

Revision of the European Works Councils Directive

Stronger social dialogue in a multinational context

OVERVIEW

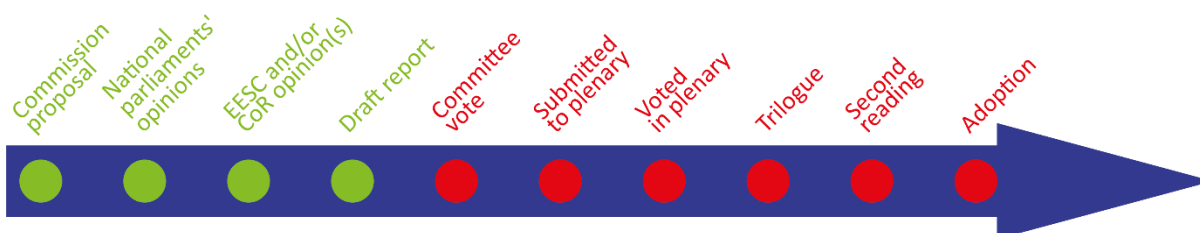
European Works Councils (EWCs) are bodies that should guarantee employees the right to be consulted on important issues in large multinational companies active in multiple EU countries. The possibility to set up EWCs was introduced 30 years ago and the rules were revised in 2009. However, with limited rights to information and little influence, EWCs have been criticised for being ineffective, on account of unclear definitions, non-dissuasive sanctions and ineffective access to justice.

In February 2023, the European Parliament called for legislative action to address the shortcomings identified and strengthen the functioning of EWCs. In response, the European Commission consulted European social partners and put forward a proposal in January 2024 to revise the 2009 directive.

The European Parliament's Committee on Employment and Social Affairs is preparing a report, with a view to securing a mandate for interinstitutional negotiations in the next legislative term.

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

<i>Committee responsible:</i>	Employment and Social Affairs (EMPL)	COM(2024) 14 24.1.2024
<i>Rapporteur:</i>	Dennis Radtke (EPP, Germany)	2024/0006(COD)
<i>Shadow rapporteurs:</i>	Brando Benifei (S&D, Italy) Jozef Mihál (Renew, Slovakia) Rosa D'Amato (Greens/EFA, Italy) Elżbieta Rafalska (ECR, Poland) Elena Lizzi (ID, Italy) Eugenia Rodríguez Palop (The Left, Spain)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Committee vote	



Introduction

Following years of expansion in the EU internal market, large multinational enterprise groups employed more than [30 million](#) people in the EU and EFTA countries in 2021. In the context of complex business structures operating across distances with various local realities, European Works Councils (EWCs) have been developed as [bodies](#) representing European employees in transnational companies. They aim to ensure that employees are informed and consulted by management on any business issues or decisions that could have an impact on employment and working conditions.

The possibility to set up EWCs was first introduced 30 years ago. Since then, a number of legal and implementation challenges have arisen and, while some EWCs appear to function smoothly, others face the same problems over and over again. What is more, the ongoing transformation of the world of work, related to the introduction of new technologies and economic, environmental and social requirements, brings a new set of challenges. To address the shortcomings that have been detected and ensure meaningful involvement of employees at transnational level through information and consultation, the European Commission proposes to change the existing rules.

Context

In the EU, the right of workers to information and consultation is enshrined in the [Charter of Fundamental Rights of the European Union](#), EU Treaties and secondary law. The Treaty on the Functioning of the European Union ([TFEU](#)) provides that the Union complements the Member States' activities to inform and consult workers ([Article 153](#)), promotes social dialogue between management and labour ([Article 151](#)), and recognises the role of social partners ([Article 152](#)). Over the years, the idea of informing and consulting workers – and also their participation – has been developed into a body of EU secondary law that currently comprises more than [35 directives](#).¹

As a compass for EU action towards a more social Europe, the 2017 [European Pillar of Social Rights](#) affirms that '[w]orkers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies' (principle 8).

Existing situation

Council [Directive 94/45/EC](#) required undertakings or groups of undertakings operating in two or more Member States to set up EWCs to represent employees in multinational companies of a certain size. The recast [Directive 2009/38/EC](#) (the EWC Directive) sought to increase the number of EWCs and make employees' rights to information and consultation in transnational contexts more effective. It defines minimum requirements for setting up and operating EWCs for transnational information and consultation procedures, which complement EU rules on informing and consulting employees at national level.

