

Analysis of the impact on existing agreements and negotiations of the amended EWC Directive.

Joint recommendations of the European Trade Union Federations for members and trade union experts in SNBs and EWCs.

as of October 2026

The publication of Directive 2025-2450 “amending Directive 2009/38/EC as regards the establishment and operation of European Works Councils and the effective enforcement of transnational information and consultation rights” on 11 December 2025 marks a crucial milestone for the European trade union movement and worker representation in multinational companies. It addresses key flaws in the existing legislation and closes some loopholes which, for many years, have been an obstacle to the efficient and meaningful information and consultation of worker representatives. It provides greater legal certainty and lays the foundations for finally giving our EWCs real clout.

Among the many improvements, we note the possibility of launching new negotiations to replace or modify obsolete agreements, the recognised role and importance of trade union coordinators, the explicit obligation to consult the EWC before a final decision is taken and the priority given to face-to-face meetings.

In order to make the most of these and other new opportunities, it is advisable for all EWCs to take the time to consider their options. For a detailed analysis of the content of your agreement, you can use the checklist that has been developed by the European Trade Union Federations. Ask your coordinator for a copy!

It is also important to check what type of agreement you have to determine the exact impact of the amended Directive. To support you in these efforts, this paper provides a detailed analysis of the potential impact on the various types of existing EWC agreements and offers strategic recommendations depending on the specific context an EWC or SNB may be facing.

Please note that this analysis is based on a first reading of the text as published. It will be amended and supplemented as more clarity emerges regarding the interpretation and practical legal implications.



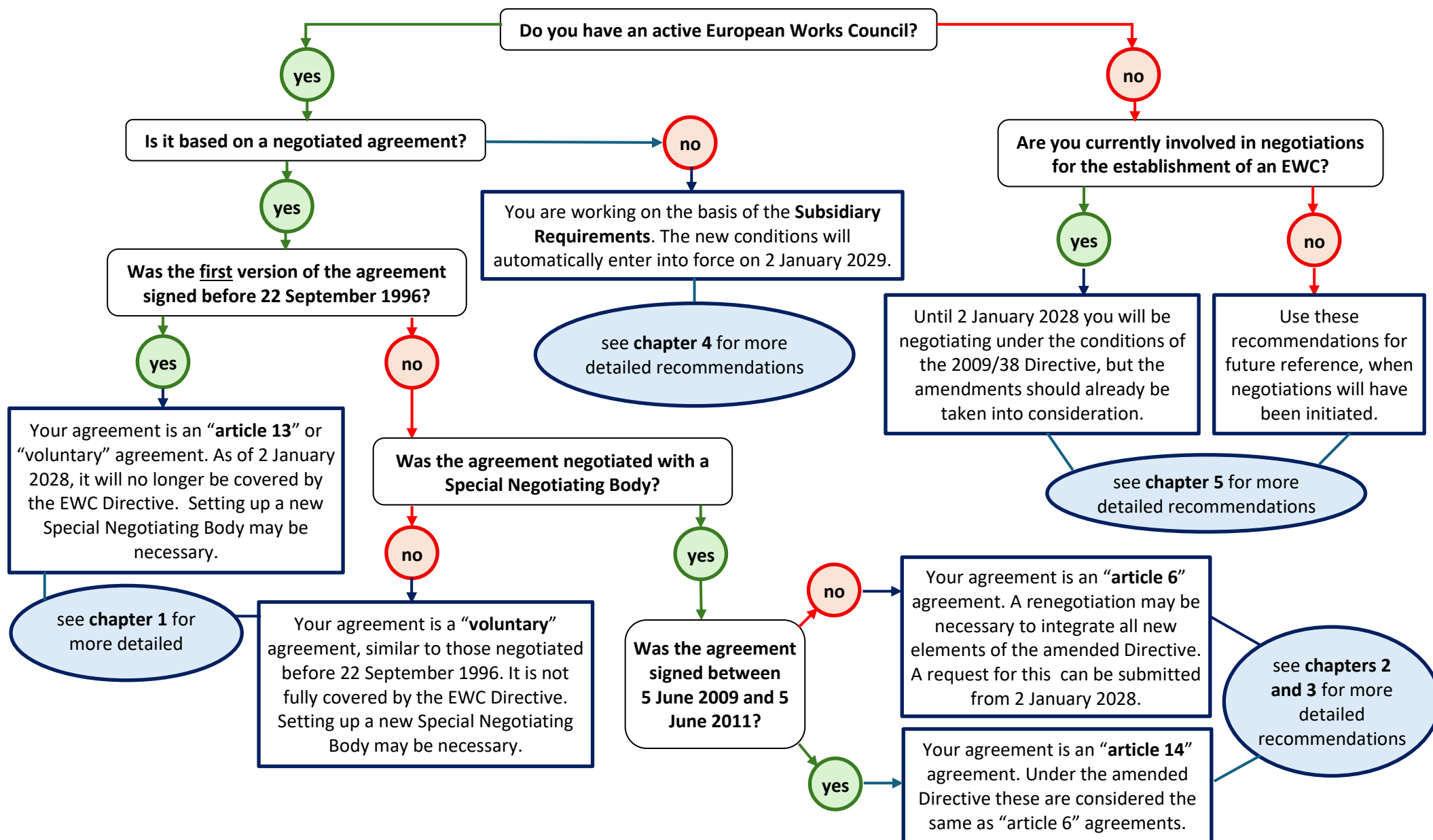
Always consult your EWC coordinator, SNB expert, local trade union and/or European Trade Union Federation before taking any concrete steps towards negotiations or renegotiations for further expertise and guidance. You can count on our support!

