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REPORT

with recommendations to the Commission on Revision of European Works
Councils Directive
(2019/2183(INL))

Committee on Employment and Social Affairs

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(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on Revision of European Works Councils Directive (2019/2183(INL))

The European Parliament,

- having regard to Article 3(3) of the Treaty on European Union (TEU),
- having regard to Article 9, Article 151, Article 153(1)(e) and (f) and Article 225 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 12, 27, 28, 30, 31 and 47 of the Charter of Fundamental Rights of the European Union (Charter),
- having regard to Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees¹,
- having regard to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community²,
- having regard to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees³,
- having regard to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁴,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁵,
- having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses⁶,
- having regard to Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business

¹ OJ L 122, 16.5.2009, p. 28.

² OJ L 80, 23.3.2002, p. 29.

³ OJ L 207, 18.8.2003, p. 25.

⁴ OJ L 225, 12.8.1998, p. 16.

⁵ OJ L 303, 2.12.2000, p. 16.

⁶ OJ L 82, 22.3.2001, p. 16.

- information (trade secrets) against their unlawful acquisition, use and disclosure⁷,
- having regard to Parliament’s European Added Value Assessments of November 2012 entitled ‘European added value of an EU measure on information and consultation of workers, anticipation and management of restructuring processes’ and of January 2021 entitled ‘European works councils (EWCs) – Legislative-initiative procedure: Revision of European Works Councils Directive’,
 - having regard to its resolution of 21 January 2021 on the new EU Strategy for Gender Equality⁸,
 - having regard to its resolution of 16 December 2021 on democracy at work: a European framework for employees’ participation rights and the revision of the European Works Council Directive⁹,
 - having regard to the study of the European Economic and Social Committee of 31 August 2020 on an EU legal framework on safeguarding and strengthening workers’ information, consultation and participation,
 - having regard to the University of Leuven research project of May 2016 entitled ‘European Works Councils on the Move: Management Perspectives on the Development of a Transnational Institution for Social Dialogue’,
 - having regard to the Commission’s study of 16 November 2018 on monitoring the application of the EU Quality Framework for anticipation of change and restructuring,
 - having regard to the Commission’s report of 14 May 2018 on the implementation by Member States of Directive 2009/38/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 (Recast),
 - having regard to the Commission’s Staff Working Document of 14 May 2018, entitled ‘Evaluation, accompanying the document Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Report on the implementation by Member States of Directive 2009/38/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 (Recast)’,
 - having regard to the Commission communication of 4 March 2021 on the European Pillar of Social Rights Action Plan (COM(2021)0102) (the ‘Pillar’),
 - having regard to the opinion of the European Economic and Social Committee of 17 October 2018 on the package on European company law¹⁰,
 - having regard to the European Council’s Porto Social Commitment of 7 May 2021 and

⁷ OJ L 157, 15.6.2016, p. 1.

⁸ Text adopted, P9_TA(2021)0025.

⁹ Text adopted, P9_TA(2021)0508.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018AE1917&rid=3>

its Porto Declaration of 8 May 2021,

- having regard to Rules 47 and 54 of its Rules of Procedure, – having regard to the report of the Committee on Employment and Social Affairs (A9-0295/2022),
- A. whereas the number of multinational undertakings with assets or plants in several countries in 2015 was around 45 times higher than during the 1990s¹¹;
- B. whereas democracy and democracy at work are core values of the Union; whereas the freedom of assembly, workers' right to information and consultation, and the right to collective bargaining and action are fundamental rights protected by the Charter and contribute to an economically, socially and environmentally sustainable future; whereas Principle 8 of the Pillar envisages the importance of the involvement of workers on matters relevant to them;
- C. whereas, according to Article 151 TFEU, the Union and the Member States have as their objectives the promotion of employment, improved living and working conditions; whereas, to that end the Union and the Member States are to implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations and the need to maintain the competitiveness of the Union economy; whereas the TFEU states that such a development will ensue not only from the functioning of the internal market, but also from the procedures provided for in the Treaties in the field of employment and social policy and from the approximation of provisions laid down by law, regulation or administrative action;
- D. whereas social dialogue, including employee information and consultation, is a key element of the European social model and whereas European Works Councils (EWCs) reflect the importance attached to workers' representation; whereas the rule of law is one of the fundamental values of the Union, enshrined in Article 2 TEU, and a prerequisite for the protection of all other fundamental values of the Union, including fundamental rights, democracy, and the effective application of Union law on informing and consulting workers;
- E. whereas well-functioning EWCs play a significant role in ensuring the proper management of multinational undertakings;
- F. whereas around 1 200 EWCs currently exist in the Union, with 18 000 individual representatives¹²;
- G. whereas under Article 2 TEU, equality is a founding value of the Union and whereas under Article 3(3) TEU, the Union shall promote equality between women and men; whereas Principle 2 of the Pillar states that equality of treatment and opportunities between women and men must be ensured, including regarding participation in the labour market, terms and conditions of employment and career progression;
- H. whereas, according to figures from an ETUI survey¹³, in 2018, the vast majority of

¹¹ European Economic and Social Committee study of 31 August 2020, p. 24.

