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IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

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

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Glossary

Term or acronym	Meaning or definition
Adaptation procedure	A procedure for adapting the existing EWC agreement, where the structure of the Union-scale undertaking or the group of undertaking changes significantly. Employees or the management can launch this procedure, unless the agreement already contains provisions to that effect (Article 13 of the Directive).
Article 14 agreement	EWC agreements concluded or revised during the transition period of the Directive (June 2009 - June 2011). The Directive exempts from its scope Union-scale undertakings with these agreements. The national law applicable when the agreement was signed or revised continues to apply to them (Article 14(1)(b) of the Directive).
Central management	Central management of the Union-scale undertaking or, in the case of a Union-scale group of undertakings, of the controlling undertaking (Article 2(1)(e) of the Directive).
CFR	Charter of Fundamental Rights of the European Union
Consultation	Consultation of EWCs is defined by the Directive as "establishment of dialogue and exchange of views between employees' representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings" (Article 2(1)(g)). The consultation should not slow down the decision-making process in undertakings (recital 22), it should be useful in the decision-making process (recital 23) and the EWC opinions should be without prejudice to the competence of the central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and practice (recital 37).
Directive	European Works Councils Directive 2009/38/EC ('the Directive') lays down rules on establishment and functioning of European Works Councils (EWCs) and of information and consultation procedures (ICPs). It is a recast of Council Directive 94/45/EC ('the 1994 Directive').

Employees representatives	Employees' representatives provided for by national law and/or practice (Article 2(1)(d) of the Directive).
Enforcement provisions	Administrative or judicial procedures defined in national laws for enforcing right s and obligations under the Directive. Member States must provide for 'appropriate measures in the event of failure to comply with this Directive' and to ensure that 'adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced' (Article 11(2)). Recital 36 clarifies that '[i]n accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive.'
European Works Council ('EWC')	Bodies of EU-based employee representatives established in a Union-scale undertaking or groups of undertakings, with the purpose of being informed and consulted by the management on transnational matters.
European Works Council agreement ('EWC agreement')	An agreement concluded between the central management and the special negotiating body in accordance with Article 6(2) of the Directive. The agreement determines detailed arrangements for information and consultation of employees on transnational matters.
Exempted undertakings	The Directive exempts from its scope Union-scale undertakings or Union-scale groups of undertakings with 'voluntary agreements' (Art. 14 (1) (a)) or with 'Article 14 agreements' (Art.14 (1)(b)). (see in this Glossary 'Article 14 agreement', 'voluntary agreement')
Information	Information of EWCs is defined in the Directive as "transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings" (Article 2(1)(f)).
Information and consultation procedure (ICP)	A procedure established in writing by the central management and the special negotiating body in accordance with Article 1(2) and Article 6(3) of the Directive. It must stipulate the method of consultation. Information should relate to transnational matters which significantly affect workers' interests.
Pillar	European Pillar of Social Rights

Special Negotiating Body ('SNB')	Body composed of employees representatives of the Union-scale undertaking, established to negotiate with the central management the setting-up of a European Works Council (EWC) or a procedure for informing and consulting (ICP) employees on transnational matters (Article 5(2) of the Directive).
Subsidiary requirements	Subsidiary requirements are procedural rules for consultation, composition, operation and resources of EWCs, where the management has refused to commence negotiations within six months of the request, or where the SNB and the central management so decide or were unable to conclude an EWC agreement or an ICP. (Article 7(1), in conjunction with Annex I).
Transnational matters	Matters are to be considered transnational where they concern the Union-scale undertaking as a whole, or at least two undertakings or establishments of the company situated in two different Member States (Article 1(4) of the Directive). Corresponding recitals 15 and 16 clarify, in particular, that the competence and scope of action of a EWC must be distinct from that of national representative bodies and that the transnational matter should be determined by taking into account the scope of the potential effects and the level of management and representation involved.[1]
Union-scale undertaking	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 (Article 2(1)(a) of the Directive).
Union-scale group of undertakings	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. (Article 2(1)(c) of the Directive)
Voluntary agreement	Also called 'pre-Directive agreement', a voluntary agreement is an agreement covering the entire workforce of the Union-scale undertaking or Union-scale group of undertakings, which provides for the transnational information and consultation of employees, and which was concluded for the first time before the Directive 1994 entered into application. The Directive excludes from its scope Union-scale undertakings with such agreements (Article 14(1)(a)).

