

Revision of Directive 2009/38/EC on European works councils

SUMMARY

The EU internal market has, over the years, led to a 'transnationalisation' of companies and groups of companies, i.e. the expansion of their operations to multiple EU Member States. However, procedures for informing and consulting employees in the Member States are often not geared towards the transnational structure of the company that takes the decisions affecting those employees. This may lead to the unequal treatment of employees affected by decisions in the same undertaking or group of undertakings, and hamper workers' representation and social dialogue at international level.

In 1994, the EU therefore adopted Directive 94/45/EC, requiring undertakings or groups of undertakings operating in two or more Member States to set up European works councils (EWCs). EWCs represent employees in multinational companies of a certain size and are intended as a platform for exchanges on transnational matters between employees and employers' representatives across EU Member States and European Economic Area (EEA) countries. In 2009, recast Directive 2009/38/EC (the EWC Directive) sought to address several shortcomings, counter the declining trend in the creation of EWCs and clarify several key concepts.

However, a 2016 ex-post evaluation identified major weaknesses in the implementation of the EWC Directive regarding, among other things, the consultation process of EWCs and the means for workers' representatives to enforce their rights. In February 2023, the European Parliament called on the European Commission to revise the EWC Directive. Around a year later, on 24 January 2024, this call was followed up by a Commission proposal.

Background

Workers' right to be informed and consulted on relevant matters is protected by the [EU Charter of Fundamental Rights](#),¹ is part of the [European pillar of social rights](#),² and is enshrined both in the EU Treaties³ and in secondary law. In line with Article 153 of the Treaty on the Functioning of the European Union (TFEU), the EU must support and complement the activities of Member States in the field of information and consultation of workers. EU law relating to information and consultation at national level is extensive and has developed over several decades.⁴

A first (unsuccessful) attempt to adopt EU legislation relative to information and consultation of employees on transnational issues in multinational companies was made in the 1980s. Only in 1994, [Directive 94/45/EC](#) introduced [European works councils](#) (EWCs). Through EWCs, the management of large multinational companies informs and consults workers on the progress of the business and any significant decision at European level that could affect their employment or working conditions.⁵



Following the adoption of Directive 94/45/EC, more than 1 250 EWCs were established. In 2009, recast [Directive 2009/38/EC](#) (the EWC Directive) aimed to address several shortcomings relating to the implementation of Directive 94/45/EC (such as the lack of legal certainty regarding key concepts of the directive (e.g. 'transnational issue') or insufficient links between EU legislative instruments on information and consultation of employees). In light of the declining trend in the creation of EWCs in the years following the adoption of Directive 94/45/EC, the EWC Directive sought to increase the number of EWCs established while enabling the continuous functioning of existing agreements. Since the recast, the take-up rate and overall number of EWCs have not changed significantly, with newly established EWCs taking the place of those dissolved, mainly owing to restructuring (mergers). In 2021, 3 676 multinational companies operational in the EEA constituted an undertaking or group of undertakings within the scope of the EWC Directive, employing close to 30 million workers in the EEA. At the time, there were about 1 020 active EWCs. In **2023, around 1 000 companies had active EWCs** (or agreements on transnational information and consultation), representing **less than a third of the over 3 600 eligible companies**.⁶

As such, EWCs have the potential to contribute to **European social dialogue** between employers and employees, launched in 1985 by then-European Commission President Jacques Delors at Val Duchesse, and complement the social dialogue at national level.⁷ Developing and fostering social dialogue is an essential element of the [European social model](#), as it plays a crucial role in promoting competitiveness and fairness and enhancing economic prosperity and social wellbeing.

As shown during the **2009/2010 economic crisis** and, even more so, the **COVID-19 pandemic** in 2020, Member States with a long tradition of social dialogue tend to have stronger, more stable economies and are often Europe's most competitive. While, especially in the second quarter of 2020, Member States were heavily hit by the coronavirus containment measures, and seasonally adjusted gross domestic product (GDP) decreased by around 12 %, employment fell by only 2.8 % in the EU (compared with 8.7 % in the United States).⁸ Interestingly, Member States with well-developed industrial relations, in which workers and their representatives had relatively strong rights, performed even better than the EU average, with far fewer workers (0-2 %) losing their jobs.⁹

EWCs can also play a **critical role in preventing and mitigating the negative effects of change**. According to the Commission, the 'involvement of social partners in labour market reforms and sector or company restructuring has shown to yield positive results as their involvement ensures ownership of reform processes and promotes trust and partnership. In addition, permanent channels for social dialogue can help anticipate and address the needs and expectations arising from the challenges associated with an ageing workforce and occupational health and safety or with regard to skills and work-life balance.'¹⁰