For most EWC members, a thorough review of their agreement is a rather rare occurrence. It is therefore essential to take your time, plan things carefully, gather all necessary information and rely on the available internal and external expertise. As a general rule, the following roadmap can be followed:

- **Step 1: Analyse:** Carefully compare your agreement with the new standards of the amended Directive. Use our checklist and get training before involving management. Make sure you are fully aligned with elements which may result from the transposition into national law.
- **Step 2: Strategise:** Agree on the best strategy and the necessary actions to make sure you can fully benefit from the new conditions. Don't involve management until you have a clear plan.
- **Step 3: Mobilise:** Put your plan into practice. This is the moment when (re)negotiations can be initiated.

As the road ahead depends largely on the type of agreement, there is no one-size-fits-all solution. Use the decision tree on the next page to determine your position and then go directly to the chapter with our recommendations, tailored to your specific needs.

Find your way to the chapter that deals with your particular situation



1. The original agreement for our European Works Council was signed before 22 September 1996. Do we have to start new negotiations?

NOT UNTIL 2028

There is a significant change in the legal status of these agreements, often referred to as ‘article 13’ or ‘voluntary’ agreements. Where the 2009/38 Directive recognised them as ‘agreements in force’, which were exempt from the obligations arising from the Directive, they are now considered as operating outside of the scope of Union law. The European legislation will no longer serve as a reference for the content or the rights contained in these agreements. From 2028, they will only be governed by national rules, provided such legislation is available. (*Note: this is yet to be specified by the Member States*)

This entails three major risks. Voluntary EWCs will no longer enjoy the legal certainty and protection provided by the Directive. It will not be possible to claim specific rights under the EWC legislation. Furthermore, new negotiations can be requested by any party representing at least 100 employees from at least two countries, regardless of what the existing voluntary EWC would prefer.

The transposition into national law must be available latest by **1 January 2028**. From that day onwards, it will be possible to initiate new EWC negotiations. These can be initiated by Central Management or by written request of at least 100 employees or their representatives in at least two different Member States. A **Special Negotiating Body (SNB)** will then have to be established and will operate under the same conditions as for any new EWC negotiations. The existing agreement remains in force as long as negotiations are ongoing. The **Subsidiary Requirements** will apply if no new agreement has been concluded within **2 years**.

