover, this sentence is excessive in that it emphasises the EWC's failure to comply with the time limit. It is therefore proposed to delete it.

Gender balance in the composition of the EWCs (art. 6.2.a)

Draft proposal (art. 6.2.a and annex I.1c)

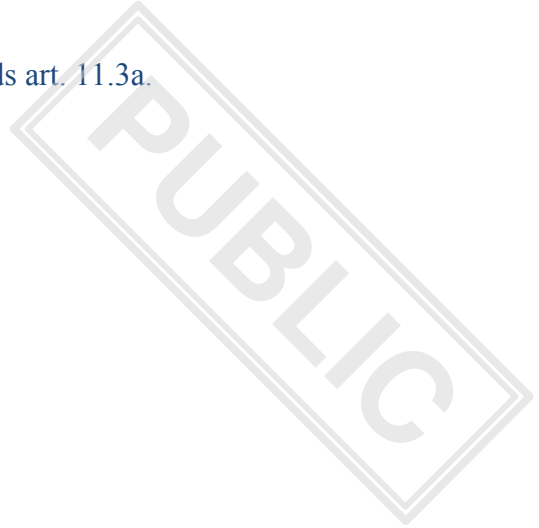
“2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall agree and lay down the necessary arrangements for attaining, ~~as far as possible, and~~ without prejudice to national laws on electing **employees’** representatives, the objective of gender balance whereby women and men each comprise at least 40 % of European Works Council members, and where applicable, at least 40 % of select committee members.”;

Reasoning

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 text already subjects this to the national laws on electing employees’ representatives. The expression “as far as possible” is too indeterminate and broad. For all these reasons, its removal is proposed.

Comments by FI

Finland supports this proposal by EE (+ by SE) as regards art. 11.3a.



Comments by FR

Recital 5:

(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 **of an undertaking** can reasonably be expected [...] to **substantially** affect **its** employees in more than one Member State, but also cases where such measures can reasonably be expected to **substantially** affect **employees of that undertaking** in only one Member State, but the consequences of those measures can reasonably be expected to **substantially** affect **its employees** in at least one other Member State. This is necessary to cover cases where undertakings envisage measures, such as lay-offs, redundancies **or allocation of production activities and outsourcing of activities**, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting **substantially** employees **of that undertaking** 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. [...] **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.**

Justification: The aim of this amendment is to bring Recital 5 into line with the amendments to Article 1(4) of the 2009 Directive, by adding the word "substantially" to describe the degree of impact of decisions on employees.

Recital 17:

(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 an [...] effective enforcement, and that possible prior out-of-court settlement procedures cannot [...] **deprive rightsholders' of their right to bring legal proceedings. In particular, Member States should guarantee the possibility either for European Work Councils and special negotiating bodies or for their members to engage any relevant administrative or judicial proceedings to enforce their rights, without prejudice to conditions on representativeness and empowerment provided for in national law as regards legal actions of**

the members or representatives of European Work Councils and of special negotiating bodies on behalf of these entities.

Justification: The French authorities support the objective of guaranteeing the effectiveness of the right to take legal action conferred by the directive to members of European Work Councils (EWC) and of special negotiating bodies.

However, the French authorities consider that it is necessary to secure the interpretation of the provisions of article 1 §9 point bb new (creating a new paragraph 3a to Article 11 of the current directive) relating to legal action on behalf of the EWC or of the special negotiating bodies.

Indeed, Member States should be able to assess whether it is appropriate to grant legal standing to the EWC or the special negotiating bodies, taking into account the specificities and the overall coherence of their legal system, provided that an effective access to legal proceedings is guaranteed. Moreover, these provisions must preserve the possibility for Member States to set rules of representativeness and empowerment for members or representatives of these bodies to act on behalf of the entity, as is the case for any other legal entity.

Article 1(1) amending article 1 paragraph 4:

The modification made to Article 1(4) of the 2009 Directive in the latest version of the text may be acceptable to the French authorities, provided that the term "substantially" is also included in Recital 5.

Article 1(9) (bb-new) amending article 11 paragraph 3a:

With respect to the rights conferred by this Directive, Member States shall ensure effective access to administrative proceedings, where relevant, and to judicial proceedings for European Work Councils and special negotiating bodies, or, on their behalf, their members or representatives, as well as for the members of special negotiating bodies. In particular, Member States shall provide that the reasonable costs of legal representation and participation in such proceedings are borne by the central management, without prejudice to the judge's decision on the final cost of the proceedings. Alternatively, Member States shall take other measures to avoid any de facto restriction of such access for reasons of lack of financial resources.

Justification: The French authorities wish to remove any ambiguity that might lead them to recognise the SNB a legal personality and consider that the addition of the phrase "or, on their behalf, their members or representatives" is not sufficient. This wording seems to imply that SNB members may act in the name of or on behalf of the SNB, which is not possible in the absence of

legal personality for the SNB. SNB members can only act in their own name to defend their individual prerogatives.

Amending domestic law to give the SNB legal personality within the framework of the body of rules relating to EWCs could require a review of other provisions of the French Labour Code, in particular those relating to the establishment of a SNB for employee participation in companies resulting from a merger, demerger or cross-border transformation (cf. Articles L. 2371-1 et seq.), the consequences of which are difficult to measure, something which the French authorities do not wish to see.