In view of current and future challenges affecting the labour market and the workplace, the Commission considers that '**European works councils** will have an **increasingly relevant role** to play in formulating fair and sustainable responses at company level to the transnational impact of challenges linked to **digitalisation, globalisation and demographic change**. They can address a wide variety of issues, such as the introduction of new technologies and the related training needs, the strategic development of the company in a changing market environment, or best practices in accommodating an ageing workforce.'¹¹

Workers involvement through EWCs could also be key to achieving a **fair transition towards climate neutrality**. According to a 2022 European Parliament [study](#), the effects of a transition to a climate-neutral economy are '... most pronounced in a handful of sectors and regions that must inevitably undergo significant structural changes (such as mining or energy production)', and 'evidence suggests that facilitating employee involvement might mediate and mitigate the negative effects of the twin transition'.

However, an **ex-post evaluation** carried out in **2016** identified major **shortcomings in the implementation** of the EWC Directive, for instance regarding the consultation process of EWCs and the means for workers' representatives to enforce their rights (see further details in the section on

the Commission's ex-post evaluation below). Similarly, recent [research](#) concludes that 'nearly 30 years after the adoption of Council Directive 94/45/EC, EWCs are still very much in a process of evolution. Although their added value is widely recognised, some key objectives and the assessment of their achievements remain in many ways contested'. As regards the twin green and digital transition, the above-mentioned European Parliament analysis found that existing policy and legal instruments (such as the EWC Directive) 'have a limited effect largely because of their questionable enforceability', thus not fully reaping their potential benefits.¹²

In a **legislative-initiative resolution** of **February 2023**, the European Parliament called on the Commission to [revise](#) the EWC Directive. Following-up on Parliament's call, the Commission launched, in April and July 2023 respectively, a first- and second-stage **consultation of European social partners** on a possible revision of the EWC Directive, as envisaged under Article 154 TFEU. In its 2024 work programme, adopted on 17 October 2023, the Commission announced a 'legislative or non-legislative initiative' to follow up on Parliament's resolution. On **24 January 2024**, the Commission finally put forward a **proposal for a revised EWC Directive**.¹³

Current legislation

In 1994, EWCs were first introduced by [Directive 94/45/EC](#) on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.¹⁴ Some 15 years later, Directive 94/45/EC was **recast**. [Directive 2009/38/EC](#) (the EWC Directive) entered into force on 6 June 2009, repealing Directive 94/45/EC. The (recast) EWC Directive's aim was to ensure the effectiveness of employees' transnational information and consultation rights, increase the number of EWCs and enable the continuous functioning of the existing ones. Member States had to transpose the EWC Directive by 6 June 2011.

Key definitions under Directive 2009/38/EC

'Community-scale undertakings' (Article 2(a)) are:

- undertakings with at least 1 000 employees within the EU Member States and
- at least 150 employees in each of at least two Member States.

'Community-scale groups of undertakings' (Article 2(c)) are groups of undertakings with at least:

- 1 000 employees within the Member States,
- two group undertakings in different Member States, and
- one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.

'Information' (Article 2(f)) means transmission of data by the employer to the employees' representatives; information must 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 the possible impact.

'Consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion.

'Employees' representatives' (Article 2(d)) means the employees' representatives provided for by national law and/or practice.

Under Article 1(4), matters must 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.

Under the EWC Directive, an **EWC** (or a procedure for informing and consulting employees) must, on request, be established **in every Community-scale undertaking and every Community-scale group of undertakings** with the purpose of **informing and consulting employees** (Article 1(2)). A request by 100 employees from two countries or an initiative by the employer triggers the process

of creating a new EWC. A special negotiating body must be established to this end (Articles 5(1) and (2)). The composition and functioning of each EWC is tailored to the company's specific situation through an agreement between management and workers' representatives from the different Member States involved (Article 6). Under the directive, **companies are only required to let EWCs meet once a year.**

EWCs can issue **non-binding opinions** on management decisions on transnational matters within the multinational undertaking. While EWC rights to information and consultation apply to all transnational topics affecting workers' employment conditions, **EWCs are not a negotiating body**, and so have a different objective than information and consultation processes at national or local level, which aim to reach an agreement between employees' representatives and management. The EWC process must not affect national information and consultation procedures set out in EU law.

