



Plenary sitting

A10-0029/2024

6.12.2024

*****I**
REPORT

on the 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
(COM(2024)0014 – C9-0012/2024 – 2024/0006(COD))

Committee on Employment and Social Affairs

Rapporteur: Dennis Radtke

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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

(COM(2024)0014 – C90-0012/2024 – 2024/0006(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2024)0014),
 - having regard to Article 294(2) and Article 153(1)(e) in conjunction with Article 153(2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0012/2024),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 30 May 2024¹,
 - After consulting the Committee of the Regions,
 - having regard to Rule 60 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A10-0029/2024),
1. Adopts its position at first reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) Evidence shows that legal uncertainty regarding the concept of

Amendment

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¹ Not yet published in the Official Journal.

transnational matters has led to differences in interpretation and disputes. In order to ensure legal certainty and reduce the risk of such disputes, it is necessary to clarify that concept. To this end, it is appropriate to clarify that this Directive should not only cover cases where measures considered by management can reasonably be expected to affect employees in more than one Member State, but also cases where such measures can reasonably be expected to affect workers in only one Member State, but the consequences of those measures can reasonably be expected to affect workers in at least one other Member State. This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees in another Member State, for instance due to changes in the cross-border supply chain or production activities, where such measures could lead to substantial changes in work organisation or in contractual relations.

transnational matters has led to differences in interpretation and disputes. In order to ensure legal certainty and reduce the risk of such disputes, it is necessary to clarify that concept. To this end, it is appropriate to clarify that this Directive should not only cover cases where measures considered by management can reasonably be expected to affect employees in more than one Member State, but also cases where such measures can reasonably be expected to affect workers in only one Member State, but the consequences of those measures can reasonably be expected to affect workers in at least one other Member State. ***Cases in which measures considered by management of the Community-scale undertaking or Community-scale group of undertakings are taken in a Member State other than that in which those effects are produced should also be covered.*** This is necessary to cover cases where undertakings envisage measures, such as lay-offs and redundancies, which do explicitly target establishments in only one Member State but nevertheless can reasonably be expected to have consequences affecting employees in another Member State, for instance due to changes in the cross-border supply chain or production activities, where such measures could lead to substantial changes in work organisation or in contractual relations.

Amendment 2

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) Directive 2009/38/EC requires the parties to a European Works Council agreement to determine the venue of meetings of the European Works Council. It is appropriate to specify that they are to determine also the format of such meetings, notably to avoid any doubt ***about***

Amendment

(8) Directive 2009/38/EC requires the parties to a European Works Council agreement to determine the venue of meetings of the European Works Council. It is appropriate to specify that they are to determine also the format of such meetings, notably to avoid any doubt ***that***

their freedom to agree that some or all of the meetings be held in a virtual environment, using online meeting tools, reducing the environmental footprint of meetings in line with Union, national and companies' emission reduction targets, while ensuring meaningful information and consultation at lower environmental and financial costs.

the *regular annual meetings of the European Works Council and the select committee should take place in person, whereas additional meetings may* be held in a virtual environment, using online meeting tools *if so agreed*, reducing the environmental footprint of meetings in line with Union, national and companies' emission reduction targets, while ensuring meaningful information and consultation at lower environmental and financial costs.

Amendment 3

Proposal for a directive Recital 9

Text proposed by the Commission

(9) There can be uncertainty and disputes with respect to the coverage of certain expenses and access to certain resources also during the operation of European Works Councils. In accordance with the principle of autonomy of the parties, it is appropriate to require that certain types of financial and material resources be determined specifically in the European Works Council agreements, namely the possible use of experts – such as technical subject-matter experts or legal experts – and the coverage of experts' fees, and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. The agreements should also address the provision of relevant training to the members of the European Works Council, and the coverage of related expenses, without prejudice to the minimum requirement in Article 10(4) of Directive 2009/38/EC.

Amendment

(9) There can be uncertainty and disputes with respect to the coverage of certain expenses and access to certain resources also during the operation of European Works Councils. In accordance with the principle of autonomy of the parties, it is appropriate to require that certain types of financial and material resources be determined specifically in the European Works Council agreements, namely the possible use of experts – such as *representatives of a recognised Community-level trade-union*, technical subject-matter experts or legal experts – and the coverage of experts' fees, and the coverage of legal costs, including the costs of legal representation and of participation in administrative or judicial proceedings. The agreements should also address the provision of relevant training to the members of the European Works Council, and the coverage of related expenses, without prejudice to the minimum requirement in Article 10(4) of Directive 2009/38/EC. *Reasonable costs concern expenses that are related to the proper functioning and operation of the special negotiating body or the European Works Council, including the costs of experts,*

legal representation, participation in administrative and judicial proceedings and training. Member States may lay down budgetary rules regarding the operation of a European Works Council.

