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REGULATORY SCRUTINY BOARD OPINION

Initiative on the European Works Council Directive

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Brussels,
RSB

Opinion

Title: Impact assessment / Initiative on the European Works Council Directive

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

European Works Councils (EWCs) are transnational information and consultation bodies set up within multinational companies, at the initiative of central management or on request of at least 100 employees or their representatives. EWCs can issue a non-binding opinion on management's proposed measures concerning transnational matters.

The 2018 Commission evaluation of Directive 2009/38/EC on EWCs highlighted persisting issues, including the rate of new EWCs, limits to the effectiveness of the consultation process, weaknesses in the means for EWCs to enforce their rights and significant differences across Member States in the type and level of sanctions. The evaluation was followed up with non-legislative action.

A European Parliament Article 225 TFEU Resolution has led to this initiative to amend the Directive to strengthen EWCs.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report is not sufficiently clear on the initiative's scope, objectives and coherence with the subsidiarity principle, including full respect of the prerogatives of social partners and the competences of Member States.**
- (2) The report does not sufficiently assess and quantify the total costs of options. It does not credibly substantiate why the impacts on cost and international**

This opinion concerns a draft impact assessment which may differ from the final version.

competitiveness are negligible. The report is unclear on how the proposed penalties will impact the take-up of EWCs.

- (3) **The report does not sufficiently bring out the available policy choices. It does not consider alternative packages of policy measures, including different combinations of legislative and non-legislative measures.**
- (4) **The proportionality of the preferred option package is not adequately justified, including in terms of penalties.**

(C) What to improve

(1) The report should assess the effectiveness of the voluntary measures in force and clearly identify the remaining problems that this initiative seeks to address. It should explain the role, prerogatives, and interplay between national laws, national workers' representative bodies and the EWCs in the social dialogue and consultation on transnational matters.

(2) The report should be clear, upfront, on the nature and limited scope of the proposed measures. It should set out clearly, with examples, the existing process for the creation of EWCs, the relationship with voluntary agreements and exactly what will change under the initiative. The problem definition should be underpinned with solid evidence on what has worked/ not worked so far. The acknowledgement of a lack of evidence should not be presented as proof of the existence of such evidence. The report should clarify why the Commission has not made use more frequently of infringement procedures.

(3) The aims of the initiative should be presented much more clearly upfront. The report should make clear from the outset that level playing field issues, an increase in the uptake of EWCs or a change of the procedural character of the Directive do not motivate the initiative. The lack of a level playing field should not be used as a justification in the selection of the preferred option, given that it is neither identified as a problem nor defined as a specific objective. The report should ensure full coherence and consistency on this point.

(4) Given the identified problem of enforcement, the report should explore all relevant options to address it beside the choice of the global turnover as a basis for imposing penalties. It should explain how option 4c (maximum intervention) is plausible and realistic and how fines levied on a percentage of global turnover as part of the preferred option are justified. It should explain the risk of uncertainty and fragmentation given that the determination of the level of such fines would be left to individual Member States. It should explain to what extent the increased administrative burden and risk of penalties levied as a proportion of global turnover will affect the take-up of EWCs.

(5) The report should better substantiate the proportionality of the proposed measure to end exemptions of voluntary agreements, given that they are considered by the management and EWCs representatives as overall effective. It should explore whether soft law measures such as a Recommendation on penalties might prove more effective than a binding but unquantified reference to a percentage of global turnover.

(6) The report should clarify whether it had considered alternative packages of measures, including different combinations of legislative and non-legislative measures. If not, the report should justify why such alternative packages were considered as not relevant for decision taking. The report should explain to what extent the preferred option package is

overall proportionate given the uncertainty on the magnitude of the problems and the ambition of some of the measures.

(7) The report should more thoroughly assess costs and benefits, including recurrent costs of EWCs functioning. The analysis should take into account the voluntary character of EWCs when assessing the estimated changes in the take up rate of EWCs and account for any uncertainties through a sensitivity analysis. On that basis, it should provide the range of total cost estimates (including in Annex 3 and when discussing administrative and adjustment costs under the OI:OO approach).

(8) The report should better substantiate the claim of a zero impact on competitiveness. It should revisit the argument of a negligible impact on international competitiveness, given that most employer organisations consistently expressed negative views on the impacts of option packages 3 and 4 on companies' competitiveness and the uncertainty of future litigation (incidence of legal actions and financial penalties).

