A COMPREHENSIVE FIELD GUIDE

The 2025 European Works Council Directive

Practical guidance for EWC strategy, negotiation, and compliance

By Tom Hayes and Alan Wild

Key Issues to Understand Before You Dive In

- The 2025 Directive introduces a number of changes to current laws. Some of them are substantial, others cosmetic. Nothing however changes the fundamental nature of the EWC as an Information and Consultation body. There are no new rights to the negotiation of agreements or veto rights on management's ability to take and implement decisions.
- None of the changes were requested by companies. They all come from trade union lobbies that seek to increase their power and influence in EWCs — there is no good news for business here.
- None of 1,000 EWCs in place today meet the terms of the new Directive. They can be challenged by two employees from two countries representing between them 100 employees. This triggers the establishment of an SNB governed by the terms of the Directive.
- Changes come from two sources. 1) The Directive itself brings in new obligations on companies. 2) The Subsidiary Requirements of the Directive have changed. The SRs influence on EWC agreements by providing a template to be implemented if an SNB is unable to reach agreement.
- There is no automatic requirement to change anything in an existing agreement. The Directive gives the right to initiate reviews of current EWC arrangements to employees and employee representatives.
- If companies want to be in control of their EWC destiny they must create a plan to do so. Some may like their current agreement and wish to maintain it with minimal change. Others have EWCs that are more obstructive or disruptive and will welcome change. The last thing any company wants is a challenge to their arrangements from an unrepresentative minority.

- *The time to plan is NOW!*

About the Authors

Tom Hayes and Alan Wild have been involved with European Works Councils (EWC) since the early 1990s. Individually and separately they participated in the negotiations of "Article 13" agreements before 1996. They assisted in the negotiations of the first EWC that was negotiated through a Special Negotiating Body (SNB) in November 1996, just two months after the 1994 Directive became national law. They were involved with UNICE and BusinessEurope during the writing of the original Directive in 1994 and its recasting in 2009. While Alan was chairing EWCs in Guinness, IBM and Amazon, Tom was involved in negotiating agreements after the 2009 Directive became national law in 2011, that became templates for multiple agreements in US-based companies.

More recently, through the HR Policy Global/Europe, both Tom and Alan have been deeply involved in the discussions that resulted in the 2025 Directive, the subject of this guide. Early in the process, they identified the major, problematic issues with the European Parliament rewrite and were able to demonstrate how damaging they would be to the ability of businesses in Europe to make and implement critical, competitiveness decisions. While the 2025 Directive is unhelpful to businesses, it is significantly better than it otherwise might have been.

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A. INTRODUCTION & EXECUTIVE SUMMARY

1. Introduction & how to use the guide

1.1 The purpose of this guide is to explain what you need to do with your European Works Council in the context the EWC Directive that became European law on 31 December 2025. The original EWC Directive dates back more than 30 years and became national law in September 1996. It was "recast" in 2009, becoming national law in 2011. The new EWC Directive became European law on 31 December 2025, and will be transposed into national law in all EU and EEA member states on 31 December 2027.

1.2 Let's be clear at the outset: **every one of the 1,000 plus EWC's today — pre-1996 agreements; Article 6 agreements under the Directives; and Subsidiary Requirements arrangements will have to change in some way if they are to comply with the new law**. Some will require more change than others. Some companies will need to move faster than others. For some the changes will not be difficult — others will face tougher challenges. There are no opt-outs.

1.3 If you are directly responsible for your company's EWC, this guide is for you — and you should consider reading it all. If someone who works for you manages your EWC you need to understand the key issues and options — and ask the right questions.

1.4 To recap, the Directive became European law on 31 December 2025 and will be transposed into national law in all EU and EEA member states on 31 December 2027.

1.5 Depending on your responsibility the guide is a pick and mix offering. Senior leaders need to read the Executive Summary. Those responsible for EWCs can pick and mix based on immediate and future needs. You may want to come back to the detailed sections later. You may have a different sequence of needs to the ones that made sense to us. Just jump in.

1.6 The key issues to understand once again – they are important.

- The 2025 Directive introduces a number of changes to current laws. Some of them are substantial, others cosmetic. **Nothing however changes the fundamental nature of the EWC as an Information and Consultation body.** There are no new rights to the negotiation of agreements or veto rights on management's ability to take and implement decisions.
- None of the changes were requested by companies. They all come from **trade union lobbies that seek to increase their power and influence in EWCs** — there is no good news for business here.
- **None of 1,000 EWCs in place today meet the terms of the new Directive.** They can be challenged by two employees from two countries representing between them 100 employees. This triggers the establishment of an SNB governed by the terms of the Directive.
- Changes come from two sources. 1) **The Directive** itself brings in new obligations on companies. 2) **The Subsidiary Requirements** of the Directive have changed. The SRs influence on EWC agreements by providing a template to be implemented if management and an SNB are unable to reach agreement.

- There is **no automatic requirement to change anything** in an existing agreement. The Directive gives the right to initiate reviews of current EWC arrangements to employees and employee representatives or to company management.
- **If companies want to be in control of their EWC destiny they must create a plan to do so.** Some may like their current agreement and wish to maintain it with minimal change. Others have EWCs that are more obstructive or disruptive and will welcome change. The last thing any company wants is a challenge to their arrangements from an unrepresentative minority.
- **The time to plan is NOW.**

1.6 It is important that that those involved with managing EWCs on behalf of their undertakings are **crystal clear on what the new Directive requires you to do — and what it doesn't.** You will glean from Section 3 that trade unions and experts are desperate to offer their own assessment of what is required ... this will be a "wish list" not a legal obligation.

1.7 EWCs are no more or less than procedures through which management informs employee representatives about general business conditions and proposed decisions in "exceptional circumstances". The EWC is entitled to offer an opinion to which management must respond in writing. There is no obligation to come to an agreement or understanding with the EWC. EWC obligations differ from those at national level for good reason — and that is to avoid conflict between the two levels.

1.8 Our guide is a practical rather than legal one. It is based on over thirty years of working directly with EWCs. We have negotiated and renegotiated more than 100 EWC agreements over those years; advised almost 400 companies on EWC questions; and chaired EWCs in Guinness, IBM and Amazon.

1.9 We hope you find the guide helpful — at least in getting started. Unless you are an insomniac (Tom is) you don't need to go cover to cover. Pick and mix the issues in the order that best suits your needs.

2. Executive Summary – the "must know" items

2.1 The new EWC Directive became European law on 31 December 2025 and will be transposed into national law in all EU and EEA member states on **31 December 2027.**

2.2 Work on a European Directive on direct trade union engagement with European company management started in the 1970's. After a "stop start", "on/off" process the first EWC Directive was passed in September 1994. It was "recast" in 2009. Employers got on with implementation and there are more than 1000 EWCs in place. **Most have worked effectively for more than 30 years.** At the same time, trade unions have worked hard to **insert themselves into EWCs and to lobby for changes in the law to give them powers of veto** over management decisions.

2.3 **Every one of the 1,000 plus EWC's today — pre-1996 agreements; Article 6 agreements under the Directives; and Subsidiary Requirements based arrangements will have to change in some way if they are to comply with the new law.**

2.4 Those involved with managing EWCs must be crystal clear on what the new Directive, and the transposing legislation, require — and what they don't. Trade unions and experts will offer their own

assessment of what is required … this will be **a “wish list” not a legal obligation**. That is why this guide is important.

2.5 EWCs are neither more or less than procedures through which management informs the members about general business conditions or about proposed major decisions that impact employees across European borders. The EWC is entitled to **offer an opinion** to which management must **respond in writing**. There is no obligation to come to an agreement or understanding with the EWC. EWC obligations differ substantially from those that arise at national level.

2.6 There are around 1,000 agreements in place … 31% of these are Article 13; 66% are Article 6; and 3% Subsidiary Requirements. The country with the highest number of companies covered is Germany 304. In **second place is the United States 168**. France is third.

2.7 Those companies based outside the EU must work with a Representative Agent within the EU. **Ireland is the dominant location choice and is today the third largest home of EWCs** after Germany and France. If you don't have a Representative Agent or wish to change your current one — **the time is now.**

2.8 Until the 2025 Directive the role of the Special Negotiating Body as a means of setting up an EWC had almost disappeared. The new Directive brings it back into play for both A13 and to a lesser extent A6 agreements. **This means you probably need to be prepared for an SNB request.**

2.9 As you decide whether to amend your current agreement to comply with the Directive, the **Subsidiary Requirements** contained in the Annex matter. These are the rules that apply if no agreement is reached. Both sides will seek to achieve a better deal than the SRs — this does not mean for a company that the SRs are a bad deal.

2.10 The most significant term of the new Directive is the **abolition of the Article 13 (A13) exemption**. After 31 December 2027 the 300 plus A13 agreements will no longer be exempt from the Directive and **will be open to an SNB request**. Those with an **A13 agreement in place are the companies that need to act fastest.**

2.11 The second most significant clauses contain **new rules on the role and payment for experts and legal advisers**.

2.12 Section eight, the bulk of the guide, assesses in detail the terms of the Directive as they relate to **Information; Consultation; Transnationality; Regular meetings; Exceptional circumstances; Costs, experts and training; Links with national bodies; Confidentiality; Select Committees; and Communication.**

2.13 Every agreement is unique. For every company there are multiple options going forward. Some may want to continue arrangement as close as possible to those they have today. Others with more problematic EWCs will wish to use the Directive as an opportunity to re-set relationships.

2.14 **To complete the guide, Section 13 contains an assessment tool to get you on your way. The time to make strategic choices and plan for their implementation is now.**

3.0 A Short History & Background

3.1 The history of EWC laws go back to the 1970's and the failed attempts to produce a European Directive on joint management of companies put forward by the Dutch Social Affairs Commissioner, Henk Vredling. The discussion bumbled on without progress until the 1990s and the passage of the first EWC Directive. So how did we get from there to the 2025 Directive?

3.2 In the mid-1980s two "big ideas" took shape in Europe. The first was the shift from the Common Market - tariff free trade zone, to a comprehensive **internal market**. The second was the creation of a **single, European currency**. These projects were driven by the French President of the European Commission, Jacques Delors. He believed that these European projects needed a **"social dimension"** if they were to win the support of unions and working people. He breathed new life into the 1961 Social Charter and included the European Works Council Directive in the workplan as a transnational information and consultation body.

3.3 In 1990, Ernst Breit, President of the DGB union in Germany and President of the European Trade Union Confederation (ETUC) delivered a lecture in Dublin which set out a vision for joint management in international companies. He cited the pioneering work of "Danone, Nestle, and Volkswagen in setting up voluntary European Works Councils suggesting they provide a template for how future EWC laws should be set out. The cause was helped when the US corporation Maytag (owners of Hoover) entered a bidding war with French and UK unions on the closure of a site. The terms – "highest factory cost loses". The political fallout from the so-called "race to the bottom" added momentum that led to the 1994 Directive. The phrase, "social dumping", was born.

3.4 The UK government had consistently opposed the idea of the social dimension, and it was only in 1992, the Maastricht Treaty and the UK opt out from future social policy Directives that allowed laws to be passed without unanimity. The original EWC Directive was adopted on September 22, 1994, and became national law on September 22, 1996.

3.5 The European trade union movement was disappointed with the 1994 EWC Directive. Unions barely got a mention in the text and were certainly not given control of EWCs. There would be no mandatory European-level co-determination or collective bargaining. The 1994 Directive did not deliver the EWCs they wanted and unions quickly began to demand that the legislation be strengthened give EWCs more powers.