[1] Recital 16 further clarifies that "'…For this purpose, matters that concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States".

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Workers' right to information and consultation within the undertaking is laid down in the **EU Charter of Fundamental Rights** (Article 27). The **Treaty on the Functioning of the European Union** (TFEU) promotes social dialogue between management and labour (Article 151) and recognises the role of social partners (Article 152).

In the **ongoing transformation of the world of work** driven by environmental, economic and social sustainability, a **meaningful involvement of workers at all levels** and their representatives as regards the anticipation and management of change can help diminish job losses, maintain employability, improve working conditions, enhance competitiveness and ease effects on social welfare systems and related adjustment costs.[2] Empirical research in the fields of industrial relations and of applied psychology has shown that the involvement of workers through information and consultation at company level can have positive impacts not only on workers' well-being, but also on labour productivity as well as on firms' profitability.[3]

In accordance with Article 153 TFEU, **the EU shall support and complement the activities of Member States in the field of information and consultation of workers**. A comprehensive set of directives on the information and consultation of workers establishes rules to protect their rights notably in restructuring processes. EWCs are an important piece of that policy framework. They are employee representation bodies for information and consultation with management of multinational undertakings on transnational matters, established on a voluntary basis in accordance with the European Works Councils Directive ("Directive"). Through them, the employees of undertakings or groups of undertakings operating in two or more Member States are to be informed and consulted on transnational matters affecting them. (For a brief description of the functioning of EWCs see the next section. For an overview of the development and of the content of the Directive see Annex 6.)

EWCs and transnational information and consultation procedures complement the information and consultation of employees at national level pursuant, in particular, to Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, Directive 2001/23/EC on transfers of undertakings, and Directive 98/59/EC on collective redundancies (see Annex 7). National legislation on information and consultation of employees derives from these EU Directives. This initiative does not affect them.

This initiative concerns Union-scale undertakings[4] and their employees in the Member States. Principle 8 of the European Pillar of Social Rights states that "workers or their representatives have the right to be informed and consulted in good time on matters relevant to them". The 2021 Commission European Pillar of Social Rights Action Plan underlines, amongst others, that information, consultation and participation of workers and their representatives at different levels

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[2] Benefits of well-developed industrial relations and workers' involvement during early stages of restructuring were observed in several Eurofound studies (see Welz C. et al. (Eurofound) (2014) Impact of the crisis on industrial relations and working conditions in Europe; Demetriades, S. et al. (Eurofound) (2016) Win-win arrangements: innovative measures through social dialogue at company level) and in the context of the Covid-19 pandemic (see European Parliament (2021) European Works Councils. Briefing – European Added Value Assessment, p. 9.).

[3] See, for example, Hübler O. (2015). Do works councils raise or lower firm productivity? IZA World of Labor; Grund C. & Schmitt A. (2011). Works Councils, Wages, and Job Satisfaction. Applied Economics, 45; Mueller S., & Neuschaeffer G. (2021). Worker Participation in Decision-making, Worker Sorting, and Firm Performance. Industrial Relations: A Journal of Economy and Society, 60(4), 436–478.

[4] Any undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States (Article 2(1)(a) of the Directive).

play an important role in shaping economic transitions and fostering workplace innovation, in particular with a view to the ongoing twin transitions and the changes in the world of work.[5]

As a part of a broader campaign for democracy in work places, the Parliament has in its 2021 resolution on 'democracy at work: European framework for employees' participation rights and the revision of the European Works Council Directive' and, in particular, in its 2023 resolution 'with recommendations to the Commission on revision of the European Works Councils Directive', called to strengthen the role and capacity of EWCs as information and bodies in Union-scale undertakings. **European worker organisations**[6] and the **European Economic and Social Committee**[7] have made similar calls over the past years.

