AN CHÚIRT UACHTARACH

THE SUPREME COURT

[2026] IESC 50

Supreme Court AP: IE:2025:0000166

High Court Record No: 2024/ 493

O'Malley J.
Murray J.
Donnelly J.
Hyland J.
O'Moore J.

Between/

JEAN-PHILLIPE CHARPENTIER

RESPONDENT

v.

VERIZON IRELAND LIMITED

APPELLANT

v.

THE LABOUR COURT

NOTICE PARTY

v.

ATTORNEY GENERAL

NOTICE PARTY

JUDGMENT of the Court delivered on 10 November 2026 by Ms. Justice Hyland

Introduction

1. This is an appeal from the decision of Bolger J. ([2025] IEHC 628) concerning the correct interpretation of s. 17(1A) of the Transnational Information and Consultation of Employees Act 1996 ("*TICEA*"), which in turn implements Article 10(1) of Directive 2009/38/EC of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees (Recast) O.J. L 122/28 (the *"2009 Directive*"). It is a "*leapfrog*" appeal, whereby Verizon Ireland Ltd. ("*Verizon*") was permitted to appeal directly from the High Court.

2. The question raised by this appeal is one of interpretation: does Article 10(1) of the 2009 Directive place an obligation on Verizon as central management under the 2009 Directive to (a) fund the costs of an expert retained by the European Works Council ("*EWC*"), and; (b) pay some or all of the legal costs or expenses incurred in seeking to recover those expert costs before the Workplace Relations Commission ("*WRC*") and the Labour Court?

3. On one reading of the 2009 Directive, one might question why it was necessary to anchor the claim in Article 10(1) at all. The Directive proceeds on the basis that central management and employees will come to a negotiated agreement on the EWC. However, the 2009 Directive provides for a default position whereby, if no negotiated agreement is reached, an EWC shall be established subject to certain rules, known as Subsidiary Requirements, that govern its establishment, composition and competence. Point 5 of Annex I on the Subsidiary Requirements to the 2009 Directive provides that

the EWC may be assisted by experts to carry out its tasks. Point 6 of the Subsidiary Requirements provides that central management must bear the operating expenses of the EWC and provide the members of the EWC with such financial and material resources to enable them to perform their duties. Thus, in principle, expert costs were payable by Verizon. Indeed, Verizon were willing to pay certain expert costs and accepted that the EWC was entitled to an expert for every meeting with central management. However, they took issue with one aspect of the invoice submitted by the expert.

4. The difficulty arose because the complainant, Mr. Charpentier, who is the Chair of the Verizon European Works Council, was not entitled to rely directly on the Subsidiary Requirements before the WRC and/or Labour Court because of the manner in which Ireland implemented the 2009 Directive. Ireland had provided for recourse to the WRC but only in respect of complaints of contraventions of s. 17 of TICEA. Complaints of a contravention of the Subsidiary Requirements could not be brought to the WRC.

5. Mr. Charpentier therefore argued that the obligation to discharge expert costs arose under s. 17(1A) of TICEA, which requires central management to provide the members of the EWC with the "*means required*" to apply the right arising from the Directive, to represent the collective interests of employees of the Community-scale undertaking.

6. The question in this appeal is whether the "*means required*" covers the provision of resources, and if so, what types of resources. Verizon argues that "*means required*" has a much more limited scope, being limited to an obligation to ensure that members of an EWC have sufficient capacity to bring claims before adjudicative bodies.

7. A separate question arises as to whether "*means required*" can encompass legal costs. Even if "*means*" covers resources, do those resources include legal costs? Mr.

Charpentier sought his legal costs before the WRC and the Labour Court but was refused them and argues that he is entitled to such costs.

8. I set out a summary of my conclusions on these two questions at the end of this judgment. Before considering the statutory context any further, it is necessary to explain the origin and operation of EWCs.

EWCs

9. EWCs were first introduced by 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 undertakings for the purposes of informing and consulting employees O.J. 1994 L0045 ("*Directive 94/45"*). Directive 94/45 was adopted in the context of the internal market involving cross-border mergers, takeovers, and joint ventures, thus necessitating that undertakings operating in two or more Member States inform and consult the representatives of their employees affected by these decisions. Because procedures for informing and consulting employees were not adapted to the transnational structure of the entity, appropriate provisions needed to be adopted to ensure employees were informed and consulted when decisions affecting them were taken in a Member State other than that in which they were employed. Directive 94/45 provided for the establishment of EWCs as a mechanism for the transactional information and consultation of employees.

10. The Recast 2009 Directive was adopted some years later to enhance effectiveness, legal certainty, and enforceability of employee rights across Member States. The usual approach is for central management and employees to seek to negotiate an agreement governing the establishment and operation of the EWC. If no negotiated agreement is reached, the 2009 Directive provides for a default position, whereby an EWC shall be

established subject to certain rules (the Subsidiary Requirements) that govern its establishment, composition and competence. The distinction between these models is significant, as the Subsidiary Requirements impose fixed obligations regarding structure and resources. The EWC in this case was established under the Subsidiary Requirements.

11. The 2009 Directive does not confer separate legal personality on EWCs. As a result, at least in Ireland, proceedings to vindicate rights arising under the 2009 Directive must generally be brought by individual members acting in a representative capacity on behalf of the EWC.

12. The purpose of the 2009 Directive is as stated at Article 1 - to improve the right to information and consultation of employees in Community-scale undertakings and groups of undertakings.

Background To The Dispute

13. Verizon Communications Inc. is a multinational telecommunications undertaking operating across 19 Member States of the European Union. It comes within the scope of the 2009 Directive, employing more than 1,000 employees in the EU, where at least 150 of those employees are in each of two Member States. Its subsidiaries include Verizon Ireland Ltd. Verizon UK Ltd. previously served as Verizon Communications Inc.'s representative agent in the EU and it operated an EWC under the terms of an agreement. In anticipation of the end of the Brexit transition period on 31 December 2020, Verizon Communications Inc. nominated Verizon Ireland Ltd. as the representative of central management within the meaning of the 2009 Directive for the purposes of the TICEA. The original Verizon European Works Council agreement expired on 20 October 2020. It was not possible to conclude a new agreement and the

Verizon European Works Council is now operating under the Subsidiary Requirements. Mr. Charpentier is the Chair of the Verizon EWC. He is based in France, and his direct employer is Verizon France SAS.

14. There were two complaints brought by Mr. Charpentier before the WRC and subsequently the Labour Court. However, the only one that remains relevant is the first dispute – the subject of Labour Court Decision TID 241 – concerning an invoice in the sum of €11,220, issued by a consultancy known as the EWC Academy. The advice was provided by a Dr. Altmeyer, an expert on EWCs. It was provided in early 2021.

WRC Decision

15. Dr. Altemeyer of the EWC Academy was engaged as an expert by the EWC without prior consultation with Verizon. He provided advices on the preparation and conduct of the first meeting of the EWC; the differences between UK and Irish law on the operation of EWCs; the status of UK delegates/representation of UK colleagues on the EWC after Brexit; preparation of draft procedural rules for the EWC and legal assessment of NDA wording; review of correspondence between Verizon and the EWC regarding an organised meeting to discuss a project that ultimately did not go ahead, and research in relation to incompatibility between TICEA and the 2009 Directive and a review of the minutes of the meeting. Verizon was presented with an invoice and took no issue with the EWC's choice of expert or with the expert's rates but disputed the necessity and/or the appropriateness of Dr Altemeyer reviewing the minutes, the advice regarding UK delegates and the advice regarding the project that did not proceed. Verizon also sought greater detail regarding the draft procedural rules that Dr. Altemeyer had produced as it wished to assess the amount of work done on the rules that it was being invoiced for. It was not possible to reach agreement and Mr. Charpentier brought a complaint to the

WRC. The complaint was heard over 5 days, and a number of witnesses gave evidence, including Dr. Altmeyer himself.

16. In his detailed ruling of 14 April 2023, the adjudication officer held that s. 17 of TICEA must be interpreted in conformity with the 2009 Directive. As such, he confirmed that the protections afforded to employee representatives and the "*means required*" to perform their functions apply equally to EWCs operating under Subsidiary Requirements as they do to those established by agreement. In addressing the broader framework, the adjudication officer emphasised the importance of information and consultation rights under EU law, such rights being rooted in Article 27 of the EU Charter of Fundamental Rights, which provides as follows:

> *"Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices".*

17. The officer highlighted that EWCs exist to ensure meaningful transnational dialogue, particularly in cases where decisions affecting employees are made in different Member States. Regarding the first complaint, the adjudication officer considered whether Verizon should pay Dr. Altmeyer's invoice for €11,220. The officer accepted that expert assistance was justified given the exceptional circumstances at that time, including the migration of the EWC from the UK to Ireland and the absence of an agreement. However, the officer also found that the EWC had failed to adequately inform central management of the extent of the expert's engagement, leading to legitimate concerns on the part of Verizon. Additionally, some elements of the invoice were not required or reasonable. Balancing these considerations, the adjudication officer concluded that only

part of the invoice was recoverable and directed Verizon to pay 50% of the claimed amount.

18. Mr. Charpentier appealed to the Labour Court seeking full reimbursement and sought recovery of the legal costs incurred in bringing the proceedings, arguing that such costs formed part of the "*means required*" to enable EWC members to exercise their rights under the 2009 Directive.

Labour Court Decision

19. The Labour Court rejected the appeal. In Decision TID 241, concerning Mr. Altmeyer's costs, the Labour Court concluded that s. 17 of TICEA, relied upon by Mr. Charpentier as the basis for his claim, was framed to afford statutory protection to individual members of EWCs *qua* individuals and was not intended to be a means of progressing collective disputes. The appeal was therefore treated as not being "*well-founded*". Accordingly, the question of awarding Mr. Charpentier his costs in respect of bringing the proceedings was treated as being moot, given the Court had not upheld his appeal.

High Court Decision

20. Mr. Charpentier appealed both determinations to the High Court pursuant to s. 46 of the Workplace Relations Act 2015, which provides for an appeal to that Court on a point of law from a determination of the Labour Court. The High Court found the Labour Court had fallen into various errors of law. Certain aspects of both Determinations were set aside, the appeals were remitted back to a differently constituted division of the Labour Court, and a costs order was made directing that Mr. Charpentier recover 90% of his costs, with a direction that Verizon pay €40,000 pending adjudication of the costs once the stay on the costs order was lifted.

21. The trial judge noted that the appeal raised issues of statutory interpretation and the proper application of EU law, including the 2009 Directive, the obligation of conforming interpretation recognised in Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA,* ECLI:EU:C:1990:395, and the principle of effectiveness.

22. The High Court held that the Labour Court, in interpreting s. 17 narrowly to exclude any collective complaints, erred in law in failing to consider the provisions of the 2009 Directive and further erred in finding that s. 17 only protected individual members of the EWC *qua* individuals and in disallowing Verizon's representative capacity claim on behalf of the members of the EWC which he was representing (para. 43).

23. Verizon had argued for a restrictive interpretation of s. 17(1A) (and in turn Article 10(1) of the 2009 Directive) in respect of the term "*means required to apply the rights arising from the Directive*", contending that this meant ensuring the EWC was simply required to have legal capacity, rather than imposing an obligation on central management to provide financial resources.

24. The trial judge held that EWCs must be competent to represent employees but that did not mean the reference to "*means*" in Article 10(1) was limited to legal capacity only. She observed that "*means*" as used in Article 10(1) and s. 17 was potentially much wider than just money, having regard to the wording of Article 10(1), and pointed out that simply conferring legal capacity on the members of an EWC would not be sufficient to enable them to represent collectively the interests of employees.

25. In relation to the application for costs, the trial judge held that the Labour Court had erred in law by treating those applications as moot solely on the basis that the substantive claims had failed. Even though the Labour Court might not have jurisdiction

under national law to award costs, she observed that does not mean it cannot be required to examine and properly determine a costs application pursuant to an Act that implements a Directive.