3.6 It was 15 years later, in 2009, that the European Commission revised the 1994 Directive. The "recast" Directive clarified some aspects of the law but again did little to enhance trade union power and influence. Neither of the Directives gave EWCs the power to block management

decisions and force the genuine negotiations that the unions wanted. They continued to be information and consultation bodies that could only offer a non-binding opinion on matters under consideration.

3.7 By 2020, and through various Treaty changes, the European Parliament had evolved into a "co-legislator" with the Council of Ministers, and this opened the door for the trade unions to breathe new life into their long standing EWC demands. Two Germans, Commission President Ursula von der Leyen and MEP Denis Radtke, were persuaded that change was due. Von der Leyen, in her campaign for the role of President, committed to the European Parliament that if the Parliament proposed legislation, then the Commission would act on it. Radke would lead the Parliamentary action.

3.8 The European Trade Union Confederation (ETUC) and MEP Denis Radtke seized the opportunity to do an end-run around the European Commission and force a revision of the EWC Directive. Radtke authored a report calling for a revision of the EWC Directive and produced a draft of a revised Directive based on the long-standing trade union wish list.

3.9 Radtke wanted EWCs to have the right to apply for injunctions when they believed management had not fulfilled its information and consultation obligations. With this power, EWCs would be able to block the implementation of decisions until they got what they wanted from management. He also wanted courts to be able to levy GDPR-size fines of up to 4% of global turnover if a company was found guilty of breaching information and consultation obligations.

3.10 The consultation process with the European social partners ran throughout 2023. With the Radtke proposals on the table, trade unions saw no reason to open negotiations. The Commission was obliged to propose legislation and did so in January 2024. To the disappointment of the trade unions there was no mention in the Commission text of Radke and the European Parliament's main proposals. Radtke responded with Radtke II, as the basis of the Parliament's negotiating mandate. Injunctions and fines were back on the table.

3.11 The Commission and the Parliament were deadlocked. The Council of Ministers agreed with the Commission and reached their own common position in June 2024. Faced with losing the entire Directive, the Parliament dropped Radke and agreed the common position with the Commission and Council.

3.12 The new Directive (EU) 2025/2450 of the European Parliament and of the Council of 26 November 2025 became European law on 31 December 2025

4.0 EWCs by the numbers

4.1 There is no requirement for an EWC agreement to be reported or registered, and the available data are effectively educated guesses. The most important source of EWC agreements is the EWC database. The database is a source of data and contains a repository of agreements. The database is publicly available, it is funded by the European Commission and is managed by the European Trade Union Institute. The main contributors are Europe's trade unions and its number of reported EWC agreements is probably an underestimation.

4.2 The EWCDB counts 1,254 agreements but only has details of 984 of them. This explains the often-used **estimate of 1,000 agreements. Of the agreements 31% are Article 13/14; 66% are Article 6; and 3% Subsidiary Requirements.** The numbers are not static as companies are taken over, merge and split. Old EWCs disappear and new ones are created.

4.3 The national origin of the companies with agreements is Germany 304; United States 168; France 126; the UK 80; Sweden 62: the Netherlands 56; Switzerland 49; Belgium 30; Finland 36; Japan 35; Italy 35; Austria 33; Denmark; Spain 22; Norway 21; Canada 7; Australia 4; Czech Republic 3; Poland 3; Korea 3; Portugal 2; and Greece 1.

4.4 Companies based **outside the EU must work with a Representative Agent** within it. Companies can choose their applicable law or in the absence of a company choice, the country with their largest undertaking is automatically appointed by law. There are a variety of countries in which representative agents are based, the most common historically being the UK, Ireland, Germany and Belgium. It can be reasonably assumed that post Brexit, the majority of Representative Agents in the UK have now moved to the Republic of Ireland and the data have not yet caught up. This makes **Ireland the third largest home of EWCs** after Germany and France, and dominant amongst non-EU companies.

4.5 There has been relatively little recourse to the courts over 30 years. With 1,000 companies having held around 75,000 meetings there have been just over 200 cases in all courts in Europe. Around half of these relate to issues concerning the establishment of an initial EWC at the request of employees or their representatives, election of representatives and issues relating to SNB procedures. Many of the others are claims of a failure to inform and consult an EWC. More recently, the issue of payment of experts and training have emerged. Of the 200 disputes that have been referred to the courts, 18 involve just one company.

4.6 Our own survey (CHRO Association) of around 100 mostly US companies on their EWCs conducted in 2023 found that:

- 70% of companies found their EWCs to be cooperative and just 6.5% adversarial.
- 80% of companies saw no reason to change either their agreement or current practices.
- One third of companies said the experience of their EWC in COVID had improved the way they work.

5.0 The Scope of the Directive – who is covered & applicable law

5.1 The EWC Directive applies to any undertaking, no matter its country of origin, that has at least 1,000 employees in the EU and European Economic Area (EEA) and has at least 150 employees in at least two Member States. There are no exact figures available, but it is estimate that there are around 2,200 undertakings within scope, and around a half of these have an EWC in place.

5.2 Companies with EWCs account for around 70% of all employees of the companies in scope. **Practically all the major companies in Europe have EWCs**. There are a few significant exceptions, but it is smaller companies with limited cross border activities that do not have arrangements.

5.3 The European Union is the 27 Member States of the EU. The European Economic Area brings in three additional countries, Norway, Iceland, and Lichenstein. Neither Switzerland nor the UK are members of either the EU or the EEA and are outside the scope of the EWC Directive. Also excluded are EU applicant countries, like the Ukraine, Turkey, and Moldovia.

5.4 Employee representatives from non-EU and EEA countries can be invited to join EWCs by mutual agreement between management and the EWC. Inviting employee representatives from "third countries" raises two important questions which management should consider carefully. First, in the absence of national legislation setting out a procedure, how are employee representatives from these countries to be selected? Second, to what extent do developments affecting the business in "third countries" come within the remit of the EWC, with what legal implications? Does involving employee representatives for "third countries" create additional obligations?

5.5 Undertakings within scope are subject to the national law of the Member States in which the central management, the head office, of the undertaking, is situated. German law governs the EWC in a German company, French law the EWC in a French company. There is no option to move this to another country.

5.6 Where the central management of an undertaking is not situated in an EU or EEA Member State but in a "third country", such as the US, or the UK post-Brexit, central management may appoint a "Representative Agent" in a Member State of its choice who acts as the "de facto" central management. **There are no mandatory criteria for the decision in which Member State to locate the representative agent,** but there must be a legal entity that can be held accountable in law.

5.7 Suggestions from employee representatives that the EWC should be situated in the country with the biggest number of employees in not correct. There is no such requirement in the law. **The location of a "Representative Agent" is not a matter for negotiation.** The location of the Representative Agent in Ireland for a company with few employees there is often

challenged as incorrect by trade unions. In fact, courts in Germany and the UK (when it was an EU member) have ruled management is free to select and to move the location of its Representative Agent. Be aware however, if there is an EWC agreement already in place where the Representative Agent is "agreed", management may be constrained from relocating its agent while the agreement remains in force

5.8 Where a company fails to nominate a Representative Agent, it automatically becomes the management of the **establishment employing the greatest number of employees in any one Member State**. For reasons of language and legal familiarity, many US, UK, Japanese, and Australian undertakings have located their Representative Agent in Ireland.

5.9 If you are within scope of the Directive and are not headquartered in the EU and EEA but in a third country, and either **do not yet have an EWC or you have an existing Article 13 arrangement,** you should **decide on an appropriate location for your representative agent now**. There is no specific procedure that needs to be followed. It is good practice to document the decision in some way or other that establishes a paper trail that can be produced if the decision is challenged. A simple email from the CHRO to the undertakings designated as the "representative agent" will suffice.

5.10 A new potential area of scope of the EWC Directive is introduced in the recitals, and deals with the gig economy and subcontract and franchise type relationships.

> *"In its evaluation of Directive 2009/38/EC of 15 May 2018, the Commission confirmed the added value and relevance in principle of that Directive. It found that many of the Directive's provisions are sufficiently flexible to accommodate evolving technological and economic realities and a variety of forms of undertaking or group. For example, it applies to all Community-scale groups of undertakings, regardless of the type of legal arrangements that allow the exercise of the dominant influence between the controlling and the controlled undertakings forming such groups. Consequently, undertakings linked, for instance, by* ***franchise or license agreements can fall under the definition of Community-scale group of undertakings, provided that dominant influence is established."***

5.11 This would be a massive change, and it is questionable that any Member State will include more than a passing reference to this in their laws. However, this opens the door for a legal claim, and the issue may well end up in the European Court of Justice at some point. If you are an undertaking with significant franchise operations, sub-contract, or gig economy arrangements , you will want to follow this issue closely

6.0 The SNB: How it has changed & why it matters – even if you already have an EWC

6.1 Since the 1994 Directive became national law in September 1996, the Special Negotiating Body (SNB) process has been, and remains, the mechanism through which a new EWC is agreed. For most companies, the days of the SNB are long gone. When the EWC was formed, the negotiated process and the SNB committee itself disappeared. An EWC based on informing and consulting was formed either by agreement or through the Subsidiary Requirements.

6.2 Under the new EWC **the SNB process takes centre stage once more**. For companies that still have an Article 13 agreement on 31 December 2027 this will be the **ONLY** means through which a "Directive compliant" agreement can be negotiated. Likewise, if discussions to update an Article 6 agreement are not successful in the year after 31 December 2027, employees of the company can trigger an SNB request to establish a new EWC any time after 31 December 2028.

6.3 Not only is it problematic to re-introduce **negotiations** into a system with rights to **information and consultations only**. Under both Article 6 and 13 scenarios, it is very possible to have a **negotiations-based SNB running alongside an information and consultation EWC.** The dynamics involved in both processes are fundamentally different.

6.4 The SNB is a body comprised of representatives of all the EU and EEA Member States in which an undertaking has employees. It is the only body with the legal right to create a EWC through negotiations with management under successive EWC Directives since 1996.

6.5 The creation of a new EWC can be initiated in one of two ways; 1) Management itself may initiate the process — but this has rarely happened in practice. 2) It can be **initiated by a written request** from at least 100 employees, or their representatives, from at least two EU and EEA Member States. This may be a single communication sent jointly by two representatives. Management may also receive separate letters from representatives in two countries. Once a written request is received, a timeline is opened**. It may take just two people to begin the SNB process.**

6.6 From the time a valid, written request is received, management and the SNB have three years in which to negotiate an EWC agreement. A failure to reach an agreement results in the Subsidiary Requirements coming into force. **Note that under the 2025 Directive, companies with Article 13 EWCs have just two years to negotiate an agreement** (see later section).

6.7 SNBs are constructed in accordance with a formula set out in the Directive and the selection process for members is set out in the appropriate national law.

- Each country within the EU/EEA in which an undertaking has employees, even if there is only one, is entitled to one representative on the SNB.
- Thereafter, if between 10% and 20% of the European headcount is located in a country, that country gets a second representative.
- Between 20% and 30%, a third representative. And so on, for each decile.
- SNB representatives are chosen in accordance with procedures set out in national law. These procedures vary considerably from Member State to Member State, reflecting their industrial relations history, culture, structures, and practices.