In the State of the Union 2023 Letter of Intent President von der Leyen announced that the **initiative on rules on EWCs is one of the key priorities of the Commission for 2024**, also in the view of the recommendations of the Parliament, and of the political commitment expressed in the President's Political Guidelines **to respond to the resolutions based on Article 225 TFEU with a legislative proposal**, in full respect of proportionality, subsidiarity and better law-making principles.
Based on Article 153 TFEU, the legislative initiative on revision of the Directive is subject to **consultation of European social partners**. The two-stage consultation took place between 11 April to 25 May 2023 (first stage) and between 26 July and 4 October (second stage). For a synopsis of social partners' responses in the two-stage consultation, see Annex 2.

This impact assessment considers results of dedicated evidence gathering,[8] the 2018 evaluation[9] as well as other expert analysis and studies described in Annex 1.

The initiative is relevant with regard to Sustainable Development Goal ('SDG') 8, as transnational information and consultation of employees can contribute to decent work. It can also promote SDG 5 by contributing to a balanced gender representation on EWCs.

2. PROBLEM DEFINITION

2.1. Content and objective of the Directive

The Directive aims to ensure adequate conditions for employees' information and consultation to enable structured dialogue between the central management and employees on transnational matters. It is procedural in nature. Its history and content are set out in Annex 6. **The legal framework encourages tailor-made solutions and arrangements,** defined in agreements between the central management and the employee representatives as a result of negotiations. Implementation of these arrangements should ensure that employees can exercise their right to

[5] Principle 8 of the European Pillar of Social Rights states that "workers or their representatives have the right to be informed and consulted in good time on matters relevant to them".
[6] ETUC Position paper (2017), For a modern EWC Directive in the Digital Era.
[7] Opinion on the package on European company law (2018); Exploratory opinion 'Industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society' (2020); Opinion 'No Green Deal without a Social Deal' (2021); Exploratory opinion on Democracy at Work (2022).
[8] ICF(2023) Study exploring issues and possible solutions in relation to the Recast Directive 2009/38/EC on European Works Council. Available .online HYPERLINK "https://op.europa.eu/en/web/general-publications/publications"
[9] COM(2018) 292 final (Available online) and SWD(2018) 187 final (Available online).

information and consultation properly while also enabling the undertakings to take decisions effectively.[10]

What are EWCs and how do they function?

EWCs are ***established*** *in Union-scale undertakings*[11] ***upon a request*** *of at least 100 employees or their representatives* ***in at least two undertakings or establishments in at least two different Member States*** *(e.g., Sweden and Denmark),* ***or when initiated by the central management****. They can be set up in accordance with the Directive in Union-scale undertakings or groups for undertaking, regardless of whether their headquarters are in a Member State or a third country (see Annex 4 for distribution of EWCs per country of headquarters). If headquarters of the company are located in a third country (e.g., the US), a deemed central management or a central management representative that is located in a Member State (e.g., Germany) takes on the responsibility of the central management for the purpose of the Directive.*

The Directive sets out a compulsory ***negotiation procedure for establishing an EWC****. This procedure entails the setting-up of a special negotiating body*[12]*, composed of employees representatives, which negotiates with the central management* ***an agreement*** *on the detailed arrangements for composition and operation of an EWC or of an information consultation procedure (ICP). The Directive sets minimum requirements of the content of EWC agreements or ICPs, but the specific modalities of their functioning are to be defined by the special negotiating body and the central management in the agreement. Where parties are not able to reach an agreement within a time limit specified in the Directive,* ***subsidiary requirements*** *set out in Annex I to the Directive apply and created an EWC based on these provisions.*[13] *A vast majority of EWCs are governed by an agreement signed between the parties.*[14] *The Directive defines minimum standards with regard to confidentiality (Article 8), operation (Article 9) and role and protection of employees' representatives (Article 10), that apply in relation to all EWCs and ICPs, regardless of whether they are specified in an agreement. Article 10 specifies that the members of an EWC must have the means required to apply the rights arising from the Directive to represent collectively the interests of the employees.*