26. The trial judge observed that the EWC, having no separate legal personality or independent financial resources, could only proceed if it had expert advice and assistance, including of a legal nature. Furthermore, given the requirements of the 2009 Directive, particularly Article 11, which seeks to ensure the effective enforcement of EWC members rights is not deterred, the Labour Court should have considered whether it could or should permit an EWC or employee to seek agreement from central management to reimburse all or some of the legal expenses associated with the claim. Such an obligation might arise if reimbursement was necessary to satisfy the requirement that an EWC had the means required to apply the rights conferred by the Directive. The High Court accordingly set aside the impugned aspect of the Labour Court's determinations and remitted the matters to another division of the Labour Court.

Submissions

Verizon's Submissions

27. Verizon argues that the central issue is whether Article 10(1) of the 2009 Directive, when read together with s. 17(1A) of TICEA, imposes an obligation on central management to fund expenses incurred by an EWC, including expert fees and legal costs. It contends that the High Court erred in concluding that Article 10(1) confers such an entitlement. Verizon contends that, properly interpreted, Article 10(1) does not impose obligations on central management at all, but requires Member States to ensure that employee representatives are capable of exercising their rights. Verizon maintains

that the "*means required*" referred to in Article 10(1) are concerned with legal standing and representational capacity, rather than financial or material resources.

28. Verizon submits that the legislative history of the 2009 Directive supports its interpretation as do subsequent legislative developments, specifically Directive 2025/2450 of 26 November 2025 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 (the "*2025 Directive*"), which expressly introduces provisions concerning the funding of legal and expert costs by central management.

29. Verizon contends that Ireland's addition of the phrase "*central management shall provide*" in transposing Article 10(1) does not alter the meaning of the 2009 Directive, such that "*means required*" continues to refer to capacity rather than funding and does not expand the scope of Article 10(1) to create new financial obligations. While certain practical obligations may fall on central management to facilitate that capacity, this is limited to addressing the EWC's lack of legal personality, i.e. enabling payment of invoices on its behalf where it cannot hold a bank account.

30. Verizon contends that the Labour Court lacks jurisdiction to award legal costs, as it is a statutory body whose powers are confined to those expressly conferred by legislation and argues that the High Court erred in suggesting that Article 10(1) or s. 17(1A) could be relied upon to create such a jurisdiction.

31. It is argued that in the absence of clear authority from the CJEU on the interpretation of Article 10(1), the issue is not *acte clair* and a preliminary reference is necessary.

Mr. Charpentier's Submissions

32. Mr. Charpentier submits that TICEA must be interpreted in light of the purpose and evolution of EU law governing EWCs, beginning with Directive 94/45, extended by Council Directive 97/74/EC to the United Kingdom, and recast in the 2009 Directive. He points out that the 2025 Directive, which must be implemented in the Member States by 2029, clarifies the obligation to provide the "*means required*" under Article 10(1). This legislative development demonstrates an expanding protection of collective rights and points towards TICEA being consistent with Article 11 and Recitals 35–36 requiring effective and proportionate enforcement mechanisms.

33. Mr. Charpentier contends that the term "*means*" in Article 10(1) cannot be confined to legal capacity and points out that the narrow interpretation contended for by Verizon would undermine the effectiveness of the 2009 Directive, that Ireland validly transposed Article 10(1) by imposing obligations directly on central management and that Verizon cannot narrow the scope of the obligation.

34. Mr. Charpentier submits that the central issue is whether the obligation to provide "*means*" and resources extends to legal costs and submits that it does. Mr. Charpentier argues that the Labour Court erred in treating legal costs as moot and should instead have considered whether the proceedings were justified and whether costs were proportionate. Mr. Charpentier argues that Article 10(1) must be read in conjunction with Article 47 of the Charter of Fundamental Rights. Where the effective exercise of Article 10(1) rights would otherwise be undermined, it must be understood as encompassing the funding of necessary legal assistance.

35. In respect of the 2025 Directive, he notes Recitals 10 and 12 of the 2025 Directive expressly acknowledge that the entitlement to the coverage of legal and other expenses was "*not sufficiently clear*" and had given rise to "*uncertainty and disputes*" and should

therefore be clarified. That language assumes a pre-existing obligation whose scope required elucidation and that the meaning now made express was inherent in Article 10(1).

36. Mr. Charpentier argues that an Article 267 reference is necessary to determine whether Article 10(1) extends to the payment of reasonable legal and associated costs and expenses, necessarily and appropriately incurred, by the EWC.

Attorney General's Submissions

37. The Attorney General was joined to these proceedings as a notice party by the High Court having regard to the reliefs sought in the originating notice of motion, namely, declarations of incompatibility of TICEA with the 2009 Directive and the inability of the WRC and/or the Labour Court to award EWC members legal costs. However, ultimately these reliefs were not pursued, and this Court was not required to consider whether Ireland had adequately transposed the 2009 Directive.

38. The Attorney General argues that the High Court was correct in its interpretation of s. 17(1A). The phrase "*means required*" is not limited to legal capacity as contended for by Verizon but rather can encompass financial resources, including expert expenses incurred by an EWC required to apply rights arising from the 2009 Directive.

39. Insofar as legal expenses or costs are concerned, the reference to "*means*" in s. 17(1A) can encompass a claim by an EWC member/employee to central management for agreement to reimburse all or some of the legal expenses associated with such a claim on the basis that such expenses or costs require discharge to satisfy the requirement in s. 17(1A) that an EWC member/employee representative have the "*means required*" to apply the rights under the 2009 Directive.

40. Having regard to the fact that the protection of employee representatives is the central aim of s. 17 of TICEA, the Attorney General notes that the obligation imposed on central management under TICEA is broad. The obligation on central management is to provide members of an EWC with financial and material resources, reasonable facilities and imposes various other obligations, all with the objective of enabling employee representatives to perform their duties in an appropriate manner. It is submitted that those provisions appropriately transpose Article 10 of the 2009 Directive. The State was entitled to impose such obligations on central management while transposing the 2009 Directive.

41. It is argued that the central objective of the 2009 Directive is stated in Article 1(1) as being to "*improve the right to information and to consultation of employees in community-scale undertakings and community scale groups of undertakings*"; and that to fulfil that objective, it is imperative that the appropriate "*means*" be provided to an EWC to ensure rights under the 2009 Directive can be exercised.

42. In relation to the 2025 Directive, although it includes specific provisions relating to the discharge of expert expenses and legal costs, it does not preclude an interpretation of "*means required*" encompassing expert or legal expenses in the 2009 Directive, as the recitals of the 2025 Directive simply clarify the scope of rights.

43. The Attorney acknowledges the Labour Court had no jurisdiction to award costs as it has no statutorily conferred power to make adverse cost orders but s.17 could encompass a claim from a member/employee seeking reimbursement from central management of legal expenses associated with a complaint to the WRC and a failure to discharge such expenses may found a complaint to the WRC for breach of s. 17(1A).

44. Accordingly, the Attorney General submits that the phrase "*means required*" and Article 10(1) of the 2009 Directive are not ambiguous and do not require a CJEU reference.

Interpretative Principles

45. Before embarking on the interpretation exercise required by this appeal, it is necessary to recall the principles of interpretation applicable when considering a provision of EU law. Those principles remain largely unchanged since they were identified by the CJEU in Case 283/81, *Srl CILFIT v Ministry of Health*, ECLI:EU:C:1982:335 at paragraph 20 as follows:

> *"Finally, every provision of Community law must be placed in its context and interpreted in light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date in which the provision in question is to be applied."*

46. The principles in *CILFIT* have become enshrined in CJEU jurisprudence, with recent restatements in Case C-561/19, *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA*, ECLI:EU:C:2021:799, and C-379/15 *Association France Nature Environnement,* ECLI:EU:C:2016:603. In *Pervaiz v Minister for Justice* [2020] IESC 27, Baker J., in interpreting the Citizens Directive 2004/38/EC, noted the importance of a teleological interpretation of the Directive, stating that such was consistent with the well-established principles in *CILFIT.*

47. Despite the importance of context, one starts with the ordinary meaning of the words when interpreting a provision. However, the literal approach has recognised limitations, most notably its ineffectiveness in the context of a multi-lingual legislative framework. An ambiguity in one language version may be clarified by reference to other language versions. Where this yields no clear meaning or is not possible, a literal approach will

be insufficient to clarify the meaning of the text and a court – including a domestic court charged with interpreting a provision of EU law - must consider the general scheme and context of the provision (the contextual approach) and its purpose or the need to ensure its effectiveness (the teleological approach).

48. The primary objective of the contextual approach is to ensure that a provision is consistent with the general scheme of the legislation and prevent contradiction, duplication or redundancy. The CJEU will examine a provision within the broader legislative framework in which a provision sits. Interpretive techniques such as *a contrario* interpretation, recourse to analogy, *a fortiori* reasoning, *ad absurdum* argument, argument from precedent, principled argumentation and balancing reasons all form part of the contextual approach to interpretation (see for example the approach of the CJEU in Joined Cases C-402/05 and C-415/05 *Kadi and Al Bakarat* ECLI:EU:C:2008:46, Case C-465/07*Elgafaji*, ECLI:EU:C:2009:94).

49. The CJEU also deploys a teleological approach to the interpretation of legislation. Writing extra-judicially, Fennelly J. characterised it as the dominant interpretative technique used by the CJEU (see Fennelly, 'Legal Interpretation at the European Court of Justice' (1996) 20(3) Fordham International Law Journal 656). The current President of the CJEU, again writing extra-judicially, observes that the reason the teleological approach is so prominent is because the treaties are imbued with "*purpose-driven functionalism".* The nature of EU legislation is that it is drafted broadly and driven by the desire to achieve major constitutional objectives. Therefore, it is imperative to analyse the objective that a provision was intended to achieve (see Koen Lenaerts and José A Gutiérrez-Fons, 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice' (2013) 9 European University Institute Working Paper AEL).

50. The CJEU tends not to use the term "*teleological*" in its case law. Rather, it refers to the importance of interpreting a provision in light of "*the spirit, the general scheme and the wording*" (Case 26-62 *Van Gend En Loos* ECLI:EU:C:1963:1), "*in the light of the wording and the purpose of the directive*", (Case C-106/89 *Marleasing* ECLI:EU:C:1990:395), or emphasising the purpose of the legislation: "*it is necessary to consider… the objectives pursued by the rules of which it is part*" (Case C-203/22 *CK v Magistrat der Stadt Wien* ECLI:EU:C:2025:117).

51. Nonetheless there are limits to the purposive approach. In Case T-416/22 *Fresenius Kabi Austria and Ors v Commission* ECLI:EU:T:2024:316, the General Court confirmed that the principle of *contra legem* applies, noting that in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules, bearing in mind that no interpretation may exceed the limits of clear and precise wording (para78).

52. In my analysis of Article 10(1) below, I consider the literal meaning of the disputed words, look at them in the context of Article 10(1) and the remainder of the 2009 Directive, including the Subsidiary Requirements, and consider the purpose for which the Directive was adopted.

Do "Means" In Article 10(1) Encompass Financial And Material Recources?

53. I will start by considering the wording of Article 10(1) itself before moving to other provisions of the 2009 Directive, including the Subsidiary Requirements and the recitals in the Preamble.

54. Article 10(1) is in the following terms:

> *"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."

55. Ireland implemented this obligation by s.17(1A) of TICEA as follows:

"Without prejudice to the competence of other bodies or organisations in this respect, central management shall provide the members of the European Employees' Forum or European Works Council, as the case may be, with the means required to apply the rights arising from the Directive, to represent the collective interests of employees of the Community-scale undertaking or Community-scale group of undertakings concerned."

56. No equivalent provision may be found in the predecessor to the 2009 Directive, i.e. Directive 94/45. On the other hand, the amendment to the 2009 Directive by the 2025 Directive leaves Article 10(1) essentially unchanged. The Directive does not contain a definition of "*means*" or "*means required*".

