



European Works Councils

TRILOGUE CONSENSUS MARKS TURNING POINT IN THE LEGISLATIVE PROCESS

1. POLITICAL BREAKTHROUGH: (ALMOST) FINAL TEXT OF THE DRAFT REVISED DIRECTIVE ON EUROPEAN WORKS COUNCILS

On 28 May 2025, the European Parliament, Council and Commission reached a political agreement on the long-anticipated revision of Directive 2009/38/EC (the **Current Directive**) on European Works Councils (**EWCs**). The compromise text, published in Council document [ST 9565/2025 INIT](#) on 2 June 2025 (**Draft 2025 Directive**), reflects the outcome of interinstitutional negotiations. This agreement is widely expected to mark the final stage of the content of the legislative draft, with only minor amendments likely during the formal adoption. Confirming the political agreement, the [European Parliament's Employment and Social Affairs Committee](#) voted in favour of the proposal on 5 June

2025, followed by [approval of the Council \(EPSCO\)](#) on 19 June 2025. The European Parliament's first reading is scheduled for 8 September 2025, and the revised directive is anticipated to enter into force by the end of 2025 or early 2026.

The EWC directive, originally enacted in 1994 and revised in 2009, establishes transnational information and consultation rights for employees in multinational undertakings. It applies to (groups of) undertakings with at least 1,000 employees in the EU/EEA and at least 150 employees in each of at least two Member States.

The revision process was initiated following [a request by the European Parliament](#) which called on the Commission to address concerns regarding the Current Directive's enforcement mechanisms and ambiguous definitions. In response, and following the

consultation with the European social partners, the Commission published a [proposal in January 2024](#). Subsequently, the Parliament's Committee on Employment and Social Affairs (EMPL) signalled the need for further amendments, but a final position was postponed until after the June 2024 European elections. Meanwhile, the Belgian Presidency of the Council introduced its own compromise [proposal in June 2024](#) (see also the [comparison of the three positions](#)). The political agreement now reached reflects the convergence of these positions.

2. KEY FEATURES OF THE REVISED DIRECTIVE (BASED ON THE INTERINSTITUTIONAL AGREEMENT)

The Draft 2025 Directive includes a proposal for a series of significant reforms. These aim to improve the enforceability of EWCs rights, while maintaining the Current Directive's focus on genuinely transnational matters.

a) Definition of “controlling undertaking”

A new criterion for establishing “dominant influence” when identifying a group of undertakings will be introduced. Under the Draft 2025 Directive, the existence of “decisions” that govern the relationship between companies – such as those found in franchise or licence agreements in the case of the application of uniform business methods under a common business name – might be enough to constitute a “group”. This means that it is no longer necessary to rely solely on formal rules or financial participation; the presence of decision-making authority alone may be sufficient.

b) End of exemptions for “grandfathered” Article 13 EWC Agreements

So-called “grandfathered” agreements – i.e. EWC agreements concluded prior to the date of application of Directive 94/45/EC (22 September 1996) – will lose their exempt status currently granted under Article 14 of the Current Directive giving the employees of (groups of) undertakings the right to initiate negotiations for a (new) EWC.

- ♦ Where such negotiations pursuant to Article 5 of the Current Directive are initiated, the subsidiary requirements apply after two years, rather than three, if no agreement is reached between the

(group of) undertaking(s) and the special negotiation body (**SNB**).

- ♦ Importantly, the initiation of negotiations does not affect the validity of the existing agreement during the negotiation period.

c) Adaptation of (other) existing EWC agreements

Where existing EWC agreements fail to address the newly inserted minimum content requirements (see below, Article 6 of the Draft 2025 Directive), they must be adapted on the basis of a two-year re-negotiation procedure at the request of:

- ♦ the EWC,
- ♦ the central management of the (group of) undertaking(s), or
- ♦ 100 employees or their representatives from at least two Member States.