EWCs ***represent the employees of the Union-scale undertaking at EU level****. The scope of information and consultation of EWCs and ICPs within the scope of the Directive is* ***limited to transnational issues****.*[15] *The competence and scope of action of EWCs is thus distinct from that of national representatives bodies. Unlike national representative bodies, EWCs are transnational employee representation bodies,* ***composed of members*** *representing the undertakings and establishments* ***situated in the different Member States****. Information and consultation of EWCs is obligatory and must be conducted* ***by the central management or any more appropriate level of***

[10] Article 1.

[11] Any undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States (Article 2(1)(a) of the Directive).

[12] Special negotiating body is a temporary body of employees' representatives established in accordance with Article 5(2) of the Directive. In accordance with the principle of subsidiarity, Member States are free to determine the method to be used for the election or appointment of the members of the employees' representatives.

[13] Article 7. Annex I to the Directive lays down the rules applicable *in the absence of agreement between the management and employees representatives* concerning an EWC's establishment, composition and competences.

[14] Only around 20 EWCs are governed by subsidiary requirements at present. See Section 3.1 of Annex 4.

[15] Article 1(3) and 1(4), in conjunction with recitals 15 and 16.

the management *of the Union-scale undertaking* ***without prejudice to information and consultation procedures at national level*** *in accordance with national law*[16] *and/or practice.*

EWC members communicate with local-level employee representatives and inform them about the content and outcome of the consultation. Information provided to the EWC relates to transnational issues.

The requirements of the Directive start applying to the undertakings as a result of a request by at least 100 employees or where the management has initiated such process voluntarily. There is **no general obligation for all Union-scale undertakings to set-up an EWC**. This approach is an expression of the principle of social partner autonomy, which is a basic tenet of the Directive seen by stakeholders as a key feature of effective social dialogue at company level. This initiative does not seek to amend the voluntary principle but focuses on making transnational information and consultation more effective in companies where employees have exercised their right to request the establishment of an EWC. This approach is also consistent with the complementary nature of EWCs to the obligatory information and consultation at national/local level, which remains the primary form of the involvement of employees affected by the implementation of management decisions and of information and consultation at company level (irrespective of this initiative).

2.2.Evaluation of the Directive

The 2018 evaluation of the Directive **confirmed its EU added value and the improvements it had brought to the quality and scope of information to employees.** The Directive was considered relevant by all stakeholders, and the need for transnational dialogue was acknowledged by social partners. The evaluation concluded that the Directive does not impose administrative, financial and legal obligations which would constitute an unreasonable burden for companies.

Nevertheless, **the evaluation identified several challenges:** the creation rate of new EWCs is low[17]; the consultation of EWCs is sometimes ineffective; EWCs face obstacles in access to courts in some Member States; there is a lack of effective remedies and effective and dissuasive sanctions in some Member States.[18]

In response, as concluded in its evaluation, the Commission acted through non-legislative actions: the continued financial support to social partners' projects, proposing a handbook for EWC practitioners,[19] and engaging in a structured dialogue with Member States on enforcement.[20] These actions did not resolve the above-mentioned challenges.

2.3.What is the problem?

Despite the above-described actions, **shortcomings continue to exist and the information and consultation of employees at transnational level is not always effective under the existing EWC framework.**

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[16] In particular, national laws transposing Directive 2002/14/EC, Directive 98/59/EC and Directive 2001/23/EC.
[17] SWD(2018)187, p. 21-22.
[18] SWD(2018)187, p. 15.
[19] The work on the handbook was put on hold in April 2019, following a refusal of the EU level trade union organisations to participate in a group of experts, which would contribute to it.
[20] The Commission services held a meeting with Member States' experts with a focus on enforcement and sanctions in 2019, while an infringement procedure concerning the Irish enforcement system was launched in 2022.

