



2024/0006(COD)

13.2.2024

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DRAFT 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 – C9-0012/2024 – 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,
 - having regard to the opinion of the Committee of the Regions,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A9-0000/2024),
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 transnational matters has led to differences in interpretation and disputes. In order to ensure legal certainty and reduce the risk of

Amendment

(5) Evidence shows that legal uncertainty regarding the concept of transnational matters has led to differences in interpretation and disputes. In order to ensure legal certainty and reduce the risk of

such disputes, it is necessary to clarify that concept. To this end, it is appropriate to clarify that this Directive should not only cover cases where measures considered by management 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.

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. ***In addition, 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.

Or. en

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

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 about 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.

meetings, notably to avoid any doubt about their freedom to agree that some 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.

Or. en

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.

Or. en

Amendment 4

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Evidence shows that the initiation of negotiations is sometimes delayed beyond the period of six months set out in Directive 2009/38/EC. In some cases, management neither takes steps nor expressly refuses to commence negotiations following a request to set up a European Works Council. It should therefore be specified that the subsidiary requirements laid down in Directive 2009/38/EC apply where the first meeting of the special negotiating body is not convened within six months following a request to establish a European Works Council, irrespective of whether central management expressly refuses to commence negotiations.

Amendment

(11) Evidence shows that the initiation of negotiations is sometimes delayed beyond the period of six months set out in Directive 2009/38/EC. In some cases, management neither takes steps nor expressly refuses to commence negotiations following a request to set up a European Works Council. It should therefore be specified that the subsidiary requirements laid down in Directive 2009/38/EC apply where the first meeting of the special negotiating body is not convened within six months following a request to establish a European Works Council, irrespective of whether central management expressly refuses to commence negotiations ***or where, after 18 months from the date of such a request, the central management and the special negotiating body are unable to reach an agreement.***

Or. en

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

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. 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.

information is shared in confidence and should not be disclosed further. ***This should not apply to situations when 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.

Or. en

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 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 this context, it is important to ensure Community undertakings or Community-scale groups of undertakings can take decisions effectively.***

Or. en

Amendment 7

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In case 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 members of European Works Councils and employees's representatives. Therefore, should there be a dispute with regards 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 information and consultation provisions of this Directive are not applicable.

Or. en

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 may 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.

Or. en

Amendment 9

Proposal for a directive Recital 17

Text proposed by the Commission

(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.

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 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 employees' representatives, 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***. 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, members of European Works Councils and employees' representatives should enjoy the same protection and guarantees equivalent to those provided to employees' representatives by national legislation or practice applicable in their country of employment.*

Or. en

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 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.

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 effective or proportionate***. Therefore, it is 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 ensure the 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, paragraphs 4 and 5, of Regulation (EU) 2016/679.***

Or. en

Amendment 11

Proposal for a directive Recital 19

Text proposed by the Commission

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/EC⁷, 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

deleted

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.

⁷ *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>).*

Or. en

Amendment 12

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) After more than 25 years from the adoption of Council Directive 94/45/EC, many pre-directive agreements are still in force and have not been adapted to the requirements of Directive 2009/38/EC. 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 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 in accordance with Articles 5 and 6 of this Directive. 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 should fall within the scope of this Directive without any obligation to renegotiate.

Or. en

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

Or. en

Amendment 14

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 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; **or**

Or. en

Amendment 15

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 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 **substantially** affected by the consequences of those measures.”; **or**

Or. en

Amendment 16

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 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.’;

Or. en

Amendment 17

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 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.