EWCs usually follow the [legislation](#) of the headquarter country, especially if this is an EU country. If this is a non-EEA country, they have to decide on the applicable national law.² Most have been set up under the national laws of Germany, France, Sweden, the Netherlands, Ireland and Italy (in decreasing order). The majority of EWCs operate in the metals, services, chemicals, building, food, agriculture and tourism sectors.

EWC creation is not automatic but triggered by a request by 100 employees from two countries or an initiative by the employer. Following that, an EWC (or a procedure for informing and consulting employees) must be established in all 'Community-scale undertakings and Community-scale groups of undertakings', to inform and consult employees. A special negotiating body (SNB) is to be set up, with the aim of reaching an agreement between central management and workers' representatives from the different Member States involved. Each EWC is tailored to the company's specific situation and is required to meet once a year.

Glossary

Agreements in force: (also 'pre-directive agreements') [Directive 94/45/EC](#) (Article 13) exempted from its scope agreements concluded before its transposition deadline (September 1996), as long as the agreements covered the entire workforce and provided for informing and consulting of employees at transnational level. Once expired, such agreements could be renewed. Recast [Directive 2009/38/EC](#) (Article 14) maintained this exemption for EWC agreements concluded or revised during its transition period (June 2009 - June 2011).

Community-scale undertakings: 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: 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.

Consultation: 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, which may be taken into account by the management.

Information: 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.

Special negotiating body (SNB): a body composed of employees' representatives established to negotiate, with central management, the setting-up of an EWC (or a procedure for informing and consulting (ICP) employees on transnational matters).

Transnational matters: matters that 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.

EWCs are not negotiating bodies. However, they can issue non-binding opinions on management decisions on transnational matters within the multinational undertaking, related to all topics that affect workers' employment conditions. The EWC process must not affect national information and consultation procedures set out in EU law.

Currently, EWCs or other agreements on transnational information and consultation exist in around 1 000 multinational undertakings, representing about [16.6 million](#) EU employees, while 678 undertakings with about 11.3 million EU employees have an active EWC agreement.³

The European Commission [notes](#) that, while some EWCs fulfil the objectives for which they were set up, many encounter difficulties. These include a lack of meaningful dialogue between the EWC and management, uncertainty in terms of setting up EWCs, the scope of information and consultation obligations (which are limited to 'transnational matters'), the coverage of expenses, the conditions for requiring the confidential treatment of information or refusing to disclose some information, and access to justice. In addition, sanctions for breaches of information and consultation are too low to ensure compliance, many EWCs lack gender balance, and about 350 undertakings have agreements on transnational information and consultation that, due to exemptions, do not fully reflect the directive's requirements, adding to the complexity and fragmentation of the situation.

Parliament's starting position

Parliament has repeatedly called for workers to have the right to be involved in company decision-making and for this right to apply in both national and transnational companies. In 2020, it invited the Commission to consider revising the EWC Directive in its resolutions on a ['strong social Europe](#)

for [Just Transitions](#)' and [sustainable corporate governance](#). In its 2021 resolution on [democracy at work](#), Parliament called for the revision of the EWC Directive, highlighting the importance of workers' participation and timely information.

On 2 February 2023, in its **own-initiative legislative resolution** with recommendations to the Commission on the [revision of the European Works Councils Directive](#) (rapporteur: Dennis Radtke, EPP, Germany, [2019/2183\(INL\)](#)), Parliament requested the Commission to propose an 'ambitious' revision of the EWC Directive by [31 January 2024](#). In an annex, it outlined its proposals for legislative amendments:

- Parliament recommends a broader and clearer definition of **transnational issues** that are subject to information and consultation obligations, considering matters to be transnational if their **potential effects** concern not only undertakings (or groups) as a whole, but also at least two undertakings or establishments in two different Member States.
- To be timely and meaningful, Parliament proposes that the **consultation** has to be done before the management decision. Employees' representatives must be able to express a prior opinion on the measures proposed, which **is to be taken into account** by central management (currently, it **may** be taken into account), and get a '**reasoned response**' before the decision is adopted.
- Parliament wants to strengthen the 'subsidiary requirements', meaning that **the deadline for setting up an EWC** or an information and consultation procedure would be **shortened** from three years to 18 months following the initial request. Past that deadline, the subsidiary requirements would apply. Considering the current rhythm of annual EWC meetings with central management to be insufficient, Parliament proposes to **meet twice a year**.
- Parliament wants the Commission to clarify the **confidentiality rules**, often used as a means to limit access to information and effective participation, and define when confidentiality is justified.
- To improve compliance, Parliament calls for tougher **sanctions**. These would include the right to request a **preliminary injunction** in national courts, which would temporarily suspend the management decision, and dissuasive **penalties** (not mentioned in the current legal body of the EWC Directive, but only in a non-binding recital) at the level of penalties applicable for breaches of the 'GDPR rules'.⁴ Parliament also recommends granting legal personality to EWCs, to facilitate their **access to justice**, and ensuring Member State courts have sufficient expertise.
- To ensure equal treatment of all workers and legal certainty, Parliament demands to **end the exemption** for 'pre-directive arrangements', which, in Parliament's view, should fall under the scope of the revised directive without any obligation to be renegotiated.
- Parliament also calls for **gender balance** to be taken into account in the composition of both EWCs and special negotiating bodies, and demands that the Commission consider including in the scope of the revised directive contracts which enable structurally independent undertakings to influence one another's operation and business decisions (such as **franchising** or management contracts).

Council starting position

In its June [2022 recommendation](#) on a fair transition to climate neutrality, the Council calls on Member States 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.

In its November [2023 conclusions](#) on more democracy at work, the Council invites Member States to continue supporting the effective application of the European framework on workers' rights to information and consultation, including the existing systems of effective sanctions and of protection of workers' representatives. It also calls on the Commission to develop initiatives designed to raise more awareness of national and EU rules on workers' rights to information, consultation and participation and promote the exchange of best practices between Member States. The Commission should also continue considering whether the existing EU law for information and consultation of workers remains fit for purpose, in terms of labour relations, new forms of work and challenges linked to the effective enforcement of information and consultation rights in the Member States.

Preparation of the proposal

Following an [ex-post evaluation](#) that assessed the EWC Directive's transposition and implementation in the Member States and other more specific aspects, and which was supported by an [external study](#), the Commission published a [REFIT report](#) in 2018. On the evidence, the Commission [concludes](#) that the EWC Directive has only partly met its objectives and has not stopped the decline in numbers of new EWCs. The causes identified included the absence of an automatic obligation to set up EWCs, changing company structures due to mergers or acquisitions, the lack of awareness of legal requirements among national social partners, the location of central headquarters in countries with less developed social dialogue and lengthy negotiations of EWC agreements. While the directive had improved information, it was less efficient as regards consultation of workers. The concept of 'transnationality' remained open to interpretation and generally low sanctions did not support proper enforcement. On the positive side, most employers found that the benefits brought about by the directive outweigh the related costs. The directive was considered relevant by all stakeholders, coherent with other EU instruments and as providing clear EU added value.

In response, the Commission proposed to publish a handbook for EWC practitioners, provide funding to social partners to support implementation of the EWC and ensure proper implementation of key provisions of the directive in the Member States, also by facilitating exchanges on the design of sanctions. A 2022 [Eurofound study](#) zoomed in on several case studies and explored concrete challenges and solutions regarding EWCs.

In reaction to Parliament's February 2023 own-initiative legislative resolution, the Commissioner for Jobs and Social Rights, Nicolas Schmit, [announced](#) that the Commission would put forward an amending legislative proposal by the end of 2023. In April 2023, the Commission launched consultations with the European social partners. The [first-stage consultation](#) (with contributions from 11 recognised social partners, including three trade union organisations and eight employer organisations) revealed little consensus on the reform among social partners. While trade unions argued for a revision, most employer organisations argued against, fearing further regulatory burdens, and for the need to maintain flexibility across sectors and companies. All agreed on the need to improve gender balance. The Commission ran a [second-stage consultation](#) between July and October 2023, outlining the main challenges and proposing possible solutions.

The proposal is accompanied by an [impact assessment](#), supported by an [external study](#), and building on data from [Eurostat](#), the [EWC database](#) run by the European Trade Union Institute (ETUI), and the 2018 [ETUI survey](#).