Where the EWC agreement contains procedural arrangements for its adaptation or renegotiation, the adaptation is negotiated pursuant to those arrangements. Furthermore, such negotiations may be limited to addressing in the agreement those elements and requirements for EWC Agreements – including those that were inserted with the Draft 2025 Directive. When negotiations fail, the subsidiary requirements apply.

d) Transnational Matters, Enhanced Consultation, and New Support Measures

- ♦ **Revised Definition of “Transnational Matters”:**
The requirement for transnational relevance remains, but is interpreted more generously:

- ♦ Firstly, the draft reflects a shift in focus: rather than requiring an actual impact in multiple Member States, it is now sufficient that such an impact “*can reasonably be expected*”. This introduces a forward-looking, anticipatory element, meaning that even if the impact has not yet materialised, the potential for such an impact is sufficient to trigger the definition.
- ♦ Secondly, the operative definition in Article 1 (4) of the Current Directive is expanded to include not only direct but also indirect cross-border effects: a presumption of transnationality now applies where a measure can reasonably be expected to affect workers in one Member State, and workers in at least one other Member State

can reasonably be expected to be affected *by the consequences of those measures*.

- ♦ Even though this new definition is in line with Recital 16 of the Current Directive, the reference to indirect effects will make it difficult for companies to determine when and if the scope of the EWCs rights is triggered.

- ♦ **Enhanced Information and Consultation**

Rights: The definitions of “information” and “consultation” are also broadened:

- ♦ Information must be given at such time, in such fashion and with such content as are appropriate to allow an *“in-depth assessment of their possible impact”* and, where applicable, timely preparation for consultation.
- ♦ Consultation must take place at such time, in such fashion and with such content as enables the EWC to express their opinion prior to the adoption of the management decision, and the EWC must receive a “reasoned” written response.

These proposed changes – especially the need for a reasoned written response – might delay the taking and implementation of necessary business decisions in the future.

Furthermore, it should be noted that the subsidiary requirements now also cover information and consultation on the following matters: *“anticipation of change and management of restructuring processes including those linked to the green and digital transitions, substantial changes concerning working conditions, notably to work organization or contractual relations”*.

- ♦ **Meeting Frequency:** According to the draft, EWCs must now meet in person at least twice per year (as opposed to once, as was the case previously). Video conferences and/or hybrid formats can be used in “exceptional cases” for holding such ordinary meetings – however, only where agreed upon with the EWC.
- ♦ **Financial and Material Support:** EWC agreements must explicitly address the reasonable costs for experts (i.e. the limit of only one expert paid by the central management is removed), including for legal experts, as well as training for EWC members. According to the

subsidiary requirements, the (group of) undertaking(s) is expressly required to bear:

- ♦ training costs,
- ♦ reasonable costs of legal experts, and
- ♦ travel, accommodation, interpretation, and meeting organisation expenses.

Furthermore, EWC members must not suffer any loss of pay due to their participation in EWC activities.

These obligations extend to pre-Directive agreements and may require formal amendment of existing EWC agreements to ensure compliance during the transposition period.

- ♦ **Trade union representatives:** The Draft 2025 Directive includes in the updated subsidiary requirements that experts assisting the EWC and the select committee may include representatives of recognised Union-level trade union organisations (e.g. ETUC). At the request of the EWC, such experts shall have a right to be present at meetings of the EWC and meetings with the central management in an advisory capacity – and may no longer be excluded from such meetings.
- ♦ **Stricter Confidentiality Rules:** Management can still classify information as confidential, but must now:
 - ♦ justify such classification,
 - ♦ define duration and scope, and
 - ♦ inform the EWC of reasons for the treatment of information as confidential.
- ♦ Disclosure may only be withheld if it would seriously harm the functioning of the undertaking – removing the prior, vaguer standard of “prejudicial impact” (Article 8 (2) of the Current Directive). In the case of non-disclosure, the EWC must be informed of the fact that the information is being withheld and provided with the underlying justification. **Composition and Gender Balance:** A new provision introduces a 40% gender balance target for EWCs, the select committee, and SNBs. While not mandatory, the EWC / the SNB must justify in writing any failure to achieve this balance.