The EWC Directive brought about **several significant changes**. In particular, the directive:

- introduced definitions of information and consultation (Article 2, see text box above);
- limited the competence of EWCs to issues of transnational nature (Article 1(3)) and introduced a link between national and transnational levels of employee information and consultation (Article 6(2)(c) and Article 12);
- clarified the role of employees' representatives (such as the obligation of EWC members to inform employee representatives about the establishments or undertakings of a Community-scale group of undertakings or – in the absence of representatives, the workforce as a whole – about the content and outcome of the information and consultation procedure (Article 10(2)) and the opportunity to benefit from training without loss of wages (Article 10(4));
- clarified responsibilities for initiating negotiations for the establishment of an EWC or an employee information and consultation procedure, as well as rules on negotiating agreements to set up new EWCs (Articles 5 and 6);
- made changes to the subsidiary requirements that apply if no agreement is signed within three years following a request to establish an EWC (Article 7 and Annex I); and
- introduced an adaptation clause applying to agreements on EWCs if the structure of the undertaking or group of undertakings changes (Article 13).

The EWC Directive also sought to strengthen its enforcement. In particular, the directive introduced criteria for sanctions (effective, dissuasive and proportionate, recital 36) and obliged Member States to amend their national enforcement systems so that they could comply with the new standards. Accordingly, Article 11 requires Member States to ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the directive to be enforced.

Finally, Article 15 of the EWC Directive includes a **review clause**. Accordingly, the Commission had to report, no later than 5 June 2016, to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the directive, making appropriate proposals where necessary.

European Commission evaluations and consultations

Ex-post evaluation and implementation report (2018)

In line with Article 15 of the EWC Directive, albeit with a delay of some two years, the Commission presented a [report](#) on the implementation of the directive on 14 May 2018.

This report was underpinned by an [ex-post evaluation](#), assessing the transposition and implementation of the directive in the Member States, as well as other more specific aspects (such as the effects on the creation of EWCs, the effectiveness of employees' transnational information and consultation rights, and improvements to the legal framework). In line with the [Better](#)

[Regulation Guidelines](#), the evaluation also assessed the relevance, coherence, efficiency and EU added value of the EWC Directive.

The Commission did not carry out any public consultation at the time – judging it unnecessary, as various key stakeholders had already been consulted at company, national and EU levels (through an [external study](#) drawn up in the context of the evaluation), and 'given the highly specialised knowledge needed to respond meaningfully to evaluation questions on the new provisions introduced by the 2009 Recast Directive'.¹⁵

The implementation report sets out, in particular, the Commission's main evaluation findings and the corresponding policy responses, as described in the following.

The evaluation concludes that the directive has **only been partly effective** in meeting its objectives. While providing some impetus for setting up new EWCs and renegotiating existing EWC agreements, it did not stop the declining trend of EWC creation. According to the Commission, the reasons lie, among other things, in the lack of awareness of legal requirements by national social partners, changing company structures due to mergers or acquisitions, the absence of an automatic obligation to set up EWCs, the location of companies' headquarters in countries with less developed social dialogue and lengthy negotiations of EWC agreements. Similarly, while the directive improved the information for workers in terms of quality and scope, it has been less effective regarding consultation. Consequently, EWC members (at least at the time of drafting of the evaluation report) seem to have little influence in the decision-making process of their companies, notably in cases of restructuring. Moreover, the Commission finds that the concept of transnationality, even if better defined, still poses interpretation issues in practice. Also, according to the Commission, weaknesses in the existing means allowing EWCs to enforce their rights and significant differences in the nature and level of sanctions across Member States hamper proper enforcement of the directive's provisions.¹⁶

By contrast, the evaluation's findings are more positive regarding the remaining evaluation criteria. Accordingly, for most employers, the benefits the directive brought about outweigh the related costs (**efficiency**). In this context, the Commission finds that the directive did not generate additional costs for employers compared with the 1994 directive. On the contrary, quantifiable costs for setting up an EWC even seem to have decreased. On a similarly positive note, the evaluation concludes that the directive is still considered **relevant** by all stakeholders. According to the Commission, the EWC Directive makes a significant contribution to ensuring transnational social dialogue at company level, thereby improving employee protection.

In addition, EWCs provide a mechanism for qualitative improvements to the strategic solutions found in companies. The directive is also found to be **coherent** with other EU instruments, with discrepancies with other relevant legislation (such as Directive 98/59/EC on collective redundancies or Directive 2008/94/EC on transfer of company ownership) justified by its specific objectives.