(9) The report should acknowledge upfront the considerable data limitations and uncertainties and explain, in the main text, their impact on the robustness of the analysis.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Legislative initiative on the Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) and follow up to the Article 225 TFEU Resolution of the European Parliament of 2 February 2023 with recommendations to the Commission on 'Revision of European Works Councils Directive' (Directive 2009/38/EC)
Reference number	PLAN/2023/334
Submitted to RSB on	25 October 2023
Date of RSB meeting	29 November 2023

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board’s recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Direct benefits		
Market efficiency from better level playing field regarding transnational information and consultation rights	Not quantifiable, expected to be negligible.	<p>This benefit is relevant for the currently 3970 Union-scale undertakings¹. By removing the exemptions from the scope of the Directive, undertakings would have a less fragmented, simpler legislative framework.</p> <p>On the employees’ side, it would primarily be relevant for:</p> <ul style="list-style-type: none"> - the ca. 5.4 million EU/EEA employees of the 323 currently exempted undertakings with ‘voluntary agreements’;² - the ca. 465.000 employees of undertakings with EWC agreements that currently remain subject to the 1994 EWC Directive (28).³
More (cost-)efficient and expedient process for negotiating and renegotiating EWC agreements	Not quantifiable and marginal savings on undertakings’ cost of setting up a new EWC agreement or renegotiating existing EWC agreements.	<p>By specifying the issues to be agreed by parties with respect to EWCs’ resources, and by requiring coverage of special negotiating bodies’ reasonable legal costs, some disputes and potential legal actions would be pre-empted. As an accompanying measure, the preferred option would clarify the wording of the deadline for initiating negotiations, to improve legal certainty and prevent delays in the setting-up process. In their combination these measures could generate some cost savings for undertakings.</p> <p>Cost savings regarding the setting up a new EWC benefit the ca. 20 undertakings establishing a new EWC per year. The average overall costs of setting up one new EWC are estimated at ca. EUR 148 000, whereas the potential savings on these costs due to the preferred policy option cannot be quantified.</p> <p>Cost saving regarding the renegotiation of existing EWC agreements benefit the unknown share of the 678 undertakings with an EWC⁴ which may face renegotiations involving an SNB. Potential savings on these costs due to the preferred policy option cannot be quantified. Nor could be reliably quantified existing average costs of renegotiations. Evidence suggests that a re-negotiation process is shorter than the process for setting up a new EWC but may require multiple meetings in complex cases. Based on the available evidence, it was possible to</p>

¹ Based on past trends, the number of Union-scale undertakings is expected to increase at a rate of close to 4% per year over the baseline period, and the number of their employees at a rate of ca. 3,4%, cf. ICF(2023).

² Estimated average number of EU employees per undertakings with an EWC is 16.600. Cf. Annex 4.

³ See footnote 164 above.

⁴ EWCs or transnational information and consultation bodies exist in 1.001 undertakings. Of those, 323 are ‘voluntary agreements’ concluded before the first EWC Directive entered into application. The number of EWCs is expected to increase at a rate of 9/year, taking into account the conclusion of an estimated 20 new EWC agreements per year and the termination of 11 such agreements.

		monetise certain costs linked to meetings (ca. EUR 18 400 per meeting ⁵) between management and EWC representatives for the renegotiation of existing agreements. This partial monetisation can provide an indication of the order of magnitude of the overall costs related to renegotiations, bearing in mind that it should not be taken as an approximation of those overall costs.
Clearer and more comprehensive EWC agreements	Not quantifiable.	<p>This benefit is relevant for the currently 678 undertakings with an EWC and their ca. 11.3 million employees⁶, as well as parties to future EWC agreements, including potentially the parties to the currently 323 ‘voluntary agreements’.</p> <p>By specifying the issues to be agreed by parties with respect to EWCs’ resources, and by requiring coverage of special negotiating bodies’ reasonable legal costs, the risk of gaps and legal uncertainty would be reduced.</p>
Improved gender balance on EWCs	Not quantifiable.	Given that in ca. 60% of existing EWCs women are underrepresented, the more balanced gender representation of interests would contribute to more equitable management decisions and improved employment conditions.
Improved social dialogue in Union-scale undertakings	Not quantifiable.	<p>This benefit is potentially relevant for the 3970 Union-scale undertakings and their ca. 31.7 million EU/EEA employees and directly relevant for those that have set up an EWC (678 undertakings and their ca. 11.3 million employees).</p> <p>Employees of all Union-scale undertakings without an EWC (including those with ‘voluntary agreements’) would be given the equal right to request the establishment of an EWC, or to rely on the minimum requirements of the revised Directive where an EWC already exists.</p> <p>For Union-scale undertakings with an EWC, the requirement for a reasoned response to EWCs’ opinions prior to the adoption of a decision on transnational matters is expected to contribute significantly to ensuring a genuine dialogue between management and EWCs where the respective EWC agreement does not yet contain such a requirement. The preferred option is likely to have a positive effect on the quality of transnational social dialogue also by increasing legal clarity and access to resources and ensuring a more effective deterrence of non-compliance (see subsequent rows).</p> <p>For undertakings with EWCs operating on the basis of subsidiary requirements (20), the requirement of at least 2 plenary meetings per year would lead to a more regular information and consultation on transnational matters, which would positively impact the quality of the social dialogue. There would also be an unquantifiable spill-over effect on undertakings with EWCs operating on the basis of agreements (of which ca. 50 % currently require only one annual plenary meeting).</p>
Improved legal certainty	Not quantifiable	This benefit is potentially relevant for the 3970 Union-scale undertakings and their ca. 31.7 million EU/EEA employees and directly relevant for those that have set up an EWC (678 undertakings and their 11.3 million employees)