Amendment 4

Proposal for a directive Recital 10

Text proposed by the Commission

(10) The requirement in Directive 2009/38/EC to take into account, where possible, the need for a balanced representation of employees with regard to their gender when determining the composition of European Works Councils has proven insufficient to promote gender balance. Women remain underrepresented in most European Works Councils. Therefore, it is necessary to lay down more effective and specific objectives regarding gender representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. To attain those objectives, it may in certain cases be necessary to give priority to the underrepresented sex in composing the European Works Council or its select committee. In accordance with the case-law of the Court of Justice of the European Union, such positive action is possible, in accordance with the principle of equal treatment of men and women, provided that the measures taken to achieve the gender balance objective do not automatically and unconditionally give priority to persons of a certain gender but allow to take into account other criteria, such as merits and qualifications and the procedure for election established by the relevant laws. Parties to European Works Council agreements should therefore be afforded the flexibility necessary to respect the legal and factual limitations to the

Amendment

(10) ***European Works Councils should promote a balanced, inclusive and diverse representation of employees.*** The requirement in Directive 2009/38/EC to take into account, where possible, the need for a balanced representation of employees with regard to their gender when determining the composition of European Works Councils has proven insufficient to promote gender balance. Women remain underrepresented in most European Works Councils. Therefore, it is necessary to lay down more effective and specific objectives regarding gender representation, to be implemented by management and employee representatives when negotiating or renegotiating their agreements. To attain those objectives, it may in certain cases be necessary to give priority to the underrepresented sex in composing the European Works Council or its select committee. In accordance with the case-law of the Court of Justice of the European Union, such positive action is possible, in accordance with the principle of equal treatment of men and women, provided that the measures taken to achieve the gender balance objective do not automatically and unconditionally give priority to persons of a certain gender but allow to take into account other criteria, such as merits and qualifications and the procedure for election established by the relevant laws. Parties to European Works Council agreements should therefore be

positive action. For similar considerations, it is appropriate, in addition, to require steps to strive for a gender-balanced composition of the special negotiating body, to promote that objective already during the negotiation phase.

afforded the flexibility necessary to respect the legal and factual limitations to the positive action. For similar considerations, it is appropriate, in addition, to require steps to strive for a gender-balanced composition of the special negotiating body, to promote that objective already during the negotiation phase.

Amendment 5

Proposal for a directive Recital 12

Text proposed by the Commission

(12) When sharing sensitive information with members of European Works Councils, members of special negotiating bodies, or employees' representatives in the framework of an information and consultation procedure, management has the possibility to provide that such information is shared in confidence and should not be disclosed further. When sharing information in confidence, central management should be required to provide at the same time a reasonable justification. Setting up adequate arrangements to safeguard the confidentiality of sensitive information can instil trust and facilitate the sharing of such information, while protecting business and workers' interests, including to avert growing risks such as industrial espionage.

Amendment

(12) When sharing sensitive information with members of European Works Councils, members of special negotiating bodies, or employees' representatives in the framework of an information and consultation procedure, management has the possibility to provide that such information is shared in confidence and should not be disclosed further. ***This should not apply to situations in which members of the European Works Council decide to reveal information to national or local work councils that may affect the situation of workers.*** When sharing information in confidence, central management should be required to provide at the same time a reasonable justification ***based on objective criteria.*** Setting up adequate arrangements to safeguard the confidentiality of sensitive information can instil trust and facilitate the sharing of such information, while protecting business and workers' interests, including to avert growing risks such as industrial espionage.

Amendment 6

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a way that enables worker's representatives to express their opinion prior to the adoption of the decision and that opinions issued by European Works Councils or employees' representatives must receive a reasoned response from central management before the latter adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty.

Amendment

(15) Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation need to be conducted in a ***meaningful and timely*** way that enables worker's representatives to express their opinion prior to the adoption of the decision, ***which could include business plans, social plans, and process innovations where they may impact on redundancies***, and that opinions issued by European Works Councils or employees' representatives must receive a reasoned response from central management before the latter ***or other competent organ of the Community undertaking or Community-scale group of undertakings*** adopts its decision on the proposed measure at issue. An explicit requirement to that effect should be laid down in Directive 2009/38/EC to ensure legal certainty. ***In that context, it is important to ensure that Community undertakings or Community-scale groups of undertakings can take decisions effectively and do not result in undue delays in decisions taken by Community undertakings or Community-scale groups of undertakings.***

Amendment 7

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In the case of a disagreement about 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 members of European Works Councils and employee representatives. Therefore, if there is a dispute with regard to whether an information and consultation procedure should be undertaken, the central management should provide duly substantiated grounds in writing specifying the reasons why the provisions in this Directive relating to information and consultation are not applicable.

Amendment 8

Proposal for a directive Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) In the context of an information and consultation procedure, the European Works Council or the select committee should be able to request assistance and advice from experts of its choice, such as representatives of competent recognised Community-level trade union organisations. Such experts should be allowed to attend meetings of the European Works Council and meetings with the central management in an advisory capacity. Moreover, Member States can lay down budgetary rules for the operation of a European Works Council.

Amendment 9

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) In certain Member States, rightsholders under Directive 2009/38/EC encounter difficulties in bringing legal actions to enforce their rights. It is therefore necessary to strengthen Member

(17) In certain Member States, rightsholders under Directive 2009/38/EC encounter difficulties in bringing legal actions to enforce their rights. It is therefore necessary to strengthen Member

States' obligation to ensure effective remedies and access to justice and the supervision by the Commission of their compliance with that obligation. For that purpose, Member States should be required to notify the Commission of how and under which circumstances the rightsholders can bring judicial, and where applicable, administrative procedures, in respect of all their rights under this Directive. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings.