In this context – as explained in its [analysis of the first-stage consultation](#) launched ahead of the EWC Directive's revision (see further details in the following section) – the Commission even considers that practical synergies can occur between the EWC Directive, and any EU policy field that stands to benefit from the involvement of EWCs, in particular in the context of the twin transition. Under a Commission proposal on due diligence legislation, for example, EWCs could be informed and consulted on multinational companies' due diligence policies and other due diligence actions, potentially helping central management to identify and mitigate adverse impacts on workers' rights, other fundamental rights and the environment. EWCs could also play a key role in disseminating information about sustainability due diligence matters among the employees they represent, and submit complaints using the complaints procedures under the proposed legislation.

Finally, the evaluation finds that the EWC Directive has a clear **EU added value** in that, without the directive, transnational information and consultation within companies would have a purely voluntary character and take place in a legal vacuum. Considering EWC's genuine transnational

dimension, the EU is best placed to legislate on the issue, while allowing Member States flexibility to adapt the directive's provisions to national industrial relations and legal systems.

As to **transposition**, the report finds that the large majority of Member States have properly transposed the directive, with some countries going beyond the directive's minimum requirements.¹⁷

In terms of **policy responses** to the identified challenges, the Commission proposes three strands of action (expressing implicitly a preference for not revising the EWC Directive at the time of drafting the implementation report): i) to publish a practical handbook for EWC practitioners;¹⁸ ii) to provide social partners with funding to support the implementation and effectiveness of EWCs;¹⁹ and iii) to ensure the full transposition of key provisions of the EWC Directive in the Member States. As to the latter, the Commission announces its intention to facilitate exchanges between Member States, notably on the design of effective, proportionate and dissuasive sanctions in the event of infringement of the directive's provisions.

Commission consultations ahead of the revision

Under Article 154 TFEU, the Commission must consult EU social partners before presenting any legislative proposal for EU action in the area of social policy. As a follow-up to Parliament's legislative resolution of February 2023 (see further details in the European Parliament section below), the Commission thus launched, in April 2023 and as indicated above, a [first-stage consultation](#) of European social partners on a possible revision of the EWC Directive.

During the **first-stage consultation**, replies were received from 11 recognised social partners, including three trade union organisations and eight employer organisations. While all responding trade union organisations saw a need for a legally binding revision of the EWC Directive to address the directive's shortcomings, most employer organisations (six out of eight) argued against a revision, considering that the directive was fit for purpose. In particular, they argued that EWCs' practices needed to remain flexible in order to be applied effectively to different sectors and companies across the Member States, and that no further regulatory burden should be put on companies having already opted for the establishment of EWCs.²⁰

Based on the replies received during the first-stage consultation, the Commission concluded that there was **scope for further EU action on improving the EWC Directive**. In July 2023, the Commission thus launched a [second-stage consultation](#) on the possible content of such action, which ended on 4 October 2023. In the related [consultation document](#), the Commission identifies main challenges, proposing possible avenues for EU action to address them.

European Parliament

Legislative-initiative report

As early as **December 2021**, Parliament called for a revision of the EWC Directive in a **non-legislative resolution**. On **2 February 2023**, Parliament reiterated its call in a **legislative-initiative resolution**, aimed at 'strengthening EWCs and their ability to exercise their information and consultation rights, as well as to increase the number of EWCs, while taking into account the different industrial relations systems in the Member States' (paragraph 1). According to Parliament, the Commission should come forward with a proposal for an 'ambitious' revision of the EWC Directive by 31 January 2024 (consideration V, paragraph 24).

In its **annex**, the 2023 resolution sets out **proposals for legislative amendments** to the EWC Directive. Accordingly, Parliament recommends to broaden and clarify the scope of the **transnational matters** subject to information and consultation obligations (paragraph 10), in particular by removing a requirement to have a certain number of Member States involved in order for a matter to be 'transnational' (annex/article 1(4a) new).

Moreover, according to Parliament, **consultation rights** should be **strengthened** so that employee representatives are able to express an opinion on a proposed measure early in the process, which is then to be taken into account by management in related decision-making. This is considering that under the EWC Directive, management 'may' take the opinion of employee representatives into account and that there is no explicit requirement as to when their opinion should be sought. Parliament also suggests to require a 'reasoned response' from central management before adopting a decision (paragraph 11 and annex/article 2(1)(g)).

In its resolution, Parliament also calls for **shortening the deadlines** within which an EWC or an information and consultation procedure should be established following a request by employees (from 3 years to 18 months, paragraph 14 and annex/article 7(1)). In this context, the subsidiary or 'default' requirements that apply if no agreement is reached should be strengthened (article 14 and annex/Annex I).