¹² European Economic and Social Committee study of 31 August 2020, p 25.

¹³ ETUI. Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives (2019).

EWC members are men, and women constitute only 15,4% of EWC members; whereas female EWC members are less likely to be found in more senior positions; whereas gender and pay gaps continue to exist in decision-making bodies, preventing women's full participation in, and contribution to, economic and social life;

- I. whereas the development of EWCs varies significantly across industrial sectors across Member States; whereas data indicates that a total of 992 EWCs are active and about 400 have been disbanded over time as a result of factors such as mergers, bankruptcy or dissolution¹⁴;
- J. whereas a study has shown that EWCs could have a positive impact in the transition to a carbon-neutral economy and that they can improve the organisation of work and decision-making¹⁵;
- K. whereas despite having the right to express an opinion, EWC members seem to have little influence in the decision-making process in their undertakings, in particular in cases of restructuring¹¹;
- L. whereas EWCs should be perceived by employers as being useful tools, bringing benefits to all parties in many ways, such as improving common understanding of issues and decisions, and contributing to transnational social dialogue at the level of the undertaking;
- M. whereas penalties for failure to consult workers in most Member States consist of financial penalties that range from EUR 23 to EUR 187 515¹⁶ and therefore in many cases fail to be effective, dissuasive and proportionate;
- N. whereas the way in which EWCs and special negotiation bodies can access justice varies in the different Member States according to their respective national systems, ranging from those granting legal personality to EWCs to those allowing EWCs to act in proceedings through their members or a trade union¹⁷;
- O. whereas only in four Member States (Austria, France, Romania and Sweden) EWCs have full legal personality, allowing EWC members to initiate judicial proceedings on behalf of the EWC and to represent the EWC in relations with third parties¹⁸; whereas the Commission has received only one formal complaint on the implementation of Directive 2009/38/EC; whereas litigation remains limited at national level due to the difficulties in accessing justice and the lack of clear provisions with regard to EWCs and special negotiating bodies in Directive 2009/38/EC;
- P. whereas the success and positive impact of EWCs require a relation of trust between the EWC and the management based on a constructive dialogue which can be influenced by the industrial relations culture in each Member State; whereas there is evidence that early consultation can have a substantial impact on job security during restructuring processes and worker consultation and participation is essential in ensuring workers'

¹⁴ <https://www.eurofound.europa.eu/fr/node/52251>

¹⁵ https://www.boeckler.de/en/faust-detail.htm?sync_id=8473

¹⁶ Commission Staff Working Document of 14 May 2018, pp. 33 to 35.

¹⁷ Commission Staff Working Document of 14 May 2018, p. 34.

¹⁸ Commission Staff Working Document of 14 May 2018, p. 34.

well-being and can have a positive impact on job quality¹⁹; whereas EWCs play a crucial role in the Europeanisation of industrial relations;

- Q. whereas gaps and the lack of enforcement of Directive 2009/38/EC contributes to a fragmented uptake of workers' rights of information and consultation on transnational matters across the Union;
- R. whereas the concept of transnationality remains difficult and abstract to interpret in concrete cases²⁰ for both members of EWCs and the central management;
- S. whereas although the use of confidentiality clauses, based on Article 8 of Directive 2009/38/EC, could be justified in certain cases, abusive reliance on that article constitutes an obstacle for effective information and consultation rights²¹;
- T. whereas the social partners have played a key role in mitigating the impact of the COVID-19 pandemic in the workplace, such as the introduction of health and safety measures, the implementation of job retention schemes, and new forms of work organisation; whereas a significant number of restructuring processes are currently underway as a result of the COVID-19 crisis²²; whereas the consultation of workers and their ability to participate in negotiations and collective bargaining are essential to addressing the positive and negative impacts of restructuring;
- U. whereas recent research by Eurofound has demonstrated the impact of COVID-19 crisis on the functioning and establishment of EWC, where mobility restrictions imposed by public health measures have halted progress in discussion about the establishment of new EWCs; whilst existing EWCs have largely moved to online meetings, enabling and contributing to a more active exchange, physical meetings should remain the norm provided that public health measures do not require otherwise;
- V. whereas the implementation of Union law in the field of the informing and consulting of employees is fragmented and could result in a lack of legal certainty for employers and employees; whereas it is essential to reinforce the Union's toolkit by an ambitious revision of Directive 2009/38/EC that reinforces workers' rights to information, consultation and participation;
- W. whereas more structured and proactive methods of information and consultation of employees' representatives could be provided for in the preparation of new corporate strategies and policies, with due regard of confidentiality clauses; whereas the social partners should be consulted with regard to the preparation and, where available, the implementation of the Member States' Recovery and Resilience Plans;
- X. whereas in its resolution of 9 June 2022 on "The call for a Convention for the revision of the Treaties"²³, Parliament called on the Council to incorporate a reference to social progress in Article 9 TFEU, with a link to a social progress protocol with the aim of enhancing social dialogue and supporting the strengthening of the competitiveness and