e) Legal Enforcement and Sanctions

The Draft 2025 Directive reinforces the enforcement regime:

- ♦ Member States must ensure effective, dissuasive and proportionate penalties, including pecuniary sanctions. In the case of financial sanctions, criteria must include the annual turnover of the sanctioned (group of) undertaking(s) or must ensure that the applicable sanctions have a similarly dissuasive nature.
- ♦ Access to judicial and/or administrative proceedings must be timely, with legal costs – including costs of legal representation and participation in such proceedings – borne by the (group of) undertaking(s) where reasonable. In some jurisdictions, this question has so far been unclear.
- ♦ Confidentiality and non-disclosure decisions are subject to judicial appeal, which must not undermine the effectiveness of information and consultation rights.

The Directive does not include an express right to suspend management decisions via preliminary injunctions, despite recommendations from the European Parliament. Some national **Employers' Associations** had argued that such a preliminary injunction would change the nature of EWCs to more closely resemble a body of codetermination rather than information and consultation.

3. IMPLEMENTATION TIMELINE AND PRACTICAL CONSEQUENCES

Once formally adopted – potentially by the end of 2025 or early 2026 – the Draft 2025 Directive will require Member States to transpose its provisions within two years. However, in theory, this does not automatically mean that companies will be required to comply immediately with all new obligations once the transposition deadline expires:

- ♦ In most cases, the new provisions will not apply until one additional year after the end of the transposition period. This means that, for most practical purposes, the new regime will not become applicable before late 2028, thereby giving employers and employee representatives sufficient time to review, renegotiate, or initiate new agreements in line with the revised minimum standards.
- ♦ An important exception applies to the abolition of the exemption for grandfathered agreements (Article 14 Current Directive). These provisions

will already become applicable immediately after the end of the two-year transposition period – effectively giving (groups of) undertakings with grandfathered agreements only two years from formal adoption to adapt to the new rules. This shortened timeline makes early preparation particularly important for affected companies.

Although the initiative for revising or establishing an EWC still formally lies with employees or their representatives, companies should nevertheless begin assessing potential exposure and prepare internally. Depending on the situation, undertakings essentially face two options:

- ♦ maintain the current EWC agreement and await a formal request for renegotiation by the employee side; or
- ♦ proactively initiate a review and alignment of the current EWC agreement with the revised minimum standards.

The first option is often administratively easier, as no obligation to renegotiate arises automatically. However, proactive alignment may be preferable in certain cases – especially where there is a risk of parallel bodies (e.g. an existing EWC under the current regime and a new SNB). In particular, the existing EWC will not necessarily serve as the negotiating body under the revised Directive, which could lead to negotiation complexity and duplication of structures for up to two years.

For (groups of) undertakings currently negotiating new EWC agreements – or entering into such negotiations until the entry into force of the Draft 2025 Directive – it is strongly recommended to proactively align the content of these agreements with the future requirements – to avoid renegotiations in 2028.

4. SYLLABUS OF LEGISLATIVE CHANGES

We have included as an annex to this Client Alert a **side-by-side comparison (syllabus)** of the Current Directive and the proposed amendments under the Draft 2025 Directive. All additions introduced by the interinstitutional informal agreement are highlighted in **red**, with all deletions in **purple**.

DIRECTIVE 2009/38/EC

as amended by Directive (EU) 2015/1794

**DRAFT DIRECTIVE (EU) 2025/... AMENDING
DIRECTIVE 2009/38/EC**

as agreed informally on 28 May 2025

Whereas:

[...]

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[...]

SECTION I

GENERAL

Article 1

Objective

1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5(1), with the purpose of informing and consulting employees. The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively.

3. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues.

4. Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

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3. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues **taking into account the possible effects on the workforce and the level of management involved.**

4. Matters shall be considered to be transnational where they **can reasonably be expected** to concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

Those conditions shall be deemed to be met where:

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

(b) the measures considered by management of the Community-scale undertaking or Community-scale group of undertakings can

¹ ST 9565 2025 INIT, 2 June 2025, implementation proposed as follows (Article 2):

“Member States shall adopt and publish, by ... [OJ: insert date: two years from the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall forthwith communicate to the Commission the text of those provisions. They shall apply those provisions from [OJ: insert date: one year from the date set out in the first subparagraph of this paragraph]. However, they shall apply the provisions transposing Article 1, points 11 and 12, insofar as they relate to Article 14 and Article 14a(1), (2) and (3), from [OJ: please insert date one day after the date set out in the first subparagraph of this paragraph].”

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reasonably be expected to affect workers of that undertaking or group, or its establishments in one Member State, and their workers in at least one other Member State can reasonably be expected to be affected by the consequences of those measures.

5. Notwithstanding paragraph 2, where a Community-scale group of undertakings within the meaning of Article 2(1)(c) comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings within the meaning of Article 2(1)(a) or (c), a European Works Council shall be established at the level of the group unless the agreements referred to in Article 6 provide otherwise.

6. Unless a wider scope is provided for in the agreements referred to in Article 6, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in paragraph 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

Article 2
Definitions

1. For the purposes of this Directive:

(a) 'Community-scale undertaking' means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

(b) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(c) 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:

- ♦ at least 1 000 employees within the Member States,
- ♦ at least two group undertakings in different Member States, and
- ♦ at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

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

(e) 'central management' means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

(f) 'information' means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; **information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent**

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organ of the Community-scale undertaking or Community-scale group of undertakings;

(g) 'consultation' means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

(h) 'European Works Council' means a council established in accordance with Article 1(2) or the provisions of Annex I, with the purpose of informing and consulting employees;

(i) 'special negotiating body' means the body established in accordance with Article 5(2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1(2).

2. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

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Article 3**Definition of 'controlling undertaking'**

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

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when an undertaking, in relation to another undertaking directly or indirectly:

(a) holds a majority of that undertaking's subscribed capital;

(b) controls a majority of the votes attached to that undertaking's issued share capital;
or

(c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

3. For the purposes of paragraph 2, a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

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DIRECTIVE 2009/38/EC

as amended by Directive (EU) 2015/1794

**DRAFT DIRECTIVE (EU) 2025/... AMENDING
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4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings

5. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

6. The law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of the Member State which governs that undertaking.

Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated.

7. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

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SECTION II**ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN
EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE****Article 4****Responsibility for the establishment of a European Works Council
or an employee information and consultation procedure**

1. The central management shall be responsible for creating the conditions and means necessary for the setting-up of a European Works Council or an information and consultation procedure, as provided for in Article 1(2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the

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management referred to in the second subparagraph of paragraph 2, shall be regarded as the central management.

4. The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of the second subparagraph of paragraph 2 of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of this Directive the information required for commencing the negotiations referred to in Article 5, and in particular the information concerning the structure of the undertaking or the group and its workforce. This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(a) and (c).

Article 5

Special negotiating body

1. In order to achieve the objective set out in Article 1(1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

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

(a) The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories.

Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.

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

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The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.

(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or the Community-scale group of undertakings, **in a manner that strives to achieve a gender-balanced representation, whereby women and men each hold at least 40 % of the posts of member of the special negotiating body**, by allocating in respect of each Member State one seat per portion of employees employed in that Member State, amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together. **If the objective of gender balance is not reached, the special negotiating body shall explain the reasons in writing to the workers. Failure to achieve the objective of gender-balance shall not prevent the creation of those bodies.**

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(c) The central management and local management and the competent European workers' and employers' organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a meeting with the special negotiating body. It shall inform the local managements accordingly.