⁵ See Annex 4 ‘Analytical methods’ (section 4.4).

⁶ Estimated average number of EU employees per undertakings with an EWC is 16.600. Cf. Annex 4.

		By clarifying the concept of ‘transnational matters’, the requirement to initiate negotiations within 6 months following a request to establish a new EWC, the issues to be addressed in EWC agreements, and the conditions for imposing confidentiality or withholding information from EWCs, the preferred option is expected to increase legal certainty significantly. Consequently, the risk of disputes, delays and costs is likely to decrease.
More effective enforcement through sanctions and remedies (access to justice)	Not quantifiable.	Generally, the preferred option would promote effective compliance monitoring by the Commission, require proportionate and dissuasive sanctions in the case of infringements of rights under the Directive (including by means of financial penalties based on undertakings’ turnover, where applicable), and access to justice with respect to all of those rights, in accordance with Article 47 CFR. This benefit is relevant for the estimated 4.3 million EU/EEA employees who currently do not have an effective remedy in the case of non-compliance with their rights under the Directive. The 5.4 million employees of currently exempted undertakings with ‘voluntary agreements’ (323) would benefit from justiciability of minimum information and consultation rights under EU law, where such agreements are replaced by EWC agreements.
Marginally increased revenue for Member States	Not quantifiable and negligible.	The requirement to consider undertakings’ turnover when determining financial penalties is likely to lead to higher penalties. While financial penalties are assumed to accrue to Member States’ budget, the increase in revenue is expected to be negligible due to the low incidence of such penalties.
Indirect benefits		
Indirect economic benefits of improved transnational social dialogue	Not quantifiable	Improved transnational social dialogue can deliver indirect benefits for undertakings with an EWC: <ul style="list-style-type: none"> - better informed strategic decision-making and better-targeted measures accompanying structural change; - reinforced mutual trust between management and the workforce.
Broader economic benefits of increased gender balance on EWCs	Not quantifiable	By promoting gender balance in EWCs, the preferred option is expected to contribute to delivering broader economic benefits such as a higher level of employment and productivity.

(1) Estimates are gross values relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate in the comments column which stakeholder group is the main recipient of the benefit; (3) For reductions in regulatory costs, please describe in the comments column the details as to how the saving arises (e.g. reductions in adjustment costs, administrative costs, regulatory charges, enforcement costs, etc.);

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Negotiation of new EWC agreements	Direct adjustment costs	N/A	N/A.	Ca. € 148 000 (=0.0006% of average global turnover) per negotiation of a	Incremental increase in the costs of operating an EWC (currently	N/A	N/A

				new EWC agreement (costs incurred by an uncertain share of the currently 323 exempted undertakings with 'voluntary agreements')	on average ca. € 300 000 per year) due to better coverage of training costs, legal costs and experts' fees. € 42 000 for an additional annual plenary meeting (costs incurred by the 20 undertakings with an EWC based on subsidiary requirements)		
Renegotiating EWC agreements	Direct adjustment costs	N/A	N/A	Average costs of renegotiation could not be reliably quantified. ⁷ Evidence suggests that a re-negotiation process is overall shorter than the process for setting up a new EWC but may entail several meetings in more complex cases. The renegotiation costs would be incurred by an – uncertain – share of the currently 678 undertakings with an EWC to adapt to the revised requirements of the Directive.	N/A	N/A	N/A
Covering reasonable	Direct adjustment costs	N/A	N/A	N/A	Possible marginal	N/A	N/A