To ensure effective employee information and prevent the abuse of confidentiality rules, Parliament also calls for a **clarification of the EWC Directive's confidentiality provisions**, with a greater focus on justifying the reason for confidentiality (paragraph 15, annex/article 8(1) and (2)). Moreover, Parliament would like to see procedures established to **suspend execution of decisions of management temporarily** where these are challenged because of an alleged infringement of the information and consultation requirements (paragraph 18, annex/article 11(2)).

Concerned about fragmented and insufficient compliance with the directive in the Member States, Parliament suggests **strengthening the provisions on financial penalties** (paragraph 19). Accordingly, such penalties must be effective, dissuasive or proportionate – a mandatory requirement in the enacting terms of the revised directive, while the current EWC Directive only includes this in a (non-binding) recital. Moreover, they should be equivalent to those applicable for breaches of [Regulation \(EU\) 2016/679](#) on the protection of personal data (i.e. financial sanctions of up to 4 % of annual turnover in cases of intentional infringements). Sanctions for non-compliance could also include orders excluding the undertaking from public benefits, aids or subsidies or from participating in a public contract (annex/article 11a new). With a view to better enforcement also, Parliament recommends **more effective access to justice for EWCs**, such as granting legal personality to EWCs and ensuring Member State courts have sufficient expertise (paragraph 21 and annex/article 11(2)).

Furthermore, Parliament calls for **ending the exemption** for EWCs that existed before the adoption of the first EWC Directive over 25 years ago. Thus, all EWCs (and pre-directive agreements) would need to meet the directive's standards in the future. According to Parliament, this would ensure equal treatment of workers and legal certainty (paragraph 20 and annex/article 14).

The resolution also points to a significant **lack of gender balance** in existing EWCs (with women constituting only 15.4 % of EWC members and less likely than men to hold senior positions).²¹ Parliament therefore calls for gender balance to be taken into account in the EWC's composition and select committees (consideration H, paragraph 23 and annex/article 5a new and article 6(2)(b)).

On **1 March 2023**, the **Commission** welcomed Parliament's resolution and – in line with President Ursula von der Leyen's commitment taken in her [political guidelines](#) as regards resolutions adopted by Parliament under Article 225 TFEU – **committed to follow up with a legislative proposal**. The Commission would assess Parliament's requests, including the concrete proposals made in the annex to the resolution, in the light of ensuring legal certainty for workers and employers, and safeguarding and promoting employment and industrial activities in the EU. This assessment would include data and evidence collection and a comprehensive evaluation of problems and drivers in relation to existing EWCs, and on the issues highlighted in the Parliament's resolution. The Commission also announced the launch of a two-stage consultation of EU social partners, as mentioned.

Selected written questions

In the current legislative term, several written questions relating to EWCs were submitted by Members of the European Parliament (MEPs) from different political groups, focusing on **revision of the EWC Directive, involvement of EWCs in restructuring operations** and the **impact of Brexit on EWCs based in the United Kingdom** (UK).

In [August](#) and [October](#) 2021, for instance, several members from The Left introduced questions further to the **dismissal of 422 workers by the GKN driveline plant** in Campi Bisenzio (Italy). In particular, the Members claimed that the information and consultation procedure involving the EWC had been largely ignored, highlighting shortcomings in the EWC Directive. A future revision should introduce a right to temporary suspension of a company decision in cases of non-compliance with the information and consultation procedure, revise the definition of the transnational character of a matter and improve enforcement of workers' rights. Moreover, MEPs inquired about EU funding provided to the different entities of the GKN group, and the specific conditions imposed on these companies in exchange for their receiving EU funds.

In its reply, the Commission referred to the Member States as primarily responsible for enforcing the rights of workers or their representatives deriving from the EWC Directive as well as Directive 98/59/EC on collective redundancies. Further to shortcomings in the implementation of the EWC Directive identified by an ex-post evaluation in 2018, the Commission had suggested several measures including a handbook for practitioners. As regards EU funding, it was for the Member States to implement the operational programmes under the European Social Fund (ESF) and the European Regional Development Fund (ERDF), and to provide financial support for beneficiaries. The conditions for all beneficiaries, including the GKN group, to access ESF and ERDF funds were established by the (regional) management authority and publicly accessible.

In a written question tabled in [January 2021](#), Billy Kelleher (Renew, Ireland) asked the Commission to clarify the **legal situation of EWCs established in the UK post-Brexit, referring to confusion among companies having moved their EWCs to Ireland** following the end of the transitional period. In this context, Chris MacManus (The Left, Ireland) in [November 2021](#) voiced concern about whether Ireland was in full compliance with the EWC Directive so that, after many multinational companies having moved their EWCs to Ireland, workers in Ireland could enjoy the directive's full benefits.