States' obligation to ensure effective remedies and access to justice and the supervision by the Commission of their compliance with that obligation. For that purpose, Member States should be required to notify the Commission of how and under which circumstances the rightsholders, ***including members of the special negotiation body and members of a European Works Council***, can bring judicial, and where applicable, administrative procedures, in respect of all their rights under this Directive, ***including the right to form and join trade unions. In addition, Member States should develop mechanisms to encourage mediation and, where appropriate, provide for alternative dispute mechanisms***. Moreover, it should be clarified that the relevant procedures have to enable a timely and effective enforcement, and that possible prior out-of-court settlement procedures can neither result in a decision which is binding on the parties concerned, nor prejudice rightsholders' right to bring legal proceedings. ***However, members of special negotiations bodies and members of European Works Councils should enjoy the same protection and guarantees equivalent to those provided to employees' representatives by national law or practice applicable in their country of employment.***

Amendment 10

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) The Commission's 2018 evaluation of Directive 2009/38/EC has shown that sanctions applicable in the case of non-compliance with transnational information and consultation requirements are often not sufficiently dissuasive. Therefore, it is appropriate to lay down the Member

Amendment

(18) The Commission's 2018 evaluation of Directive 2009/38/EC has shown that sanctions applicable in the case of non-compliance with transnational information and consultation requirements ***regretfully*** are often not sufficiently dissuasive, ***effective or proportionate***. Therefore, it is

States' obligation to provide for effective, dissuasive and proportionate sanctions. **Pecuniary sanctions** should be provided for in case of failure to comply with the information and consultation procedures set out in Directive 2009/38/EC. Other forms of sanctions **could** also be provided for. **Pecuniary** sanctions should be determined taking into consideration the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate.

appropriate to lay down the Member States' obligation to provide for effective, dissuasive and proportionate sanctions. **Financial penalties** should be provided for in case of failure to comply with the information and consultation procedures set out in Directive 2009/38/EC. Other forms of sanctions **should** also be provided for, **including administrative and judicial procedures. In line with national law and practice, Member States should provide for a possibility to request a preliminary injunction in national courts or other competent authorities for a temporary suspension of the implementation of management decisions until an information and consultation procedure has taken place at the relevant level of management and representation and in such a way as to enable a reasoned response from the central management in accordance with this Directive. Financial sanctions should be determined taking into consideration the size and financial situation of the Community-scale undertaking or group – for example, based on its annual turnover – and any other relevant factors – such as the gravity, duration, consequences, and intentional or negligent nature of the offence –, in order to be effective, dissuasive and proportionate and should be based on the administrative fines referred to in Article 83(4) and (5), of Regulation (EU) 2016/679.**

Amendment 11

Proposal for a directive Recital 19

Text proposed by the Commission

(19) Undertakings with an agreement on the transnational information and consultation of employees concluded before 23 September 1996, that is to say prior to the date of application of Council

Amendment

(19) Undertakings with an agreement on the transnational information and consultation of employees concluded before 23 September 1996, that is to say prior to the date of application of Council

Directive 94/45/EC^{1a}, are exempted from the application of the obligations arising from Directive 2009/38/EC. The employee information and consultation bodies established under such agreements have been concluded and continue to operate outside the scope of Union law. Directive 2009/38/EC does not provide the employees in the exempted undertakings with the possibility to request an establishment of a European Works Council under that Directive. However, for reasons of legal clarity, equal treatment and effectiveness, employees and their representatives in all Community-scale undertakings or Community-scale groups of undertakings should in principle have the right to request the establishment of a European Works Council. Almost 30 years after a legislative framework setting minimum requirements for the transnational information and consultation of employees was first established at Union level, those reasons prevail over the considerations of continuity for pre-existing agreements which initially motivated the exemption. That exemption should therefore be deleted.

^{1a} Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64, ELI: <http://data.europa.eu/eli/dir/1994/45/oj>).

Directive 94/45/EC^{1a}, are exempted from the application of the obligations arising from Directive 2009/38/EC. The employee information and consultation bodies established under such agreements have been concluded and continue to operate outside the scope of Union law ***and their legal status should be ensured by civil or collective labour law, depending on the different legal system of each Member State***. Directive 2009/38/EC does not provide the employees in the exempted undertakings with the possibility to request an establishment of a European Works Council under that Directive. However, for reasons of legal clarity, equal treatment and effectiveness, employees and their representatives in all Community-scale undertakings or Community-scale groups of undertakings should in principle have the right to request the establishment of a European Works Council. Almost 30 years after a legislative framework setting minimum requirements for the transnational information and consultation of employees was first established at Union level, those reasons prevail over the considerations of continuity for pre-existing agreements which initially motivated the exemption. That exemption should therefore be deleted.

^{1a} Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30.9.1994, p. 64, ELI: <http://data.europa.eu/eli/dir/1994/45/oj>).

Amendment 12

Proposal for a directive

Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) It is essential that all European Works Council 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. With a view to creating a regulatory level-playing field governing the functioning of European Works Councils, the rights and obligations arising from Directive 2009/38/EC should be applicable to all European Works Council agreements and agreements on an information and consultation procedure concluded in accordance with Articles 5 and 6 of Directive 94/45/EC or with Articles 5 and 6 of this Directive.