Before and after any meeting with the central management, the special negotiating body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.

For the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened.

Such a decision shall stop the procedure to conclude the agreement referred to in Article 6. Where such a decision has been taken, the provisions in Annex I shall not apply.

A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

Article 6

Content of the agreement

(c) The central management and local management and the competent European workers' and employers' organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene **a sufficient number of negotiation meetings** with the special negotiating body. It shall inform the local managements accordingly.

Before and after any meeting with the central management, the special negotiating body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.

For the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened.

Such a decision shall stop the procedure to conclude the agreement referred to in Article 6. Where such a decision has been taken, the provisions in Annex I shall not apply.

A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner. **These expenses shall include reasonable costs of experts, including for legal experts, insofar as necessary for that purpose. Expenses shall be notified to central management before they are incurred.**

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body.

Article 6

Content of the agreement

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1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1(1).

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 and effected in writing between the central management and the special negotiating body shall determine:

(a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;

(c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles set out in Article 1(3);

(d) the venue, frequency and duration of meetings of the European Works Council;

(e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

(f) the financial and material resources to be allocated to the European Works Council;

(g) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.

1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1(1).

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 and effected in writing between the central management and the special negotiating body shall determine:

(a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;

(c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles and requirements set out in Article 1(3) and Article 9;

(d) the format, venue, frequency and duration of meetings of the European Works Council;

(e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

(f) the financial and material resources to be allocated to the European Works Council, including at least with respect to the following aspects:

- the possible use and participation in meetings of experts, including of legal experts and of representatives of recognised Union-level trade union organisations, to assist the European Works Council in relation to the discharge of its functions,
- the provision of relevant training to the members of the European Works Council, without prejudice to the minimum requirement in Article 10(4), first subparagraph;

(g) the date of entry into force of the agreement, its duration, its possible extension, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.

2a. The central management and the special negotiating body, when negotiating or renegotiating a European Works Council agreement, shall lay down the necessary arrangements and make all reasonable efforts for attaining, without prejudice to national laws and practices on electing and appointing employees' representatives, the objective of gender balance whereby women and men each comprise at least

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40 % of European Works Council members, and where applicable, at least 40 % of select committee members. If the objective of gender balance is not reached, the European Works Council shall explain the reasons in writing to the workers. Failure to achieve the objective of gender-balance shall not prevent the creation of those bodies.

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of Annex I.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

Article 7**Subsidiary requirements**

1. In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:
- where the central management and the special negotiating body so decide,
 - where the central management refuses to commence negotiations within six months of the request referred to in Article 5(1),
or
 - where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in Annex I.

SECTION III**MISCELLANEOUS PROVISIONS****Article 8****Confidential information**

1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence.

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of Annex I.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

Article 7**Subsidiary requirements**

1. In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:
- where the central management and the special negotiating body so decide,
 - where the **first meeting of the special negotiating body is not convened by the central management within six months following** a request pursuant to Article 5(1)
or
 - where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in Annex I.

SECTION III**MISCELLANEOUS PROVISIONS****Article 8****Confidential information**

1. Member States shall provide that, **subject to objective criteria**, members of special negotiating bodies, members of European Works Councils or employees' representatives in the framework of an information and consultation procedure, and any experts who assist them, are not authorised to reveal information which, **in the legitimate**

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interest of the undertaking, has expressly been provided to them in confidence by central management. In addition, central management may set up appropriate information transmission and storage arrangements to help safeguard the confidentiality of information provided in confidence.

The same shall apply to employees' representatives in the framework of an information and consultation procedure.

That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

2. When central management provides information in confidence in accordance with the applicable objective criteria laid down by Member States pursuant to paragraph 1, it shall inform the members of the special negotiating bodies or the European Works Councils, or the employees' representatives in the framework of an information and consultation procedure of the reasons justifying the provision of information in confidence and shall determine the duration of the confidentiality requirements whenever possible.