57. Verizon contends that the "*means required*" are limited to ensuring that members of the EWC have the necessary capacity as a legal person to enable them to take action where necessary. That is not the natural and ordinary meaning of the words the "*means required*". In the Oxford Advanced Learner's Dictionary, the noun "*means*" has two meanings: first "*an action, an object or system by which a result is achieved; a way of achieving or doing something*"; and second, "*the money that a person has"*. Examples given for the second meaning include "*living within your means*" i.e. not spending more money than you have, "*living beyond your means*" i.e. spending more than you have, and "*according to a person's means*", i.e. the amount required should be commensurate with what a person can afford.

58. The French version of Article 10(1) is as follows:

> *"Sans préjudice de la capacité d'autres instances ou organisations à cet égard, les membres du comité d'entreprise européen disposent des moyens nécessaires pour appliquer les droits découlant de la présente directive de représenter collectivement les intérêts des travailleurs de l'entreprise de dimension communautaire ou du groupe d'entreprises de dimension communautaire."*

59. Our attention was drawn to this language version at the hearing but there was a general consensus that the phrase "*moyens nécessaires*" did not differ in any material respect from "*means required*". No submissions were made in respect of any other language version, and it was not suggested that any ambiguity arose because of differences in language versions. Later in this judgment, when explaining why I have decided not to make a reference under Article 267, I set out the analysis this Court carried out in respect of 14 other language versions. No significant divergence in meaning arises from that analysis.

60. On any ordinary reading of the provision, a reader would not think "*means*" is a synonym for "capacity", as argued by Verizon. However, Verizon have argued that this meaning is available when Article 10(1) is read in the context of the 2009 Directive. Accordingly, I will consider its meaning in the context of the wording of Article 10(1), the remainder of Article 10, other provisions of the Directive and the Preamble to the Directive, before considering the overall purpose of the 2009 Directive and the role Article 10(1) plays in achieving that purpose.

61. The purpose for which the "*means*" are conferred is critical. Article 10(1) specifies the purpose i.e. to apply the rights arising from the Directive, in order that that the members of the EWC can represent collectively the interests of the employees. Verizon's

interpretation requires an assumption that (a) the only way in which the members can so represent those interests is by the EWC having capacity, and; (b) capacity is all that is needed to represent those interests. But neither of those assumptions are supported by the wording of Article 10(1). Moreover, it requires the reader to ignore the previous words, "*to apply the rights arising from this Directive*".

62. To understand Article 10(1), it is necessary to recall the rights arising from the 2009 Directive. They are the rights of employees in transnational undertakings to information and to consultation (see Article 10(2)). Information means the transmission of data by the employer to the employee's representatives to enable them to acquaint themselves with the subject matter and to examine it. That must allow them to undertake an in-depth assessment of the possible impact of the matters communicated, and, where appropriate, to prepare for consultations. Consultation means the establishment of dialogue and exchange of views between the employee's representatives and central management to allow the employee's representatives to express an opinion on the information provided about the proposed measures to which the consultation is related.

63. As pointed out by counsel for the Attorney General, the principal role of an EWC or employee representative is their interaction with central management or the employer to ensure those rights are properly given effect *vis-à-vis* the employees. The question of the legal capacity of the EWC, for example whether it is a legal entity or whether it may be represented by an employee representative, or some other variant, is not central to its interaction with central management.

64. There is a clear obligation under the 2009 Directive on central management to inform and consult with an EWC to give effect to the obligations set out in the 2009 Directive. Once an EWC is constituted as described in the 2009 Directive – and the 2009 Directive

takes some considerable care in describing the various ways in which an EWC can come about and the form it may take – then central management must interact with it. When that interaction is taking place, the job of the members of the EWC is to represent collectively the interests of the employees.

65. It is certainly true that when the EWC is engaging with external entities, its capacity may take on greater importance. For example, if it is necessary for an EWC to issue proceedings or represent employees to enforce a right under the 2009 Directive, for example in the context of competition proceedings, then its legal status may become relevant. But engaging with external entities, as opposed to with central management and employees, is clearly not the primary task of the EWC. Its primary task is to collect information, reflect on it in consultation with its employees, and then to engage in consultation and to relay back to those employees the outcome of same. Article 10 requires the EWC to have the "*means*" required to do so.

66. What are the "*means*" that the drafters had in mind? The most obvious example is the necessary material means – either direct financial support or the provision of the necessary supports, such as meeting rooms, on-line facilities, IT facilities, access to means of communication with employees, time off to attend meetings and so on. That interpretation accords with the natural and ordinary meaning of the words and with the functions conferred on the EWC.

67. When one looks at the remainder of Article 10, the reference to "*means required"* becomes clearer. Article 10(2) provides that the members of the EWC shall have the right and necessary means to inform the representatives of the employees of the content and outcome of the information and consultation procedure. Article 10(3) provides for anti-penalisation provisions, requiring that members of EWC shall enjoy protection and

guarantees equivalent to those provided for employees' representatives in the relevant Member State. Article 10(4) provides that the members of the EWC shall be provided with training without loss of wages and the reasonable costs and expenses of that training shall be borne by central management. In other words, members of the EWC are to be given the means they require to discharge their obligations under the Directive i.e. to represent collectively the interests of the employees, whatever those needs may be.

68. "*Means*" may encompass the provision of sufficient capacity to the EWC to allow it to represent employees in external contexts. Nothing in Article 10(1) suggests the reference to *"means"* cannot encompass capacity or standing. But critically, what cannot be discerned in the wording of Article 10(1) is any intention to limit the means required to capacity or standing only.

69. Verizon relies on the reference to "collectively represent" the interests of the employees to argue that this can only apply to the capacity to represent those interests. That argument is unconvincing. There is no reason to suppose that collectively representatively the interests of the employees mean representing their interests only in an external context.

70. Verizon also relies upon the first line of Article 10(1) i.e., "*Without prejudice to the competence of other bodies or organisations in this respect ...*". Verizon argues that this focuses on the external facing role of an EWC to represent the interests of the employees and that to discharge same, it is necessary to have capacity. But the main body with whom the EWC interacts to represent the employees is the central management and, as discussed above, capacity is not an issue in this context as the EWC is created by the 2009 Directive and central management has obligations to it

under the 2009 Directive, irrespective of its capacity under national law in external contexts. As the *travaux preparatoire* to the 2009 Directive (discussed below) make clear, the focus of the first line was to clarify that the EWC or members of same were not removing the competence of trade unions or other similar bodies – who are usually organised along national rather than transnational lines – to represent collectively the interests of the employees.

71. Because it is not necessary to consider the precise obligations on a Member State in respect of the capacity of an EWC, I will not do so here. However, I do not think the obligation is to ensure that all EWCs have legal capacity within the meaning of that term in the relevant Member State; rather, it is more likely to mean that the members of the EWC must be in a position to represent the interests of the employees in any dispute about the enforcement of the 2009 Directive, whether that is done by permitting members to act in a representative capacity, through awarding legal personality to the EWC, or in some other way compatible with the relevant legal order in the Member State.

72. Verizon also contends that the heading of Article 10 – "*Role and Protection of Employee's Representatives*" – supports its interpretation, on the basis that this does not encapsulate an obligation to provide resources. In fact, the title is not of any great assistance in interpreting Article 10(1) either way. Rather, it is best understood by looking at the other provisions of Article 10 as identified above. Thus, considered as a whole, Article 10 identifies the role of the employee's representative and the protections available to them. Article 10(1) is directed at ensuring they can discharge their role. Given my interpretation of the role of the members of the EWC, the reference to "*role*" in the title, if anything, points to a wider rather than narrower interpretation of the term "*means required*".

73. There is one final aspect of the wording of Article 10(1) that strikes me as potentially significant. That is the reference in Article 10(1) to the "*members of the EWC*" having the "*means required*", rather than the EWC. If Verizon's interpretation is correct, and Article 10(1) is about securing legal personality for EWC's so that they can interact more satisfactorily with external parties, one would expect Article 10(1) to refer to the "*means required*" by the EWC itself, rather than by its members. On the other hand, if Article 10(1) covers resources, it makes perfect sense that the obligation is to ensure that the members have the "*means required*", since it is they who act on behalf of the EWC.

Subsidiary Requirements

74. An EWC is normally governed by an agreement negotiated between central management and employee representatives. Article 5 provides for the establishment of a special negotiation body which has the task of determining, together with central management, the scope, composition, functions and term of office of the EWC or equivalent. Once the agreement has been completed, the special negotiation body falls away. Under Article 6, the agreement must contain certain mandatory terms. However, as identified earlier in this judgment, the 2009 Directive also provides for the situation where there is, *inter alia*, a failure of negotiation, or central management refuses to commence negotiations. Article 7 provides that in that situation, the Subsidiary Requirements specified in Annex 1 to the Directive shall apply. In other words, a default set of terms will come into existence and an EWC shall be established subject to those terms, as is the case with the Verizon EWC.

75. TICEA has included the Subsidiary Requirements in the Second Schedule to the Act.

76. An interpretation of Article 10(1) that includes financial and material "*means*" is considerably advanced by the architecture of the 2009 Directive, both in relation to EWCs under the Subsidiary Requirements and those individually negotiated. The Subsidiary Requirements make explicit reference to the requirement placed on central management to materially support EWCs and the mandatory terms applicable to a negotiated agreement require equivalent provisions to be mandatory terms in any agreement.

77. Points 5 and 6 of Annex I containing the Subsidiary Requirements identify certain obligations that are relevant to the question of resourcing the EWC. Point 5 provides that the EWC or select committee may be assisted by experts of its choice insofar as this is necessary for to carry out its tasks. Point 6 specifies in some detail the obligations of central management in respect of the provision of resources as follows:

> *"The operating expenses of the European Works Council shall be borne by the central management.*
>
> *The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.*
>
> *In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.*
>
> *In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit funding to cover one expert only."*

78. In respect of negotiated agreements, unsurprisingly the specific costs to be borne by central management are not specified as each agreement is to be individually negotiated. Nonetheless, included in the list of matters that must be contained in the negotiated agreement, is the "*financial and material resources to be allocated to the European Works Council*" (Article 6(2)(f)). This is not optional. Under Article 6(2) the agreement between the central management and the special negotiating body shall determine the financial and material resources to be allocated, thus making it clear that such resources must be allocated by the agreement, with each individual agreement determining the extent of those resources.

79. Therefore, irrespective of whether the EWC is negotiated or is governed by the Subsidiary Requirements, there is an obligation on central management to provide some material and financial resources to the EWC. This is unsurprising since, without same, it would be impossible for an EWC to function and/or the members of the EWC to operate it, given that it has no resources of its own.

80. This is not the only situation where the 2009 Directive requires the provision of resources by central management. Article 10(4) provides that members of the special negotiating body and the EWC shall be provided with training without loss of wages. Article 5 establishes special negotiating bodies solely for the purpose of negotiating for the establishment of an EWC. Article 5(6) provides that any expenses relating to the negotiations "*shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner*". Article 5(4) permits the special negotiating body to request assistance from experts of its choice for the purpose of the negotiations. Echoing the Subsidiary Requirements, Article 5(6) provides that Member States may lay down budgetary rules regarding the operation of the special negotiating body and may limit the funding to cover one expert only.

81. Verizon seeks to treat the Subsidiary Requirements as supportive of its position, arguing that if "*means*" included resources, Article 10(1) would have referred to "*financial and material resources*", as used in the Subsidiary Requirements and Article 6(2)(f). But that argument fails to recognise the breadth of the word "*means*". As set out above, "*means*" covers all those supports required to enable the EWC to apply the rights arising from this Directive. A reference to the members having the financial or material resources required would have narrowed their entitlement in a way that may have been considered undesirable.

82. In my view, treating "*means required*" under Article 10(1) as including the provision of material and financial resources to members of the EWC sits comfortably with the existing obligations placed on central management under the Subsidiary Requirements in respect of resources and the mandatory provisions on material and financial resources in respect of negotiated agreements. Construing the Directive as a whole, the "*means required*" encompass the resources that central management is already obliged to provide under the Requirements or those that have been negotiated between central management and the special negotiating body.