6.8 The 2025 Directive introduces **several changes** to the SNB process.

- Once a valid, written request is received, management **must arrange to meet with the SNB within six months**, otherwise the Subsidiary Requirements will apply — you need to be prepared.
- The 2025 Directive refers to **experts and legal advice**. The wording is important

  > *"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".*

  Prior Directives provided for expenses that included travel, accommodation, meeting costs, interpretation and translation. The 2025 Directive makes clear that financial support can also include **the cost of experts and legal costs**". The Directive suggests the governments of Member States may lay down "budgetary rules" regarding SNB costs. These rules will not be known until transposing legislation is published and enacted.

  Because expenses must be notified to management before they are incurred, management will have the opportunity to challenge whether they are "reasonable" and "necessary". It needs to be made clear to employee representatives on both SNBs and EWCs that they do not have a "blank cheque" to retain experts or lawyers.

- The 2025 Directive requires, **at least 40% of an SNB should be made up of women**. This is a matter of employee choice in accordance with national laws and practices. it is not a decision controlled by management. If the SNB is not "gender balanced" it is for **the SNB to explain** to the company's employees why this is the case. It is not a matter for management. A practical way to do this is for the SNB to prepare a statement which management may agree to circulate on their behalf, and in accordance with normal company communication protocols.

- It was previously technically possible for an SNB to meet only once over the three-year period. The 2025 Directive requires management to schedule **regular meetings** to facilitate the negotiation of an agreement. Although meetings now need to be regularly scheduled, management is not required to keep making new offers. A "first offer, best offer" approach is perfectly reasonable.

6.9 *Practical considerations in preparing for an SNB request*

Putting an SNB together is not easy, and six months is a very short time. **If you are at risk of an SNB request, be prepared.**

Members of an SNB are selected/elected/appointed in accordance with national law and/or practice. These laws and practices differ widely. In Ireland, SNB members must be elected through a ballot of the entire workforce. In France, they are appointed by the majority union on the works council, in the Netherlands, by the works council. There are 30 varieties and getting it right is important.

If you are in scope of the Directive but do not yet have an EWC, or you have an Article 13 arrangement, **the time to be prepared is now**. List all the countries in which you have employees, familiarise yourself with how SNB members in those countries are chosen, prepare plans for (s)election accordingly and keep them up to date.

6.10 *SNB outcomes*

- If management fails to convene a meeting with the SNB within six months of receiving a valid, written request, then the Subsidiary Requirements automatically apply.
- Once the SNB is established, the members of the SNB must decide if they wish to open negotiations for an EWC agreement. If members of the SNB vote by a two-thirds majority not to open negotiations, then the process is complete and a further request for an SNB cannot be submitted for four years. In our experience, this has never happened. Matters could however be different with requests to negotiate EWC agreements in undertakings with Article 13 agreements, and an existing agreement could be protected for four years.
- If negotiations proceed, there are three possible outcomes. 1) The parties can agree to establish an information and consultation process in place of an EWC agreement; 2) The parties can reach an agreement to set up an EWC and agree the framework within which it will operate; 3) They fail to reach an agreement and the Subsidiary Requirements apply.

6.11 In most cases to date, an agreement has been reached between management and the SNB. Less than 5% of current EWCs operate under the Subsidiary Requirements. This may change under the **2025 Directive where the balance of judgment shifts**. We say throughout this guide, management should not fear the Subsidiary Requirements.

7 The Subsidiary Requirements – *why they matter to everyone*

7.1 The Subsidiary Requirements (SRs) are found in an Annex to the Directive and they set out the provisions that apply in the absence of an agreement. Their existence is not limited to being the "EWC of last resort". With the Subsidiary Requirements already in both parties back pockets, **they play a key role in every negotiated agreement. Both sides seeking to better the deal they already have.** It is little surprise that many agreements copy paste many elements of the SRs.

7.2 This section offers a picture of what is involved in working under the SRs and section eight assesses what aspects of the SRs, and the Directive itself, the company and employee representatives may seek to change. In the light of this, an EWC negotiator can assess how attractive the SRs are to each side, and where the opportunities for negotiation, trade off and compromise are.

7.3 The three most significant changes the 2025 Directive make to the SRs are:

- **Two regular meetings** between the EWC and management each year. These should be face to face unless otherwise agreed.
- Budgetary rules laid down by national governments governing the **costs of experts, legal advisors**, and training.
- The right of the EWC to bring **experts into meetings with management**

The SRs also include the definitions of "transnational", "information", and "consultation" that are also found in the body of the Directive. We will cover these and other big issues in section eight below.

7.4 A sound EWC agreement setting out clearly the roles and responsibilities of both parties is the optimum outcome of negotiations between management and the SNB**. Clarity will always trump uncertainty and the lack of it in many aspects of the SRs will be exploited in unpredictable courts of law.** There is no point however on having clarity on matters that are not in the company's interest or requires unnecessary concessions.

7.5 Remember, **where the SRs are unclear it is up to management to decide what they mean**. Employee representatives have the right to challenge these judgments, but do not have the power to hold up decisions based on them. This makes the SRs appear very attractive, but don't forget that these definitions will over time be clarified by the courts — those decisions may not be to the benefit of the business community.

7.6 In conclusion, **agreement may be the optimum outcome, but it is not a result to be pursued at all costs**. Faced with unreasonable demands, the SRs, as set out in national law, may be a

perfectly acceptable solution. In this case, your BATNA (best alternative to a negotiated agreement) may in fact be the best solution overall. At very least, a company's stated willingness to accept an SR solution is an enormous bargaining chip in SNB or EWC discussions. In all negotiations, uncertainty plays a role on both sides. Management should have a clear view of what an EWC working under the Subsidiary Requirements would mean for it and be able to put this across clearly to SNB/EWC members. Diffusing a negotiating threat makes the threat redundant.

8.0 The key issues for most companies in detail

8.1 Issues of importance will vary company by company based on the business and a comparison of your exiting agreement to the new SRs. Note that A13 agreements struck between 1994 and 1996 tend to be shorter and less specific than more recent ones. This is particularly the case of the definition of transnational issues and exceptional circumstances meetings. The paragraphs below set out, analyse and discuss what are likely to be the most contentious issues - information, consultation, transnationality, regular meetings, costs, experts and lawyers, training and links with national bodies, select committees and confidentiality.

8.2 **Information**

Definition: Information provision is at the heart of the EWC information and consultation process. Without information, there can be no consultation. It is the company that decides exactly the information to release and in what detail within the terms of the Directive, the Agreement and the Confidentiality clause. Representatives have the right of challenge the adequacy of the information. What does the Directive say about "information"?

> Recital 15a:
> *In the context of information and consultation on transnational matters, it is important to ensure that Community undertakings or Community-scale groups of undertakings can take decisions effectively and that information and consultation does not result in undue delays in their decisions. It is also crucial that European Works Councils and employees' representatives are given adequate time to form, coordinate, and express their views on sometimes complex transnational matters, taking into account any agreed arrangements for linking information and consultation of the European Works Council and national employee representation bodies. To enable parties to reconcile those considerations in practice, the minimum requirements for the consultation process should remain sufficiently flexible, allowing them to schedule the process as appropriate in light of the respective circumstances and content of consultation."*

> Article 2:
> *"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;*

> Article 9:
> *"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 ©, for linking information and consultation of the European Works Council and national employee representation bodies."*

What information?

The Subsidiary Requirements list the following information to be provided to the EWC. Most companies include all these issues in their agreement. Some agreements go further to include issues like Safety and Health, Equality and CSR:

> *"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."*

There is no guidance in law on the extent of the information that must be made available under. This is for company to decide. As a guide: 1) It should be sufficient to allow EWC members to take a view on the issues under discussion. Representatives and their experts will always want "more" and the line must be drawn by the company. 2) Management is not required to provide data to "justify" its proposed decision. The company only needs to provide details of the proposed decision and the impact it will have on employees.

Regular meetings

information to be provided to the EWC at the regular meetings should be sufficient to enable the EWC to take an overview of the progress of the business, in much the same way as the annual shareholders meeting is given such an overview. Many companies choose to align their meeting schedules with the posting of annual and half year results, so information is readily available and consistent.

Exceptional circumstances

The information should cover:

- The rationale for the proposed decision. (Demands for information on what other options were considered can be dismissed on the grounds that they are not proposals).
- Details of what is being proposed (closure of a facility, transfer of production, a merger or acquisition, the sale of part of the business, outsourcing, etc.).

- o The facilities affected in the countries affected.
- o The number of employees potentially affected, including, if necessary, on employees remaining
- o The proposed timescale.
- o How the decision may affect continuing operations within the undertaking, if relevant.
- o The plan for national information and consultation in the countries impacted.

The extent of information provided is a company choice. Management is only required to provide the information that is available on the development of their proposal. There is no obligation to "create" additional information just to satisfy the EWC. Representatives may ask questions, but it is a company decision where to draw the line. Representatives have a right of legal challenge but note there are no injunctive rights to hold up the process whilst the issue is resolved.

8.2 Consultation

> "*Consultation" means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management.*
>
> *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".*
>
> *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 of the decision on the measures in question, provided their opinion was expressed within a reasonable time.*"

The most important part of the consultation obligation is the right of representatives to assess the information provided and offer an opinion on it within a reasonable time. Management must respond in writing, and at that point the transnational information and consultation process ends, and likely continues at national level.

The Directive, including the SRs is extremely imprecise on important elements which if unclarified in an agreement offer opportunities for challenge; *"… in **particular** to …"; "… can **reasonably to be expected** to affect the employees' interests to **a considerable extent**" … "**within a reasonable***

***time**, taking into account the urgency of the matter"; "to **acquaint themselves** with the subject matter and to **examine it**"*

Companies in their agreements should include a set of timelines for the consultation process to be concluded. 15 to 30 days are often used. Where this is not possible to be agreed companies should nonetheless notify employee representatives of the timelines they plan to operate under. This should also apply to SR committees.

8.4 *Transnationality*

The wording in the 2025 Directive suggests that the definition of translational may be **more broadly defined** than under previous text. In reality, it leaves us no wiser about the meaning of "transnational" in any given case. Most issues in an international company have an element of transnationality.

Recital 5 in the directive contains the most helpful assessment from a company point of view:

> *"The concept of transnational matters covers those measures which could affect employees in a substantial way, i.e. in a way which does not affect them in a trivial manner and does not only concern individual employees or ordinary operational decisions."*

The definition of transnationality in the provision of information and any consultation at regular meetings is important. It is much **more significant in the calling of exceptional circumstances meetings.** Most companies will seek to avoid exceptional meetings where a group of employees meet to discuss a single, and often controversial, management proposal. For this reason, the shift to two meetings per year may be welcomed as most proposals can be managed within these timescales without recourse to additional meetings.

Almost every decision that has an impact on more than one country is transnational — and these decisions are made every day. The test is whether the decision under consideration is **"substantial"** and not **"trivial"** and does not involve **"ordinary operational decisions"**. For some companies, an ongoing programme of facility updating and location changing is an "ordinary operating decision".

As is the case with consultation and timelines, a company will wish to include in an agreement a precise definition of transnationality with thresholds (# of countries; % of employees; timescale; etc). In the absence of agreement, the EWC will be free to challenge these rules through whatever disputes procedure national law makes available. For a challenge to be successful it would need to be based on alternative set of criteria defining "exceptional circumstances" which showed management's metrics as failing to meet the requirements of the law.

8.5 Regular Meetings

The 2025 Directive provides for two meetings a year between an EWC and management. These meetings should be face-to-face, unless otherwise agreed.