*NB. In the context of the Directive, **'effectiveness'** refers to the **establishment of a well-functioning, clear and coherent regulatory framework for the setting up and operation of EWCs** at transnational level, **and to the adequate enforcement of rights** to information and consultation on transnational matters. Accordingly, effectiveness must be determined in respect of the conditions enabling such dialogue between employee representatives and management rather than the degree to which companies' decisions on transnational matters align with EWCs' opinions.*

The scale of the problem cannot be easily ascertained in objective terms, as the functioning of transnational information and consultation depends on uncertain – often behavioural – variables specific to each undertaking. EWCs remain complementary to the national employee representative bodies (e.g. trade union or works councils), which may be closer to the decision-making in the company.

As a general trend, the **views of key stakeholders on the problem are polarised**. Trade unions and employees' representatives underline perceived obstacles, while employer organisations do not acknowledge that adaptations to the existing framework are needed (see Annex 2).

EWCs are considered overall useful by both employee representatives and managers, albeit to a different degree. A majority of the employee representatives consider their EWC very useful (56 %) or useful (14 %) for involvement in decision-making, whereas managers consider EWCs mostly useful (36 %) or somewhat useful (32 %).[21] With regard to the EWCs' usefulness in reducing industrial relations conflicts in the company, a majority of employee representatives consider EWCs very useful (57 %) or useful (13 %). Most managers considered that EWCs are useful (38 %) or somewhat useful (34 %). 10 % of managers considered them very useful.

Available literature and studies[22] on the effects of employee involvement – albeit not referring specifically to EWCs for the most part – corroborate the conclusion that (well-functioning) EWCs can deliver tangible added-value in terms of the quality and acceptance of companies' decisions on transnational matters.

The **available evidence** nevertheless **points to shortcomings regarding the effectiveness of the existing EWC framework**. Among the main issues encountered by EWCs is the timing of the consultation and the lack of a genuine and meaningful dialogue on transnational matters. EWCs that experienced such problems report for instance that their questions or opinions are not properly answered by management.[23] Conflicts also exist between EWCs and the central management on whether a matter is transnational, i.e., whether the EWC is to be informed and consulted. Moreover, there is some evidence of uncertainty regarding the process for setting up EWCs, the coverage of their expenses, access to justice and effective remedies when rights under the Directive are infringed. Specifically, as regards:

[21] ICF(2023), Section 5.1.2.2. 14 % of employee representatives and 30 % of managers consider that EWCs' involvement in decision-making is not useful.
[22] See, e.g., Eurofound (2016), Win–win arrangements: Innovative measures through social dialogue at company level, Publications Office of the European Union, Luxembourg; *Pulignano/Turk*, European Works Councils on the move: management perspectives on the development of a transnational institution for social dialogue, KU Leuven & CESO 2016.; European Parliament Research Service (2021), European Added Value Assessment on EWCs.
[23] ICF(2023), Section 4.2.1.3.

- timing of the consultation: the Directive does not unambiguously require that EWCs are involved prior to the adoption of management's decision on transnational matters, which is an obvious condition for their effective consultation (see Section 2.4.3);
- lack of a genuine and meaningful dialogue: the Directive does not explicitly require management to respond to EWCs' opinions. Without such a response, consultation remains a 'one-way-street' rather than a dialogue (see Section 2.4.3);
- uncertainty regarding the concept of 'transnational matters': the current definition in the Directive leaves scope for divergent interpretations and hence for disputes about the applicability of the obligation to inform and consult EWCs on given issues (see Section 2.4.3);
- resources: the Directive does not require that the coverage of certain key expenses be specified in EWC agreements; if agreements are mute on such expenses, disputes ensue and employees' representatives can be left without the necessary means to fulfil their function (see Section 2.4.3);
- access to justice and sanctions: effective implementation of minimum requirements on transnational information and consultation depends on the prospect of enforcement if these requirements are not respected (see Section 2.4.4). Currently, as the Commission's 2018 evaluation found, sanctions set by Member States for non-compliance are often not dissuasive, and EWCs do not have access to justice in some Member States for some of their rights. In response to the findings of the evaluation, the Commission launched a dialogue with Member States on their national enforcement procedures[24] and launched infringement proceedings against Ireland.[25] Neither of these non-legislative actions has resulted in changes to national rules so far.