83. Verizon argues there is a duplication in this interpretation of Article 10 and therefore it must be wrong. I cannot agree. Article 10 does not duplicate the Subsidiary Requirements. Rather, Article 10 is declaratory of the principle that resources must be provided. Concrete effect is given to this principle either by the agreement of the parties or, in the absence of agreement, by the Subsidiary Requirements. The latter fleshes out the principle identified in Article 10 by specifying the precise nature of the obligation placed upon central management. In fact, seen in this light, the Subsidiary Requirements reinforce this interpretation of Article 10, since rather than existing in

isolation from the structure established by the Directive, the Directive provides a principled basis for them.

84. In summary, Article 10(1) establishes a general principle that EWC members must be provided with the means necessary to exercise Directive rights. In the absence of agreement, the specific content of those means is supplied by the Subsidiary Requirements.

Recitals to the 2009 Directive

85. Verizon relied upon four of the Recitals in the Preamble to the 2009 Directive to support its interpretation of Article 10(1). The first is Recital 7, which identifies that Community legislation on information and consultation of employees requires modernisation in order to ensure the effectiveness of the information and consultation rights, increase the proportion of EWCs established, while resolving the problems encountered in the practical application of Directive 94/45 and remedying the lack of legal certainty resulting from some of its provisions or absence of same. The argument made was that the reference to problems was intended to refer to the issues raised by the lack of capacity of the EWCs. This argument is difficult to accept. The reference to problems is wholly general and nothing in the Recital suggests it is intended to reflect the issue focused upon by Verizon. Problems of practical application may just as easily be those relating to a lack of resources as those relating to a lack of capacity. Indeed, the reference to the importance of the effectiveness of information and consultation rights supports the interpretation I have given to Article 10(1).

86. Next, Verizon placed significant emphasis on Recital 9 which refers to the 2009 Directive being part of the Community framework intended to support and compliment the actions taken by Member States in the field of information and consultation of

employees and provides that "*this framework should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted*".

87. Counsel relies on the reference to keeping to a minimum the burden on undertakings. But this is balanced by the reference to the effective exercise of the rights granted. Moreover, as identified above, interpreting "*means*" in the way contended for by Mr. Charpentier simply has the result that the obligations under the Subsidiary Requirements, which are in any case binding upon Verizon, may be enforced in the WRC directly under s.17A of TICEA if a breach of s.17(1A) is alleged. It is difficult to see how this could be construed as increasing the burden on undertakings since the obligation exists in any case. Indeed, that argument amounts to a submission that the employee's representatives should not have the means of enforcing existing obligations in the Irish legal context, which is not so much about minimising the burden but avoiding obligations that already exist under the 2009 Directive. Where a Directive provides for obligations, it cannot be contended that there is an additional burden on the central management because there is a civil law remedy for an alleged breach of those obligations, as well as a criminal sanction for failure to comply with obligations.

88. Reliance is also placed on Recital 27, which provides in relevant part:

> *"Recognition must be given to the role that recognised trade union organisations can play in negotiating and renegotiating the constituent agreements of European Works Councils, providing support to employees' representatives who express a need for such support."*

89. This Recital is largely concerned with the assistance that trade union organisations can give to the establishment of new EWCs, and, to that end, they shall be informed of the commencement of negotiations. Nothing in it supports the Verizon construction.

90. Finally, Recital 34 is relied upon, which gives employee representatives the same protections as those provided to employee's representatives in the country of employment and requires that they enjoy adequate protection as regards dismissal and other sanctions. It is true that this goes to representation before tribunals; but it seems unlikely that it is a reference to the necessity for EWCs to have legal capacity, since a person facing dismissal or other sanction will necessarily be treated as having capacity *qua* individual.

91. In summary, having considered the wording of Article 10(1), its place in the 2009 Directive, the architecture of the Directive including the Subsidiary Requirements, and the overall purpose of the Directive, I am satisfied that the term "*means required*" includes material and financial resources.

Do Means In Article 10(1) Encompass Legal Costs/Expenses?

92. I turn now to the second, and distinct, aspect of this appeal – assuming the reference in Article 10(1) to "*means*" covers material resources, do material resources include the legal costs of the EWC, including those incurred in litigating against central management? It will be recalled that the trial judge decided this question in the affirmative. When considering this question in the context of the Irish legal system, I will refer where appropriate to "legal expenses" rather than "legal costs", to distinguish between expenditure incurred on legal services (legal expenses) and the legal costs payable following a direction by the WRC/Labour Court. It should be emphasised that this question is not whether central management are obliged to pay all legal costs

incurred without limitation: I will consider below the types of constraints on the obligation that exist. Rather it is a jurisdictional question: does the 2009 Directive encompass an obligation to pay legal costs at all or are they excluded?

93. My conclusion that "*means*" encompasses the resources identified in the Subsidiary Requirements has certain consequences for the determination of this question. The Subsidiary Requirements state that the EWC may be assisted by experts insofar as this is necessary for it to carry out its tasks. Those tasks must include relying upon the rights arising from the Directive to represent collectively the interests of the employees. Retaining a lawyer for that purpose potentially constitutes assistance from an expert to apply the rights under the Directive.

94. At Point 6 of the Subsidiary Requirements, an unambiguous obligation is imposed on central management: they must bear the operating expenses of the EWC. Reference is made to the provision of financial and material resources to enable the EWC to perform their duties in an appropriate manner, and an obligation to provide various resources is specified, including the costs of organising meetings, interpretation facilities and accommodation and travelling expenses. In my view, "operating expenses" is a catch all category that covers the expenses incurred by the EWC. In my view, legal costs, including those incurred in litigation initiated or defended for reasons squarely connected with collectively representing the interests of the employees, in principle come within the definition of operating expenses.

95. That does not mean that central management is responsible for all legal costs, or all those relating to litigation. Nor does it mean that the Labour Court was obliged to entertain an application for costs as part of the appeal. The Labour Court refused Mr. Charpentier's costs application on the basis that his appeal against the decision of the

WRC was not well founded and that the question of awarding him costs was moot in circumstances where the Labour Court had not upheld his appeal (Decision TID 241). It is therefore unclear whether, had Mr. Charpentier been successful, the Labour Court would have considered it had jurisdiction to award him costs.

96. The trial judge rightly acknowledged that the Labour Court's national statutory jurisdiction does not allow for legal costs. Counsel for Mr. Charpentier identified some statutory provisions that give power to the Labour Court to make costs type orders in an attempt to urge this Court to find that the Labour Court has power to make costs orders when dealing with a complaint made under s.17A. But these statutory provisions are very much the exception to the rule, the normal approach being that the Labour Court does not make costs orders of any type in appeals before it. Indeed, if anything, they identify the necessity of making specific provision if costs are to be ordered by the Labour Court. The absence of any such specific provision suggests the corresponding absence of any power to make costs orders. The purpose of this approach is to *encourage* people to treat the hearings as processes that parties can negotiate without the necessity for legal representation.

97. Mr. Charpentier has not pointed to any provision of the 2009 Directive (or indeed TICEA) that requires national bodies adjudicating on employment and industrial relations disputes to have power to award legal costs following a hearing. Therefore, to the extent that the trial judge held that the Labour Court erred in failing to consider the costs applications before it in the light of TICEA and the 2009 Directive, I cannot agree.

98. However, as suggested by counsel for the Attorney General, there is another route by which the EWC can seek to recover the legal expenses that it incurred in litigating, one that does not necessitate the Labour Court to make costs orders following hearings.

This is through an application to central management by the EWC for reimbursement of some or all of the legal expenses associated with the claim, on the basis that they are operating expenses and are required under Article 10(1) to apply the rights arising from the Directive.

99. Central management can adjudicate upon the claim and if a dispute arises between a member of the EWC and management in this regard, that claim can be brought before the WRC under s.17A of TICEA.

100. Article 10(1) gives an entitlement to the members of the EWC to have the "*means required*". "Required" is a limiting provision here, as is the entitlement of the EWC to be assisted by experts under the Subsidiary Requirements "in so far as this is necessary for it to carry out its tasks". Equally, the obligation on central management to bear operating expenses means that consideration must be given to whether legal expenses incurred in litigatation are to be treated as reasonably incurred operating expenses in all the circumstances.

101. Therefore, if the WRC is adjudicating upon that issue, it will necessarily look at matters including but not limited to whether retaining a lawyer *qua* expert in the context of the litigation was necessary for the EWC to carry out its task, whether the litigation was necessary to apply the rights arising from the Directive, whether authority was sought in advance for the discharge of those expenses, the extent to which the expenses were identified and fixed in advance, and the necessity of retaining lawyers in the WRC or the Labour Court, given the nature of hearings before those bodies.

102. For example, a different view might be taken of the necessity of retaining lawyers in the High Court as compared to in the WRC/Labour Court. The success or otherwise of the complaint to the WRC and/or appeal to the Labour Court might also be a relevant

factor in determining the extent to which central management ought to be required to be liable for the legal expenses incurred. If a claim was frivolous or vexatious, or the conduct of the members of the EWC in the course of the complaint was unreasonable, that would also likely be a relevant consideration in deciding upon the obligation of the central management to reimburse the members.

103. In the hearing before us, reservations were expressed in relation to the suitability of the WRC and/or the Labour Court in adjudications of legal costs. I should emphasise that the interpretation of the 2009 Directive I propose does not involve the WRC/Labour Court making costs orders following the hearing of a case. Rather, it means that if a claim for a specified amount is made to central management following the incurring of legal expenses by the EWC or members of same in the context of a complaint made to the WRC/Labour Court, the WRC/Labour Court can adjudicate upon that claim in the context of a separate complaint if there is a refusal to reimburse some or all of the legal expenses.

104. It is true that adjudicating upon that claim may itself require some expertise in measuring legal expenses. I accept that the WRC and the Labour Court do not have the type of expertise in measuring legal costs that a legal costs adjudicator has. (Legal costs adjudicators are established under s.139 of the Legal Services Regulation Act 2015 and their only task is to measure legal costs where costs orders have been made by a court and the parties cannot agree on costs).

105. But this argument does not go to the interpretation of Article 10, but rather to whether it is desirable to permit non specialists to make decisions on the amount of costs recoverable. That abstract policy question cannot influence the interpretation of the Directive. Moreover, on the interpretation I adopt, the WRC and Labour Court are only

charged with deciding upon claims for legal expenses i.e. reasonable operating expenses of a legal nature.

106. To summarise, the Labour Court has no jurisdiction to make costs orders. However, that does not determine whether legal expenses may constitute operating expenses, as reimbursement claims may themselves form the basis of a dispute under s.17 of TICEA. Therefore, legal expenses may in principle be covered by the term "*means required*" subject to the limitations identified above. I should emphasise that this jurisdiction only arises in the context of TICEA and the 2009 Directive and not in the context of any other claim before the WRC/Labour Court.

Verizon Arguments

107. I turn now to address certain arguments raised by Verizon to counter the interpretation of Article 10(1) advanced by Mr. Charpentier.

Duplication

108. One of the arguments most prominently deployed by Verizon was that of duplication. Counsel for Verizon argues that the Subsidiary Requirements would be redundant if Article 10(1) covered finances and that the 2009 Directive should be interpreted to avoid duplication. It was said that if "*means*" included resources, then the Subsidiary Requirements were entirely unnecessary, as indeed was Article 6(2)(f) in relation to individually negotiated agreements, since there was already an open-ended obligation. (Article 6(2)(f) obliges individually negotiated agreements to include the financial and material resources to be allocated to the EWC). But that argument fails to acknowledge the interrelated nature of Article 10(1) and the Subsidiary Requirements that I have discussed above. As identified above, Article 10(1) identifies the principled approach. The Subsidiary Requirements flesh out what is required in practice by the principle.

There is a certain degree of duplication in relation to negotiated agreements given , the identification of matters that must be included in such an agreement in Article 6(2)(f). But in my view that simply reinforces the obligation in Article 10 in the context of the content of the negotiated agreement: in other words, Article 10 identifies the general principle, and Article 6(2)(f) confirms that the provision of material and financial resources must be addressed in the agreement.