Our recommendations:

- Take the time to compare the existing agreement with the new conditions. You can use the checklist of the European Federations but make sure to consider all aspects of the amended Directive as some provisions already included in 2009 may also be missing.
- Any renegotiation before 2028 should consider the new conditions as the minimum standard. However, this will not change the legal status of your agreement, even if it would contain a reference to the amended Directive. To make sure you can benefit from the full legal coverage, it will still be necessary to establish a Special Negotiating Body after 1 January 2028.
- Start planning for a fresh start with a new request for negotiations, especially when the agreement is significantly below the legal standards.
- Even if the agreement already covers all requirements of the existing European legislation, the organisation of an SNB is necessary to ensure full legal coverage. This can be limited to some minor changes to the pre-existing voluntary agreement, followed by the formal approval by the SNB as the basis for a newly established ‘real’ EWC.
- Use the time until January 2028 to:
 - review the existing agreement;
 - map out the company workforce and potential countries that would be involved in a future SNB;
 - hold a strategic discussion to prepare the negotiation process;
 - contact your coordinator and/or European Trade Union Federation;
 - get training with experts on the amended EWC directive.

Please note...

- In order to determine whether your EWC is an ‘article 13’, you need to find the very first version of the agreement. Later revisions sometimes still refer to it. Bear in mind that the name of your company may have changed, but that the status of the EWC agreement remained unchanged.
- It is always possible to terminate any existing agreement immediately. However, any new negotiations launched before 2028 may take up to three years instead of the reduced period of two years. It also carries the risk that you will not have access to information and consultation at all anymore until a new agreement has been concluded.

- Once a new agreement has been concluded, make sure to include a paragraph specifying that it fully replaces the previous, voluntary version.
- A reference to the 94/45 or 2009/38 Directive is not sufficient for the agreement to be considered as falling within scope of Union law. This can only be achieved through negotiations by an SNB or by new negotiations in application of any rules that may be stipulated in a terminated agreement.
- The composition of the SNB must follow the principles contained in the Directive. As a result, negotiations may involve both current EWC members and new representatives without any prior experience. Moreover, countries which previously have been excluded from having a mandate on the EWC on the basis of thresholds applied, will have the possibility to appoint SNB members.

2. Our agreement was signed after 21 September 1996 but only refers to the 94/45 and/or the 2009/38 Directive. Do we have to renegotiate our agreement?

NO, BUT IT IS WORTH CONSIDERING

It is not mandatory to renegotiate existing 'article 6' agreements, which have been concluded by an SNB since 22 September 1996. The applicable minimum conditions will in any case always have to be respected. This concerns, amongst other things, the right to receive a reasoned written response to EWC opinions before adopting a decision. Another example is the obligation on management to justify confidentiality or the non-disclosure of information. However, it is recommended to introduce the necessary adjustments to ensure that all legal principles are fully reflected. This should prevent any future discussions about terms of the agreement which may be in conflict with the provisions of the amended Directive.

As of **2 January 2028**, negotiations to address those aspects which are not yet covered by the agreement may be initiated, either upon request of at least 100 employees or their representatives in at least two different Member States, by Central Management or by the EWC itself. Such negotiations may be limited to those elements and requirements that are missing or where there is scope for improving the working conditions of the EWC.

A renegotiation can be requested on the basis of rules contained in the existing agreement, provided these are sufficiently detailed. It must be clear who can negotiate, how long negotiations can continue, what majority is needed and what happens if no new agreement is reached at the end. If no such arrangements are available, **an SNB** will have to be organised. In addition to the statutory composition, at least three members of the existing EWC can be added to that SNB. The existing agreement remains in force until a new agreement has been reached. The **Subsidiary Requirements** will apply if negotiations do not lead to an agreement within **2 years** following the request.

Our recommendations:

- Take the time to compare the existing agreement with the new conditions. You can use the checklist of the European Federations for this purpose. If the current version of your agreement is from before 2009, it might be worth considering all aspects of the amended Directive. Some improvements compared to the 94/45 Directive may also be missing.
- Also take a look at what the practice of your EWC looks like. Some aspects can be improved without changing the agreement. But a renegotiation is a good opportunity to clearly set out existing practices in writing, so these cannot be questioned later.
- Use the new conditions as the minimum standard for the revision of your agreement in case a renegotiation is already planned.
- If your agreement is significantly below the standards of the EWC Directive, start preparing for a full renegotiation with an SNB from January 2028.