¹⁹ Parliament's European added value assessment of November 2012.

²⁰ Commission Staff Working Document of 14 May 2018, p. 6.

²¹ Commission Staff Working Document of 14 May 2018, p. 27-28.

²² <https://www.eurofound.europa.eu/publications/report/2020/erm-report-2020-restructuring-across-borders>

²³ Texts adopted_P9_TA(2022)0244.

resilience of the Union's economy, paying particular attention to small and medium-sized enterprises and competitiveness checks and promoting future-oriented investments focused on the just, green and digital transitions;

- Y. whereas the disruptive impact on the economy and the labour market brought about by ongoing transformations such as technological development, digitalisation, the transition to a low-carbon economy, COVID-19 pandemic prevention measures and the economic and social recovery from the pandemic, as well as new forms of employment such as platform and remote work, should be accompanied by a revision of the Union's legislative instruments and practices to address existing challenges while also harnessing the potential of such transformations;
- Z. whereas the use of digital tools such as videoconferencing systems should be used as a means to reinforce the rights provided for in Directive 2009/38/EC and the practical application of the Directive, but should never substitute the procedural obligations to inform and consult workers, such as the holding of regular, physical meetings between the EWCs and the central management;

Call on the Commission to carry out the long-awaited revision of Directive 2009/38/EC

1. Underlines that workers' rights to information, consultation and participation play a crucial role in a the functioning of a social market economy, in particular in the context of the labour market transformations arising from the green and digital transitions; stresses that EWCs are one of the key instruments by which to enhance democracy at the workplace on topics of transnational matters, enforce worker's rights, increase employee engagement, and promote mutual trust between management and employees; believes that it is essential to strengthen 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;
2. Reiterates the need to raise awareness and increase the visibility of EWCs and their potential benefits among employee and management representatives and for incentives to be created in favour of the development of EWCs, their wider use and effective enforcement; in this context, calls on the Commission to gather data on the undertakings falling under the scope of Directive 2009/38/EC; calls on the Commission to organise a high level conference in 2023 to mobilise undertakings falling under the scope of Directive 2009/38/EC, EWCs, social partners within various sectors as well as national labour market institutions on the importance of EWCs in order to put this topic high on the policy agenda;
3. Notes the significant contribution that the exchange of knowledge, experience and best practices can play in the further development of EWCs and in improving their functioning, including the creation of a platform for structured and regular exchange across Member States and sectors on best practices, in particular to increase EWCs' visibility in sectors and Member States where their existence is limited;
4. Calls on the Commission to support European trade unions organisations, and on the Member States to support most representative workers organisations provided for by national law or practice, to organise specialised trainings on EWCs' rights in order for

them to properly inform their members about the functionality of the EWCs, as well as to allocate resources to awareness raising campaigns;

5. Recalls that EWCs are unique transnational bodies set up for the purpose of informing and consulting employees and building and promoting corporate identity and that EWC engagement can develop and promote corporate culture and cohesion; highlights the importance of employee representatives, in particular EWCs, participating meaningfully, after having been effectively informed and consulted, in the drawing up and implementation of decisions related to transnational matters which significantly affect workers' interests;
6. Highly regrets that the financial, material and legal resources needed to enable EWCs to perform their duties in an appropriate manner are not always provided by the central management; is concerned about the difficulties of EWCs to access financial support provided by the Commission and stresses the urgent need to facilitate the application procedure and reduce all administrative burdens to access this funding; calls on the Commission to monitor the transposition of Directive 2009/38/EC and to institute infringement procedures where appropriate;
7. Reiterates its call on the Commission to bring forward a proposal for revision of Directive 2009/38/EC with a view to clarifying its objectives, definitions and procedures, strengthening the right of employee representatives to information and consultation, particularly during restructuring processes, according to the recommendations contained in its resolution of 16 December 2021;
8. Calls on the Commission, in the context of the forthcoming revision, to explore the merits of including contracts which enable structurally independent undertakings to influence one another's operation and business decisions (such as franchising or management contracts)²⁴ within the scope of Directive 2009/38/EC in order to prevent possible gaps.