Amendment 13

**Proposal for a directive
Recital 20**

Text proposed by the Commission

Amendment

(20) Moreover, for the same considerations, the same minimum requirements should apply to all Community-scale undertakings with European Works Councils operating under Directive 2009/38/EC and those in which a European Works Council agreement was signed or revised between 5 June 2009 and 5 June 2011. Therefore, the exemption of the latter undertakings from the application of Directive 2009/38/EC should also be deleted.

deleted

Amendment 14

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to Directive 2009/38/EC have the right to meet with central management once a year, to be informed and consulted on the progress of the business of the relevant Community-scale undertaking or Community-scale group of undertakings and its prospects. In order to strengthen the transnational information and consultation of those European Works Councils, it is appropriate to increase the number of such annual plenary meetings in the subsidiary requirements to two.

Amendment

(21) European Works Councils operating based on the subsidiary requirements set out in Annex 1 to Directive 2009/38/EC have the right to meet with central management once a year, to be informed and consulted on the progress of the business of the relevant Community-scale undertaking or Community-scale group of undertakings and its prospects. In order to strengthen the transnational information and consultation of those European Works Councils, it is appropriate to increase the number of such annual plenary meetings in the subsidiary requirements to ***at least two. When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases without replacing ordinary meetings.***

Amendment 15

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) ***In some cases, existing*** European Works Council agreements or agreements on information and consultation procedures, concluded under Directive 94/45/EC or Directive 2009/38/EC before the entry into force of the measures adopted by Member States to transpose this Directive, may not be in conformity with the revised ***requirements***. It is therefore appropriate to set out transitional arrangements enabling the parties to such agreements to negotiate ***adaptations before the date of application of the transposition measures***.

Amendment

(24) ***Existing*** European Works Council agreements or agreements on information and consultation procedures, concluded under Directive 94/45/EC or Directive 2009/38/EC before the entry into force of the measures adopted by Member States to transpose this Directive, may not be in conformity with the revised ***required contents of those agreements***. It is therefore appropriate to set out transitional arrangements enabling the parties to such agreements to negotiate ***addenda, without, however, requiring a complete re-negotiation of the agreement. In order not to allow for any interruption of the***

information and consultation of employees, the existing European Works Council agreement or agreement on information and consultation procedure is to remain in force during the negotiation of such addenda.

Amendment 16

Proposal for a directive Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) If the central management initiates negotiations to supplement an existing European Works Council agreement or agreement on information and consultation procedures in accordance with the requirements of this Directive, there is no obligation to renegotiate the entire existing agreement. The amended requirements should be negotiated as an addendum within 2 years of the date of transposition of this Directive. Provision should be made for the subsidiary requirements specifically relating to the amended requirements to apply in the absence of an agreement on the addendum within that time limit.

Amendment 17

Proposal for a directive Recital 24 b (new)

Text proposed by the Commission

Amendment

(24b) It is necessary to ensure that the special negotiation body has the opportunity to meet regularly with the central management in order to be able to conduct meaningful negotiations. Where the conditions laid down in Article 7(1) are met, it should be clarified that it is the responsibility of the central management to initiate the establishment of a

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2009/38/EC

Article 1 – paragraph 4 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) the measures considered by management **in** the Community-scale undertaking or Community-scale group of undertakings affect workers in undertakings or establishments in more than one Member State;

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2009/38/EC

Article 1 – paragraph 4 – subparagraph 2 – point b

Text proposed by the Commission

(b) the measures considered by management **of** the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in an undertaking or establishment in one Member State, and workers in an undertaking or establishment in **another** Member State can reasonably be expected to be affected by the consequences of those measures.”;

Amendment

(b) the measures considered by management **in** the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in an undertaking or establishment in one Member State, and workers in an undertaking or establishment in **at least one other** Member State can reasonably be expected to be affected by the consequences of those measures.”; **or**

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2009/38/EC

Article 1 – paragraph 4 – subparagraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the measures considered by central management of the Community-scale undertaking or Community-scale group of undertakings can reasonably be expected to affect workers in a Member State other than that in which those measures are being considered.

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 2009/38/EC

Article 1 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to determine the transnational character of a matter, the scope of its possible effects on the workforce and the level of management and representation involved shall be taken into account. This shall include matters which are of concern to workers in terms of the scope of their potential impact in two or more Member States, as well as matters which involve the transfer of activities between two or more Member States.

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) in Article 2(1), points (f) and (g) are replaced by the following:

(2) in Article 2(1), points ***(d)***, (f) and (g) are replaced by the following:

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2009/38/EC

Article 2 – paragraph 1 – point d

Present text

(d) ‘employees’ representatives’ means the employees’ representatives provided for by national law *and/or* practice;

Amendment

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

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2009/38/EC

Article 2 – paragraph 1 – point f

Text proposed by the Commission

“(f) ‘information’ means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it;

Amendment

“(f) ‘information’ means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it ***and is given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives to undertake an in-depth assessment of their possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;***

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2009/38/EC

Article 2 – paragraph 1 – point g

Text proposed by the Commission

(g) ‘consultation’ means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management;”

Amendment

(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 Community-scale undertaking or Community-scale group of undertakings. Consultation is to take place in such a way as to enable employees’ representatives to obtain a reasoned written response in due time from the central management prior to the adoption of the decision provided the employee representatives expressed their opinion within a reasonable time in accordance with the first sentence;***

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2009/38/EC

Article 2 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

For the purposes of point (c) of the first subparagraph, employees of controlling and controlled undertakings within the meaning of Article 3(2), point (ca), shall also be taken into account in the definition of a Community-scale group of undertakings;

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 2 a (new)

Directive 2009/38/EC

Article 3 – paragraph 1

Present text

1. For the purposes of this Directive, ‘controlling undertaking’ means an undertaking which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or the rules which govern it.