In its reply, the Commission clarified that, following its exit from the EU on 31 January 2020, the UK had become a 'third country' but continued to apply EU labour law, including the EWC Directive, during a transition period that ended on 31 December 2020. After the transition period, UK companies were treated like other third-country companies. While the EWC Directive applied to Community-scale undertakings in EU Member States and EEA countries, central management and the EWCs may agree to conclude EWC agreements with a wider scope. As to Ireland's compliance with the EWC Directive, the Commission had, following a complaint from an Irish trade union, launched an EU pilot project in summer 2021, designed to ascertain whether the national enforcement mechanisms ensured the right to effective judicial protection and provided for appropriate measures in the event of failure to comply with the obligations laid down in the directive. Based on the outcome of the exchange, the Commission would decide on the appropriate follow-up action.

Petitions

While there have not been any petitions on the EWC Directive in the current legislative term, two such petitions were submitted in 2014 and 2016 respectively. In [2014](#), the chairman of the EWC of an Australian company (with headquarters in Australia but 12 000 employees working at EU production sites) claimed that, in breach of the EWC Directive, EWC members had repeatedly been denied access to the company's EU factories by the management and thus been prevented from

assuming their responsibilities as workers' representatives. In its reply, the Commission recommended that, in the event of information and consultation rights under the EWC Directive not being applied by the company, redress be sought before the national courts, as enforcement of the EWC's provisions lies within their exclusive competence (with infringement proceedings by the Commission only directed at bringing national law into line with EU law).

In [2016](#), representatives of the trade union of a Danish company in Poland considered this company to be in breach of the EWC Directive. In particular, they claimed that the company never informed the representatives of the trade union in Poland that a negotiating body had been established, resulting in the absence of representatives participating in negotiations on the establishment of an EWC. Moreover, no trade union representative was involved in the EWC further on, and the company had not established an appropriate procedure for informing and consulting Polish employees. The petitioners therefore asked whether Denmark had adopted appropriate rules on the establishment and functioning of EWCs, and whether Danish legislation transposing the directive provided for appropriate sanctions. The Commission replied that Denmark had properly transposed the directive, and recommended that the petitioners raise their case before the relevant national court, given that it was foremost the national authorities' competence to assess the legality of the situation described by the petitioners.

Other EU institutions and bodies

Council of the EU

On 16 June 2022, the Council adopted a [recommendation](#) on ensuring a fair transition towards climate neutrality. In its recommendation, the Council called on Member States, among other things, to ensure full involvement of workers and their representatives in the anticipation of change and the management of restructuring processes (including those linked to the green transition), in line with the 2013 EU quality framework for anticipation of change and restructuring.

Moreover, in its [conclusions](#) of 17 November 2023 on 'More democracy at work and green collective bargaining for decent work and sustainable and inclusive growth', the Council calls on the Member States to support the effective application of EU legislation on workers' rights to information and consultation, such as the existing system of sanctions and protection of workers' representatives. In addition, the Commission should, inter alia, develop awareness-raising initiatives on national and EU rules on workers' right to information, consultation and participation and promote the exchange of best practices between Member States. Moreover, the Commission should assess, in close cooperation with European social partners, whether existing EU law for information and consultation of workers remains fit for purpose, taking into account, for instance, the changes brought about by the digital transition, as well as the challenges regarding effective enforcement of information and consultation rights in the Member States.

European Economic and Social Committee

In the current term, the European Economic and Social Committee (EESC) has issued several opinions that stress the need for an enhanced role of EWCs in the event of large company transformations and in transnational restructuring processes in the context of the twin transition.²²

In a December 2020 [opinion](#) on 'Industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society', the EESC considers that the digital transition would need regulation that follows the pace of technological transformation and anticipation of change by involving for instance, the social partners. According to the EESC, 'European works councils (EWCs) and Societas Europaea (SE) works councils may serve as a positive example of mandatory cross-border involvement of workers in balancing interests and exploring solutions in a spirit of social partnership'.

While acknowledging EWCs' positive contribution to companies' long-term economic, social and environmental objectives, the EESC, in an April 2023 [opinion](#) on 'Democracy at work', calls for substantially increasing the effectiveness and resources of EWCs, sanctioning infringements of participation rights, and facilitating access to justice. In this context, the EESC welcomes the European Parliament's resolution on the revision of the EWC Directive and calls on the Commission 'to take legal measures in a timely manner'.