Ensuring timely and meaningful consultation

9. Acknowledges that Directive 2009/38/EC has led to improvements regarding the establishment and functioning of EWCs; regrets, however, that EWCs still face major difficulties to enforce their rights, especially on timely information and prior and effective consultation on matters of transnational character that could have an impact on jobs and working conditions of the workforce in Europe, including changes deriving from the green and digital transitions;
10. Underlines that the definition and consequential interpretation of what matters are to be regarded as 'transnational issues' remains vague and subject to interpretation, thus resulting in a fragmented transposition and implementation of Directive 2009/38/EC by the Member States and a resulting fragmented application by undertakings; highlights that the definition needs to be precise and comprehensive and that the scope of possible effects, as well as the relevant level of management and representation it involves, are

²⁴ Management contracts are agreements by means of which one undertaking, whilst remaining an independent structure, confers its day-to-day operation to another undertaking. The managing undertaking can thus control the employees of the managed undertaking without owning the business as such.

missing elements which need to be considered when determining the transnational character of a matter; reiterates its call to clarify the concept of the “transnational character of a matter” in Directive 2009/38/EC;

11. Regrets that the timely manner of consultation remains an issue where the employees’ representatives opinion may be requested or delivered at a point in time where no meaningful consideration can be taken or when the management decision on the proposed measure has already been taken; regrets that the lack of management obligation to take an opinion into account often results in the input being disregarded or failing to have an actual impact on the proposed measure at hand; reiterates its call on the Commission and the Member States to promote the strengthening of information and consultation rights, and meaningful consultation processes; calls for a revised definition of the term ‘consultation’ in Directive 2009/38/EC, in order to ensure that the EWC’s opinion is taken into account in the decisions of undertakings and that opinion is delivered before the completion of the consultation at the relevant level, before the governing bodies of the undertaking come to a decision, and in such a way as to enable the EWC to obtain a reasoned response to its opinion in accordance with Directive 2002/14/EC;
12. Stresses the importance of ensuring that undertakings or groups of undertakings can take decisions effectively;
13. Underlines the need for EWC members to have timely access to meaningful and up-to-date information about envisaged decisions of a transnational character, and stresses the importance of sufficient time and resources to assess, evaluate and discuss the information received with the support of available experts; stresses the importance of ensuring good communication and cooperation between the central management and the EWC, including board level employee representation, in order to ensure that workers’ rights to information, consultation and participation are properly respected;

Strengthening subsidiary requirements

14. Notes that the three-year delay following a request before the subsidiary requirements apply, in the event of a failure to conclude an agreement, is excessive, is often not used effectively and is to the disadvantage of workers; reiterates its call to strengthen the subsidiary requirements in Directive 2009/38/EC which provide a basis for negotiated agreements; underlines that the right of EWCs to have an annual meeting with the central management is insufficient and should be increased to biannual meetings in order to improve the practical functioning, impact and management of EWCs;

Clarifying the scope of confidentiality

15. Highlights that the Member States’ implementation of confidentiality provisions is fragmented due to the lack of a clear definition and therefore calls for a clear definition of confidential information; stresses in this context that further efforts by Member State are needed in order to specify and clarify precisely the conditions under which the central management is not required to pass on information which could be harmful; reiterates its call²⁵ to prevent the abuse of confidentiality rules as a means to limit access

²⁵ Parliament resolution of 16 December 2021 on democracy at work: a European framework for employees’

to information and effective participation, and calls on the Commission in the context of the revision of Directive 2009/38/EC to require Member States to clearly define in what cases confidentiality is justified in order to restrict the access to information;

Improving dispute resolution

16. Stresses that in cases of disagreement on whether to undertake an information or consultation procedure, there is a lack of guidance on how to resolve the negative effects that such disagreements may have on EWC members and employees' representatives; stresses, therefore, the added value that Union initiatives could have in providing such guidance;