Amendment

(2a) in Article 3, paragraph 1 is replaced by the following:

‘1. For the purposes of this Directive, ‘controlling undertaking’ means an undertaking which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation, ***control over decisions*** or the rules which govern it.’

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 2 b (new)

Directive 2009/38/EC

Article 3 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(2b) in Article 3(2), the following point is added:

(ca) operates directly or indirectly in the internal market selling goods or providing services through franchise or license agreements concluded with independent third-party companies in return for royalties where such agreements ensure a common identity, a common business name or concept and the application of uniform business methods.

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point -a (new)

Directive 2009/38/EC

Article 5 – paragraph 1

Present text

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 the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

Amendment

(-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 the ***either joint or separate*** written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.’

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a

Directive 2009/38/EC

Article 5 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

“(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or the Community-scale group of undertakings, in a manner that strives to achieve a gender-balanced representation, ***whereby women and men each hold at least 40% of the posts of member of the special negotiating body***, 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. ***If this objective is not reached, the reasons shall be explained in written by the special***

negotiating body.”;

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a a (new)

Directive 2009/38/EC

Article 5 – paragraph 4 – subparagraph 3

Present text

For the purpose of the negotiations, the special negotiating body may request assistance from ***experts of its choice which can include*** representatives of competent recognised Community-level trade union organisations. 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.

Amendment

(aa) 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 Community-level trade union organisations ***and, if needed, further experts***. 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.’

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point b – indent 1

Directive 2009/38/EC

Article 5 – paragraph 6 – subparagraph 1

Text proposed by the Commission

“These expenses shall include reasonable costs of experts, including for legal assistance, insofar as necessary for that purpose, as well as reasonable costs of legal representation and participation in administrative or judicial proceedings. Expenses shall be notified to central management before they are incurred.”;

Amendment

“These expenses shall include reasonable costs of experts, including ***a representative of a recognised Community-level trade-union***, for legal assistance, insofar as necessary for that purpose, as well as reasonable costs of legal representation and participation in administrative or judicial proceedings. Expenses shall be notified to ***and approved by*** central management before they are incurred.”;

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point a – indent 2

Directive 2009/38/EC

Article 6 – paragraph 2 – point f – subparagraph 2

Text proposed by the Commission

Amendment

The requirement to determine the elements listed in the first subparagraph, as amended by [OP: insert reference to this amending Directive*], shall apply also with respect to European Works Council agreements concluded before [OP: insert date laid down in the second subparagraph of Article 2 of this amending Directive.]

deleted

* ***[OP: insert OJ reference to this amending Directive.]***;

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point b

Directive 2009/38/EC

Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

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

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 4 a (new)

Directive 2009/38/EC

Article 7 – paragraph 1 – introductory part

Present text

1. In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

Amendment

(4a) in Article 7(1), introductory part is replaced by the following:

‘1. In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply **with immediate effect.**’

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 5 a (new)

Directive 2009/38/EC

Article 7 – paragraph 1 – indent 2 a (new)

Text proposed by the Commission

Amendment

(5a) in Article 7(1), the following indent is inserted after the second indent:

“— where the special negotiating body is not convened on a regular basis,”

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 5 b (new)

Directive 2009/38/EC

Article 7 – paragraph 1 – indent 3

Present text

— where, after **three years** from the date of **this** request, they are unable to conclude an agreement as laid down in Article 6 and the

Amendment

(5b) in Article 7(1), the third indent is replaced by the following:

‘— where, after **24 months** from the date of **such a** request, they are unable to conclude an agreement as laid down in

special negotiating body has not taken the decision provided for in Article 5(5).

Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).’

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 5 c (new)

Directive 2009/38/EC

Article 7 – paragraph 1 – indent 3 a (new)

Text proposed by the Commission

Amendment

(5c) in Article 7(1), the following indent is added:

‘— where an agreement as laid down in Article 6 has been terminated and no new agreement has been concluded within 24 months after the last day of validity of that agreement.’

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/38/EC

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide that members of special negotiating bodies, members of European Works Councils or employees’ representatives in the framework of an information and consultation procedure, and any experts who assist them, are not authorised to reveal information which has expressly been provided to them in confidence by central management. In addition, central management may set up adequate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.

1. Member States shall provide that members of special negotiating bodies, members of European Works Councils or employees’ representatives in the framework of an information and consultation procedure, and any experts who assist them, are not authorised to reveal information which has expressly been provided to them in confidence by central management ***within the conditions and limits laid down by Union and national law and subject to objective criteria***. In addition, central management may set up adequate information transmission and storage arrangements to help safeguard the confidentiality of

information provided in confidence.

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/38/EC

Article 8 – paragraph 2

Text proposed by the Commission

2. When central management provides information in confidence in accordance with paragraph 1, it shall inform the members of the special negotiating bodies or the European Works Councils, or the employees' representatives in the framework of an information and consultation procedure of the **reasons** justifying the provision of information in confidence.