In 2020, the EESC also published a [study](#) on workers' information, consultation and (board-level) participation in the EU. While recognising the benefits of employee involvement (such as increasing job and employment security in crisis situations but also contributing to more resilient corporate strategies that are better prepared to anticipate and manage change), the study draws a critical picture of the state of play in the EU at the time of drafting. The study concludes that the 'state of workers' voice and involvement in corporate decision-making' is not fit for purpose, and that the EU legal framework is insufficient in light of the challenges relating to the green and digital transition. The study recommends an 'EWC Directive that better matches realities and needs of transnational restructuring and reflects the need to equip EWCs with necessary resources and competences to engage in transnational information and consultation at eye level'.

Court of Justice of the European Union

As regards the setting up of new EWCs under the **1994 EWC Directive**, **three cases brought before the European Court of Justice (ECJ) for a preliminary ruling** have established the principle that the managements of all undertakings located in EU Member States must supply any information required to open negotiations on setting up an EWC. This relates, in particular, to the provision of information on the group's structure or organisation of the group to employee representatives, irrespective of where the group's headquarters are located or of the central management's opinion as to the relevance of the directive.²³

Under the **(recast) EWC Directive**, the Commission received **few formal complaints against Member States** alleging incorrect transposition and implementation.²⁴ No cases were brought before the ECJ for a preliminary ruling, and the Commission has so far only initiated [infringement proceedings](#) against Ireland. In a letter of formal notice, the Commission, in May 2022, called on Ireland to comply with EU rules to ensure the effective enforcement of workers' rights under the EWC Directive. According to the Commission, Irish legislation failed to guarantee the right of workers' representatives, the Special Negotiating Body (a body of workers' representatives) or the EWC to go to a national court over disputes relating to breaches of the rights and obligations under this directive. This concerned for instance disputes relative to the right to request assistance and presence of an expert in negotiation meetings or disputes relative to confidentiality obligations. As of July 2023, the exchange between the Commission and the Irish authorities was still ongoing.²⁵

Similarly, **court cases concerning EWCs at national level** are **infrequent** and concentrated in jurisdictions with a higher number of multinationals with EWCs.²⁶ According to the Commission, some of these national cases point to legal uncertainties, which may compromise the correct implementation of the directive and can entail costs and delays in the companies' decision-making processes.

ENDNOTES

- ¹ In line with Article 27 of the Charter, workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by EU law and national laws and practices.
- ² Besides the right to collective bargaining, the social pillar establishes, under its principle 8, the right of workers or their representatives to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of companies and on collective redundancies.
- ³ Article 151 of the Treaty on the Functioning of the European Union (TFEU) promotes social dialogue between management and labour, while Article 152 TFEU recognises the role of social partners.
- ⁴ EU legislation on information and consultation of workers at national level includes, in particular: Directive 2002/14/EC establishing a general framework for information and consultation of workers; Directive 2001/86/EC supplementing the European Company Statute with regard to employee participation; Directive 2003/72/EC supplementing the statute for a European cooperative society with regard to employee involvement; and the 'restructuring directives' (Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, Council Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the protection of workers' rights in the event of transfer of undertakings, plants or parts of undertakings or plants). Directive (EU) 2022/2041, adopted in 2022, aims to support social dialogue as an effective mechanism for wage setting. The EU legal framework is complemented by a non-binding [EU quality framework](#) for anticipation of change and restructuring (QFR), adopted in 2013 with the aim of contributing to more sustainable employment opportunities and maintaining employment levels in the EU.
- ⁵ As explained in the Commission's July 2023 [analytical document](#) following the first-stage consultation – EWC Directive (p. 4), 'when company decisions are taken at a transnational level, the national system of information and consultation does not enable employees in the different Member States to organise inputs and voice their views or concerns on these transnational issues together'. EU law on EWCs thus 'aims to bridge the gap between increasingly transnational corporate decision-making and workers' nationally defined and nationally confined information and consultation rights' (C. Barnard, *EU Employment Law*, 4th Edition, Oxford University Press, 2012, p. 664).
- ⁶ See further details in the Commission's July 2023 [analytical document](#) (pp. 15-19).
- ⁷ Social partners also have an important role in shaping EU legislation pertaining to social policy, as defined in Articles 152, 154 and 155 TFEU. Before the Commission submits a social policy-related proposal, it starts by consulting the social partners, first on the possible direction of EU action and, if the Commission considers EU-level action advisable, on the content of the envisaged proposal. See further details in the Commission publications '[A new start for social dialogue](#)' (2015) and '[A new start for social dialogue – one year after](#)' (2016).
- ⁸ These numbers (GDP decrease by 12.1 % and employment loss of 2.8 %) refer to the Euro area, while the GDP went down by 11.8 % and employment by 2.6 % in the EU as a whole. See [Eurostat press release](#) (14 August 2020).
- ⁹ K. Müller, [European works councils \(EWCs\)](#), EPRS, European Parliament, 2021.
- ¹⁰ European Commission, report on the implementation of Directive 2009/38/EC, [COM\(2018\) 292](#), 2018 (p. 2).
- ¹¹ [COM\(2018\) 292](#) (p. 3).
- ¹² J. Bednorz, A. Sadauskaite et al., [Unionisation and the twin transition – Good practices in collective action and employee involvement](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, September 2022 (p. 12).
- ¹³ The proposal for revision has not been covered in this briefing as it was not available at the time of drafting.
- ¹⁴ Directive 94/45/EC was extended to the UK by another directive ([Directive 97/74/EC](#)) and adapted by a third ([Directive 2006/109/EC](#)) to the accession of Bulgaria and Romania.
- ¹⁵ According to the [evaluation report](#) (pp. 9-10), in addition to an external study, information sources used included stakeholder opinions collected in expert workshops in November 2015 and June 2016, desk research and the outcome of Commission-funded projects aimed at developing employee involvement in undertakings.
- ¹⁶ As highlighted in the Commission [ex-post evaluation](#) (pp. 33-36), sanctions varied significantly across Member States, both as regards their nature (administrative or criminal offence) and level (with minimum fines as low as €23 per worker in Malta and maximum fines up to €187 000 in Spain in 2017). Moreover, the Commission identified a lack of a consistent practice across Member States as to whether EWCs have the legal status to bring an action before the courts, as well as of the dedicated financial means to do so. For further details, see Annexes 5 and 6 of the evaluation report (pp. 57-63).
- ¹⁷ For instance, in Germany, Czechia and Estonia, the consultation process ends with a reasoned opinion by the management referring to the opinion expressed by employees' representatives (Commission [ex-post evaluation](#), p. 45).