Introducing effective, dissuasive and proportionate penalties

17. Is concerned about the fragmented and insufficient compliance with Directive 2009/38/EC across the Union and stresses the need to ensure proper, effective and timely compliance, implementation and enforcement of the Directive for the benefit of workers throughout the Union;
18. Calls in this regard for reinforced rules and procedures and other measures, such as introducing in Directive 2009/38/EC a right to request a preliminary injunction in national courts or other competent authorities for a temporary suspension of the implementation of management decisions until the procedure for informing and consulting the EWC has taken place at the relevant level of management and representation and in such a way as to enable a reasoned response from the management in accordance with that Directive;
19. Regrets that in many Member States penalties for non-compliance are not effective, dissuasive and proportionate as required by Directive 2009/38/EC; stresses that the provisions governing Member State penalties needs to be strengthened in order to improve compliance with Directive 2009/38/EC, while at the same time ensuring that it does not create a burden to the business; reiterates its call on the Commission to revise the Directive 2009/38/EC with a view to introducing effective, dissuasive and proportionate penalties in order to secure compliance;

Ending the exemption of pre-Directive agreements

20. Stresses that more than 25 years after the adoption of the first EWC Directive²⁶, many pre-Directive agreements are still in force and have not been adapted to the requirements of Directive 2009/38/EC; believes that it is essential that all EWC agreements are governed by the same rights and obligations, in order to ensure equal treatment of workers, access to the application of high Union standards, and legal certainty; reiterates its previous call on the Commission and the Member States to put an end to the exemption for the so-called voluntary pre-Directive agreements and calls for a revision of the relevant provisions of Directive 2009/38/EC with the view to

participation rights and the revision of the European Works Council Directive, P9_TA(2021)0508, paragraph 30.

²⁶ Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64).

creating a regulatory level-playing field governing the functioning of EWCs;

Ensuring access to justice

21. Highlights the importance of EWCs having access to courts or national competent labour authorities; deplors the fact that EWCs experience obstacles to exercise their rights to information and consultation as defined in Directive 2009/38/EC; regrets that in some Member States the courts or authorities competent to provide advice or to hear or determine disputes related to EWC do not have the expertise in the issues provided for in that Directive; reiterates its call on the Member States to ensure facilitated administrative and legal proceedings for an effective access to justice for EWCs and special negotiation bodies, and for the specification of legal status, including granting legal personality, of EWCs and Special Negotiating Bodies, as part of the Commission's impact assessment;
22. Stresses the right of workers and employers, or their respective organisations, to engage in collective bargaining and the freedom of assembly, and that there should be no interference from employers which would restrict those rights and that employees' representatives in EWCs should be protected in the exercise of their rights against any retaliation practices;
23. Highlights the importance of inclusive labour markets and that a comprehensive approach is required to achieve gender equality in the workplace; regrets that much remains to be done in order to ensure equal opportunities and stresses the need to ensure greater participation of women and persons with disabilities in the labour market; underlines the importance of ensuring a gender balanced composition in EWCs and stresses that EWC members and other employees' representatives bodies can be useful tools in this context;
24. Requests that the Commission submit, by 31 January 2024, on the basis of Article 153(1)(e) TFEU, a proposal for a revision of Directive 2009/38/EC, following the recommendations set out in the Annex hereto;
25. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council.

ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

The European Parliament requests that the Commission submit a proposal to amend Directive 2009/38/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, based on the following recommendations:

- (1) The green and digital transitions create opportunities and challenges for labour markets, employers and employees. To find sustainable solutions to labour market changes, employees, employers and citizens should be encouraged to participate in the democratic systems and decision-making processes.
- (2) European Works Councils are undoubtedly a success story and an important pillar of the European social model. Nearly three decades have passed since the adoption and transposition of Directive 94/45/EC and over a decade has passed since the adoption of Directive 2009/38/EC. There is no longer any justification to exempt agreements signed prior to Directive 94/45/EC, or to retain that otherwise obsolete Directive for agreements signed or amended during the transposition period of Directive 2009/38/EC. Therefore, agreements exempted under Article 14 of Directive 2009/38/EC should be brought into the scope of this Directive.
- (3) Certain decisions having a potential significant direct or indirect effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible.
- (4) Although Directives 94/45/EC and 2009/38/EC established transnational collective labour rights on information and consultation, those rights are in practice often not respected and have proven very difficult to enforce. In many cases employers have implemented measures with transnational issues without informing and consulting the European Works Council (Renault Vilvoorde)¹, and European Works Councils are frequently informed and consulted only after measures with transnational issues have been implemented. Therefore, provisions enabling the effective enforcement should be established;
- (5) In some Member States it is unclear which national court is competent to rule on European Works Councils or the special negotiation body. Because of the nature of collective labour rights, the competent national labour court is a labour court. The Member States should determine and notify to the Commission a competent national labour court to which the European Works Council and the special negotiation body have straightforward access.

Directive 2009/38/EC is amended as follows:

- (1) Article 1 is amended as follows:
 - (a) paragraph 4 is replaced by the following:

¹ <https://www.eurofound.europa.eu/publications/article/1997/the-renault-case-and-the-future-of-social-europe>

“4. Matters shall be considered to be transnational where their potential effects concern, directly or indirectly, a Union-scale undertaking or a Union-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.