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

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

3. The obligation referred in paragraph 1 shall continue to apply, wherever the persons referred to in paragraph 1 are, even after the expiry of their terms of office, until the reasons justifying it have become obsolete.

Article 8a

Non-transmission of information on specific grounds

1. Member States shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information to members of special negotiating bodies or European Works Councils, or employees' representatives in the framework of an information and consultation procedure, and any experts who assist them, when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned. A Member State may make such dispensation subject to prior administrative or judicial authorisation.

2. When central management does not transmit information on the grounds referred to in paragraph 1, it shall inform the members of the special negotiating bodies or the European Works Councils, or the employees' representatives in the framework of an information and consultation procedure of the reasons justifying the nontransmission of information.

Article 9

Operation of the European Works Council and the information and consultation procedure for workers

Article 9

Operation of the European Works Council and the information and consultation procedure for workers

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The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

1. The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

2. Information on transnational matters shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of their possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings, taking into account any arrangements agreed in accordance with Article 6(2), point (c), for linking information and consultation of the European Works Council and national employee representation bodies.

3. Consultation shall take place at such time, in such fashion and with such content as it enables employees' representatives to express their opinion prior to the adoption of the decision and based on the information provided in accordance with paragraph 2, without prejudice to the responsibilities of the management, and within a reasonable time, taking into account the urgency of the matter. The employees' representatives shall be entitled to a reasoned written response from the central management or any more appropriate level of management prior to the adoption of the decision on the measures in question, provided the employees' representatives expressed their opinion within a reasonable time in accordance with the first sentence.

Article 10

Role and protection of employees' representatives

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

2. Without prejudice to Article 8, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Directive.

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

Article 10

Role and protection of employees' representatives

1. Without prejudice to the competence of other bodies or organisations in this respect, **the employees' representatives, including the members of the special negotiating body and the members of the European Works Council,** shall have the means 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.

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

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

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This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6(3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, shall be entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to Article 6(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

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

In cases where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.

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

national legislation and practice in force in their country of employment.

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6(3), the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties, and protection against retaliatory measures or dismissal.

A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, shall be entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to Article 6(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

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

Where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.

4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages. Without prejudice to agreements concluded pursuant to Article 6(2), point (f), the reasonable costs of such training and related expenses shall be borne by the central management, provided that the central management has been informed thereof in advance.

Article 11

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

Article 11

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.

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

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

(b) penalties that are effective, dissuasive and proportionate are applicable in cases of infringement of the rights and obligations deriving from this Directive.

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

For the purposes of the first subparagraph, point (b), Member States shall take into consideration, when determining penalties, the gravity, duration, consequences, and the intentional or negligent nature of the offence. In the case of financial sanctions, they shall also take into account the annual turnover of the sanctioned undertaking or group or ensure that the applicable sanctions have a similarly dissuasive nature.

3. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.

3. Member States shall make provision for administrative or judicial appeal procedures which the members of the special negotiating body, European Works Council members or employees' representatives may initiate when the central management provides information in confidence in accordance with Article 8 or does not transmit information on specific grounds in accordance with Article 8a.

Such procedures may include procedures designed to protect the confidentiality of the information in question.

Such procedures may include procedures designed to protect the confidentiality of the information in question.

The duration of the procedures referred to in the first subparagraph shall be compatible with the effective exercise of the information and consultation rights under this Directive.

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

5. Where Member States make access to legal proceedings conditional upon the prior implementation of an alternative dispute resolution, that procedure shall not prejudice or limit the right of the parties concerned to bring legal proceedings.

Article 12

Relationship with other Community and national provisions

1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies,

Article 12

Relationship with other Community and national provisions

1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies,

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with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).

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

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

4. This Directive shall be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC and to the specific procedures referred to in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

5. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).

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

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

4. This Directive shall be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC and to the specific procedures referred to in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

5. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

6. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

Article 13
Adaptation

Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 5 on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Article 5(2).