"Blank Cheque"

109. Separately, Verizon relied on what was described as the "blank cheque" argument i.e. that the interpretation advanced by Mr. Charpentier could not be correct as it would lead to an open-ended obligation on central management to fund the operating costs of the EWC without limitation, including legal costs and such an onerous obligation must be excluded. But that argument, like that of duplication, ignores the Subsidiary Requirements and their role in the architecture of the 2009 Directive. As identified above, Article 10(1) identifies the general obligation to provide the "*means required*" and (in respect of non-negotiated agreements) points 5 and 6 of the Subsidiary Requirements identify what is envisaged by that obligation insofar as the provision of resources is concerned. This approach is replicated elsewhere in the 2009 Directive in relation to special negotiating bodies. There is a general requirement that they be given the necessary means (Article 5(4)) and a specific requirement that funding be provided for the training (Article 5(6)).

110. The obligation in the Subsidiary Requirements is widely drawn. Central management are obliged to cover operating expenses and the financial and material resources to perform their duties must be provided. However, the reference to an entitlement to operating expenses should not be interpreted without limitation. Where there is a refusal

by central management to provide for some or all of the expenses, that dispute will be brought to the relevant adjudication authority. The EWC will have to justify the expenses incurred by reference to their nature, the circumstances in which they were incurred, and their level. Indeed, that is precisely what happened here, where the Adjudication Officer allowed 50% of the expenses sought for the external expert.

111. Moreover, the Subsidiary Requirements themselves envisage financial controls being imposed, for example by the express reference at point 6 to the entitlement of the Member State to limit funding to cover one expert only. This implicit limitation on the costs recoverable has been made explicit in the 2025 Directive, as discussed further below. The costs are now required to be reasonable and to have been approved in advance. But the absence of those explicit limitations in the 2009 Directive cannot undermine the clear meaning of the words "*means*" as discussed in this judgment, both because limits can be implied and because of the clarity of the words used in Article 10(1) read in conjunction with the Subsidiary Requirements.

112. Accordingly, given the specificity of the obligations under the Subsidiary Requirements correctly interpreted and my conclusion that the obligations therein represent the totality of the obligations of central management in a non-negotiated context, I cannot accept that my interpretation of Article 10 amounts to a "blank cheque" as argued by Verizon.

Absence of Regulations under TICEA

113. Ireland's failure to make regulations under s. 7 of TICEA was also relied upon by Verizon as supportive of its interpretation of Article 10(1). Section 7(1) gives the Minister the power to make regulations for the purpose of giving effect to the Act including in relation to:

"(a) expenses to be borne by the central managements in relation to undertakings and groups of undertakings;

…….

(d) subject to the Second Schedule in relation to a European Works Council, the funding by central managements of the expenses of the operation of Special Negotiating Bodies, European Works Councils, European Employees' Fora or information and consultation procedures."

114. Verizon suggests that, were there to be enforcement of the rights under the Second Schedule by way of recourse to the WRC or any other enforceable rights in relation to resources, it would have to be done under such regulations and, absent same, it cannot be enforced by way of s. 17. I am unpersuaded by this argument for various reasons. Most obviously, Article 10(1) cannot be interpreted by reference to choices made in its implementation. TICEA must be interpreted by reference to the 2009 Directive, not the other way around. The meaning of Article 10(1) is unaffected by national implementing legislation.

115. Even if this was not the case, s. 7 does not mean that there is no obligation on central management in relation to resourcing, unless regulations are made. Rather, it gives the entitlement to the Minister to make detailed regulations in respect of expenses in relation to undertakings and groups of undertakings as well as the expenses of the operation of *inter alia* EWCs and associated bodies. However, s. 7(d) is specifically made subject to the Second Schedule, thus suggesting that nothing in the regulations could undermine what is stated in the Second Schedule. Nothing in s. 7 undermines the existing obligations under the Subsidiary Requirements.

Remedies

116. Before concluding my consideration of specific arguments raised by the parties, I should consider Mr. Charpentier's reliance upon the importance of an effective remedy to bolster his interpretation of the 2009 Directive. It is undoubtedly true that the Directive places a focus upon remedies and the effectiveness of same. This may be seen both in the body of the Directive and in the Preamble. Recital 35 identifies that Member States must take appropriate measures in the event of failure to comply with the obligations laid down in the 2009 Directive. Recital 36 identifies that administrative or judicial procedures as well as sanctions that are effective dissuasive and proportionate should be applicable in cases of infringement of the obligations arising from the Directive. That is mirrored in Article 11 of the 2009 Directive (entitled "*Compliance with this Directive*"), which provides that Member States shall ensure that the management of undertakings affected by the Directive and their employees or employee's representatives abide by the obligations laid down by the Directive (Article 11(1)). Article 11(2) requires that Member States shall provide for appropriate measures in the event of failure to comply with the Directive, including adequate administrative or judicial procedures being available to enforce the obligations deriving from the Directive.

117. As explained earlier, Ireland chose to implement the 2009 Directive by limiting the recourse to the WRC/Labour Court to complaints identifying breaches of s. 17 of TICEA. Breaches of an agreement between management and labour, or disputes concerning same may be referred to an independent arbitrator under s. 21. Neither of those routes cover an alleged breach of the Subsidiary Requirements. Instead, Ireland has chosen to use the criminal law to provide a remedy for breach of the Subsidiary Requirements. Section 18 of TICEA provides that an undertaking that refuses to provide certain specified types of information shall be guilty of an offence. Section 13(2)

provides that where the Subsidiary Requirements apply, the central management shall, no later than six months after they first become applicable, comply with the requirements. Section 18(2) provides that where central management does not comply with the requirements in s. 13(2), it shall be guilty of an offence. Section 19 provides for penalties including fines and imprisonment.

118. No question arises in this case as to whether the criminal sanctions are a sufficient remedy for breach of the 2009 Directive. The 2009 Directive does not prescribe how a Member State is to enforce the Directive and simply requires that Member States shall provide for appropriate measures in the event of failure to comply and that adequate administrative or judicial procedures are available to enforce the obligations.

119. Therefore, I do not consider that Mr. Charpentier has made out a case that the interpretation of Article 10(1) advanced by him is necessary to ensure he has an effective remedy, as he has not shown that the criminal penalties are ineffective. Nonetheless, it is true that the interpretation of Article 10 that I have adopted gives a member of a EWC recourse to the enforcement mechanism identified by s.17A i.e. an entitlement to bring a complaint of a contravention of s.17 before the WRC. This is because such complaints may only be brought where it is alleged that s.17(1A) has been breached.

120. Had the Verizon interpretation prevailed, no such recourse to the WRC would have been available to members of the EWC and enforcement of the Subsidiary Requirements would have been exclusively by way of criminal means. The interpretation adopted thus enlarges the remedies available to members of the EWC and arguably increases the effectiveness of the 2009 Directive. However, that could not justify an interpretation of Article 10(1) that was not otherwise warranted.

Travaux Preparatoire

121. I turn now to external sources of interpretation relied upon by both parties, being the *travaux preparatoire* (meaning the preparatory work) and the 2025 Directive. (In fact, the material relied upon by both parties in this case went well beyond documents generated prior to the adoption of the 2009 Directive and extended to documents generated after its adoption also. However, for the sake of simplicity, I will refer to all the documents relied upon in this case as "*travaux*").

122. As a matter of EU law, it is permissible to consider those documents as an aid to interpretation. This differs from the position of Irish law where Dáil debates on the adoption of legislation may not be used as an aid to interpretation – see for example *Crilly v T&J Farrington Limited & Anor; Eastern Health Board v Crilly & Anor [2001]* 3 I.R. 251*,* recently affirmed in *DPP v Brown* [2018] IESC 67. Equally, subsequent legislative amendments may not be used as an aid to interpretation – see *Cronin (Inspector of Taxes) v Cork and County Property Company Limited* [1986] I.R. 559 (affirmed in *Revenue Commissioners v Droog* [2016] IESC 55 and *Hanrahan v Revenue Commissioners* [2024] IECA 113) - it is for the courts to say what the true construction of a statute is, and that the construction could not be influenced by what the Oireachtas may subsequently have believed it to be. In the same vein, material such as explanatory memorandum in respect of subsequent amendments may not relied upon – see *Hibernian Real Estate Group Ltd v. Dun Laoghaire-Rathdown County Council* [2026] IEHC 141, where Farrell J. determined that the explanatory memorandum for the Urban Regeneration and Housing Act 2015 could not be relevant to the interpretation of the definition of "house" in the Planning and Development 2000 Act. On the other hand, it is permissible to consider the legislative history of a statute: *DPP v McDonagh [1996]* 1 I.R. 565*; DPP v Brown [2018]* IESC 67.

123. *Travaux* were not mentioned as an aspect of legislative context in *CILFIT* and were historically rejected by the CJEU as a reliable interpretative aid – see Case 39/72 *Commission v Italy* ECLI:EU:C 1973:13 at para. 22 and Opinion of Advocate General in Case 28-76 *Milac v Hauptzollant Freiburg* ECLI:EU:C: 1976:144 at pg. 1664. However, more recently, drafting history has been recognised as a potentially valuable aid in ascertaining legislative context. The change in approach was explained by Advocate General Kokott in her Opinion in Case C-583/11 P, *Inuit Tapiriit Kanatami*, ECLI:EU:C:2013:21 at para. 32:

> "*Drafting history in particular has not played a role thus far in the interpretation of primary law, because the 'travaux préparatoires' for the founding Treaties were largely not available. However, the practice of using conventions to prepare Treaty amendments, like the practice of publishing the mandates of intergovernmental conferences, has led to a fundamental change in this area. The greater transparency in the preparations for Treaty amendments opens up new possibilities for interpreting the Treaties which should be utilised as supplementary means of interpretation if, as in the present case, the meaning of a provision is still unclear having regard to its wording, the regulatory context and the objectives pursued.*"

124. In that case, Advocate General Kokott was discussing Treaty amendments: but the same principle applies to legislation. EU legislation goes through a process whereby the various institutions i.e. Parliament, Council and Commission have defined roles. That process produces a considerable volume of material that is now easily available. This has presumably encouraged parties to seek to rely on that material as an aid to interpretation. Nonetheless, although it is permissible to rely on *travaux*, including

material generated after the adoption of the legislation in question, there is no obligation on a national court to do so.

125. According to academic writers (see Søren Schønberg and Karin Frick, 'Finishing, Refining, Polishing: On the Use of *Travaux Preparatoires* as an Aid to the Interpretation of Community Legislation' (2003) 28(2) ELR 149), a court's discretionary power to consider *travaux* will be exercised subject to the following considerations: (a) *travaux preparatoires* are only utilised where a legislative provisions is not by itself sufficient to resolve a problem of interpretation (see Opinion of Advocate General Tizzano in Case C-133/00 *Bowden* ECLI: EU:C:2001:254, para.30); (b) if to follow the wording of the preparatory material would result in a contrary meaning to the legislative provision in light of the objective and context, then it is inappropriate to draw on the legislative history; (c) the Court will disregard preparatory material that is too inherently contradictory to be of any assistance or that reveals that the legislation was deliberately drafted vaguely to conceal disagreement between the community institutions or member states.

126. The legislative history is most often used as a tool to confirm a conclusion reached through other interpretative methods (Joined Cases C -611/22 P and C-625/22 P *Illumina v Grail* ECLI:EU:C:2024:677) or to correct the meaning of a provision that would otherwise be absurd or contrary to primary community law. The CJEU has continuously emphasised that *travaux* are not binding and may only be used to understand policy objectives to the extent that it does not interfere with overall objective of the legislation.

127. One can distinguish between three types of *travaux* prior to the adoption of a legislative provision: core preparatory documents, peripheral preparatory material and pre-preparatory material.