> *"When appropriate and agreed upon and while ensuring meaningful information and consultation, digital means of communication and coordination can be used in exceptional cases for holding such ordinary meetings."*

EWC members should be able to meet on their own before meeting with management. Although there is no requirement for the EWC to be able to meet after the meeting with management, this is common practice to assist in the development of an opinion. The Directive says nothing about the format or length of the meetings.

Most typically, an employee pre-meeting is held on the day before the meeting with management or in the morning before an afternoon meeting. Any employee representative meeting after that with management is designed to facilitate the drafting an opinion.

Although the meeting agenda is often discussed with a Select Committee, it is up to management to determine appropriate agenda items in view of current business developments. Meetings are conducted on the basis of a written report prepared by management. When the report must be given to the EWC is not clear but best practice is for it be given sufficient time in advance to allow the members of the EWC to study it. In our experience it is common for EWC members to raise questions with management after they have read the report and before the meetings. This is helpful for meeting preparation and efficiency.

The 2025 Directive sets out in the Subsidiary Requirements the issues that may need to be covered. These issues generally find their way into negotiated agreements:

> *"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."*

It is common and good practice for management and employee representatives to agree a short meeting brief for onward communication to local management, national works councils and employees.

8.6 Exceptional Circumstances

The Directive sets out;

> *"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, 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 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"*

The CHRO Association survey suggests that for many companies the holding of exceptional meetings is rare. There are outlier companies however where multiple exceptional meetings are held every year.

For most companies, exceptional meetings are events they seek to avoid. 1) Additional meetings are expensive and require large amounts of management time to prepare for them. 2) They often involve a lengthy meeting dedicated to one subject which, by the nature of the Directive, has a negative impact on the workforce. It is here that the increase in number of meetings from one to two offers the opportunity for exceptional items to be covered at a regular meeting with several other agenda items. If the company believes it is in its interest to call an additional and dedicated meeting it can do so.

For those engaged in an unwanted and unending series of exceptional meetings and project updates, here's a reminder of words in the directive that help.

> "*The concept of transnational matters covers those measures which could affect employees in a substantial way, i.e. in a way which does not affect them in a trivial manner and does not only concern individual employees or* ***ordinary operational decisions".***

This is where national works council and European works council remits differ. National works councils meet frequently and are actively engaged in decisions as they evolve locally. At the European level, ***once*** **a consultation on an overall project has concluded, operationalising the decision is an "ordinary operational decision**" that belongs at the local level.

8.7 Costs, experts and training

Costs can be broken down into two categories. 1) Those involving meetings, travel, accommodation, interpretation, and the provision of equipment to EWC members: 2) Those involving "professional fees" including experts, lawyers, and training. In the 2025 Directive, all

reasonable costs must be covered by management. Of all the unclear aspects of the Directive, “reasonable” in this case will be a hotly contested word.

The operating expenses of the European Works Council shall be borne by the central management. On Category one;

> *“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.”*

Meeting, travel, and accommodation costs are generally uncontroversial. EWC members usually comply with normal company policies and procedures for travel and incidental expenses. Interpretation costs can be significant, and other than by agreement it must be provided. Typical costs for on-site interpretation into multiple languages can be $50K per meeting. The mandatory provision of adequate interpretation was underscored recently by a judgement of the Italian Supreme Court. Technology change is making interpretation easier and cheaper by eliminating the need for interpreter travel and the setting up of interpretation booths. If interpretation is required, discussed alternatives in advance with your designated provider.

Professional fees; experts, lawyers, and training.
The Subsidiary Requirements on experts:

> *“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.*
> *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.”*

There are three key changes;

1) EWCs working under the Subsidiary Requirements are now given the right to invite their experts to meetings with management, and management cannot object to their presence. Their presence is in an “advisory capacity”, which presumably means they cannot actively engage in the meeting but are there to offer advice to the EWC members if requested to do so.

2) The reference to experts is plural. EWCs can bring more than one expert to meetings with management, including trade union representatives, provided they are nominated by "Union-level trade union organisations". This provision opens the possibility of a meeting with multiple experts, especially in circumstances where a major restructuring decision is under consideration. Whilst the EWC can bring experts of their choice into meetings, they cannot require specific members of management to represent the company. If representatives choose to make meetings "labour expert-driven" then that is what they will get on the management side to the detriment of quality discussion. EWC members should be careful what they wish for.

3) Provision is made for the "reasonable costs of legal experts". Previously costs were limited to one expert. This is largely a clarification of Article 10:1 of the 2009 Directive and most companies are used to it. Under the Directive, expenses need to be notified to management before they are incurred. This implies that expenses cannot be incurred unless management agrees in advance that they are necessary and reasonable. Although not explicitly stated, it can be assumed the same applies to the cost of experts. They will need to be approved in advance and be reasonable and appropriate, and related to the analysis of the information provided by management and not to independent audits or research. It needs to be clear to EWC members that they do not have a "blank cheque" for lawyers and experts. Management should insist that the EWC presents a justification as to why they are needed and to their proposed mandate.

Note that budgetary rules regarding the operation of the European Works Council will be set out in national laws and may be more limiting than allowing for multiple paid experts and lawyers.

Experts: expert mission creep is a real danger, and the management of expert participation will be important. Companies must be clear that the remit of experts is limited to assisting EWC members at meetings, including preparation, based on the report prepared by management. Company funding of experts is now clear; the question is what expert duties should be paid for. The *raison d'etre* of an EWC is to be "informed and consulted" by management. Not to devise and offer alternative strategies to the company. Management should look closely at suggestions that the EWC can commission experts to carry out independent audits or to draft counter strategies to the proposals of management.

Lawyers: new to EWCs is the issue of legal costs and the explicit requirement that management pay them. Recital 7 of the 2025 Directive covers the issues of legal costs in relation to SNBs, so it can be assumed that the same reasoning applies to SR EWCs:

> *"Members of special negotiating bodies may need legal advice to carry out their tasks under Directive 2009/38/EC. It is however not sufficiently clear that they are entitled to the coverage of the associated legal fees. With a view to ensuring such coverage, it should be clarified that central management is to bear costs incurred by member of special negotiation bodies, which the latter should be required to notify in advance. It is appropriate to limit that obligation to* ***reasonable legal costs*** *to ensure that* ***management is not liable for manifestly disproportionate costs, costs without justifiable link to the provision of relevant legal advice, or costs created by manifestly unfounded, frivolous, or vexatious claims."***

The management of undertakings with EWCs should consider making their views of the budgetary rules to be drafted by national governments clear and encourage sensible restrictions.

Management might also want to consider giving the EWC an annual budget to cover legal and expert costs and let the EWC decide how best to get value for money from experts and lawyers.

Training - the Directive says of EWC agreements;

> *"The agreements should also address the provision of relevant training to the members of the European Works Council and the coverage of related expenses, without prejudice to the requirement to provide the necessary training pursuant to Directive2009/38/EC.*

The question of reasonableness and the requirement for notification of management in advance apply. It is our view that training should always be discussed between management and the EWC and its "requirement" demonstrated. Management should reject any suggestion that EWCs can unilaterally decide training needs.

8.8 Links with national bodies

The Directive says:

> *Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(3). 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.*
>
> *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.*
>
> *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. 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.*

Whilst European and national processes must be linked, there is no requirement for processes to be run sequentially or be otherwise dependant in any way. Most companies will wish to assure than processes can be carried out concurrently. The EWC process should run in accordance with

the applicable agreement and national information and consultation run in accordance with the provisions of national law and or practice.

8.9 Communication

The extent to which and how the EWC communicates with the people it represents has been a difficult issue, made more complex by the requirements of confidentiality. The 2025 Directive says;

> *Without prejudice to Articles 8 and 8a, [confidentiality] 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.*

Two questions arise. 1) Site visits and meetings with employees without representation. This not an attractive proposition for most companies and the probable answer is through means of communications on an appropriate platform. 2) The extent and consistency of reporting. Many agreements solve this by providing for an agreed short document to be used for the purpose of onward communication. The new Directive may bring this issue back onto the agenda

8.10 Select Committee

It is long established practice in most EWCs to create a select committee for the EWC to liaise with management between meetings. The Subsidiary Requirements allows for a select committee of up to 5 people. Under the Subsidiary Requirements there is no obligation on management to meet with the select committee, other than in exceptional circumstances.
Where a select committee is provided for in agreements, management often meet with it several times a year. EWCs will now move to two full meetings a year, it may be appropriate to meet with the select committee twice a year to prepare for the meetings and twice at the meetings themselves. This makes four meetings in total, spaced out at three-month intervals. This schedule should eliminate the need for extraordinary meetings. Meetings with the select committee outside the general meetings are generally held virtually.

Items for discussion with the select committee often include:

- The timing and venues of the full meetings.
- The agenda.
- Any need for experts.
- Communications after the meeting.
- Exceptional circumstances arising between meetings
- Training for EWC members.
- Any request for legal advice.

Care needs to be taken that the select committee is "balanced" and full reflective of not only the general membership of the EWC but of the wider employee population. Be wary of attempts at "activist capture".

8.11 Confidentiality

Confidentiality in its two forms have been issues for many EWCs to date. 1) What are the employee representatives' confidentiality obligations and 2) what issue can the company keep from the representatives on the basis of confidentiality. With this in mind, Article 8 of the 2025 Directive has much to say. But what it says helps us little in a practical way.

> *"1. Member States shall provide that 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 disclose information which central management has expressly provided to them in confidence, in the legitimate interest of the undertaking, in accordance with objective criteria laid down by the Member State. In addition, central management may set up appropriate transmission and storage arrangements to help safeguard the confidentiality of information.*
>
> *2. When central management provides information in confidence pursuant to paragraph 1, it shall inform the members of the special negotiating bodies, the members of the European Works Councils, or the employees' representatives in the framework of an information and consultation procedure, of the reasons justifying confidentiality and shall determine the duration of the confidentiality obligation where possible.*
>
> *3. The confidentiality obligation referred to in paragraph 1 shall continue to apply, wherever the persons referred to in that paragraph are, even after the expiry of their terms of office, until the reasons for the confidentiality obligation have become obsolete.';*

> *'Article 8a*
>
> *Non-transmission of information*
>
> *1. Member States shall provide, in specific cases and under the conditions and limits laid down by national legislation, that central management situated in their territory is not obliged to transmit information to 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, when the nature of that information is such that, in accordance with objective criteria laid down by the Member State, the transmission of that information 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 ground referred to in paragraph 1, it shall inform the members of the special negotiating bodies, members of the European Works Councils, or employees' representatives in the framework of an information and consultation procedure, of the reasons justifying the non-transmission of information.';*

The text here provides little practical help, and relying on national laws will probably not shed more light. The key issue here is that it is the company that decides what information it will designate as confidential and more importantly what issues it will not inform and consult about. As a practical guide to those who produce EWC documents and, as a routine, label slides and texts as “CONFIDENTIAL”, even when they refer to the menu for the group dinner — if you want to be credible, be selective.

D. BUILDING A STRATEGY

9. The strategic options

9.1 There are no existing EWCs that currently meet the requirements of the new Directive.
If it is not already clear from the sections above, the approach to compliance is complex. Every company starts from a unique position, with a "one of a kind" agreement and a different relationship with their EWC. There are Article 13 and 6 agreements and some subsidiary requirements committees: The agreements themselves range from two pages to more than 50: Some are simple frameworks; others are extremely prescriptive: Some have termination clauses that come into play soon and before the Directive. Others are "evergreen": Some have been renegotiated over time, but many have never been touched since they were originally signed: Our 2023 survey suggests that most companies go further in engagement with their EWC than their agreement suggests.