During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.

Article 13
Adaptation

Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 5 on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Article 5(2).

During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.

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Article 14

~~-Deleted-~~**Agreements in force**

1. Without prejudice to Article 13, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, either

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(a) an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees have been concluded pursuant to Article 13(1) of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC, or where such agreements are adjusted because of changes in the structure of the undertakings or groups of undertakings;

or

~~-Deleted-~~

(b) an agreement concluded pursuant to Article 6 of Directive 94/45/EC is signed or revised between 5 June 2009 and 5 June 2011.

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The national law applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings referred to in point (b) of the first subparagraph.

Article 14a

Transitional provisions

1. Where, after [OJ: insert date from which the transposing provisions are to be adopted and published, set out in the Article 2(1), 1st subparagraph of this amending Directive], a European Works Council agreement concluded before ... [OJ: insert date from which the transposing provisions are to apply, set out in the Article 2(1), 2nd subpar. of this amending Directive] in accordance with Articles 5 and 6 of Directive 94/45/EC or Articles 5 and 6 of this Directive does not address, as a consequence of the amendments entered into force on ... [OJ: insert date of entry into force of this amending Directive], one or several of the elements and requirements of Article 6, central management shall, at the written request of the European Works Council or of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States, initiate negotiations to adapt that agreement to that or those elements and requirements of Article 6. Central management may also initiate such negotiations on its own initiative. Such negotiations may be limited to addressing in the agreement those elements and requirements of Article 6 that were inserted on ... [OJ: insert date of entry into force of this amending Directive].

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

3. When an adaptation procedure under this Article does not lead to an agreement within two years from the date of the respective request by employees or their representatives or from the date of initiation of the negotiations by the European Works Council or by

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central management on its own initiative, the subsidiary requirements set out in Annex I shall apply.

4. This Article shall not have the effect of exempting the parties to European Works Council agreements from respecting the applicable minimum requirements in this Directive.

Article 14b

Formerly exempted undertakings

Where negotiations pursuant to Article 5 are initiated in order to conclude an agreement under this Directive in a Community-scale undertaking or Community-scale group of undertakings in which an agreement covering the entire workforce providing for the transnational information and consultation of employees was concluded prior to the date of application of Directive 94/45/EC and is still in force, the period referred to in Article 7(1) third indent shall be reduced to two years. The initiation of negotiations does not affect the terms of the existing agreements in force.

Article 15

Report

No later than 5 June 2016, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

Article 15

Report

No later than 5 June 2016, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(2), (3) and (4), Article 2(1), points (f) and (g), Articles 3(4), Article 4(4), Article 5(2), points (b) and (c), Article 5(4), Article 6(2), points (b), (c), (e) and (g), and Articles 10, 12, 13 and 14, as well as Annex I, point 1(a), (c) and (d) and points 2 and 3, no later than 5 June 2011 or shall ensure that management and labour introduce on that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(2), (3) and (4), Article 2(1), points (f) and (g), Articles 3(4), Article 4(4), Article 5(2), points (b) and (c), Article 5(4), Article 6(2), points (b), (c), (e) and (g), and Articles 10, 12, 13 and 14, as well as Annex I, point 1(a), (c) and (d) and points 2 and 3, no later than 5 June 2011 or shall ensure that management and labour introduce on that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

DIRECTIVE 2009/38/EC

as amended by Directive (EU) 2015/1794

**DRAFT DIRECTIVE (EU) 2025/... AMENDING
DIRECTIVE 2009/38/EC**

as agreed informally on 28 May 2025

Article 17

Repeal

Directive 94/45/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from 6 June 2011 without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 17

Repeal

Directive 94/45/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from 6 June 2011 without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 18

Entry into force

[...]

Article 18

Entry into force

[...]

Article 19

Addressees

[...]

Article 19

Addressees

[...]