- ¹⁸ According to the Commission's July 2023 [analytical document](#) (p. 13), 'the work on the handbook was put on hold in April 2019, following a refusal of the EU level trade union organisations to participate in a group of experts, which would contribute to it'.
- ¹⁹ The [2023 call for proposals](#) aims to support projects that seek to identify and address challenges in workers' involvement resulting from changes in the world of work, in particular those driven by the twin (green and digital) transition.
- ²⁰ See the Commission's July 2023 [analytical document](#) (p. 8).
- ²¹ According to a 2023 review of national rules transposing the EWC Directive (done by European Centre of Expertise in the field of labour law, employment and labour market policies (ECE), but unpublished), most Member States have transposed the directive's provision on the composition of EWCs, including the criterion of gender, while eight Member States (CY, DE, ES, FI, IE, NL, PL, SK) have not included a reference to gender balanced representation in the EWCs into their laws. However, according to the Commission's July 2023 [second-stage consultation document](#) (p. 7), 'available evidence suggests that the directive's requirement to negotiate, where possible, a balanced composition of EWCs with regard to their gender is not effective in achieving an equal representation of men and women'. As a possible option, the Commission suggests requiring central management and the special negotiating body 'to ensure that the underrepresented sex comprises a certain proportion of EWC and select committee members' (p. 18).
- ²² See, in particular: [2020 exploratory opinion](#) 'Social dialogue as an important pillar of economic sustainability and the resilience of economies taking into account the influence of lively public debate in the Member States'; [2020 exploratory opinion](#) 'Industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society'; [2021 opinion](#) 'No Green Deal without a Social Deal'; and [2023 exploratory opinion](#) 'Democracy at Work'.
- ²³ [C-62/99 Bofrost](#), [C-440/00 Kühne & Nagel](#), [C-349/01 ADS Anker GmbH](#).
- ²⁴ The Commission only received one formal complaint on the level of sanctions in Finland (Commission [ex-post evaluation](#), p. 18).
- ²⁵ See the Commission's July 2023 [analytical document](#) (p. 12).
- ²⁶ From 1997 until the beginning of 2023, a total of 160 EWC-related national court cases have been identified by the European Trade Union Institute (ETUI). According to the Commission, the low occurrence of legal disputes may be the result of various factors, including the seriousness of issues, lack of agreement within the EWC to pursue a legal case against the management, as well as potential lack of legal standing of special negotiating bodies or EWCs in some Member States or lack of effective remedies available in Member States (see the Commission's July 2023 [analytical document](#) (p. 12, footnote 39, and pp. 43-49).

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2024.

eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

<http://epthinktank.eu> (blog)