This is a good thing! EWCs have evolved over time and have developed ways of working over 30 years. In a few cases we have dealt with recently company representatives can't find a copy of their agreement. (we could). Of course, there are EWCs that are dysfunctional and many have features they would like to change but almost 90% of those surveyed by the CHRO association believe their EWC to be cooperative and has improved over time. There have been very few major legal cases, and these tend to be with companies that have multiple claims against them.

With this story of success – more than 1,000 massive companies engaging positively with employee representatives - why would anyone seek change. It should be one of Europe's social success stories that is not replicated anywhere in the world. Indeed the 2025 Directive only survived by the skin of its teeth (seven votes) when the European Parliament backed down from their extreme position on injunctions and fines. The history section (now might be a good time to take a look) shows that the trade unions have never been happy with the laws since 1994 and have lobbied consistently for change. They seek a defined role and right to effectively control every EWC; to establish a cash cow for consulting and advisory income to compensate for the decline in paying members; and the right to hold companies to ransom by having a veto right on decisions. Think here of the German model in terms of power and the French model of high guaranteed income without members.

We are where we are. The Directive is far less challenging than it might have been but there are changes that companies will have to deal with. The time to think that through, including when to act, is now.

It is tempting to start drafting new confidentiality clauses and transnationality thresholds but there are four questions that must be addressed.

1) Do you like your current EWC or do you want to change. Are you looking to keep most of what you have or is this an opportunity to re-think?
2) What is the view of your agreement amongst your EWC representatives and what internal or external influences are on them legal status of your agreement.
3) What are your legal constraints and what options are open to you.
4) What agreement content are you looking for and how can you get there

… now you can write that killer transnationality clause we've been worrying about.

9.2 Love it or leave it?
In looking at options going forward the very first question is how happy are you with your EWC as it stands? This decision will shape the nature of your approach, irrespective of the legal base of your EWC which doesn't matter.

If you run a generally successful operation, your plan will be to protect and continue with as much of the current agreement as possible; make tweaks to improve; and above all minimise disruption. If our 2023 survey is correct this will be most companies. These will also be the arrangements that trade unions have called substandard or "sham" EWCs and will take the opportunity to challenge them.

There are several EWCs that companies describe as disruptive and obstructive. Here the approach to the Directive will be more radical and the approach more adversarial. The new Directive offers an opportunity to make a break and re-set. At the extreme, the opportunity is presented for some to give notice of termination of the current agreement and move to a three-year SNB with no EWC in place.

The paragraphs below set out the process rules that govern your options.

Just as there are a thousand varieties of agreement, there are multiple process options within the misleadingly simple Art13/Art6 construct.

10. Dealing with "Article 13"

10.1 High on the trade union wish list and probably the biggest change introduced by the 2025 Directive rewrite is the ending of the "Article 13 Exemption". Around one third of current EWCs are Article 13's and the agreements were signed before the 1994 Directive became national law.

The trade unions often refer to these agreements as sub-standard or sham. What happened in 1994 when the Directive passed was that many companies seized the opportunity to set up an EWC outside the context of the law. In most cases they established their own employee representative negotiating committee or partnered with a trade union well established in the company and with which it had a constructive relationship. Companies had the advantage of speed, whilst trade unions were slow to develop their infrastructure and competence.

Despite union claims, the test of time suggests that these arrangements have been extremely successful. Every one of them could have been terminated by representatives at some point over the years and they choose not to do so.

All undertakings with Article 13 agreements, and the employee representatives in them are now confronted with uncertainty about future arrangements. More challenging is that **they cannot negotiate their own future**. Undertakings with an Article 13 agreement that remains in place on 31 December 2027 must negotiate their new agreement with an SNB under the new and more trade union friendly rules.

Once a valid, written request is received, management must facilitate the establishment of an SNB and will have two, not three, years in which to negotiate an EWC agreement or the Subsidiary Requirements will apply. The first meeting with the SNB must be held within six months of receiving the request otherwise the Subsidiary Requirements will apply. If you have an Article 13 agreement, you need to plan now, or, at very least, develop a contingency plan for the establishment of SNB that is able to hold a first meeting within six months. Without a plan, companies will struggle to meet the deadline and end up with the Subsidiary Requirements.

There is **no possibility of negotiating an Article 13 EWC agreement with the existing EWC members.**

10.2 Article 13 and the new law

The most important question for those with Article 13 agreements is what happens next? If there is an SNB request does the A13 EWC remain in place alongside the SNB and any subsequent agreement? Does it cease to exist? What options do companies have?

The Article 13 Story

The "Article 13 Exemption" refers to Article 13 in the original 1994 EWC Directive. In the 2009 "recast" it became Article 14 but everyone still refers to it as "Article 13". The article says if, on or before the 22 September 1996, a company already transnational information and consultation arrangements in place, then it was exempt from the Directive.
It is understood that around 320 undertakings, or one third of existing EWCs, have agreements in place. These numbers are educated guesses as there is no legal requirement to register or record A13 or any other EWC agreement.
A13 agreements sit outside and above the law. They are, collective agreements, voluntarily negotiated between the parties at the international level. For the most part A13 agreements are legally located in a particular Member State. This is something that will now come into play as the management of undertakings consider the future of A13 agreements as the exemption ends.
Until 31 December 2027, companies with A13 agreements can use its existence of such an agreement as a defence against a request to set up an SNB to negotiate an EWC within the framework of the law.
The 2025 EWC Directive takes away that defence. After the 31 December 2027, 100 employees, or their representatives from at least two EU or EEA Member States, can request the establishment of an SNB to negotiate the terms of an EWC agreement with central management.

So, what are the broad options? There are many variants on four general approaches.

1. ***Wait and see?*** Unless there is an SNB request at some point in the future after December 31, 2027, the A13 agreement remains an "agreement" and continues to exist under its own terms. It simply no longer protects the company from a legitimate SNB/EWC request from employee representatives inside or outside the current EWC. The fact that most or all EWC members like current arrangements is no protection. After December 31, 2027, there is no time limit on the submission of an SNB request.
2. ***Go proactive?*** If all or a majority of your EWC members are happy with current arrangements, you might look to form an EWC containing the terms of the 2025 Directive — but reflecting as closely as possible the current EWC. This is likely to be possible. This can only be done through an SNB and the feasibility of the approach depends to an extent the SNB mirrors the current membership of your EWC. The SNB can either *reject the need for an EWC by 2/3rds majority and keep the current agreement* — meaning that a new request cannot be made for four years. Or it may *strike a new Art 6 agreement more in line with the 2025 Directive.* If this is done prior to December 31, 2027, the new SNB will have three years to run. You will also need to terminate your A13 agreement.
3. ***Go radical?*** Terminate your A13 agreement under its own terms and live without an EWC until an SNB request is served. Look closely at your agreement and termination clause. Remember companies constructed A13 agreements largely on their own terms and deliberately made them too difficult to get out of.
4. ***Is your agreement actually a valid A13?*** The requirements for a valid A13 agreement were that it had to be negotiated with employee representatives; cover the entire European workforce; and provide a process for informing and consulting employees on transnational issues. Many agreements currently in force don't meet these criteria, and this makes you simply a company without an agreement.

Bear in mind, these so called **"sub-standard" agreements will be first on the European union federations target list** and they will look for internal activists on your EWC or your existing unions to work with.

11. Dealing with Article 6

11.1 The impact on Article 6 agreements is less dramatic than A13 but is still significant. It is also simpler to explain. A company with an A6 agreement has one year from 31 Dec 2027 to amend it in line with the new Directive**. It can be amended by agreement between the company and the current EWC. There is no SNB involvement during the year December 31, 2027, to December 31 2028.** There is no obligation on the company to do this. However, if the agreement

is not compliant with the law by 31 December 2028 then employee representatives inside or outside the EWC can request an SNB that runs for two (not three) years.

11.2 Once more, there are multiple options built around four scenarios

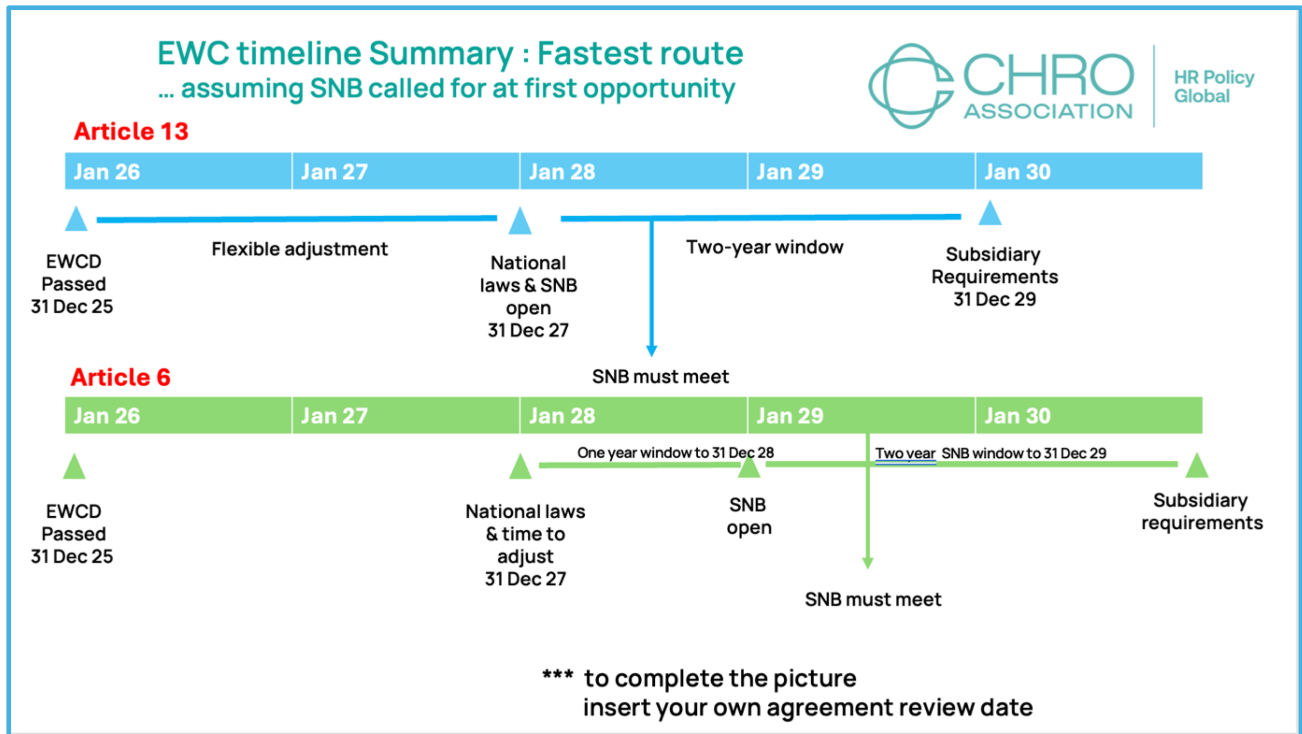
1. ***First mover.*** Your current agreement will probably have a clause related to renegotiation. You could take the opportunity now to revise the agreement in line with the 2025 Directive. This offers **first mover advantage** to companies with an effective EWC. Trade unions will be preparing for interventions over the next two years. Between now and then **experts do not have the rights to engagement with management the new Directive gives them. Whether experts are involved in the renegotiation depends on what it says in your current agreement.**
2. ***Trust and maintain.*** If you don't wish to change, and you believe you are not and will not be a target for change — you can simply do nothing and trust in people's satisfaction with the status quo. If you do this, you will have no opportunity to negotiate with the current EWC after 31 December 2028 and **your A6 agreement will remain in place** until a new EWC is agreed or the SRs apply.
3. ***The legal route.*** Wait for the Directive and amend by agreement over the year after 31 December 2027. **Your EWC will continue to operate during negotiations.**
4. ***Go radical.*** Those with dysfunctional EWCs may choose to terminate the agreement before 31 December 2027 and await an SNB request. If that comes before 31 December 2027 the 2009 Directive applies. The SNB will last three years and there is no obligation to meet during this period.