Amendment

2. When central management provides information in confidence in accordance with paragraph 1, it shall inform the members of the special negotiating bodies or the European Works Councils, or the employees' representatives in the framework of an information and consultation procedure of the **objective criteria** justifying the provision of information in confidence **and shall determine the duration of the confidentiality requirements.**

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/38/EC

Article 8 – paragraph 3

Text proposed by the Commission

3. The obligation referred in paragraph 1 shall continue to apply, wherever the persons referred to in paragraph 1 are, even after the expiry of their terms of office, until, **in agreement with central management**, the justification provided is considered to have become obsolete.”;

Amendment

3. The obligation referred in paragraph 1 shall continue to apply, wherever the persons referred to in paragraph 1 are, even after the expiry of their terms of office, until the justification provided is considered to have become obsolete.”;

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/38/EC

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Paragraph 1 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.

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 7

Directive 2009/38/EC

Article 8a – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

Member **States shall** make such dispensation subject to prior administrative or judicial authorisation.

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Information on transnational matters shall be given at such time, in such fashion and with such content as are **appropriate** to enable employees' representatives to undertake an in-depth assessment of their possible impact and, where appropriate, prepare for

2. Information on transnational matters shall be given at such time, in such fashion and with such content as are **necessary and sufficient** to enable **the European Works Council to consult relevant** employees' representatives **at national and local level**, to undertake an

consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.

in-depth assessment of their possible impact, and, where appropriate, prepare for **meaningful** consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings.

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In duly justified and exceptional cases, where the adoption of a decision requires urgency, management and employees' representatives shall carry out an effective information and consultation process in accordance with paragraphs 2 and 3 as quickly as possible. When appropriate and agreed upon, digital means of communication and coordination can be used for that purpose.

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 9 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. If there is a dispute between the central management and the European Works Council or employees' representatives as to whether an information and consultation procedure 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.

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 9 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. 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 Community-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.

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Without prejudice to the competence of other bodies or organisations in this respect, the members of the **special negotiating body, the members of the** European Works Council **and the employees' representatives** 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 Community-scale undertaking or

Community-scale group of undertakings.

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 2

Text proposed by the Commission

2. Without prejudice to Articles 8 and 8a, the members of the European Works Council shall have the right and necessary means to inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure, in particular before and after the meetings with the central management.

Amendment

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

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6(3) shall, in the exercise of their functions, enjoy protection and guarantees equivalent to those provided for employees' representatives by the national legislation and practice in force in their country of employment.

Amendment

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 and guarantees equivalent to those provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

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.

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 3 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

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

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 3 – subparagraph 2 c (new)

Text proposed by the Commission

Amendment

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.

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

In so far as this is necessary for ***and linked to*** the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 10 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed in advance.

Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the costs of such training and related expenses shall be borne by the central management, ***or any other appropriate level of management***, provided that the central management ***or any other appropriate level of management***, has been informed in

advance.

Amendment 56

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) adequate ***administrative and judicial*** procedures are available ***and easily accessible*** to enable the rights and obligations deriving from this Directive to be enforced in a timely and effective 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***;

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – point b – subparagraph 1 a (new) – introductory part

Text proposed by the Commission

Amendment

The penalties referred to in point (b) shall include:

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – point b – subparagraph 1 a (new) – point i

Text proposed by the Commission

Amendment

(i) 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;

Amendment 59

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – point b – subparagraph 1 a (new) – point ii

Text proposed by the Commission

Amendment

(ii) orders excluding the undertaking from an entitlement to some or all public benefits, aids or subsidies, including Union funds managed by the relevant Member States, for a period of up to three years;

Amendment 60

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – point b – subparagraph 1 a (new) – point iii

Text proposed by the Commission

Amendment

(iii) orders excluding the undertaking from participating in a public contract as defined in Directive 2014/24/EU of the European Parliament and of the Council^{1a}.

^{1a} **Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).**

Amendment 61

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In the event of failure to comply with the national provisions transposing the obligations under Article 9(2) and (3), Member States shall provide for pecuniary sanctions, to be determined considering the criteria listed in the third subparagraph of this paragraph, without prejudice to the possibility to provide for other types of sanctions in addition.

Amendment

In the case of infringements as referred to in point (b) of this paragraph, which are not committed intentionally, the financial penalties referred to in point (a) of this paragraph, shall be substantive and equivalent to those provided for in Article 83(4) of Regulation (EU) 2016/679^{1a}.

^{1a} **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) (OJ L 119, 4.5.2016, p. 1).**

Amendment 62

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

For the purposes of point (b), of the first subparagraph, Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence, and in respect of pecuniary sanctions, also the size and financial situation of the sanctioned undertaking or group, and any other relevant criteria.”;

In the case of infringements as referred to in point (b) of this paragraph which are committed intentionally, the financial penalties referred to in point (a) of this paragraph shall be substantive and equivalent to those provided for in Article 83(5) of Regulation (EU) 2016/679.”;

Amendment 63

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point b – indent 1 a (new)

Directive 2009/38/EC

Article 11 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

– ***the following subparagraph is inserted after the first subparagraph:***

"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;"

Amendment 64

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point c

Directive 2009/38/EC

Article 11 – paragraph 4

Text proposed by the Commission

Amendment

“4. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding

“4. ***Member States are encouraged to develop out-of-court mediation procedures enabling both parties to find acceptable solutions.*** Where Member States make access to legal proceedings

on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.”;

conditional upon the prior implementation of an alternative dispute resolution, that procedure shall neither result in a decision which is binding on the parties concerned, nor otherwise prejudice their right to bring legal proceedings.”;