4a. In order to determine the transnational character of a matter, the scope of its possible effects and the level of management and representation involved shall be taken into account. This includes matters which, irrespective of the number of Member States involved, are of concern to workers in terms of the scope of their potential impact, as well as matters which involve the transfer of activities between two or more Member States. Undertakings or establishments situated in different Member States are deemed to be concerned where it can be reasonably expected that a matter affecting one undertaking or establishment entails, or may entail in the foreseeable future, effects on undertakings or establishments in other Member States, including where decisions envisaged by an undertaking or a group of undertakings are taken in a Member State other than that in which those effects are produced.”;

(2) in Article 2, paragraph 1 is amended as follows:

(a) point (d) is replaced by the following:

“(d) ‘employees’ representatives’ means trade unions or the employees’ representatives provided for by national law or practice”;

(b) point (g) is replaced by the following:

“(g) ‘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 a prior opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which is to be taken into account within the Union-scale undertaking or Union-scale group of undertakings. Consultation shall take place in such a way as to enable employees’ representatives to obtain a reasoned response in due time from the central management prior to the adoption of the decision;”;

(3) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. In order to achieve the objective set out in Article 1(1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at written request, either jointly or separately, of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.”;

(b) the introductory wording of paragraph 2 is replaced by the following:

“2. For this purpose, a special negotiating body shall be established within six months of the date of a request pursuant to paragraph 1, with a possible 6-month extension, in accordance with the following guidelines.”;

(c) in paragraph 2, point (b) is replaced by the following:

“(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Union-scale undertaking or the Union-scale group of undertakings, in a manner that strives to achieve a gender-balanced representation, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together.”;

(d) in paragraph 4, the third subparagraph is replaced by the following:

“For the purpose of the negotiations, the special negotiating body may request assistance from representatives of competent recognised Union-level trade union organisations and, if needed, further experts of its choice. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.”;

(e) in paragraph 6, the second subparagraph is replaced by the following:

“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 in addition to a representative of a recognised Union-level trade union organisation.”;

(4) The following article is inserted:

“Article 5a

Objectives with regard to gender balance on European Works Councils and select committees

1. The central management and the special negotiating body, when establishing a new European Works Council, or the central management and the European Works Council, when renegotiating a European Works Council agreement, shall negotiate in a spirit of sincere cooperation the necessary arrangements in order to ensure that European Works Councils are subject to the following objectives:

(a) the underrepresented sex comprise at least 40% of European Works Council members;

(b) members of the underrepresented sex hold at least 40% of select committee

positions.

The number of European Works Council members and select committee positions deemed to be necessary to attain the objectives laid down in the first subparagraph shall be the number closest to the proportion of 40%, but not exceeding 49%.”;

(5) in Article 6(2), point (b) is replaced by the following:

“(b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities and category, and the term of office, including, when allocating the seats, a set of procedural requirements to attain a gender-balanced representation;”;

(6) in Article 7(1), , the second and third indents are replaced by the following:

- “- where the first meeting of the special negotiating body is not convened within six months following a request pursuant to Article 5(1),
- where, after 18 months from the date of such a request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).”;

(7) in Article 8, paragraphs 1 and 2 are replaced by the following²:

- “1. Member States shall ensure that members of special negotiating bodies or of European Works Councils and any experts who assist them, within the conditions and limits laid down by Union and national law and subject to objective criteria, are not authorised to reveal any information which, in the legitimate interest of the undertaking or establishment has expressly been provided to them in confidence;

The same shall apply to employees’ representatives in the framework of

² The existing text reads as follows:

“1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees’ representatives in the framework of an information and consultation procedure.

That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

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.

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

an information and consultation procedure.

That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office:

This paragraph shall not apply to members of the European Works Council who reveal information to national or local work councils that may affect the situation of workers where such information has been provided to them in confidence and is subject to national rules on confidentiality.

The central management shall provide the members of the European Works Council with the objective criteria referred to in paragraph 2 and shall determine the duration of the confidentiality requirements.

2. Each Member State shall define, in specific and substantiated 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.

A Member State shall make such dispensation subject to prior administrative or judicial authorisation.”;

(8) in Article 9, the following paragraphs are added:

“An information and consultation procedure shall be initiated within a timeframe and in such a manner that allows the European Works Council to undertake meaningful consultation of relevant employees’ representatives at national and local level with the aim of delivering its opinion before the end of the consultation procedure at the relevant level.