ANNEX I

SUBSIDIARY REQUIREMENTS

(referred to in Article 7)

1. In order to achieve the objective set out in Article 1(1) and in the cases provided for in Article 7(1), the establishment, composition and competence of a European Works Council shall be governed by the following rules:

(a) The competence of the European Works Council shall be determined in accordance with Article 1(3).

The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings.

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

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express;

ANNEX I

SUBSIDIARY REQUIREMENTS

(referred to in Article 7)

1. In order to achieve the objective set out in Article 1(1) and in the cases provided for in Article 7(1) **and Article 14a**, the establishment, composition and competence of a European Works Council shall be governed by the following rules:

(a) The competence of the European Works Council shall be determined in accordance with Article 1(3).

The information of the European Works Council **on transnational matters** shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings.

The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, **skills and training policies, anticipation of change and management of restructuring processes including those linked to the green and digital transitions, substantial changes concerning working conditions, notably to work organisation or contractual relations**, the introduction of new working methods or production processes, **as well as** to transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies, **including in controlled undertakings**.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management **or any more appropriate level of management. The employees' representatives shall be entitled to a reasoned written response to any opinion they might express prior to the adoption**

DIRECTIVE 2009/38/EC

as amended by Directive (EU) 2015/1794

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<p>of the decision on the measures in question, provided their opinion was expressed within a reasonable time;</p>	
<p>(b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.</p>	<p>(b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.</p> <p>In doing so and to the extent possible women and men shall each comprise at least 40% of European Works Council members and of select committee members. Failure to achieve the objective of gender-balance shall not prevent the creation of the European Works Council. If the objective of gender balance is not reached, the European Works Council shall explain the reasons in writing to the workers.</p>
<p>The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice;</p>	<p>The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice;</p>
<p>(c) The members of the European Works Council shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;</p>	<p>(c) The members of the European Works Council shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;</p>
<p>(d) To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.</p>	<p>(d) To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.</p>
<p>(e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council;</p>	<p>(e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council;</p>
<p>(f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 or to continue to apply the subsidiary requirements adopted in accordance with this Annex.</p> <p>Articles 6 and 7 shall apply, mutatis mutandis, if a decision has been taken to negotiate an agreement according to Article 6, in which case 'special negotiating body' shall be replaced by 'European Works Council'.</p>	<p>(f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 or to continue to apply the subsidiary requirements adopted in accordance with this Annex.</p> <p>Articles 6 and 7 shall apply, mutatis mutandis, if a decision has been taken to negotiate an agreement according to Article 6, in which case 'special negotiating body' shall be replaced by 'European Works Council'.</p>
<p>2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.</p>	<p>2. The European Works Council shall have the right to meet in person with the central management at least twice a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly. When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of</p>

DIRECTIVE 2009/38/EC

as amended by Directive (EU) 2015/1794

DRAFT DIRECTIVE (EU) 2025/... AMENDING DIRECTIVE 2009/38/EC

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communication and coordination can be used in exceptional cases for holding such ordinary meetings.

3. Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

3. Where there are exceptional circumstances or decisions which are reasonably to be expected to affect the employees' interests to a considerable extent, and urgency does not allow for information or consultation to take place at the following scheduled European Works Council meeting, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council, shall have the right to be informed in a timely manner. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, in order to be informed and consulted.

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

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

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

This meeting shall not affect the prerogatives of the central management.

The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to Article 1(2) and Article 8.

The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to Article 1(2), Article 8 and Article 8a.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.

5. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks. Such experts may include representatives of recognised Union-level trade union organisations. At the request of the European Works Council, such experts shall have a right to be present at meetings of the European Works Council and meetings with the central management in an advisory capacity. The central management shall be informed in advance.

6. The operating expenses of the European Works Council shall be borne by the central management.

6. The operating expenses of the European Works Council shall be borne by the central management.

DIRECTIVE 2009/38/EC

as amended by Directive (EU) 2015/1794

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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.

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.

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 these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council.

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