11.3 Let's end where we began;

There are no current EWCs that meet the requirements of the new Directive. Unless you are one of the few that moved quickly out of the box (I know of only one) you have decisions to make. The time for action may be later, but the decision and planning time is NOW.

12. Timelines

The following figure summarises the timelines for change. It is based on actions being taken (e.g. an SNB request) at the earliest possible moment. Delays to an SNB request simply push out the timeline by the extent of the delay



13. The universal start point – the Subsidiary Requirements

13.1 No matter where you start – great agreement/poor agreement; Cooperative EWC/hostile EWC; Close to 25 compliance/miles away from compliance; influential advisers/no advisers – the base document is the Subsidiary Requirements of the 2025 Directive. No matter what your strategy or end objective, **the SRs are what you get** if you don't reach agreement. Both sides need to look at SRs and ask; "can I do better"? It is here where preparation; the understanding and application of leverage; negotiating skills; clear red lines; and relationships are the essential ingredients to deliver the best outcome possible. As Tom says all the time "They are your BATNA" – Best Alternative To a Negotiated Agreement.

13.2 Whilst most EWC agreements to date have been by agreements between the parties, not having an agreement in the future is not a sign of failure. The fact that you could not get a **better** deal than your BATNA doesn't make the SRs a bad choice. Remember, one third of agreements were done under Art 13 of the much simpler 1994 Directive when employer friendly terms were there to be had. The terms of the 2009 recast Directive made the SRs look more attractive as an option. This is not a negotiation with the US Longshoremen where no agreement is not an option.

13.3 The main disadvantage for employers with the SRs are the ill or undefined terms that lead to uncertainty. How long should consultation take? What is a transnational issue? Exactly how much budget should an EWC have? What is a confidential issue? Of course, in the absence of clarity it is up to the company to define the terms — but in the end these will be challenged and defined in courts. Few companies want to be taken to court or trust the outcome.

13.4 Just as there are many issues the company would like to change or to clarify, there are other, and often different, issues that pose problems for employee representatives. Can we have more representatives? Can other countries be involved? Can we have a bigger select committee? Can we share the decision where meetings will be held? What role do we have in agenda setting? These things are important to them and they can only achieve them by agreement. Like the employers, they themselves do not want to go to court to clear up definitions if they can agree reasonable rules on things like consultation or transnational.

13.5 Whether your negotiations are constructive or adversarial, both sides need to understand the BATNA and what it means to them. It is important that employee representatives have a clear view of the SRs and what they mean. In some cases, you will simply help explain the alternatives. In others the discourse may be closer to a threat. The other side needs to be clear from the company side, that in the absence of agreement **"the subsidiary requirements are just fine".**

13.6 To do this requires an in-depth knowledge of the Directive and the SRs and identification of those elements you, and the representatives would seek to change. Lining the two “wish lists” up gives you a strong feel for your leverage. We’ve tried to make it easier for you. The table below sets out at the terms of the Directive and SRs so you to look at them from the perspective of the company and the employee representatives. It suggests in red and green where areas for negotiation are likely.

13.7 You can then compare the issues identified to your existing agreement to see what needs to be changed. Do you need to go with a completely new text or is the approach to make as few amendments to your exiting terms as possible?

13.8 **Never forget negotiating rule 101 – work on YOUR draft and you HOLD THE PEN.** Anything already written needs a powerful argument to change it!

2025 Directive Subsidiary Requirements content	Co.		Reps		Comment
	+	-	+	-	
Geographical Scope EU and EEA Member States only. There are no provisions for the inclusion of representatives from non-EU/EEA countries.					For many Representatives the inclusion of other countries will be very significant … particularly the UK
Membership of the EWC One representative from every country in which the undertaking has operations. If over 10% of the European headcount is located in a country, it gets a second seat. Over 20%, a third seat, and so on.					The scale leads to lower representation from major (manufacturing) sites and larger representation from low headcount white collar sites. In many cases this is to company advantage
Election/Selection of EWC Members Most national laws today do not provide for substitutes, not do they have anything to say about what happens if a member of the EWC resigns. This is especially the case where the EWC member is elected, as opposed to being appointed by a works council or union.					Both sides likely prefer specificity here and is an area for agreement
Gender Balance The 2025 Directive requires 40% of the members of an EWC to be women. However, is this number is not achieved, it is for the EWC to explain the reasons why it was not achieved to the employees.	–	–	–	–	Unlikely to be an issue
Meetings 2 full in-person meetings a year between the EWC and management.					Increases meetings from one to two. Companies may want to have just one in person meeting. This is an interesting area. Most companies seek to avoid exceptional circumstances meetings where an entire agenda is taken up by a topic that is likely to be controversial. Having two meetings per year may reduce or eliminate the need to exceptional hold meetings with a single subject agenda. See also the potential involvement of the select committee in avoiding exceptional meetings.
Select Committee The EWC may elect a select committee of up to 5 people, which should also be gender balanced. However, management has no obligation to meet with the select committee, unless "exceptional circumstances" arise. (*See below)*.					Trade unions may seek a larger group. Companies would likely prefer to restrict the number of members from one country and also extend the committee membership beyond blue collar sites. See our earlier comments on the potential role of a select committee.

Experts Under the 2025 Directive, a Subsidiary Requirement EWC can be assisted by experts of its choice and they can bring these experts to meetings with management in an "advisory capacity". Payment for experts, as well as any legal costs that the EWC might incur, will be covered by budgetary rules to be decided by Member States. Budgetary rules under the 2025 Directive will have to make provision for necessary legal costs, should they arise.					A major win for trade unions and EWC will press for this to be included in negotiated agreements. Companies will want to build in specific language around budgeting and approvals (below)
Training National governments can write budgetary rules covering the cost of training					A win for unions. Companies will seek specificity on approvals and costs of training (below)
Transnational *"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.* *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:* *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.* *or Community-scale group of undertakings can 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.*					This extension of transnational favours unions and they will seek to expand it. Companies will seek numerical specificity on what is and is not a transnational issue
Information *From the Directive* *"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 on transnational matters shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives*	_	_	_	_	No major change in 2025 ... Unions/EWCs will wish to expand the list to include diversity, safety and health, environment, CSR etc. Companies may wish to expand in certain areas e.g. to fulfil CSR obligations at European level only

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 ©, for linking information and consultation of the European Works Council and national employee representation bodies. ***From the Subsidiary Requirements*** *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.*					
Consultation "*Consultation" means the establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management.* *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.* *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 of the*					The more detailed definition favours unions. Companies will want specificity on the timing of the response and closure (below)

decision on the measures in question, provided their opinion was expressed within a reasonable time."					
Exceptional Circumstances *"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 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."* … It is also worth noting the following wording from the Recitals to the Directive: *"The concept of transnational matters covers those measures which could affect employees in a substantial way, i.e. in a way which does not affect them in a trivial manner and does not only concern individual employees or ordinary operational decisions. To this end, it should be clarified that the scope of the potential effects of transnational issues on the workforce and the level of management involved are to be taken into account to determine whether a matter falls within the competence of a European Works Council."*					Specificity for management on using regular meetings where possible, and exclusion of trivial or ordinary operation decisions is welcomed. This is linked to defining transnational and consultation Marginally negative for trade unions
Links to national I+C *"Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).* *…* *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.*	-	-	-	-	Companies will seek specificity and language allowing concurrent discussions at European level and national level and no requirement to conclude EWC consultation prior to action (below). Suggestions that EWCs should meet with national works councils during the transnational information and consultation process should be strongly resisted.

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."					
Adaptation ***(from the 2009 Directive. This has not changed).*** *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.*	-	-	-	-	No change from prior directive but old agreements may want to tighten wording
Confidentiality For EWCs working under the Subsidiary Requirements, the rules on confidentiality will be defined by national laws.	–	–	–	–	Companies may seek tighter definitions, trade unions greater employee protection
Disputes The legal and judicial procedures available for resolving disputes between EWC and management will have to be set out clearly in national law.					Companies will likely seek internal resolutions prior to external recourse.

APPENDIX I

The newly published Directive text contains only the amendments to the earlier Directive.

As such, it is confusing and without context. The version below and is our consolidation of the texts of the original Directive and The new Directive containing the amendments, into a single document.

An official consolidated text will be published soon.

DIRECTIVE (EU) 2025/2450 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2025

amending Directive 2009/38/EC as regards the establishment and operation of European Works Councils and the effective enforcement of transnational information and consultation rights

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with Article 153(1), point (e), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure (2),

Whereas:

(1)Pursuant to Article 27 of the Charter of Fundamental Rights of the European Union (the 'Charter'), workers or their representatives are, at the appropriate levels, to be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national law and practices. Principle No 8 of the European Pillar of Social Rights reaffirms the right of workers or their representatives to be informed and consulted in good time on matters relevant to them.

(2)With regard to transnational matters, the objective of Directive 2009/38/EC of the European Parliament and of the Council (3) is to give practical effect to those basic principles by setting minimum requirements for informing and consulting employees in Community-scale undertakings and Community-scale groups of undertakings.

(3)In its evaluation of Directive 2009/38/EC of 15 May 2018, the Commission confirmed the added value and relevance in principle of that Directive. It found that many of the Directive's provisions are sufficiently flexible to accommodate evolving technological and economic realities and a variety of forms of undertaking or group. For example, it applies to all Community-scale groups of undertakings, regardless of the type of legal arrangements that allow the exercise of the dominant influence between the controlling and the controlled undertakings forming such groups. Consequently, undertakings linked, for instance, by franchise or license agreements can fall under the definition of Community-scale group of undertakings, provided that dominant influence is established.

(4)However, the Commission evaluation also identified shortcomings regarding, for instance, the effectiveness of the consultation process, access to justice, penalties and the interpretation of certain concepts.

(5)On 2 February 2023, the European Parliament adopted, pursuant to Article 225 of the Treaty on the Functioning of the European Union (TFEU), a legislative own-initiative resolution with recommendations on a revision Directive 2009/38/EC. Subsequently, the Commission carried out a two-phase consultation of the social partners pursuant to Article 154 TFEU on the need for and possible content of measures to address the shortcomings of Directive 2009/38/EC. The Commission also collected evidence through a study involving a targeted online survey, stakeholder interviews, workshops and an analysis of national case-law and of relevant provisions in national law.

(6)Evidence shows that legal uncertainty regarding the concept of transnational matters has led to differences in interpretation and disputes. In order to improve legal certainty and reduce the risk of such disputes, it is necessary to clarify the concept of transnational matters. To that end, it is appropriate to clarify that Directive 2009/38/EC not only covers cases where measures considered by the management of an undertaking or group of undertakings can reasonably be expected to affect workers of that undertaking, of that group, or of any establishment of that undertaking or group, in more than one Member State, but also cases where such measures can reasonably be expected to affect such workers in only one Member State and the consequences of those measures can reasonably be expected to affect such workers in at least one other Member State. Such clarification is necessary in light of cases where an undertaking envisages measures, such as lay-offs, redundancies, the allocation of production activities or the outsourcing of activities, which explicitly target establishments in only one Member State but which can reasonably be expected to have consequences affecting workers of that undertaking, of that group, or of any establishment of that undertaking or group, in another Member State, for instance due to changes in the cross-border supply chain or in production activities. The concept of transnational matters covers measures which could affect employees in a substantial and not in a merely trivial manner and which do not concern only individual employees or ordinary operational decisions. To that end, it should be clarified that the scope of the potential effects of transnational issues on the workforce and the level of management involved are to be taken into account to determine whether a matter falls within the competence of a European Works Council.