If there is a dispute between the central management and the European Works Council or the employees' representatives as to whether an information and consultation is to be carried out, the central management shall provide duly substantiated grounds in writing for the reasons why the information and consultation requirements under this Directive or under agreements concluded pursuant thereto do not apply, including the reasons that justify the absence of transnational issues.

In so far as it is necessary for the European Works Council to carry out its tasks, the European Works Council or the select committee may request assistance from experts of its choice. Such experts may include representatives of competent recognised Union-level trade union organisations. At the request of the European Works Council, such experts shall be present at meetings of the European Works Council and meetings with the central management in an advisory capacity.

In accordance with this Article, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit the funding to cover the seeking assistance of only one expert in addition to a

representative of a recognised Union-level trade union organisation.”;

(9) Article 10 is replaced by the following:

“Article 10

Role and protection of employees’ representatives

1. Without prejudice to the competence of other bodies or organisations in this respect, the members of the special negotiating body and the members of the European Works Council shall have the means and legal capacity required to apply the rights arising from this Directive, to represent collectively the interests of the employees of the Union-scale undertaking or Union-scale group of undertakings.;

2. Without prejudice to Article 8, the members of the European Works Council shall have the right and necessary resources to inform the representatives of the employees of the establishments or of the undertakings of a Union-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out and whenever it deems it necessary to perform its tasks deriving from this Directive, in particular before and after its meetings.

3. Members of special negotiating bodies, members of European Works Councils and employees’ representatives exercising their functions under the procedure referred to in Article 6(3) shall, in the exercise of their functions, including the right to form and join trade unions, enjoy protection, in particular against retaliatory measures or dismissal, and guarantees similar to those provided for employees’ representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6(3), and the payment of wages for members who are on the staff of the Union-scale undertaking or the Union-scale group of undertakings for the period of absence necessary for the performance of their duties.

A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, shall be entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to Article 6(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.

In cases where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.

4. In so far as this is necessary for the exercise of their representative duties in an

international environment, the members of the special negotiating body and of the European Works Council shall be provided with training free of charge and without loss of wages.”;

(10) Article 11 is amended as follows:

(a) paragraph 2 is replaced by the following³:

“2. Member States shall ensure, in the event of failure to comply with this Directive, that adequate administrative and judicial procedures are available and easily accessible to enable the rights deriving from this Directive to be exercised and the obligations to be enforced in a timely and effective manner.

Member States shall establish effective judicial procedures, that can be accessed in a timely manner, to apply for and terminate including the possibility to request a preliminary injunction for the temporary suspension of decisions of the central management where such decisions are challenged on the basis that there has been an infringement of the information and consultation requirements under this Directive or under agreements concluded pursuant thereto. The effects of the challenged decisions on employment contracts or employment relationships of the affected employees shall be suspended accordingly”;

(b) in paragraph 3, the first subparagraph is replaced by the following:

“3. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the European Works Council members and/or employees’ representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article. Such procedures shall ensure a timely decision so that the European Works Council can effectively exercise its information and consultation rights.”;

“The central management shall bear the judicial costs incurred in carrying out the procedures, the costs of legal representation and subsidiary costs such as subsistence and travel expenses for at least one employees' representative.”

(11) the following article is inserted:

“Article 11a

Penalties

1. Member States shall lay down rules on penalties applicable to infringements of this Directive or of agreements concluded pursuant thereto. The penalties shall be effective, proportionate and dissuasive.

³ The existing text reads as follows: “2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.”

2. The penalties referred to in paragraph 1 shall include:
 - (a) financial penalties that are proportionate to the nature, gravity and duration of the undertaking's infringement and which shall increase in amount according to the number of affected employees;
 - (b) orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including EU funds managed by the relevant Member States, for a period of up to three years;
 - (c) orders excluding the undertaking from participating in a public contract as defined in Directive 2014/24/EU of the European Parliament and of the Council⁴.
3. In the case of infringements as referred to in paragraph 1 which are not committed intentionally, the financial penalties referred to in paragraph 2, point (a), shall be substantive and equivalent to those provided for in Article 83(4) of Regulation (EU) 2016/679⁵.
4. In the case of infringements as referred to in paragraph 1 which are committed intentionally, the financial penalties referred to in paragraph 2, point (a) shall be substantive and equivalent to those provided for in Article 83(5) of Regulation (EU) 2016/679.”;

(12) Article 14 is replaced by the following:

“Article 14

Agreements in force

1. The obligations arising from this Directive shall apply fully to all Union-scale undertakings or Union -scale groups of undertakings by ... [two years after the deadline for transposition of this amending Directive].
2. All agreements which have been concluded pursuant to Article 13(1) of Directive 94/45/EC and agreements concluded pursuant to Article 6 of Directive 94/45/EC which were signed or revised between 5 June 2009 and 5 June 2011 shall fall within the scope of this Directive without any obligation to renegotiate. Renegotiation of existing agreements shall remain possible in application of the relevant provisions in the agreements themselves and as laid down in Articles 5 and 13 of this Directive.
3. This Directive shall not affect provisions in existing agreements that are more favourable for European Works Councils.”;

⁴ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

(13) in Article 16, the following paragraph is added:

“3. Member States shall notify the Commission of the measures taken referred in Articles 11(2) at the earliest opportunity.”;

(14) Annex I is amended as follows:

(a) point 2 is replaced by the following:

“2. The European Works Council shall have the right to meet with the central management twice a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Union-scale undertaking or Union-scale group of undertakings and its prospects. The local managements shall be informed accordingly.”;

(b) in point 3, the first paragraph is replaced by the following:

“3. Where there are exceptional circumstances or decisions which may affect the employees’ interests to a considerable extent, and urgency does not allow for information or consultation to take place at the following scheduled European Works Council meeting, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed in a timely manner. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Union-scale undertaking or group of undertakings having its own powers of decision, in order to be informed and consulted. In addition to the select committee, the members of the European Works Council designated in the Member States directly or potentially concerned by the exceptional circumstances shall have the right to participate in the extraordinary meetings.”;

(c) point 5 is replaced by the following:

“5. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks. Such experts may include representatives of recognised Union-level trade union organisations. At the request of the European Works Council, such experts shall be present at meetings of the European Works Council and meetings with the central management in an advisory capacity.”;

(d) in point 6, the first paragraph is replaced by the following:

“6. In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit the funding to cover one expert only, in addition to a representative of a recognised Union-level trade union organisation.”

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	30.11.2022
Result of final vote	+: 33 -: 6 0: 8
Members present for the final vote	João Albuquerque, Marc Angel, Gabriele Bischoff, Vilija Blinkevičiūtė, Milan Brglez, Sylvie Brunet, David Casa, Leila Chaibi, Ilan De Basso, Özlem Demirel, Klára Dobrev, Jarosław Duda, Estrella Durá Ferrandis, Lucia Ďuriš Nicholsonová, Loucas Fourlas, Cindy Franssen, Helmut Geuking, Elisabetta Gualmini, Alicia Homs Ginel, Agnes Jongerius, Irena Joveva, Ádám Kósa, Stelios Kypouropoulos, Katrin Langensiepen, Miriam Lexmann, Elena Lizzi, Sara Matthieu, Kira Marie Peter-Hansen, Dragoş Pişlaru, Dennis Radtke, Elżbieta Rafalska, Guido Reil, Daniela Rondinelli, Mounir Satouri, Monica Semedo, Eugen Tomac, Romana Tomc, Nikolaj Villumsen, Marianne Vind, Stefania Zambelli, Tomáš Zdechovský
Substitutes present for the final vote	Abir Al-Sahlani, Krzysztof Hetman, Peter Lundgren, Samira Rafaela, Eugenia Rodríguez Palop
Substitutes under Rule 209(7) present for the final vote	Virginie Joron

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

33	+
NI	Daniela Rondinelli
PPE	David Casa, Jarosław Duda, Loucas Fourlas, Cindy Franssen, Helmut Geuking, Krzysztof Hetman, Stelios Kympouropoulos, Dennis Radtke, Eugen Tomac, Romana Tomc
RENEW	Irena Joveva, Monica Semedo
S&D	João Albuquerque, Marc Angel, Gabriele Bischoff, Vilija Blinkevičiūtė, Milan Brglez, Ilan De Basso, Klára Dobrev, Estrella Durá Ferrandis, Elisabetta Gualmini, Alicia Homs Ginell, Agnes Jongerius, Marianne Vind
THE LEFT	Leila Chaibi, Özlem Demirel, Eugenia Rodríguez Palop, Nikolaj Villumsen
VERTS/ALE	Katrin Langensiepen, Sara Matthieu, Kira Marie Peter-Hansen, Mounir Satouri

6	-
ECR	Peter Lundgren, Elżbieta Rafalska
ID	Virginie Joron, Guido Reil
NI	Ádám Kósa
RENEW	Abir Al-Sahlani

8	0
ID	Elena Lizzi, Stefania Zambelli
PPE	Miriam Lexmann, Tomáš Zdechovský
RENEW	Sylvie Brunet, Lucia Ďuriš Nicholsonová, Dragoş Pîslaru, Samira Rafaela

Key to symbols:

+ : in favour

- : against

0 : abstention