

# REVISION OF THE EUROPEAN WORKS COUNCILS DIRECTIVE

30 November 2023

## KEY MESSAGES

1. As employers we believe that the European Works Councils proved they are useful bodies for strengthening social dialogue and employees' representation, bringing added value for management in terms of reaching company strategic objectives, including improving workers' openness and adaptation to change.
2. In response to the European Commission's second-stage consultation of the European social partners on a possible revision of the EWCs Directive published on 26 July, BusinessEurope offered on 4th October 2023 to the European Trade Union Confederation to negotiate the revision of the EWCs Directive. Unfortunately, despite that the functioning of EWCs is at the core of social partners competences, the European Trade Union Confederation rejected the offer of BusinessEurope to negotiate a revision of the Directive.
3. The up-coming initiative on European Works Councils Directive must be coherent with the European Commission's policy approach aimed at strengthening European companies' competitiveness and reducing regulatory burdens, and as such should take into account the context in which European companies find themselves with respect to the functioning of European works councils.
4. Social partners at company level are best placed to solve difficulties occurring in the activity of the EWCs, and this is proved by the renegotiation of many EWCs agreements over time. Any future initiative must therefore respect the autonomy of the social partners and leave enough space for manoeuvre to come with arrangements that suit circumstances at company level.
5. The upcoming initiative should focus on changes improving the functioning of EWCs in practice and which ensure legal clarity and certainty. Changes should create more space for social partners at the company level to come up with their own solutions, provide clarity, improve efficiency, avoid unnecessary costs and administration for employers, and respect the diversity in existing practices.

6. Transforming EWCs in co-decision bodies through granting a right to injunctive relief in the case of an alleged violation of their information and consultation rights would distort the purpose of the directive and represents a real danger for European companies' competitiveness and their ability to take decisions effectively. Therefore, any form of co-determination should be absolutely avoided.
7. If the Commission deems changes in the Directive necessary, these changes should promote and safeguard companies' prerogative and ability to make decisions and manage their operations. Effective transnational information and consultation of employees should take place without delaying companies' decision-making processes and their implementation of decisions.
8. It is essential to protect the EWCs that are functioning well through ensuring that possible changes for these bodies are not automatically mandatory for existing agreements. It should be possible that agreements can remain unchanged as long as they are valid. Moreover, as regard the voluntary EWCs agreements concluded under Article 13 of the original EWCs directive 94/45/EC or concluded or revised during the transition period following adoption of the recast directive 2009/38/EC from June 2009 to June 2011 i.e. the pre-Directive agreements, their specific nature needs to be valued and protected.
9. Calls for GDPR-size fines should be rejected as this would be totally disproportionate and not in line with the EU legislative practice under the social policy chapter in the EU Treaty, whereby it is up to the Member States to provide for sanctions that are effective, dissuasive and proportionate. This practice needs to be respected by the Commission.
10. It is essential that the definition of transnational matters remains unchanged, and that the text of the definition includes that matters can only qualify as transnational if they concern at least two undertakings or establishments of the undertaking or group situated in two different Member States.
11. The ability of management to keep information confidential needs to be maintained as proprietary information is a key element to the success of many businesses. The Commission must therefore avoid provisions increasing the risk of disclosure of confidential information.
12. The Directive must respect the importance of local consultation and continue allowing EWC consultations running in parallel to national ones ensuring national information and consultation procedures can be conducted in accordance with national legislation and practices. The Commission should therefore avoid any provision demanding the conclusion of EWC opinion prior to the conclusion of national consultations.

Please find the full version of the paper: <https://www.businesseurope.eu/publications/revision-european-works-councils-directive-businesseurope-advocacy-paper>

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