- If the agreement already provides ample scope for the functioning of the EWC, plan a request for a targeted renegotiation to include any missing new conditions stemming from the amended Directive.
- Where possible, any full or partial renegotiation should be done in line with already existing procedural arrangements for adaptation of the agreement. If these are missing or not sufficiently clear, then ask for the establishment of an SNB.
- Use the time until January 2028 to:
 - review the existing agreement;
 - map out the company workforce and potential countries that would be involved in a future SNB;
 - hold a strategic discussion to prepare the negotiation process;
 - contact your coordinator and/or European Trade Union Federation;
 - get training with experts on the amended EWC directive.

Please note...

- There is no need to wait until 2028 if there is an opportunity to adapt the existing agreement in anticipation of the entry into force of the new legal framework. Such negotiations will however not be able to fully take into consideration any more favourable conditions that may arise from the transposition into national law.
- Any negotiation with an SNB that would start before 2028 may take up to three years instead of the reduced period of two years under the amended Directive. In any case, if no agreement was reached at the end, the new Subsidiary Requirements will automatically apply.
- The conditions mentioned under the Subsidiary Requirements (at least two meetings in person per year, extension of the competences to include the green and digital transitions...) can only be integrated into existing agreements through negotiations.
- There is no obligation to renegotiate an existing 'article 6' agreement. It will in any case continue to be covered by Union law, from 2029 onwards in accordance with the amended EWC Directive.
- **Attention:** even when you have agreed to only negotiate the adaptation of certain parts of your current agreement, you may end up with just the Subsidiary Requirements. This is particularly a risk when negotiations are conducted with an SNB. It is therefore necessary not to simply conclude the negotiations without an agreement. Make sure it is clearly noted that you will continue to work under the old conditions. Another option is to specify that you will apply specific elements of the Subsidiary Requirements, while other aspects of the existing agreement remain unchanged.

3. Our agreement was signed or revised during the transition period before entry into force of the 2009/38 Directive, between 5 June 2009 and 5 June 2011. Do we have to renegotiate our agreement?

NO, BUT IT IS WORTH CONSIDERING

Such agreements, often referred to as 'article 14' agreements, are exempt from the obligations arising from the 2009/38 Directive. However, they are considered as regular EWC agreements in application of the 94/45 Directive.

All exemptions have now been removed in the amended EWC Directive. As a result, 'article 14' agreements should be treated in the same way as any other 'article 6' agreement. All observations, recommendations and remarks made under section 2. apply in the same way for this category of EWC agreements.

4. The functioning of our EWC is based on the Subsidiary Requirements. Will the new conditions automatically apply?

YES

From 2 January 2029 onwards, the revised Subsidiary Requirements will automatically replace the old ones. Those mentioned in the EWC Directive must first be transposed into national law. Only then will we have a complete overview of the new legal framework. This should be done latest by 1 January 2028, but, as mentioned before, the actual entry into force follows one year later, on 2 January 2029.

Our recommendations:

- Take the time to compare the functioning of your EWC with the new conditions. You can use the checklist of the European Federations for this purpose.
- Use the new conditions as the minimum standard in case a negotiation for the purpose of concluding a proper agreement is already planned.
- Use the time until January 2029 to:
 - review the current practice of your EWC;
 - hold a strategic discussion to decide on the best way forward: either let the new Subsidiary Requirements take effect or prepare for negotiations;
 - contact your coordinator and/or European Trade Union Federation;
 - get training with experts on the amended EWC directive.

Please note...

- If the EWC commences negotiations for a proper agreement before the entry into force of the new legal framework, this will be done in application of the conditions mentioned in the 2009/38 Directive. It might be better to wait until 2029, when the new Subsidiary Requirements will take full effect. That will put you in a stronger starting position to conclude a better agreement.
- If such negotiations do not result in the conclusion of an agreement within 3 years, the new Subsidiary Requirements will in any case take effect.
- An important new provision under the amended Directive is the right to be assisted by a trade union expert in all internal and plenary meetings. If you do not have one yet, this is the time to get in touch with your European Trade Union Federation to make sure you can rely on our expertise as soon as the new rules will enter into force.
- There is no need to rush into any negotiations. As of 2 January 2029, you will automatically benefit from the new provisions.

5. We have already started negotiations for the establishment of a new EWC. Can we benefit from the new conditions provided by the amended Directive?