⁷ Based on the available evidence, it was possible to monetise certain costs linked to meetings (ca. EUR 18 400 per meeting) between management and EWC representatives for the renegotiation of existing agreements. This partial monetisation can provide an indication of the order of magnitude of the overall costs related to renegotiations, bearing in mind that it should not be taken as an approximation of those overall costs (see Annex 4 section 4.4.).

legal costs of special negotiating bodies					increase in the costs of negotiating or renegotiating EWC agreements with an SNB, see above for estimates of the respective estimates of average overall costs. EWC agreements are renegotiated on average every 5 years, but not all renegotiations involve an SNB.		
Potentially more extensive coverage of EWCs' expenses for legal and expert advice and training; reasoned response to EWC opinions	Direct adjustment costs	N/A	N/A	N/A	Possible incremental increase in the costs of running an EWC for certain undertakings, depending on the negotiated content of the relevant EWC agreements. The average overall costs of running an EWC are estimated at ca. EUR 300 000 / year.	N/A	N/A
One additional plenary meeting per year	Direct adjustment costs	N/A	N/A	N/A	Ca. € 42 000 for an additional annual plenary meeting (applies for 20 undertakings with an EWC based on subsidiary requirements)	N/A	N/A
Notification of information on judicial proceedings available to enforce min. rights	Direct administrative costs	N/A	N/A	N/A	N/A	Negligible, because the notification obligation could be discharged as a part of the standard process of notifying	N/A

of the Directive						transposition measures via the available IT systems	
	Direct regulatory fees and charges	N/A	N/A	N/A	N/A	N/A	N/A
Payment of higher financial penalties	Direct enforcement costs	N/A	N/A	N/A	Higher financial penalties for infringements, but no specific thresholds set at EU level. Such costs would apply only to sanctioned undertakings. Their overall scale would be negligible, given the low incidence of financial penalties and legal actions.	N/A	N/A (Evidence remains inconclusive as to whether the preferred option would lead to a higher incidence of legal procedures, and thereby possible higher adjudication costs for Member States. Even if a small increase should materialise, costs are expected to be negligible given the very low baseline.)
	Indirect costs	N/A	N/A	N/A	N/A	N/A	N/A

(1) Estimates (gross values) to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (adjustment costs, administrative costs, regulatory charges, enforcement costs, indirect costs;).

III. Application of the 'one in, one out' approach – Preferred option(s)			
[M€]	One-off (annualised total net present value over the relevant period)	Recurrent (nominal values per year)	Total
Businesses			
New administrative burdens (INs)	N/A	N/A	N/A
Removed administrative burdens (OUTs)	N/A	N/A	N/A
<i>Net administrative burdens*</i>	N/A	N/A	N/A

Adjustment costs**	<p>Ca. € 148 000 (=0.0006% of average global turnover) per negotiation of a new EWC agreement (costs incurred by an uncertain share of the currently 323 exempted undertakings with ‘voluntary agreements’)</p> <p>Costs incurred during renegotiation of an EWC agreement. Average costs of renegotiation could not be reliably quantified.⁸ Evidence suggests that a re-negotiation process is overall shorter than the process for setting up a new EWC but may entail several meetings in more complex cases. The renegotiation costs would be incurred by an – uncertain – share of the currently 678 undertakings with an EWC to adapt to the revised requirements of the Directive.</p>	<p>Incremental increase in the costs of operating an EWC (currently on average ca. € 300 000 per year) due to better coverage of training costs, legal costs and experts’ fees. The scale depends on the results of autonomous negotiations between parties so cannot be estimated</p> <p>€ 42 000 for an additional annual plenary meeting (costs incurred by the 20 undertakings with an EWC based on subsidiary requirements)</p>	
Citizens			
New administrative burdens (INs)	N/A	N/A	N/A
Removed administrative burdens (OUTs)	N/A	N/A	N/A
<i>Net administrative burdens*</i>	N/A	N/A	N/A
Adjustment costs**	N/A	N/A	
Total administrative burdens***	N/A	N/A	N/A

(*) *Net administrative burdens = INs – OUTs;*

(**) *Adjustment costs falling under the scope of the OIOO approach are the same as reported in Table 2 above. Non-annualised values;*

(***) *Total administrative burdens = Net administrative burdens for businesses + net administrative burdens for citizens*

⁸ See footnote above.