(7)The definitions of information and consultation in Directive 2009/38/EC include normative requirements. For the sake of coherence and legal clarity, it is appropriate to move those normative provisions to the article on the operation of the European Works Council and the information and consultation procedure for workers.

(8)The election and appointment of employees' representatives is governed by national law and practice. The national systems for the election and appointment of employees' representatives vary among Member States. Employees' representatives can be trade union representatives, where the national law or practice of a Member State so provides.

(9)With a view to concluding an agreement establishing a European Works Council, central management is required to negotiate with a special negotiating body representing employees. To increase legal certainty in that regard, it should be clarified that central management is required to convene a number of meetings with the special negotiating body sufficient for both parties to reach such an agreement.

(10)It is possible that members of special negotiating bodies need legal advice to carry out their tasks under Directive 2009/38/EC. It is however not sufficiently clear that they are entitled to have the associated legal fees covered. To that end, it should be clarified that central management bears such expenses when incurred by members of special negotiation bodies. Such expenses should be notified in advance by special negotiation bodies to central management. Where the precise amount of the expenses is not known in advance, an estimate of the expenses, including information about their nature, should be notified to central management. It is appropriate to limit central management's liability for such expenses to reasonable legal costs, to ensure that central management is not liable for manifestly disproportionate costs, costs without a justifiable link to the provision of relevant legal advice, or costs created by manifestly unfounded, frivolous or vexatious claims. Moreover, Directive 2009/38/EC gives Member States discretion to lay down budgetary rules regarding the operation of special negotiating bodies and European Works Councils based on subsidiary requirements, having regard to the principle that expenses relating to the appropriate conduct of the special negotiating body's functions must be borne by central management. The provisions in Directive 2009/38/EC referring to the number of experts to be funded by central management are therefore redundant and should be deleted.

(11) Directive 2009/38/EC requires the parties to a European Works Council agreement to determine the venue for the meetings of the European Works Council. Those parties should also determine the format of such meetings, namely whether they are in person, online or hybrid, in order, inter alia, to avoid any doubt about their freedom to agree, on the one hand, to hold some or all of the meetings in a virtual environment, using online meeting tools, reducing the environmental footprint of meetings in line with Union, national and company emission reduction targets, while ensuring the meaningful and efficient sharing of information and consultation at a lower environmental and financial cost, and, on the other, to hold physical meetings which can offer a confidential environment that instils trust and provides an opportunity for exchanges in person.

(12) There can also be uncertainty and disputes with respect to the coverage of certain expenses and access to certain resources during the operation of European Works Councils. In accordance with the principle of the autonomy of the parties, it is appropriate to require that certain types of financial and material resources be determined specifically in European Works Council agreements, namely the possible assistance of experts – such as representatives of recognised Union-level trade union organisations, technical subject-matter experts or legal experts –, the coverage of experts' fees and the possible participation of experts in meetings. The agreements should also address the provision of relevant training to the members of the European Works Council and the coverage of related expenses, without prejudice to the requirement to provide the necessary training pursuant to Directive 2009/38/EC.

(13) The requirement in Directive 2009/38/EC to take into account, where possible, the need for balanced representation of employees with regard to their gender when determining the composition of European Works Councils has proven insufficient to promote gender balance. Women remain underrepresented in most European Works Councils. Therefore, it is necessary to lay down more effective and specific objectives regarding gender balance, to be implemented by management and employees' representatives when negotiating or renegotiating their agreements. To attain those objectives, it may in certain cases be necessary to give priority to the underrepresented sex in composing European Works Councils or their select committees. In accordance with the case-law of the Court of Justice of the European Union (4), such positive action is possible, in accordance with the principle of equal treatment of men and women, provided that the measures taken to achieve the gender balance objective do not automatically and unconditionally give priority to persons of a certain gender but allow to take into account other criteria, such as merits and qualifications and the procedure for election established by the relevant national laws. Parties to European Works Council agreements should therefore be allowed the flexibility necessary to respect the legal and factual limitations to the positive action. For similar considerations, it is also appropriate to strive to achieve gender balance in the composition of the special negotiating bodies, so that gender balance is already promoted during the negotiation phase.

(14) Evidence shows that the initiation of negotiations is sometimes delayed beyond the period of six months provided for in Directive 2009/38/EC. In some cases, management neither takes steps nor expressly refuses to commence negotiations following a request to set up a European Works Council. It should therefore be specified that the subsidiary requirements laid down in Directive 2009/38/EC apply where the first meeting of the special negotiating body is not convened within six months following a request to establish a European Works Council, irrespective of whether central management expressly refuses to commence negotiations.

(15) When sharing sensitive information with members of special negotiating bodies, members of European Works Councils, or employees' representatives in the framework of an information and consultation procedure, central management can require such information to be shared in confidence and prohibit it from being disclosed further. To prevent the excessive use of such confidentiality restrictions and to align the relevant provisions of Directive 2009/38/EC with the corresponding provisions in Directive 2002/14/EC of the European Parliament and of the Council (5), confidentiality restrictions should be possible only to protect the legitimate interest of the undertaking concerned. The existence of such a legitimate interest should be assessed on the basis of objective criteria to be laid down in national law. Moreover, when sharing information in confidence, central management should be required to provide at the same time reasons justifying confidentiality. The confidentiality restriction should be applied only for as long as the reasons for confidentiality persist. Setting up adequate arrangements to safeguard the confidentiality of sensitive information can instil trust and facilitate the sharing of such information, while protecting the interests of businesses and workers, including averting growing risks such as industrial espionage.

(16)The possibility of central management not to transmit information to the members of special negotiating bodies, the members of European Works Councils, or employees' representatives in the framework of an information and consultation procedure, should be limited to cases where such transmission would seriously harm the functioning of the undertakings concerned. For reasons of transparency and effective redress, central management should also be required to specify the reasons justifying the non-transmission of information in a way which allows for sufficient legal scrutiny, while not disclosing protected information.

(17)With a view to increasing legal clarity, it is appropriate to lay down the provisions on the transmission of information in confidence and on the non-transmission of information in two separate articles. Moreover, the provision allowing Member States to lay down particular rules for undertakings pursuing the aim of ideological guidance should be moved to an article concerning the relationship with other national provisions, because it pertains to the implementation of the requirements of Directive 2009/38/EC more broadly.

(18)Decisions on transnational matters can have far-reaching consequences for employees, such as in the case of redundancies arising from business plans, social plans, or process innovations. Effective transnational consultation requires a genuine dialogue between central management and European Works Councils, or employees' representatives in the framework of an information and consultation procedure. This implies that information and consultation is to be conducted in a meaningful and timely way that enables employees' representatives to express their opinion prior to the adoption of the decision. It also implies that opinions issued by European Works Councils or employees' representatives are to receive a reasoned response from central management or a more appropriate level of management before the decision on the proposed measure at issue is adopted. Explicit requirements to that effect should be laid down in Directive 2009/38/EC, to ensure legal certainty.

(19)In the context of information and consultation on transnational matters, it is important to ensure that Community-scale undertakings or Community-scale groups of undertakings can take decisions effectively and that information and consultation does not result in undue delays in the decision-taking process. It is also crucial that employees' representatives are provided with adequate time to form, coordinate and express their views on sometimes complex transnational matters, taking into account any agreed arrangements for linking information and consultation of the European Works Council and national employee representation bodies. To enable parties to reconcile those considerations in practice, the minimum requirements for the consultation process should remain sufficiently flexible, allowing them to schedule the process as appropriate in light of the respective circumstances and content of the consultation. Rather than imposing a rigid timeframe for employees' representatives to issue their opinion and for management to provide a reasoned response, it is appropriate to provide for the principle that consultation is to take place within a reasonable time, taking into account the degree of urgency of the matter. That principle enables the parties to expedite the consultation process in urgent situations. It should also be clarified that the requirement for management to provide a reasoned response prior to adopting a decision applies where the employees' representatives expressed their opinion within a reasonable time, with regard to all relevant circumstances, such as the complexity or significance of the matter, or management's interests in taking a decision promptly.

(20)The provisions of Directive 2009/38/EC on the role and protection of employees' representatives should be amended to increase clarity and accuracy, in particular with regard to the protection of the members of special negotiating bodies and the members of European Works Councils against retaliatory measures or dismissals relating to the exercise of their functions. Members of special negotiating bodies, members of European Works Councils, and employees' representatives in the framework of an information and consultation procedure, should enjoy, in the exercise of their functions, protection and guarantees equivalent to those provided for national employees' representatives by the national law or practice applicable in their country of employment.

(21)In order to avoid disputes, it should also be specified that central management bears the reasonable costs of training and related expenses of the members of the special negotiating body and of the members of the European Works Council, which are necessary for the exercise of their duties, where central management has been informed of those costs in advance.

(22)In certain Member States, rightsholders under Directive 2009/38/EC encounter difficulties in bringing legal action to enforce their rights. It is therefore necessary to strengthen Member States' obligations to ensure effective remedies

and access to justice and the supervision by the Commission of their compliance with those obligations. With regard to rightsholders under that Directive, including special negotiating bodies and European Works Councils, Member States should, in accordance with national law on legal standing or on the form of legal representation, guarantee access to judicial proceedings and, where relevant, administrative proceedings to enforce the rights under Directive 2009/38/EC. Moreover, it should be clarified that the relevant proceedings have to enable timely and effective enforcement. Where Member States impose mandatory pre-judicial out-of-court settlement procedures, it is important to ensure that such requirements neither prevent parties from fully exercising their right of access to the judicial system nor make it in practice impossible or excessively difficult for them to exercise their rights under Union law, with regard to any delays, effects on time limits, costs and other potential obstacles (6). It should therefore be clarified in Directive 2009/38/EC that, where Member States render access to judicial proceedings conditional upon the prior implementation of an alternative dispute resolution procedure, that procedure should not prejudice or limit the right of the parties concerned to bring judicial proceedings. Moreover, for the purposes of supervision by the Commission, Member States should be required to notify the Commission of the manner and circumstances in which rightsholders under Directive 2009/38/EC can bring judicial proceedings and, where relevant, administrative proceedings, in respect of their rights under that Directive.

(23)The Commission's 2018 evaluation of Directive 2009/38/EC showed that penalties applicable in the case of non-compliance with transnational information and consultation requirements are often not sufficiently effective, dissuasive or proportionate. Therefore, it is appropriate to lay down an obligation on the part of Member States to provide for effective, dissuasive and proportionate penalties. Financial penalties should be provided for in the case of non-compliance with the information and consultation procedures set out in Directive 2009/38/EC. Other forms of penalties could also be provided for. In order to be effective, dissuasive and proportionate, penalties should be determined taking into consideration the gravity, duration and consequences of non-compliance and whether such non-compliance is intentional or negligent. For the penalties to be dissuasive, the turnover of the undertaking or group concerned should be taken into account or the applicable penalties should have a similarly dissuasive nature.