128. Core preparatory documents refer to documents produced by EU institutions after the legislative process has formally been initiated by the Commission. The CJEU will most often examine explanatory memoranda to decipher legislative intent (see Case C–43/96, *Commission v France*, ECLI:EU:C:1998:304 where the CJEU relied upon the explanatory memorandum to the legislation in question). More recently, in Joined Cases T-600/23 and T-612/23, *BNetzA and Germany v ACER*, EU:T:2025:927, the General Court considered whether ACER exceeded its powers under Regulation 2019/493 and 2015/1222 by analysing the explanatory memoranda to the proposals for Regulation 2019/493. Ultimately, the Court determined that the Regulations conferred onto ACER a power to set a common coordinated capacity calculating methodology.

129. Other types of material that fall within the category of core preparatory documents include opinions and suggested amendments by the European Parliament, the Economic and Social Committee and the Committee of Regions. Peripheral preparatory material is similar to core preparatory documents, however these are documents that are not explicitly envisaged by the Treaties, for example declarations made by representatives of the Member States recorded in the minutes of the Council of Ministers, declarations made by the Commission recorded in the minutes of the Committee of Permanent Representatives and opinions of Community institutions or bodies. The use of this material may raise concerns, given that many documents that fall into this category are unpublished. The position of the CJEU is that a declaration contained in the minutes of a Council meeting cannot be used for the purpose of interpreting a provision of secondary legislation where no reference is made to the

content of the declaration in the wording of the provision in question (Opinion of Advocate Darmon in Case C–292/89, *Antonissen* ECLI:EU:C:1990:387 and subsequently affirmed in Cases C-283/94, C-291/94 and C-292/94 *Denkavit International* ECLI:EU:C:1996:387).

130. An exception to this rule was carved out Case C-368/96, *R v. Licensing Authority ex parte Generics*, ECLI:EU:C:1998:583. There, the Court stated:

> "*According to the case-law of the Court, a declaration recorded in the minutes of the Council on the occasion of the adoption of a directive cannot be used for the purpose of interpreting a provision of that directive where no reference is made to the content of the declaration in the wording of the provision in question . . . However, inasmuch as it serves to clarify a general concept such as that of an 'essentially similar medicinal product'. . . a declaration of that kind may be taken into consideration when interpreting that provision.*"

131. Finally, material that predated the Commission's legislative proposal but still forms part of the legislative context, pre-preparatory material, may be utilised. This includes resolutions by the European Parliament or the Council of Ministers urging for Community action, Green Papers, White Papers and conclusions by the European Council outlining strategy and priorities for legislative activities.

132. The first document relied upon by the parties was a report by Eurofound (an EU institution) of 10 November 2004 that followed a European Commission consultation on Directive 94/45. It is entitled "*Developments in European Works Councils*". It identifies that the study reviews key developments concerning EWCs over the period 2002 to 2004. It includes consideration of legal cases involving EWCs and debates on how to best enhance the effectiveness of EWCs, including the possible revision of

Directive 94/45. It identifies that Directive 94/45 has given rise to a limited amount of litigation. Under the heading "*Litigation concerning EWCs*", various topics are addressed, including the legal standing of EWCs. It states that in a case before the UK Employment Appeal Tribunal, the EAT judge questioned whether, where the EWC in P&O Ferries is a joint management employee body, the employee side has the legal standing under UK law to be able to pursue a complaint. The document also references the decision of the Court of First Instance of the European Communities in 2002 granting the Legrand EWC leave to intervene in a competition law case connected with the company's merger with Schneider (Case T-310/01 *Schneider Electric v Commission* ECLI:EU:T:2002:254).

133. Reliance is placed by Verizon on the Eurofound report as showing that there was a concern about the absence of legal capacity of EWCs. But it must be remembered that this issue was identified under the heading "*Litigation concerning EWCs*". The interpretation contended for by Mr. Charpentier is considerably wider – that when the members of the EWC are seeking to apply the rights arising from the 2009 Directive, central management have an obligation to provide the requisite means to do so. The nature of that representation extends well beyond litigation. In other words, the mere fact that the EWC – or its members – may need sufficient capacity to litigate where necessary cannot be treated as the totality of the means required to permit an EWC or its members to discharge its functions.

134. The next document is a Consultation Paper of the European Social Partners on the revision of Directive 94/45 of 20 February 2008. At para 1.4 it is pointed out that, to allow employees representatives to perform the duties to the full, it might be appropriate to introduce a right to training for those representatives, thus helping to optimise the functioning of the EWCs and reduce the costs. Under the heading "*Protection of*

Rights" at para. 1.5, the following appears: "*As for their responsibilities, European Works Councils are called upon with increasing frequency to represent European employees' interests in dealings with authorities or other parties outside the undertaking, also in disputes relating to competition law. It might therefore be useful to explicitly recognise the European Works Council as the representative of the undertakings or group's employees".* The footnote to that paragraph identifies that this is without prejudice to the competence of other bodies in particular trade union organisations in this respect.

135. Although this provision is relied upon by Verizon, in fact it seems to me to be more relevant to the issue of the EWC being the representative of the employees, rather than identifying a necessity for it to have legal capacity as such. The footnote suggests that the core idea was representation by the EWC of the employees, rather than a formal designation of the EWC in any given way.

136. The next document is a Proposal for a Directive dated 7 February 2008 presented by the Commission. Paragraph 37 refers to the role of the employee representatives by requiring them to report back to employees, confirming the establishment of the competence of the members representing the employees on the EWCs to represent the employees of the undertaking or group of undertakings, and clarifying their entitlement to training without loss of pay. The wording of Article 10(1) in that Proposal does not differ in substance from the 2009 Directive.

137. Finally, the parties refer to a Staff Working Document of 2 July 2008 on the impact assessment of the then proposed 2009 Directive, that again refers to national cases highlighting legal uncertainties as to the right of employee representatives to pursue

complaints. The cases identified are the EAT P&O decision, and the Alstrom decision referred to above.

138. One core difficulty with Verizon's focus on representation is that it assumes that if "means" covers the capacity to represent employees, that inevitably excludes a more expansive interpretation of "*means*" and that it cannot also include financial and material resources. There is nothing in the wording of Article 10(1), nor the general architecture of the 2009 Directive, nor the *travaux,* to support this interpretation. Nor was the wording of Article 10(1) changed at any point to confer legal capacity on EWCs. Thus Verizon's reliance on the preparatory documents is a double edged sword: there are certainly documents expressing concern about the lack of legal capacity; but ultimately the legislature did not take the opportunity to confer legal capacity on EWCs and instead adopted a provision ensuring that the members of the EWC would have the "*means required*" to apply the rights arising from the Directive. Had there been a clear legislative desire to confer capacity, that could have been done in the 2009 Directive.

Documents postdating the adoption of the 2009 Directive

139. The next category of documents are those evaluating the impact of the 2009 Directive following its adoption with a view to considering whether changes are required. Ultimately, the 2009 Directive was amended by the 2025 Directive. They should not be conflated with *travaux preparatoires. Travaux preparatoires* focuses on the legislative history preceding the enactment of legislation, whereas post-legislative material includes proposals for the amendment of legislation that may or may not have yet come into force, reports that post-date the enactment of the legislation, or any other material produced after the legislative process has ended. Schønberg and Frick note that post-legislative material cannot be used to determine the intentions of the legislature and

therefore does not fulfil the same purpose as the *travaux preparatoires.* Nonetheless, the CJEU may use this material to understand the context in which the legislation operates, aligning with the contextual approach to statutory interpretation (see Opinion of Advocate General Jacobs in Case C-97/90 *Lennartz v Finanzamt Munchen* ECLI:EU:C:1991:178).

140. In this case, the material gives context to the amendments made to the 2009 Directive by the 2025 Directive, which Directive is also relied on by the parties as an interpretative aid.

141. The first document put forward is a Commission Staff Working Document from 2018 on the evaluation of the 2009 Directive. It contains a section entitled "*Legal Certainty*" which details that the evidence collected results from information collected from ministry representatives, social partners, labour law experts and from an analysis of national case law. It is noted that some employee representatives drew attention to the ongoing lack of legal clarity over the scope of the transnational matter, the resources allocated by employers to support the work of EWC members including financial and material resources, and the interpretation of budget for external expertise to fulfil the obligation under Article 10 for employers to provide the means of EWC representatives to fulfil their functions.

142. Under the heading "*Enforcement*", it is noted that the capacity of EWCs to seek legal redress varies from one EU Member State to another. It is pointed out that in 4 Member States, EWCs have full legal personality, in a further 11 countries including Ireland, they can be a party to legal proceedings and in a further 5 countries, only EWC members or trade unions have the capacity to act in an action on EWC matters.

143. It is further noted that another element influencing the capacity to bring action before the courts in cases of litigation is the cost of proceedings. In most Member States, rules on financial means and the legal costs of proceedings are limited to the general provisions of Article 10 of the 2009 Directive under which the members of the EWC shall have the "*means required*" to apply the rights arising from the Directive. It is stated that the data collected via the European Centre of Expertise in Labour Law shows that no legislation lays down a dedicated budget financial for court fees in case of potential litigation, but most experts consider that the cost could generally be part of the operating expenses of the EWC.

144. Annex V to the Staff Working Document is a questionnaire. In the context of an enforcement overview, it asks whether there is capacity to bring actions before the courts for the EWC, about alternative dispute settlement mechanisms and whether there are autonomous means to enable the EWC to act (by which it is meant whether there is sufficient funding for same). Certain answers in the last category identify that the costs of judicial proceedings are considered as operating expenses and should be borne by central management.

145. In a study exploring issues in relation to the 2009 Directive carried out by the Commission in preparation for the 2025 Directive, published by the Directorate-General for Employment, Social Affairs and Inclusion (European Commission) and ICF SA in January 2024 (https://op.europa.eu/en/publication-detail/-/publication/da0337ff-bc0b-11ee-b164-01aa75ed71a1/language-en), it is identified that coverage of legal costs was mentioned by stakeholders as an aspect that would benefit from more legal certainty. Experts working with EWC representatives made the point that while resources for legal costs EWC agreements are adequately addressed in the Directive, nonetheless EWCs struggle to finance court cases and management may

refuse to cover the costs of legal experts. It records that the European Parliament passed a resolution to include an obligation on central management to bear the costs of legal representation and subsidiary costs. Under the heading "*Enforcement*" the following is noted:

> "*As an additional measure to guarantee the enforcement of rules concerning EWCs compared to Directive 98/45/EC, Article 10(1) of the Recast Directive establishes that EWCs should be equipped with the means required to apply the rights arising from this Directive".*

146. A further review is carried out by ETUC 22 entitled "*Access to Justice for European Works Councils*" https://www.etuc.org/sites/default/files/2023-05/Litigation%20report_EN.pdf. It notes that the cost of legal proceedings affects the capacity to bring a case to court, that most countries rely on the general provisions of Article 10(1), that no legislation provides a dedicated budget for court fees in EWC litigation and that legal experts suggest that the cost could be covered by the EWC's operating costs in general as is the case in Germany. Based on the review of national provisions, it identifies that legal costs would not be covered in at least four Member States (Ireland is not included in this list). Elsewhere, the report notes that coverage of legal costs was mentioned by stakeholders as an aspect that would benefit from more legal certainty.

Conclusions on Travaux

147. In my view, taken overall, the material postdating the 2009 Directive tends to suggest that the word "*means*" in Article 10(1) is used in respect of the ability of an EWC to represent itself and its employees in a dispute resolution procedure and in respect of the funding of the EWC, including legal costs. It is far from determinative, and the material

at times points in different directions, but taken as a whole, I do not consider the material supports the argument that Article 10(1) refers only to the capacity of an EWC.

148. The material prior to the adoption of the 2009 Directive is marginally more helpful for obvious reasons. It is fair to say it is probably less focused on resources and more on capacity: but nonetheless it is not sufficiently clear in my view to support an interpretation that Article 10(1) is exclusively focused upon capacity. Apart from anything else, had that been the intention, it is difficult to see why Article 10(1) did not refer to capacity rather than "*means*": in other words, the drafters chose to use a word that does not obviously connote capacity or standing, and whose ordinary meaning is significantly wider than either of those concepts.