The evidence is based on results of 2018 evaluation, available studies and surveys (see individual references), review of national laws transposing the Directive and of national case-law, and evidence-gathering activities for this initiative[26], including a survey of EWCs and management and interviews with various stakeholders.

Evidence and data limitations

It needs to be acknowledged upfront that certain key evidence sources are affected by selection-bias and the risk of inaccurate self-reporting by stakeholders. Throughout the various evidence gathering activities, this was addressed by seeking the views of a broad range of relevant stakeholders in addition to management and EWC representatives, such as legal experts, representatives of relevant national authorities, European and national social partners. Moreover, when presenting the results of the evidence gathering, the sources of the reported views are systematically stated. Results are not aggregated across different stakeholder groups, in view of the polarisation described above.

Due to the structure of the stakeholder population and the polarisation of their policy views, there is a risk of bias also in the literature and other evidence sources on transnational information and consultation. To mitigate the risk of a skewed evidence base, information from potentially biased

[24] A meeting was held with Member States representatives in autumn 2019.
[25] See a press release.
[26] ICF(2023) Study exploring issues and possible solutions in relation to the Recast Directive 2009/38/EC on European Works Council.

sources has been cross-checked with evidence from other sources to ensure robustness. The respective data sources are specified transparently to acknowledge possible biases. In the framework of the supporting study[27], a set of quality criteria was applied for the purposes of identifying and reviewing the key sources of literature.

See further Section 2 of Annex 4.

The problem concerns primarily Union-scale undertakings and their employees, including employee representatives, although it is not possible to specify the share of undertakings affected by the lack of effectiveness of the transnational information and consultation framework. In 2021, 3676 multinational companies in the EEA came within the scope of the Directive, employing close to 30 million **employees in the EEA**.[28] Taking into account the annual growth rate, the estimate for 2023 is **3,970 eligible companies** with a total of **31.7** million employees.[29]

Of those, EWCs or agreements on transnational information and consultation have been established **in around 1000 companies**[30]. The estimated average number of EU employees per undertaking with an EWC or a voluntary information and consultation body is 16.600 (total population estimated at 16.6 million) (see Annex 4). The take up of EWCs has not been identified as a shortcoming in effectiveness of the legal framework. The evaluation of the Directive[31] showed that the reasons for the low-take up mainly relate to external factors, such as the fact that some Union-scale undertakings are headquartered in countries with a less developed tradition of employee information and consultation or a lack of awareness about the instrument,[32] changing company structures, existence of other social dialogue mechanisms deemed to be sufficient or the fact that the larger multinational undertakings with most to gain from establishing an EWC had already done so. EWCs are more likely to be established in bigger companies.[33] It is estimated that while less than 30 % of eligible Union-scale undertakings have established an EWC, more than 50 % of EU/EEA employees of Union-scale undertakings are covered by an EWC. **The voluntary nature of EWCs will be maintained under this initiative, as well as flexibility allowing social partners to establish other procedures for informing and consulting workers than EWCs.[34]** To the extent that factors contributing to a low take-up rate are linked to the effectiveness of the Directive, such as the possibility for delaying or blocking launch of negotiations of EWC agreement, they are addressed by this initiative.

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[27] Ibid.

[28] Eurostat, ad-hoc extraction from the EuroGroups Register.