The impact assessment considered various policy options related to the following aspects:

- **pre-directive agreements:** whether to maintain or remove the existing exemptions;
- **setting-up of EWCs:** the resources available to employees' representatives tasked with negotiating an EWC agreement (coverage of their reasonable legal costs), the deadline for initiating negotiations and a balanced gender composition of EWCs;

- **operational issues:** ways to clarify 'transnational matters', the requirement that central management provides a reasoned response to the EWC's opinion, and limitations to imposing the confidential treatment of information;
- **coverage of EWCs' expenses:** options ranging from non-binding guidance, to specific legislative requirements for an EWC agreement to cover certain expenses (such as experts' fees and training costs), to binding requirements for the coverage of costs laid down in the directive;
- **enforcement and access to justice:** a range of options in terms of sanctions.

The preferred option put forward results from a combination of these considerations.

The changes the proposal would bring

On [24 January 2024](#), the European Commission put forward the [proposal](#) for a revised directive.

The aim of the proposal is to improve the effectiveness of the framework for informing and consulting employees at transnational level. The main changes concern:

- **definitions:** the Commission clarifies the definition of 'transnational matters', 'information' and 'consultation' (that is, to enable employees' representatives to express an opinion prior to the adoption of the decision, which must receive a reasoned written response from central management before the latter adopts its decision on the proposed measure);
- **procedure for setting up EWCs:** the proposal modifies the rules for setting up the SNB, its resources (to be negotiated and included in the EWC agreement, at least with respect to the use of experts, legal costs and training) and gender balance, both in SNBs and EWCs (at least 40 % of seats to be allotted to members of either gender);
- **operation of EWCs:** the proposal adapts the timing of and processes for consultation (two plenary meetings per year, virtual formats are possible if parties so agree) as well as extraordinary meetings, sets new rules for resources (EWC operating expenses to be borne by central management include reasonable legal costs, as notified in advance) and expertise (experts may include trade union representatives), and specifies what is to be understood as justified use of the confidentiality obligation and non-disclosure of information;
- **enforcement:** the proposal establishes access to justice both for SNBs and EWCs, and introduces obligatory sanctions by Member States in the legal body of the text, including financial sanctions that have to take account of the size and situation of the undertaking;
- **exemptions:** these are removed and adaptations to existing agreements are to be renegotiated within two years after the transposition deadline (proposed as one year from the revised directive's entry into force).

The Commission affirms that the changes proposed will have **negligible costs** for companies (compared to the turnover of relevant undertakings) and no costs for employees.⁵ The Commission has also taken up many of the elements requested by Parliament. In [Annex 11](#) to the impact assessment, it explains which elements have not been included (for instance, bringing franchises under the scope of the directive and the possibility to request a preliminary injunction for the temporary suspension of management decisions), and why.

Advisory committees

The Commission plans to consult the European Economic and Social Committee (EESC) and the European Committee of the Regions (CoR). The [EESC](#) is preparing an opinion (rapporteur: Reiner Hoffmann, Workers – GR II, Germany), adoption of which is envisaged in plenary in May 2024.

In its 2023 exploratory opinion on [democracy at work](#) (prepared by the same rapporteur), the EESC called on the Commission to take legal action in a timely manner, to substantially improve the functioning of EWCs.

National parliaments

The [deadline](#) for raising concerns related to subsidiarity issues is 16 April 2024.

Stakeholder views⁶

Stakeholders have expressed opposing views, with trade unions calling for a legally binding revision of the EWC Directive and employer organisations mostly arguing against it.

The European Trade Union Federation ([ETUC](#)) argued that EWCs continue to be confronted with a done deal, especially in cases of transnational company restructuring. They see a need for substantial improvements to the EWC Directive, particularly in the context of advancing digitalisation. Many of the [elements](#) they advocate are reflected in Parliament's own-initiative legislative resolution.

[Business Europe](#), representing employers, underlines that the revised EWC Directive must be coherent with the EU approach aimed at strengthening European companies' competitiveness and reducing regulatory burdens. In their view, informing and consulting employees effectively at transnational level should take place without delaying companies' decision-making processes and their implementation of decisions. They consider it essential that the definition of transnational matters remains unchanged, and that the ability of management to keep information confidential is a key element to the success of many businesses, and do not see the need to change existing agreements that function well, including voluntary agreements.