149. In summary, insofar as weight is to be given to the material preceding the 2009 Directive or after it, it is in favour of the proposition that Article 10(1), when referring to "*means required*", was directed at all relevant means, being primarily resources, including legal costs, but also capacity in the context of litigation. However, on balance, I think little weight should be placed on this material because of the limitations inherent in it, coming as it does from a wide variety of sources and lacking an overall consensus on the correct interpretation of the term "*means required*" therein.

2025 Directive

150. EU case law on whether it is permissible to look at an amending Directive when interpreting an existing Directive is remarkably scant. There appears to be only one decision of the CJEU where the CJEU considered proposed legislation to assist in its interpretation of an existing Directive (Case C-293/98, *Entidad de Gestión de Derechos de los Productores Audiovisuales (Egeda) v Hostelería Asturiana SA (Hoasa)*, ECLI:EU:C:2000:66); but in that case, the proposed legislation did not amend the

Directive being interpreted. The Court was tasked with determining the meaning of Article 1 of Directive 93/83/EEC, specifically whether it provided information to the Court to answer the question of whether reception of TV signals and their distribution by cable constituted an act of communication to the public. The CJEU was of the view that the Directive did not provide that information: and it was corroborated in that view by a proposal for a directive on the harmonisation of copyright and related rights in the Information Society. The Preamble to that proposal stated that the law on the communication to the public of works had not yet been harmonised by existing Community legislation. In other words, the Court used a proposal for an entirely different Directive to assist in determining the scope of the Directive before it.

151. That decision assists to a certain extent in persuading me that an amending Directive may be relied upon as an aid to interpretation of the Directive being amended. In any case, drawing an analogy from the approach of the CJEU to the use of *travaux* as an interpretative aid, I consider I have a discretion as to whether to take such material into account; that I should be restrained in using such material; and that I should only do so if there is sufficient ambiguity or lack of clarity in the wording such that it is desirable to look at the wider context to assist in the interpretation exercise.

152. Applying those principles, I am satisfied that it is useful in this context to look at the 2025 Directive. Both parties have both placed reliance on the 2025 Directive and urged this Court to take it into account. Since both parties have sought a reference, and given that I am of the view that the matter is *acte clair* and a reference is unnecessary, I think it important that the parties be reassured that every avenue of interpretation has been explored by this Court in arriving at the conclusion that no reference is required. For all those reasons, I have decided to consider the 2025 Directive in interpreting the 2009 Directive.

153. There are no significant amendments to Article 10 for the purpose of this interpretation exercise. The revised wording is as follows:

> *"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 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."*

154. However, the amendments to Article 11 are of significance. To fully understand them it is useful to identify the relevant recitals. Recital 4 refers to the fact that the Commission evaluation identified shortcomings regarding the effectiveness of the consultation process, access to justice, penalties and the interpretation of certain concepts.

155. Recital 22 is as follows, in relevant part:

> *"In certain Member States, rightsholders under Directive 2009/38/EC encounter difficulties in bringing legal action to enforce their rights. It is therefore necessary to strengthen Member States' obligations to ensure effective remedies and access to justice and the supervision by the Commission of their compliance with those obligations. With regard to rightsholders under that Directive, including special negotiating bodies and European Works Councils, Member States should, in accordance with national law on legal standing or on the form of legal representation, guarantee access to judicial proceedings and, where relevant, administrative proceedings to enforce the rights under Directive 2009/38/EC. Moreover, it should be clarified that the*

relevant proceedings have to enable timely and effective enforcement .... Moreover, for the purposes of supervision by the Commission, Member States should be required to notify the Commission of the manner and circumstances in which rightsholders under Directive 2009/38/EC can bring judicial proceedings and, where relevant, administrative proceedings, in respect of their rights under that Directive."

156. Recital 24 is as follows:

"Special negotiating bodies, European Works Councils, and, on their behalf, their members should have the necessary means to cover the costs of legal representation and participation in judicial proceedings and, where relevant, administrative proceedings. Such costs can cover the travel and subsistence costs of participation in such proceedings of the members acting on behalf of the body concerned. The Member States should either provide for central management to bear the reasonable costs of legal representation and participation in judicial proceedings and, where relevant, administrative proceedings, or should take other, equivalent measures to ensure that special negotiating bodies and European Works Councils are not de facto prevented from participating in judicial proceedings or, where relevant, administrative proceedings, due to a lack of financial resources. This could be achieved, for example, by requiring the allocation of an appropriate operational budget to the European Works Council, the setting up of solidarity funds at national level, the provision of insurance to cover legal costs, the granting of access to legal aid in certain circumstances or other provisions in accordance with national law and practice."

157. These recitals are reflected in the following amendments. First, an amended Article 11(3) in the following terms:

> *"3. Member States shall provide for judicial proceedings and, where relevant, administrative proceedings which the members of the special negotiating body or of the European Works Council, or employees' representatives in the framework of an information and consultation procedure, may initiate in relation to the application of Article 8 or 8a."*

158. A new Article 11 (4) is added in the following terms:

> *"4. With respect to the rights conferred by this Directive, Member States shall ensure effective access to judicial proceedings and, where relevant, administrative proceedings for special negotiating bodies, European Work Councils or, on their behalf, their members or representatives. Member States shall provide for the reasonable costs of legal representation and participation in such proceedings to be borne by central management or shall take other, equivalent measures to avoid any de facto restriction of access to such proceedings on the grounds of lack of financial resources".*

159. The obligations of the Member States are therefore to establish judicial/administrative proceedings to enforce the core obligations under the Directive, to ensure effective access to those proceedings and to provide for the reasonable costs of legal representation and participation in the proceedings, either by central management or by other equivalent measures such as those suggested Recital 24.

160. The second sentence of Article 11(4) introduces two new elements; first, it is the reasonable costs of legal representation and participation, and second, an obligation is placed on the Member States to achieve this in one of two ways, either through central

management or other equivalent measures. It is true that the second sentence of Article 11(4) might be taken to indicate that there was previously a doubt about whether EWCs had an entitlement to seek to recover the costs of legal representation. That might indicate the matter is not *acte clair*, necessitating a reference.

161. But having considered the amendments carefully, I do not think they undermine the interpretation of Article 10(1) derived from an examination of the 2009 Directive and outlined earlier in this judgment. I am satisfied that Article 10(1) included a requirement that the members of the EWC had the "*means required*" to represent collectively the interests of employees and that those means covered financial and material means, including the payment of legal costs. But Article 10(1) did not provide for how that requirement was to be discharged or any limits on that obligation.

162. Ireland implemented Article 10(1) by placing the obligation on central management. But it may be seen from the travaux that postdated the 2009 Directive that there were differences in practice across the Member States in that regard. Accordingly, the 2025 Directive makes it clear that Member States may either place the obligation on central management or take other measures to ensure sufficient funding is in place. Separately, a new limitation on the requirement is imposed: the obligation only extends to the reasonable costs. In my view, that is already an inherent condition of the obligation to discharge legal expenses *qua* operating costs: but the Commission have decided to make explicit this limitation. Viewed in this way, Article 11(4) conditions an existing entitlement.

163. I am fortified in my interpretation by the amendment made to the Subsidiary Requirements. It is largely unchanged save that the last two sentences of Point 6 are new, and in the following terms:

"The operating expenses of the European Works Council shall include reasonable costs of legal experts. Operating expenses shall be notified to central management before they are incurred.

In compliance with the principles set out in this point, the Member States may lay down budgetary rules regarding the operation of the European Works Council."

164. The obligation on central management to bear the operating expenses remains unchanged. Indeed, that obligation was first identified in Directive 1994/45. In my view, the purpose of the amendment in relation to operating expenses is confirmatory. In other words, operating expenses include the costs of legal experts. A new explicit condition is introduced: the obligation is limited to costs that are (a) reasonable and (b) cleared in advance. As discussed above, properly interpreted, operating costs in any case only covered reasonably incurred legal costs. Nothing in the revised wording suggests that legal costs were formerly excluded but are now included for the first time. Read in conjunction with the new Article 11(4), it suggests that the option on the part of the Member States to provide for reasonable legal costs other than by imposing the obligation on central management is not available where the Subsidiary Requirements apply. Given that the vast majority of EWCs are established by negotiated agreement rather than being governed by the Subsidiary Requirements, this is unsurprising.

165. Recital 10 of the 2025 Directive is relied on by counsel for Verizon to support an argument that legal costs are not already covered under the 2009 Directive. It provides that central management must cover reasonable legal fees for special negotiating body members (when notified in advance), capped to exclude proportionate or frivolous costs. It also removes the now redundant rule capping the number of funded experts.

However, Recital 10 is directed exclusively at special negotiating bodies and is therefore not particularly relevant in this context.

166. Verizon also places reliance on Recital 12, which provides in relevant part:

> *"There can also be uncertainty and disputes with respect to the coverage of certain expenses and access to certain resources during the operation of European Works Councils. In accordance with the principle of the autonomy of the parties, it is appropriate to require that certain types of financial and material resources be determined specifically in European Works Council agreements, namely the possible assistance of experts – such as representatives of recognised Union-level trade union organisations, technical subject-matter experts or legal experts – the coverage of experts' fees and the possible participation of experts in meetings*."

167. Verizon seeks to rely upon Recital 12, and the other references to experts, including legal experts, in the 2025 Directive, as demonstrating that the 2009 Directive limits the definition of experts to those spelled out in the 2009 Directive, namely "*representatives of competent recognised Community-level trade union organisations*" in Article 5(4) and excludes all other types of experts. But Article 5(4) of the 2009 Directive is only concerned with meetings between a special negotiating bodies and central management – as is Recital 12 - and simply refers to relevant experts in that context as including representatives of "competent recognised Community-level trade union organisations". There is no indication anywhere in the 2009 Directive that experts are limited to trade union representatives.

168. Elsewhere in that Directive (notably in the Subsidiary Requirements) there is a simple reference to "*experts*" without limitation. The ordinary meaning of "expert" does not

mean an expert of a particular type; rather it means a person with a special expertise in a discrete area, with an implication that they may share their knowledge for the benefit of others. Recital 12 of the 2025 Directive describes various types of experts that are likely to be relevant in the context of the negotiated agreements for the establishment of an EWCs. But it cannot be read as narrowing the definition of experts in the 2009 Directive. Nothing in Recital 12 suggests that a new category of experts is being included, or that there is an expansion of the concept of expert from that contained in the 2009 Directive.

169. Recital 21 identifies that to avoid disputes it should be specified that central management bears the reasonable cost of training and related expenses of, *inter alia*, the members of the EWC necessary for the exercise of their duties where central management has been informed of those costs in advance. In my view, those costs are already covered by the Subsidiary Requirements. The purpose of the amendment is to condition that entitlement by ensuring that central management are informed of the costs in advance and to oblige those seeking such costs to demonstrate that they notified the costs in advance. It continues the approach described above: to include limitations on costs payable by central management.

170. In summary, I consider the 2025 Directive makes explicit and conditions the obligation to provide members of the EWC with the financial means required to apply the rights from the Directive but does not introduce those obligations for the first time. It confirms my view that "*means*" in Article 10(1) of the 2009 Directive includes financial and material resources and encompasses an obligation on central management to pay legal expenses *qua* operating expenses to represent collectively the interests of employees of Community-scale undertakings where the Subsidiary Requirements

govern the EWC, although the extent to which such expenses can be recovered from central management in any given case will depend on the factors identified above.

Reference To CJEU

171. As set out earlier in this judgment, both Mr. Charpentier and Verizon sought a reference to the CJEU, though the reference sought by Verizon was wider in its ambit. The Attorney General contended that the meaning of Article 10(1) was clear and that no reference was necessary. I am persuaded that the Attorney is correct in this respect.

172. As a court of last resort, this Court must make a reference under Article 267 TFEU unless the question of EU law could not materially affect the outcome of the case, unless the question raised is materially identical with a question already resolved, or unless the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (*acte clair*) –see C-561/19 *Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi* ECLI:EU:C:2021:799.