Amendment 65

Proposal for a directive

Article 1 – paragraph 1 – point 9 a (new)

Directive 2009/38/EC

Article 12 – paragraph 2

Present text

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

Amendment

(9a) in Article 12, paragraph 2 is replaced by the following:

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6 **in order to ensure good coordination between information and consultation processes within the European Works Council and those established at national level.** That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

Amendment 66

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/38/EC

Article 12 – paragraph 6

Text proposed by the Commission

(10) in Article 12, the following paragraph is added:

“6. Each Member State may lay down particular provisions for the central

Amendment

deleted

management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.”;

Amendment 67

Proposal for a directive

Article 1 – paragraph 1 – point 12

Directive 2009/38/EC

Article 14a – paragraph 1

Text proposed by the Commission

1. Where, *following the transposition of [OP: insert reference to this amending Directive]*, a European Works Council agreement or agreement on an information and consultation procedure concluded before [OP: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive] in accordance with Articles 5 and 6 of Directive 94/45/EC or Articles 5 and 6 of this Directive *is not in conformity with any of the requirements applicable to that agreement as a consequence of the amendments provided for in* [OP: insert reference to this amending Directive], central management shall initiate negotiations *to adapt that agreement at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States. Central management may also initiate such negotiations on its own initiative.*

Amendment 68

Proposal for a directive

Amendment

1. Where a European Works Council agreement or agreement on an information and consultation procedure concluded before [OP: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive] in accordance with Articles 5 and 6 of Directive 94/45/EC or Articles 5 and 6 of this Directive *does not determine all the elements listed in Article 6(2), as amended by* [OP: insert reference to this amending Directive] central management shall initiate negotiations *by ... [one year from date of entry into force of this Directive] for the establishment of an addendum, determining the elements not determined by the existing European Works Council agreement or agreement on an information and consultation procedure.*

Article 1 – paragraph 1 – point 12

Directive 2009/38/EC

Article 14a – paragraph 2

Text proposed by the Commission

2. Where the European Works Council agreement or agreement on an information and consultation procedure contains procedural arrangements for its adaptation *or renegotiation*, the *adaptation* may be negotiated pursuant to those arrangements. Otherwise, the *adaptation* shall follow the procedure set out in Article 5 in conjunction with Article 13, second and third paragraphs.

Amendment

2. Where the European Works Council agreement or agreement on an information and consultation procedure contains procedural arrangements for its adaptation, the *establishment of the addendum* may be negotiated pursuant to those arrangements. Otherwise, the *establishment of the addendum* shall follow the procedure set out in Article 5 in conjunction with Article 13, second and third paragraphs.

Amendment 69

Proposal for a directive

Article 1 – paragraph 1 – point 12

Directive 2009/38/EC

Article 14a – paragraph 3

Text proposed by the Commission

3. Where an adaptation procedure does not lead to an agreement within two years *from the date of the respective request by employees or their representatives*, the subsidiary requirements set out in Annex I shall apply.”;

Amendment

3. Where an adaptation procedure *initiated pursuant to paragraph 1* does not lead to an agreement *on the addendum* within two years *following the initiation of the negotiations*, the subsidiary requirements set out in Annex I *in respect of the elements not determined in the existing European Works Council agreement or agreement on an information and consultation procedure* shall apply.”;

Amendment 70

Proposal for a directive

Article 1 – paragraph 1 – point 12 a (new)

Directive 2009/38/EC

Article 15 a (new)

Text proposed by the Commission

Amendment

(12a) The following article is inserted:

‘Article 15a

Monitoring

1. To ensure the correct application of the Directive and to address and resolve practical problems arising from its implementation, a monitoring committee shall be established.

2. The monitoring committee shall be composed by one representative per Member State, three representatives of each of the European social partners, and the Commission.

3. The monitoring committee shall meet twice per year and shall be chaired by the Commission.’

Amendment 71

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

“2a. Member States shall notify the Commission of the measures taken pursuant to Article 11(2) at the earliest opportunity.”

Amendment 72

Proposal for a directive

Annex 1 – paragraph 1 – point 1 – point a a (new)

Directive 2009/38/EC

Annex 1 – point 1 – point a – paragraph 2

Present text

Amendment

(aa) in paragraph 1, the second subparagraph of point (a) is replaced by the following:

The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, *investments*, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

The information of the European Works Council *on transnational matters* shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, *working conditions, skills and training policies including in franchise networks*, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

Amendment 73

Proposal for a directive

Annex 1 – paragraph 1 – point 1 – point c

Directive 2009/38/EC

Annex 1 – point 1 – point dd

Text proposed by the Commission

“(dd) *as far as possible*, women and men shall each comprise at least 40% of European Works Council members and of select committee members;”;

Amendment

“(dd) *European Works Council members and those of select committee shall represent the diversity of the workforce and* women and men shall each comprise at least 40% of European Works Council members and of select committee members.

Amendment 74

Proposal for a directive

Annex 1 – paragraph 1 – point 2

Directive 2009/38/EC

Annex 1 – point 2

Text proposed by the Commission

“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 Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.”