Legislative process

The European Commission put forward the [proposal](#) for a revised directive on 24 January 2024.

In the Council, the Working Party on Social Questions had the first exchange of views with the Commission on [8 February 2024](#), following the Commission's presentation of the proposal. On [26 February](#) it discussed the opinion of the Regulatory Scrutiny Board.

In Parliament, the Committee on Employment and Social Affairs (EMPL) takes the lead, with Dennis Radtke (EPP, Germany) as rapporteur. The Commission presented the proposal at the EMPL meeting of [14 February 2024](#) and in parallel, the rapporteur put forward his [draft report](#), based on the Parliament's 2023 own-initiative legislative resolution. The amendments put forward target mainly the effective enforcement of the directive through substantive financial penalties and the exclusion of the undertaking from public benefits, aids or subsidies (including EU funds) as well as from participating in a public contract. Among other amendments proposed is a further clarification of the term 'consultation', the inclusion of pre-directive agreements within the scope of the directive without any obligation to renegotiate, and the possibility for EWCs to use representatives from EU-level trade unions as experts. The EMPL committee is expected to vote on the draft report on 3 April 2024.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Hahnkamper-Vandenbulcke N., [Revision of Directive 2009/38/EC on European works councils](#), EPRS, European Parliament, January 2024.

Kennedy A., [Workers' right to information, consultation and participation](#), EU Fact Sheets, Policy Departments, European Parliament, January 2024.

OTHER SOURCES

ETUI, [European Works Councils: contested and still in the making](#), 2022.

European Parliament, [Establishment and functioning of European Works Councils and effective enforcement of transnational information and consultation rights](#), 2024/0006(COD).

ENDNOTES

- ¹ The main EU rules protecting workers' rights on information and consultation are: (national context) [Directive 98/59/EC](#) on collective redundancies and [Directive 2001/23/EC](#) on transfers of undertakings, [Directive 2002/14/EC](#) that establishes a general framework for informing and consulting employees, and [Directive 2019/1152/EU](#) on predictable working conditions including advance information on work schedules; (transnational context) [Directive 2004/25/EC](#) on takeover bids, [Directive 2009/38/EC](#) on European Works Councils, and [Directive 2017/1132/EU](#) on certain aspects of company law, amended by [Directive 2019/2121/EU](#) as regards cross-border conversions, mergers and divisions. Further EU rules include directives that grant partial rights for participation in decision-making in a transnational context ([Directive 2001/86/EC](#) supplementing the Statute for a European company and [Directive 2003/72/EC](#) supplementing the Statute for a European Cooperative Society), cross-sectoral agreements between social partners, a directive on temporary agency work and several health and safety directives. For details, see [Workers' right to information, consultation and participation](#).
- ² Most companies with EWCs or voluntary agreements have [headquarters](#) in the United States, Germany, France, the United Kingdom, Sweden, the Netherlands, Switzerland, Italy, Finland or Belgium.
- ³ ETUI's [EWC database](#) registers the number of EWCs that are created, dissolved or active in a given year. While [data](#) on agreements falling under EWC legislation are 'notoriously unreliable', the database shows that, following the adoption of Directive 94/45/EC and before its entry into force, EWCs popped up in great numbers (404 in 1996 alone). The creation rate slowed down to an average of 52 new EWCs per year between 1997 and 2008, and fell further after adoption of the recast, to 24 per year. The declining trend has not reversed since.
- ⁴ [Regulation \(EU\) 2016/679](#) on the protection of personal data (which introduces financial sanctions of up to 4 % of annual turnover in cases of intentional infringements).
- ⁵ The average one-off costs of negotiating a new EWC agreement are estimated at about €148 000 per negotiation. Generally, during negotiations or renegotiations involving a SNB, undertakings will be legally obliged to cover – in addition to other costs incurred in the setting-up phase – reasonable legal costs. In many cases, adaptations of EWC agreements may take place as part of regular renegotiations, which occur about every five years, and thus with no or very limited additional costs. Average annual costs of running an EWC are about €300 000, which is likely to increase slightly due to the obligation to provide a reasoned response to the EWC (proposal, p. 9).
- ⁶ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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First edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.