YES and NO

No, because the original 2009 Directive applies until the national transposition is done. EWC negotiations that have already been initiated should continue their activities until an agreement has been reached. In this case, the deadline remains 3 years.

The Subsidiary Requirements as mentioned in the 2009 version and its transposition into national law will apply:

- if management does not reply to a request for negotiations within six months after receiving such request;
- if no agreement has been signed by the end of the three-year period for negotiations;

- if the SNB and management agree to apply the Subsidiary Requirements instead of drafting an agreement **and**
- if any of the above happens before 2 January 2029.

Yes, because the Subsidiary Requirements as amended by the 2025 Directive and as transposed into national law will apply in any of these events if they occur after 1 January 2029.

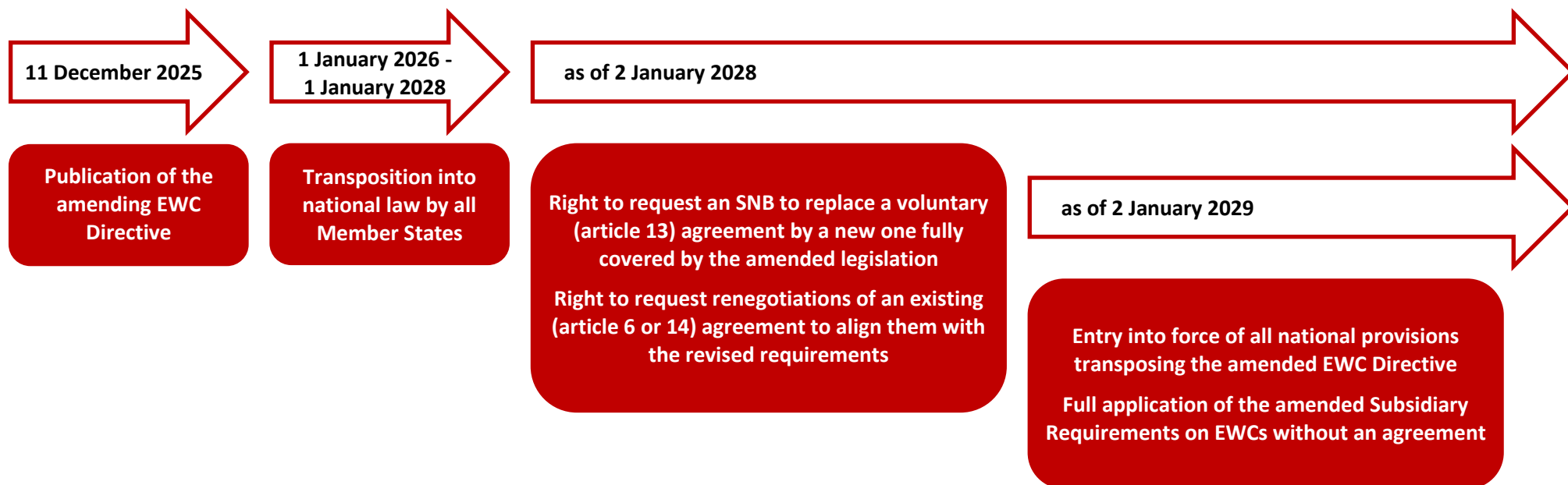
Our recommendations:

- Even if they do not apply until 2029, make sure to use the new conditions as the minimum standard for the negotiations of your agreement. You can use the checklist of the European Federations as a reference.
- If you were unable to incorporate all new provisions, then insist on an article that allows for rapid additional negotiations after January 2028. This should guarantee the possibility of bringing the agreement fully in line with the new conditions as soon as the transposition into national law has been finalised.

Please note...

- Negotiations that have already been initiated will follow the rules and conditions under the 2009/38 Directive until 1 January 2029.
- Any agreement not covering all conditions stemming from the new Directive will in any case be subject to a possible revision and renegotiation as of 2 January 2028. See chapter 2 for further recommendations on this aspect.
- Should the negotiations fail or the SNB decide to simply refer to the Subsidiary Requirements before 1 January 2029, those mentioned in the 2009/38 Directive will apply. Subsequently, as of 2 January 2029, the new Subsidiary Requirements resulting from the transposition of the 2025/2450 Directive will automatically apply.

Timeline for the implementation of the amended EWC Directive



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