Or. en

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 19

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;

Or. en

Amendment 20

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 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;”;

Or. en

Amendment 21

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 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.’;

Or. en

Amendment 22

Proposal for a directive

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

Directive 2009/38/EC

Article 5 – paragraph 2 – introductory part

Present text

2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

Amendment

(-aa) 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:

Or. en

Amendment 23

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 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.’;

Or. en

Amendment 24

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 central management before they are incurred.”;

Or. en

Amendment 25

Proposal for a directive

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

Text proposed by the Commission

– points (c) and (d) are replaced by the following:

Amendment

– points **(b)**, (c) and (d) are replaced by the following:

Or. en

Amendment 26

Proposal for a directive

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

Directive 2009/38/EC

Article 6 – paragraph 2 – point b

Present text

(b) the composition of the European Works Council, the number of members,

Amendment

‘(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, category and **gender**, and the term of office;

the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities **and** category, and **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;**'

Or. en

Amendment 27

Proposal for a directive Article 1 – paragraph 1 – point 5

Text proposed by the Commission

(5) **in** Article 7(1), the second **indent is** replaced by the following:

Amendment

(5) Article 7, **paragraph 1 is amended as follows:**

(a) the second **and third indents are** replaced by the following:

Or. en

Amendment 28

Proposal for a directive Article 1 – paragraph 1 – point 5 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 special negotiating body has not taken the decision provided for in Article 5(5).

Amendment

‘— 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).’

Or. en

Amendment 29

Proposal for a directive

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

Directive 2009/38/EC

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

Text proposed by the Commission

Amendment

(b) the following indent is added:

— **where an agreement as laid down in Article 6 has been terminated and no new agreement has been concluded until the last day of validity of that agreement.**

Or. en

Amendment 30

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, **within the conditions and limits laid down by Union and national law and subject to objective criteria**, 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.

Or. en

Amendment 31

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*.

Or. en

Amendment 32

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

Or. en

Amendment 33

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

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

Amendment

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

Or. en

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2009/38/EC

Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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 and** employees' representatives **at national and local level** to undertake an 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.

Or. en

Amendment 35

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 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, digital means of communication and coordination can be used for this purpose.*

Or. en

Amendment 36

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.*

Or. en

Amendment 37

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. In accordance with this Article, the Member States may lay down budgetary rules regarding the operation of the European Works Council.

Or. en

Amendment 38

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 employees' representatives, including 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 Community-scale undertaking or
Community-scale group of undertakings.

Or. en

Amendment 39

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, ***carried out and whenever it deems it necessary to perform its tasks deriving from this Directive***, in particular before and after the its meetings with the central management.

Or. en

Amendment 40

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

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

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.

Or. en

Amendment 41

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.

Or. en

Amendment 42

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.

Or. en

Amendment 43

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

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.

Or. en

Amendment 44

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.”;

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.”;

Or. en

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

Article 11 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 46

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;

Or. en

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

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

Text proposed by the Commission

Amendment

The penalties referred to in point b) of this paragraph shall include:

Or. en

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

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

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;

Or. en

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

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

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;

Or. en

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 9 – point a

Directive 2009/38/EC

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

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).**

Or. en

Amendment 51

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).***

Or. en

Amendment 52

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

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.”;

Amendment

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.

Or. en

Amendment 53

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;"

Or. en

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 12

Directive 2009/38/EC

Article 14a – paragraph 1

Text proposed by the Commission

Amendment

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*

1. *By ... [two years after the deadline for transposition of this amending Directive], the obligations arising from this Directive shall be applicable to European Works Council agreements or agreements 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. All agreements which have been concluded pursuant to Article 13(1) of Directive*

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.

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.

Or. en

Amendment 55

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 does not lead to an agreement within *18 months* from the date of the respective request by employees or their representatives, the subsidiary requirements set out in Annex I shall apply.”;

Or. en

Amendment 56

Proposal for a directive

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

Directive 2009/38/EC

Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(12a) in Article 15, the following paragraph is added:

When making such proposals, the Commission shall assess the possibility of including contracts which enable

structurally independent undertakings to influence one another's operation and business decisions (such as franchising or management contracts) within the scope of Directive 2009/38/EC, in order to prevent possible gaps.

Or. en

Amendment 57

Proposal for a directive

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

Directive 2009/38/EC

Article 16 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(12b) in Article 16, the following paragraph is added:

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

Or. en

Amendment 58

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

Amendment

“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

“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.

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.

Or. en

Amendment 59

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.”;

Or. en

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 draft report:

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

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