173. In my view, this is a case where the correct interpretation of Article 10(1) is so obvious so as to leave no scope for any reasonable doubt. It is true that the interpretation of Article 10(1) has not been the subject of previous consideration by the CJEU. But the line of case law culminating in the *Consorzio* test does not specify that where the text of a directive or regulation bears two possible meanings, the resulting question of construction must go to the CJEU. While the conditions under which a final court of appeal can refuse to refer an issue are stringent, they are capable of being met even where there is a dispute about a provision of EU law not previously interpreted by the CJEU. Ultimately, it is a matter for the national court to judge whether those conditions have been met. Once the national court is satisfied that bringing all of the interpretative techniques to bear – text, context, purpose and, where germane, the *travaux* – a

provision can only have one plausible meaning, the national court is absolved from the necessity to refer.

174. This is made quite clear by paragraphs 39-48 of *Consorzio*, where the CJEU discusses the process a national court of last resort should undergo when faced with a question of interpretation of EU law.

175. First, the national court must be convinced that the matter would be equally obvious to the other courts of last instance of the Member States and the Court of Justice (para. 40). In deciding whether there is no scope for any reasonable doubt, the national court must consider the characteristic features of EU law, any particular difficulties raised by the interpretation of the phrase in question, and the risk of divergences in judicial decisions within the EU (para. 41). Courts must bear in mind the very specific terminology used in EU law (para. 45). Every provision of EU law must be placed in its context and interpreted in the light of the provisions of EU law as a whole, regard being had to the objectives thereof (para. 46).

176. Where a decision is made by a court of last resort not to refer, the CJEU has insisted upon the necessity for reasons to be given as to why the court considers a reference is unnecessary. In deciding not to refer, I have borne in mind the detailed guidance from the CJEU in *Consorzio*, having considered the characteristic features of EU law, the risk of divergences in decisions within the EU (given the vital objective of uniform interpretation of EU law) and the fact that all language versions are equally authentic.

177. In relation to the various language versions, the CJEU outlined in *Consorzio* the correct approach as follows:

> " *According to the Court's settled case-law, one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision*

or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union (see, inter alia, judgment of 24 March 2021, A, C-950/19, EU:C:2021:230, paragraph 37 and the case-law cited).

While a national court or tribunal of last instance cannot be required to examine, in that regard, each of the language versions of the provision in question, the fact remains that it must bear in mind those divergences between the various language versions of that provision of which it is aware, in particular when those divergences are set out by the parties and are verified."

Apart from a reference to the French version, the parties confined themselves to making submissions on the English version and did not identify any divergences in other language versions. However, in view of the above guidance given in *Consorzio* in relation to different language versions, this Court decided to carry out a review of the disputed terms in various languages. All translations were produced using the Deep L online translation tool, which is known to have strong accuracy and context performance specifically for European language translations. (https://www.deepl.com/en/translator). The following is the outcome of that translation exercise:

Language	**Term used in other language versions of Article 10(1) of the Directive**	**Translation when searched in context of Directive text**	**Translation when 'means required' searched in isolation**	**Translation when 'means' searched in isolation**
English	*Means required*	N/A	N/A	N/A
Spanish	*los medios necesarios*	Necessary means	The necessary resources	*Los medios* = means
French	*des moyens nécessaires*	Necessary means	The necessary resources	*Des moyens* = resources
Romanian	*mijloacele necesare*	Necessary means	Necessary resources	*Mijloacele* = means
Swedish	*de medel som är nödvändiga*	Resources necessary	The necessary funds	*Medel* = funds
Dutch	*de middelen die nodig zijn*	Necessary resources	Same as translation in context	*Middelen* = resources
Croatian	*sredstva potrebna*	Necessary means	Necessary resources	*Sredstva* = means

Polish	*środkami koniecznymi*	Necessary means	Necessary measures	*Środkami* = means
German	*die Mittel, die erforderlich sind,*	Necessary resources	The funds required to	*die Mittel* = funds
Czech	*nezbytné prostředky*	Necessary means	Necessary resources	*Prostředky* = funds
Lithuanian	*numatę priemones*	Measures necessary	Have measures in place	*Priemones* = measures
Greek	απαραίτητα μέσα	Necessary means	Essential resources	τα μέσα = the means
Maltese	*il-mezzi meħtieġa*	Necessary means	Necessary means	*il-mezzi* = the means
Finnish	*tarvittavat valmiudet*	Necessary capacity	Necessary capabilities	*Valmiudet* = capabilities
Estonian	*vajalikud vahendid*	Necessary means	Necessary resources	*Vahendid* = resources

178. That review demonstrates that in the majority of languages the relevant term is translated as "necessary means" with a significant number of languages translating the term "*means*" or "*means required*" when taken in isolation from the 2009 Directive as referring to "resources" or "funds". In fact there are few divergences between the

different language versions. Nothing in the other language versions undermines the interpretation I have taken above. If anything, it confirms it, given the various translations of "*means*" as meaning funds or resources.

179. Nor have any diverging lines of case law across the other Member States been brought to our attention, despite a wide-ranging review of the travaux and the material in respect of the 2025 Directive. As far as I can ascertain Directive 94/45 has only been interpreted on four occasions by the CJEU: Case C-62/99 *Bofrost* ECLI:EU:C:2001:188; Case C-349/01 *ADS Anker* ECLI:EU:C:2004:440; Case C-440/00 *Kühne & Nagel* ECLI:EU:C:2004:16; Case C-430/98 *Commission v. Luxembourg* ECLI:EU:C:1999:520, and none of these addressed Article 10 in any way, still less the term "*means required*".

180. Further, I have sought to consider the correct interpretation of Article 10(1) in the context of EU Law, including the objectives and state of evolution of EU law.

181. In summary, the mere fact that Verizon advanced a different interpretation to that ultimately adopted by this Court is not sufficient to create a reasonable doubt such as to necessitate a reference. As the CJEU observed at paragraph 48 of *Consorzio*, the mere fact that a provision of EU law may be interpreted in different ways does not necessarily mean there is a reasonable doubt as to the correct interpretation of that phrase if none of them seem sufficiently plausible to the national court, given the context and the purpose of the provision and the system of rules of which the provision forms part.

182. Accordingly, for the detailed reasons set out in this judgment, I am satisfied that there is no reasonable doubt as to the correct interpretation of "*means*" in Article 10(1) and therefore I see no reason to make a reference to the CJEU under Article 267.

183. In the circumstances, I would uphold the decision of the trial judge and remit the dispute the subject of Labour Court Decision TID 241 to the Labour Court. If necessary, the Labour Court can adjourn the matter to allow an application by Mr. Charpentier for reimbursement of legal expenses to be made to central management.

Summary Of Conclusions

184. Article 10(1) provides that 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 employees of Community-scale undertakings.

185. There is a dispute between the parties as to the interpretation of "*means required*". In interpreting that phrase, I consider the literal meaning of the disputed words, look at them in the context of Article 10(1) and the remainder of the 2009 Directive, including the Subsidiary Requirements, and consider the purpose for which the 2009 Directive was adopted. I also consider certain *travaux preparatoire* (i.e. the preparatory work done prior to the enactment of the 2009 Directive) and the 2025 Directive that amends the 2009 Directive.

186. I conclude that, properly interpreted, Article 10(1) of the 2009 Directive places an obligation on Verizon as central management under the 2009 Directive to provide resources to its EWC.

187. Literally interpreted, the reference to "*means*" includes financial and material resources. That interpretation is also consistent with the wording and purpose of the 2009 Directive. The 2009 Directive provides for information and consultation of employees by management in transnational undertakings. The primary task of the EWC is to collect information, reflect on it in consultation with employees, engage in consultation with management, and relay back to the employees the outcome of same.

Article 10(1) requires the EWC to have the "*means*" required to do so. Those means necessarily include material means, either direct financial support or the provision of the necessary supports, such as meeting rooms, on-line facilities, IT facilities, access to means of communication with employees, retention of experts, time off to attend meetings and so on. The interpretation adopted advances the purpose of the 2009 Directive as it enables the EWC to carry out the functions conferred upon it by the 2009 Directive.

188. Moreover, the terms of the Subsidiary Requirements support the interpretation adopted. The Subsidiary Requirements are a set of rules that govern the establishment of an EWC by default in the absence of a negotiated agreement, akin to a set of minimum requirements. The Subsidary Requirements impose an obligation on central management to provide certain material and financial resources to the EWC, including the costs of an expert, subject to certain limitations. I conclude that the parameters of the resourcing obligation established by Article 10(1) are deliniated by the existing requirements under the Subsidary Requirements.

189. The resources to be provided to the EWC under Article 10(1) may include legal costs. That is made clear by the Subsidiary Requirements. The Subsidiary Requirements state that the EWC may be assisted by experts insofar as this is necessary for it to carry out its tasks. Those tasks necessarily include relying upon the rights arising from the 2009 Directive to represent collectively the interests of the employees. Retaining a lawyer for that purpose potentially constitutes assistance from an expert to apply the rights under the Directive.

190. Moreover, the Subsidiary Requirements provide that central management must bear the operating expenses of the EWC. Legal expenses, including those incurred in

litigation connected with collectively representing the interests of the employees, in principle come within the definition of operating expenses.

191. This conclusion does not mean the WRC and the Labour Court are required to make legal costs awards following hearings. Their rules do not provide for such awards unless specific legislative provision is made for same.

192. Rather, the EWC or its members can apply to central management for reimbursement of some or all of the legal expenses associated with a claim as operating expenses. If a dispute arises between a member of the EWC and central management about reimbursement, that claim can be brought before the WRC under s.17(1A) of TICEA. The jurisdiction of the WRC/Labour to adjudicate on claims for legal expenses only arises in the context of TICEA and the 2009 Directive, and not in the context of any other claim before the WRC/Labour Court.

193. This interpretation of Article 10(1) does not mean that central management are obliged to pay all legal expenses incurred. Article 10(1) refers to the "*means required*" and in any dispute the adjudicating body is entitled to consider whether the expense was required. The entitlement of the EWC is to be assisted by experts under the Subsidiary Requirements only so far as necessary for it to carry out its tasks. The obligation on central management to bear operating expenses means there is only an obligation to pay reasonably incurred operating expenses in all the circumstances.

194. Where the WRC is adjudicating upon a dispute about recovery of legal expenses sought by the EWC, it will necessarily look at matters including whether retaining a lawyer *qua* expert in the context of the litigation was necessary for the EWC to carry out its task, whether the litigation was necessary to apply the rights arising from the 2009 Directive, whether authority was sought in advance for the discharge of those

expenses, the extent to which the expenses were identified and fixed in advance, and the necessity of retaining lawyers.

195. Finally, both Mr. Charpentier and Verizon both sought a reference to the CJEU under Article 267 TFEU. As a court of last resort, this Court must make a reference under Article 267 TFEU unless the question of EU law could not materially affect the outcome of the case, unless the question raised is materially identical with a question already resolved, or unless the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. However, as noted by the CJEU, the mere fact that a provision of EU law may be interpreted in different ways does not necessarily mean there is a reasonable doubt as to the correct interpretation of that phrase.

196. Here, the correct interpretation of Article 10(1) is so obvious so as to leave no scope for any reasonable doubt. The term "*means required*" can only have one plausible meaning, i.e. that it includes an obligation to provide the resources identified in the Subsidiary Requirements in respect of non negotiated agreements. In deciding that it unecessary to make a reference, I have borne in mind the detailed guidance from the CJEU in the case of *Consorzio*, considered the characteristic features of EU law, interpreted the provision in context and concluded that it is highly unlikely this interpretation will cause divergences in decisions in other Member States or the CJEU within the EU. I have also considered a number of language versions and am reassured by the fact that in the majority of languages, "*means required*" is translated as "necessary means" with a significant number of references to "resources" or "funds".

197. In the circumstances, I would uphold the decision of the trial judge and remit the dispute the subject of Labour Court Decision TID 241 to the Labour Court.