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

(25)Undertakings with an agreement on the transnational information and consultation of employees concluded before 23 September 1996, that is to say prior to the date of application of Council Directive 94/45/EC (7), are exempted from the application of the obligations arising from Directive 2009/38/EC. The employee information and consultation bodies established under such agreements have been concluded and continue to operate outside the scope of Union law. Directive 2009/38/EC does not provide the employees in the exempted undertakings with the possibility to request an establishment of a European Works Council under that Directive. However, for reasons of legal clarity, equal treatment and effectiveness, employees and their representatives in all Community-scale undertakings or Community-scale groups of undertakings should, in principle, have the right to request the establishment of a European Works Council. Almost 30 years after a legislative framework setting minimum requirements for the transnational information and consultation of employees was established at Union level, those reasons prevail over the considerations of continuity for pre-existing agreements which initially motivated the exemption. That exemption should therefore be deleted, without prejudice to the legal status of such agreements, which continue to be governed by the applicable national rules. The initiation and conduct of negotiations for the establishment of European Works Councils in undertakings with such agreements should be subject to the procedure provided for in Directive 2009/38/EC, while the period after which the subsidiary requirements come into force

should be reduced from three to two years, in line with the period applicable to the adaptation of existing European Works Council agreements.

(26)Moreover, for the same considerations, the same minimum requirements should apply to all Community-scale undertakings with European Works Councils operating under Directive 2009/38/EC and those in which a European Works Council agreement was signed or revised between 5 June 2009 and 5 June 2011. Therefore, the exemption of the those undertakings from the application of Directive 2009/38/EC should also be deleted.

(27)European Works Councils operating on the basis of the subsidiary requirements set out in Annex I to Directive 2009/38/EC have the right to meet with central management once a year, to be informed and consulted on the progress of the business of the relevant Community-scale undertaking or Community-scale group of undertakings and its prospects. In order to strengthen the transnational information and consultation of those European Works Councils, it is appropriate to increase the number of such ordinary meetings in the subsidiary requirements to two meetings held in person.

(28)In addition, certain technical changes should be made to the subsidiary requirements set out in Annex I to Directive 2009/38/EC, to ensure consistency with the enacting terms.

(29)Therefore, it is appropriate to amend Directive 2009/38/EC to bring all eligible undertakings within its scope, clarify some of its key concepts, improve the transnational information and consultation process, and ensure effective redress and enforcement.

(30)Pursuant to Article 27 of the United Nations Convention on the Rights of Persons with Disabilities, persons with disabilities are to be able to exercise their labour and trade union rights on an equal basis with others. As the Union and the Member States are parties to that Convention, Directive 2009/38/EC and relevant national legislation are to be interpreted in accordance with that principle, for instance in relation to accessibility and reasonable accommodation for members of special negotiating bodies, members of European Works Councils, and employees' representatives in the framework of an information or consultation procedure, as well as the bearing of related costs by central management.

(31)Pursuant to Directives 2014/23/EU (8), 2014/24/EU (9) and 2014/25/EU (10) of the European Parliament and of the Council, Member States are to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of social and labour law established by Union law. The integration, as appropriate, of social sustainability criteria in the award criteria designed by contracting entities for identifying the most economically advantageous tenders can contribute to the effective implementation of the requirements under this Directive. However, this Directive does not create any additional obligation in relation to those Directives.

(32)When implementing Union law, Member States are to respect the rights set out in the Charter and to promote the application thereof in accordance with Article 51 of the Charter, including the right to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

(33)In order to give employees' representatives and central management in Community-scale undertakings or Community-scale groups of undertakings sufficient time to consider the revised minimum requirements and to prepare for their application, it is appropriate to defer by one year the application of the provisions adopted by Member States to comply with this Directive.

(34)It is possible that European Works Council agreements concluded under Directive 94/45/EC or 2009/38/EC before the transposition of this Directive, do not address the requirements for the content of those agreements as amended by this Directive. It is therefore appropriate to provide for transitional arrangements enabling the parties to such agreements to amend their agreements.

(35)Since the overall objective of this Directive, namely to ensure the effectiveness of the requirements of Directive 2009/38/EC regarding the information and consultation of employees of Community-scale undertakings and Community-scale groups of undertakings, cannot be sufficiently achieved by the Member States but can rather, by

reason of the inherently transnational nature and scale of those requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

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, 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 at least 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, of that group, or of any establishment of that undertaking or group, in more than one Member State; or

(b)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, of that group, or of any establishment of that undertaking or group, 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.

7. Member States may provide that this Directive shall not apply to merchant navy crews.

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;

(g)“consultation” means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management;’

(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.

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 and decisions 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.

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 (9).

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.

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 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), 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 joint or separate written request of at least 100 employees or their representatives in at least two undertakings or establishments situated in at least two different Member States.’2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

2.(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 a manner that strives to achieve a gender-balanced representation, whereby women and men each comprise at least 40 % of the members of the special negotiating body, and in proportion to the number of employees employed in each Member State by the Community-scale undertaking or the 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. If the objective of gender balance is not achieved, the special negotiating body shall explain, in writing, the reasons to the workers. Failure to achieve the objective of gender balance shall not prevent the creation of a special negotiating body.’

(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, 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 central management so as to enable the special negotiating body to carry out its task in an appropriate manner. Those expenses shall include

reasonable costs of experts, including of legal experts, insofar as necessary for that purpose. Such 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

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:

(i)the possible use and participation in meetings of experts, including the possible use and participation in meetings of legal experts and representatives of recognised Community-level trade union organisations, to assist the European Works Council in the discharge of its functions,
(ii)the provision of relevant training to the members of the European Works Council, without prejudice to 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.'

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.

‘2a. 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 to achieve, without prejudice to the national law and practice on electing or appointing employees’ representatives, the objective of gender balance, whereby women and men each comprise at least 40 % of the members of the European Works Council and, where applicable, at least 40 % of the members of the select committee. If the objective of gender balance is not achieved, the European Works Council shall explain, in writing, the reasons to the workers. Failure to achieve the objective of gender balance shall not prevent the creation of a European Works Council or a select committee.’

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 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 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 disclose information which central management has expressly provided to them in confidence, in the legitimate interest of the undertaking, in accordance with objective criteria laid down by the Member State. In addition, central management may set up appropriate transmission and storage arrangements to help safeguard the confidentiality of information.

2. When central management provides information in confidence pursuant to paragraph 1, it shall inform the members of the special negotiating bodies, the members of the European Works Councils, or the employees’ representatives in the framework of an information and consultation procedure, of the reasons justifying confidentiality and shall determine the duration of the confidentiality obligation where possible.

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

(Article 8a

Non-transmission of information

1. Member States shall provide, in specific cases and under the conditions and limits laid down by national legislation, that central management situated in their territory is not obliged to transmit information to 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, when the nature of that information is such that, in accordance with objective criteria laid down by the Member State, the transmission of that information 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 ground referred to in paragraph 1, it shall inform the members of the special negotiating bodies, members of the European Works Councils, or employees' representatives in the framework of an information and consultation procedure, of the reasons justifying the non-transmission of information.'

Article 9

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

1. 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 central management, and employees' representatives in the framework of an information and consultation procedure for workers.

2. Information on transnational matters shall be provided 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. The provision of such information shall also take into account any arrangements pursuant to Article 6(2), point (c).

3. Consultation shall take place at such time, in such fashion and with such content as enables employees' representatives to express their opinion prior to the adoption of the decision, on the basis of the information provided in accordance with paragraph 2, without prejudice to the responsibilities of 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 central management or any more appropriate level of management prior to the adoption of the decision on the measures in question, provided that the employees' representatives have expressed their opinion within a reasonable time in accordance with this paragraph.

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 meetings with 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 national law or 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 central management, provided that 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 the national provisions adopted pursuant to this Directive. In particular, they shall ensure that:

(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.

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

For the purposes of point (b), when determining penalties, Member States shall take into consideration the gravity, duration and consequences of the failure to comply, and whether the failure to comply is intentional or negligent. In the case of financial penalties, they shall also take into account the annual turnover of the undertaking or group concerned, or ensure that the applicable penalties have a similarly dissuasive nature.'

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

The duration of the proceedings referred to in the first subparagraph shall allow for 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 and, where relevant, administrative proceedings for special negotiating bodies, European Work Councils or, on their behalf, their members or representatives. Member States shall provide for the reasonable costs of legal representation and participation in such proceedings to be borne by central management or shall take other, equivalent measures to avoid any de facto restriction of access to such proceedings on the grounds of lack of financial resources.

5. Where Member States render access to judicial proceedings conditional upon the prior implementation of an alternative dispute resolution procedure, recourse to such a procedure shall not prejudice or limit the right of the parties concerned to bring judicial proceedings.'

6. Each Member State may lay down particular provisions for 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 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, 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.

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 14a

Transitional provisions

1. Where, after 1 January 2028, a European Works Council agreement concluded before 2 January 2029 in accordance with Articles 5 and 6 of Directive 94/45/EC or with Articles 5 and 6 of this Directive does not address, as a consequence of the amendments entered into force on 31 December 2025, one or several of the elements and requirements of Article 6 of this Directive, 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 situated in at least two different Member States, initiate negotiations to adapt that agreement so as to address that or those elements and requirements of Article 6 of this Directive. 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 of this Directive that were inserted on 31 December 2025.

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 request of employees or their representatives or from the date of initiation of the negotiations by the European Works Council or by 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 of this Directive are initiated in order to conclude an agreement pursuant to 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, of this Directive shall be reduced to two years. The initiation of negotiations does not affect the terms of the existing agreements in force.’

(14) Annex I is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 1 January 2028, 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 2 January 2029. However, they shall apply the provisions transposing Article 1, points (12) and (13), insofar as they relate to Article 14 and Article 14a(1), (2) and (3), from 2 January 2028.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The method of making such a reference shall be laid down by Member States.

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.

Member States shall notify the Commission by 1 January 2028 of the means by which special negotiating bodies, European Works Councils and employees' representatives can, pursuant to Article 11(2) to (5) of Directive 2009/38/EC, as amended, bring judicial proceedings and, where relevant, administrative proceedings, in respect of all the rights under that Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg, 26 November 2025.

For the European Parliament The President R. METSOLA

For the Council The President M. BJERRE

ANNEX I

SUBSIDIARY REQUIREMENTS

(referred to in Article 7)

1. 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, the anticipation of change and the management of restructuring processes including those linked to the green and digital transitions, substantial changes concerning working conditions, in particular 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 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 of the decision on the measures in question, provided their opinion was expressed within a reasonable time;'

(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.

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 achieved, the European Works Council shall explain, in writing, the reasons to the workers.';

The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice;

(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;

(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.

It shall adopt its own rules of procedure;

(e)The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council;

(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.

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'.

2.The European Works Council shall have the right to meet in person with central management at least twice a year to be informed and consulted, on the basis of a report drawn up by 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. In exceptional cases, digital means of communication and coordination may be used to hold such ordinary meetings, when appropriate and agreed upon and while ensuring meaningful information and consultation.';

3.3.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, 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 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 meeting shall not affect the prerogatives of the central management.

'The information and consultation procedures provided for in the circumstances referred to in this point shall be carried out without prejudice to Article 1(2) and Articles 8 and 8a.';

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.

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 Community-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 central management in an advisory capacity. Central management shall be informed thereof in advance.';

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

   Central management 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 borne by 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 the principles set out in this point, the Member States may lay down budgetary rules regarding the operation of the European Works Council'.