Article 1(12) concerning the new article 14a:

The French authorities wonder about the implications of Article 14a.2. and its link with point 3 of Article 14a. According to point 2 of this article, existing agreements may be renegotiated in accordance with the provisions they contain. Does this also apply to the renegotiation deadlines that may be included in these agreements? If agreements provide for renegotiations at regular intervals, does this imply the automatic application of the provisions of the current draft directive when these renegotiations take place after its entry into force? Finally, is Article 14a. 3. be understood to mean that the subsidiary provisions will apply if the forthcoming renegotiations under the existing agreements fail? The French authorities would like the Presidency to clarify the implications of the provisions of this article on these various points.

Comments by NL

After reviewing the amendments by France, the Netherlands is not in favour of the French proposal for Article 1(9) (bb-new) amending **article 11 paragraph 3a**:

With respect to the rights conferred by this Directive, Member States shall ensure effective access to administrative proceedings, where relevant, and to judicial proceedings for European Work Councils and special negotiating bodies, or, on their behalf, their members or representatives, as well as for the members of special negotiating bodies. In particular, Member States shall provide that the reasonable costs of legal representation and participation in such proceedings are borne by the central management, without prejudice to the judge's decision on the final cost of the proceedings. Alternatively, Member States shall take other measures to avoid any de facto restriction of such access for reasons of lack of financial resources.

In the Netherlands, individual EWC or SNB members cannot take legal action on behalf of the EWC/SNB. Only the entity as a whole has legal standing. Therefore, the “and special negotiating bodies” should not be deleted in order to take into account that practices that may differ from country to country. We would like to maintain this freedom of choice and would therefore propose reverting to the Presidency text. Alternatively, we could consider adding the phrase ‘in line with national law or practice’, so that hopefully also the French concerns are addressed.

... for European Work Councils **and special negotiating bodies**, or, on their behalf, their members or representatives **in line with national law or practice**

Comments by SE

As a general remark, the text is going in the right direction, and we appreciate many of the changes proposed by the Presidency. We still have a few comments, as stated below.

Please find below Swedish suggested insertions underlined and deletions ~~striked out~~.

Article 1.4 and recital 5

We support the amendments made and the addition of “substantially” in article 1.4 (a) and (b) and wish to see this change remain in the text. We can also support an inclusion of “substantially” in recital 5 as some member states suggested at the working party.

Recital 10 (article 6.2a)

As mentioned during the working party we would prefer to revert back to the commission’s proposal regarding recital 10. The Swedish social partners on both sides find the wording “the agreements should include arrangements to work towards a gender-balanced composition” too prescriptive and doesn’t properly take account of the autonomy of the social partners.

If the Presidency believes that it is necessary to keep the amendments made in recital 10, we would like to reinstate the reference to “the autonomy of the employees to freely choose their representatives” from the Presidency’s first compromise proposal.

“(10) The requirement in Directive 2009/38/EC (.....) **Without prejudice to the national laws and the autonomy of the employees to appoint the members of the European Works Councils, the agreements should include arrangements to work towards a gender-balanced composition of the European Works Council. This might (...).**”

Article 10.2 and recitals 12 and 13

It is important to make clear that the information that should be given according to articles 8 and 8a should not be disclosed further, i.e. not be covered by the information obligation in article 10.2, since the reasons justifying the provision of information in confidence (as in article 8) and the reasons justifying the non-transmission of information as well as the mere information that there exist non-transmissible information (as in article 8a), can itself be insider information.

We therefore propose the following wording for recitals 12 and 13, but we are also available for further discussions to find suitable ways forward in this important matter.

(12) When sharing sensitive information (...), the reasonable justification should not be disclosed further. **The confidentiality should only be upheld as long as the reasons for it persist.** (...).

(13) The possibility of central management (...). The reasons justifying the non-transmission of information should not be disclosed further. (...)

Rationale

- The reasons for non-transmitting information as well as the reasonable justification to information given in confidence must stay within the EWC. A widespread transmission of this information might in practice lead to difficulties for the central management to keep classified information from impacting the financial market and risks leading to infringements of the Market Abuse Regulation.

Article 11.3a

We would like to propose the following wording of this paragraph.

“3a. With respect to the rights conferred by this Directive, Member States shall ensure effective access to administrative proceedings, where relevant, and to judicial proceedings for European Work Councils and special negotiating bodies, or, on their behalf, their members or representatives. ~~In particular,~~ Member States shall provide that the reasonable costs of legal representation and participation in such proceedings are borne by the central management ~~Alternatively, Member States shall~~ or take other measures to avoid any de facto restriction of such access for reasons of lack of financial resources.”

Reasoning

- The proposed provision stating that the central management is to be responsible for the cost of legal representation would seriously distort the balance between the parties. Such unbalance risks to be litigious and to cause an undue increase of costs and administrative burden for the companies.
- The current wording in article 11.3a implies that the first-hand choice is for the central management so bear the costs of judicial proceedings, and as second hand choice the member states could provide for alternative measures. The current wording interferes with national fundamental principles and legal frameworks on legal costs of proceedings, in particular the provisions governing the court’s possibility to assess how legal costs shall be set off, reduced, or allocated between the parties.