

To: Employment and Social Affairs Committee
European Parliament

Sent by email

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Joint EU employers' statement on the revision of the European Works Councils Directive ahead of the vote in European Parliament's EMPL Committee on 3 April 2024

The revision of the European Works Councils (EWCs) Directive has been proposed by the European Commission, whereas the overwhelming feedback by companies operating EWCs is that their European works council operates well. This revision needs to be conducted based on the real companies' evidence to support improvements in the operation of EWCs that are conducive to the development of a trust-based social dialogue culture in the concerned companies, a culture that underpins economic and social progress in each of the concerned companies. The proposal to revise the 2009 directive must respect the current role of this social dialogue body and not transform it into a co-decision-making body. We would therefore like to underline a number of key recommendations and concerns to be taken into account ahead of the upcoming vote in the European Parliament's EMPL Committee scheduled on 3 April:

1. **Transnational matters:** The proposed presumption of transnationality in cases that only involve one Member State creates the risk of overlaps in national and European information and consultation processes and would lead to legal uncertainty. An appropriate approach for achieving this would be to state in the directive that transnational matters can only qualify as transnational if they have direct, immediate and severe consequences affecting workers across national boundaries. The definition should also make clear that it fully respects and avoids overlapping responsibilities with national information and consultation procedures.
2. **Pre-existing agreements:** The proposal to include in the Directive the voluntary EWCs agreements concluded under Article 13 of the original EWCs directive 94/45/EC or concluded or revised during the transition period following adoption of the recast directive 2009/38/EC from June 2009 to June 2011 will damage many well-functioning European Works Councils and existing social dialogue practices at company level. It is therefore essential to allow these well-functioning EWCs agreements to continue to exist in their current form through respecting their specific legal nature and without compulsorily bringing them under the Directive regime.



3. **Confidentiality:** The ability of management to keep information confidential without delays to the decision-making process is essential and should be therefore protected. The EWCs directive includes a dedicated article on confidentiality. This revision process is the right time to remove the possibility for Member State to impose prior administrative or judicial authorisation from article 8 maintaining its title “confidential information’. Moreover, building on the practice of well-functioning European Works Councils, whereby confidentiality arrangements are best set gradually between the social partners at company level in a trustworthy way, we recommend including in article 6 of the directive a clear reference to confidentiality as an item to be addressed in EWCs agreements.
4. **Resources:** The proposed wording related to experts must be clarified, and legal costs left at the discretion of Member States per their internal frameworks including prices ranges provided for in national legislation. The possibility for EWCs to be assisted by an expert is already acknowledged in the existing Directive and no changes are therefore required. However, if additional experts should be available to the EWC at management cost, we believe that management should decide on the expert’s mandate and the level of costs incurred which should concern expenses that are directly related to the proper functioning and operating of the European Works Council. For this reason, it is not enough for management to be informed of the costs in advance, as an approval procedure is necessary. Moreover, it is important to clarify that the scope of the mandate of the external experts involved is to support social dialogue solutions.
5. **The role of mediation and conciliation for EWCs disputes:** Rather than encouraging judicial intervention in social partners’ dealings, and in line with the political priority to support social dialogue development, a revised EWCs directive should require Member States to develop alternative dispute resolution mechanisms for avoiding unnecessary increases of court cases, including through expert facilitation and based on the experience of the existing mediation and conciliation structures for social partners disputes that exist in the Member States, as an alternative to Court rulings.
6. **Reinforced consultation procedure:** Companies are concerned that the proposed change for the consultation requirements which would enable the European Works Council to express an opinion before the company adopts its decision, and that such an opinion should be the subject of a reasoned written response from management before the latter adopts its decision could delay important decisions at a time when companies often need to react quickly given the fast changes in the economic environment. Particularly in the case of measures with a significant impact on the interests of employees, information and consultation should take place as quickly as possible. Decision-making processes often require complex consultations with representatives and/or bodies at local, national and European level, and therefore the procedures should not be made more rigid through the introduction of a reasoned

written response from the employer, as this constitutes an unnecessary administrative burden and does not correspond to any legal requirement or usual practice.

7. **Representatives of employees:** We underline that European Works Councils are information and consultation bodies where management shares information and fosters consultation with all representatives of employees, including but not prioritising trade union-affiliated members, about corporate matters that may impact the company's employees. Therefore, we recommend to not change the current formulation of workers' representatives in the text of the Directive.
8. **Right to request preliminary injunction:** The draft report of the European Parliament foresees the right 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. We believe this provision would be highly detrimental for companies as it will significantly hamper their decision-making process and will be a serious intrusion in corporate governance. Generally, we think that the matters related to penalties should be addressed by the Member States, in line with article 153 TFEU.