Amendment

“2. The European Works Council shall have the right to meet ***in person*** with the central management ***at least*** twice a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly. ***When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases without replacing ordinary meetings.***”

Amendment 75

Proposal for a directive

Annex I – paragraph 1 – point 3

Directive 2009/38/EC

Annex I – point 3 – subparagraph 1

Text proposed by the Commission

“Where there are exceptional circumstances or decisions which are likely to 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 Community-scale undertaking or group of undertakings

Amendment

“Where there are exceptional circumstances or decisions which ***may or*** are likely to 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 Community-scale undertaking or group of undertakings

having its own powers of decision, in order to be informed and consulted.

having its own powers of decision, in order to be informed and consulted.

Amendment 76

Proposal for a directive

Annex I – paragraph 1 – point 3

Directive 2009/38/EC

Annex I – point 3 – subparagraph 2

Text proposed by the Commission

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned or can reasonably be expected to be **directly concerned** by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.”;

Amendment

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned or can reasonably be expected to be **affected** by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.”;

Amendment 77

Proposal for a directive

Annex 1 – paragraph 1 – point 3 a (new)

Directive 2009/38/EC

Annex 1 – point 4 a (new)

Present text

Amendment

4a. Information and consultation procedures within the European Works Council shall be carried out without prejudice to those taking place at the national level. Where a procedure is already taking place at the national level, the European Works Council and the central management shall ensure that those procedures can complement each other with respect to the content and the timing of the procedures.

Amendment 78

Proposal for a directive

Annex 1 – paragraph 1 – point 5 – point a

Directive 2009/38/EC

Annex 1 – point 6 – paragraph 3a

Text proposed by the Commission

The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings. Operating expenses shall be notified to central management before they are incurred.

Amendment

The operating expenses of the European Works Council shall include reasonable costs of legal assistance, representation and proceedings, ***and relevant training to members of the European Works Council.*** Operating expenses shall be notified to central management before they are incurred.

EXPLANATORY STATEMENT

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.

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 that Directive.

Certain decisions having a potential significant direct or consequential effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible. 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 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.

**ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that he has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
BDA - The German Business Representation
ETUC - European Trade Union Confederation
EFFAT - European Federation of Food, Agriculture, and Tourism Trade Unions
EWC Academy
LNS Rechtsanwälte und Fachanwälte für Arbeitsrecht

The list above is drawn up under the exclusive responsibility of the rapporteur.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	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
References	COM(2024)0014 – C9-0012/2024 – 2024/0006(COD)
Date submitted to Parliament	25.1.2024
Committee responsible Date announced in plenary	EMPL 26.2.2024
Rapporteurs Date appointed	Dennis Radtke 25.1.2024
Discussed in committee	14.2.2024 19.3.2024
Date adopted	3.4.2024
Result of final vote	+: 28 -: 7 0: 8
Members present for the final vote	Marc Angel, Dominique Bilde, Gabriele Bischoff, Vilija Blinkevičiūtė, Sylvie Brunet, Jordi Cañas, Ilan De Basso, Margarita de la Pisa Carrión, Jarosław Duda, Cindy Franssen, Chiara Gemma, Niels Geuking, Alicia Homs Ginel, Agnes Jongerius, Radan Kanev, Sara Matthieu, Jozef Mihál, Dragoş Pişlaru, Dennis Radtke, Antonio Maria Rinaldi, Mounir Satouri, Monica Semedo, Nikolaj Villumsen, Marianne Vind, Tomáš Zdechovský
Substitutes present for the final vote	Konstantinos Arvanitis, Ilana Cicurel, José Gusmão, Jeroen Lenaers, Eugenia Rodríguez Palop, Birgit Sippel, Sara Skytvedal, Kim Van Sparrentak
Substitutes under Rule 209(7) present for the final vote	Udo Bullmann, Jorge Buxadé Villalba, Mohammed Chahim, Matthias Ecke, Ladislav Ilčić, Peter Jahr, Pedro Marques, Karen Melchior, Vera Tax, Michal Wiezik

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

28	+
PPE	Jarosław Duda, Cindy Franssen, Niels Geuking, Peter Jahr, Jeroen Lenaers, Dennis Radtke
Renew	Ilana Cicurel, Monica Semedo
S&D	Marc Angel, Gabriele Bischoff, Vilija Blinkevičiūtė, Udo Bullmann, Mohammed Chahim, Ilan De Basso, Matthias Ecke, Alicia Homs Ginel, Agnes Jongerius, Pedro Marques, Birgit Sippel, Vera Tax, Marianne Vind
The Left	Konstantinos Arvanitis, José Gusmão, Eugenia Rodríguez Palop, Nikolaj Villumsen
Verts/ALE	Sara Matthieu, Mounir Satouri, Kim Van Sparrentak

7	-
ECR	Jorge Buxadé Villalba, Chiara Gemma, Ladislav Ilčić, Margarita de la Pisa Carrión
ID	Dominique Bilde
PPE	Sara Skyttedal
Renew	Sylvie Brunet

8	0
ID	Antonio Maria Rinaldi
PPE	Radan Kanev, Tomáš Zdechovský
Renew	Jordi Cañas, Karen Melchior, Jozef Mihál, Dragoș Pîslaru, Michal Wiezik

Key to symbols:

+ : in favour

- : against

0 : abstention