[29] Based on data extractions by Eurostat, annual growth rate of Union-scale undertakings (3.92 %) and of their employees (3.42 %). See Annex 4.

[30] Source: EWC Database (ETUI, 2023).

[31] See SWD(2018) 187 final, p. 21 et seq.

[32] The Commission is funding, on annual basis, projects raising awareness of transnational information and consultation and promoting best practices. For 2023, a budget of EUR 2.5 million was available for this purpose, with the main priority to "promote actions aimed at developing employees' involvement in undertakings in particular by raising awareness and contributing to the application of European Union law and policies in this area and the take-up and development of European Works Councils". The conception and development of training materials and courses for EWC members, as well as measures to strengthen the cooperation between employees' representatives at national and transnational level are eligible for funding.

[33] In a sample of eligible companies analysed by Eurofound 2015 study, companies with more than 10,000 employees in the EU were twice as likely to have established an EWC than companies with fewer than 5,000 employees. (see Annex 4 Section 3.1).

[34] Even after introducing a request for an EWCs, employees' representatives may decide not to seek the setting-up of an EWC or the parties may decide on other procedures for the transnational information and consultation of employees (cf. Article 5(1) and (5), Article 6(3), recital 31 of the Directive).

The available evidence does not support the conclusion that EWCs are generally more beneficial for undertakings than other types of transnational information and consultation procedures. Accordingly, the existence of such alternative procedures or arrangements is not identified as a problem per se. It is however considered to be a problem that by exempting undertakings with pre-existing agreements from the scope of the Directive, employees in such undertakings are denied the right to request the establishment of an EWC, unlike the employees of all other Union-scale undertakings (see Section 2.4.1).

This initiative focuses on improving the effectiveness of a specific aspect of the existing legal framework: the EU level minimum procedural requirements on transnational information and consultation of employees. The defined problem concerns **shortcoming in the effectiveness of the existing EWC framework,** leading to unused potential of EWCs having the following consequences.

For affected employees, the problem reduces the level of their involvement and limits the social dialogue in their company, for instance with respect to the anticipation of company developments. This might reduce their acceptance of change, and is not conducive to shared understanding and smooth implementation. Ineffective or lacking dialogue reduces the employees' possibility to provide appropriate input, e.g. on corporate restructuring, and can reduce trust between a company's management and its workforce. Ultimately, the lack of genuine social dialogue **can lead to lower employment levels in the companies operating in the EU** (e.g. relocation of production outside the EU leading to unemployment)**, less motivated workforce and suboptimal working conditions**. When properly involved, EWCs can help achieve certain minimum standards on working conditions when it comes to downsizing and restructuring, such as on site closures. As transnational bodies, EWCs can provide views on where production can be moved to mitigate employee reductions. For example, an EWC provided decisive impetus in preventing redundancies when a multinational company's manufacturing plant was shut down in a Member State due to low-capacity utilisation as a result of the economic crisis in southern Europe. Approximately 50 employees then moved to various other plants in the headquarter country of the multinational company via a restructuring plan.[35]

For affected companies, the unused potential of EWCs may lead to higher indirect costs of implementing measures in case of corporate restructuring (due to lack of common understanding and lack of compromise solutions); **loss of business** due to a risk of delays on decision-making and decision-implementation (including due to unclear obligations and disputes); **fines** for non-compliance with information and consultation requirements, as well as **reputational risk** as a result of a dispute. Companies report that, when properly consulted, EWCs are useful in business internationalisation and in giving company an understanding of national social dialogue culture in the context of newly acquired businesses. Some concrete examples were provided in the evidence gathering: an EWC contributed to a stronger corporate identity during a merger; an EWC made helpful contributions in getting in touch with acquired company representatives and integrating the acquired business into the new corporate culture; an EWC helped local representatives to understand the situation in the other EU countries.[36]

Benefits of transnational information and consultation tend to be long-term and indirect in nature and depend on a number of factors, which are external to the scope of this initiative (i.e. national

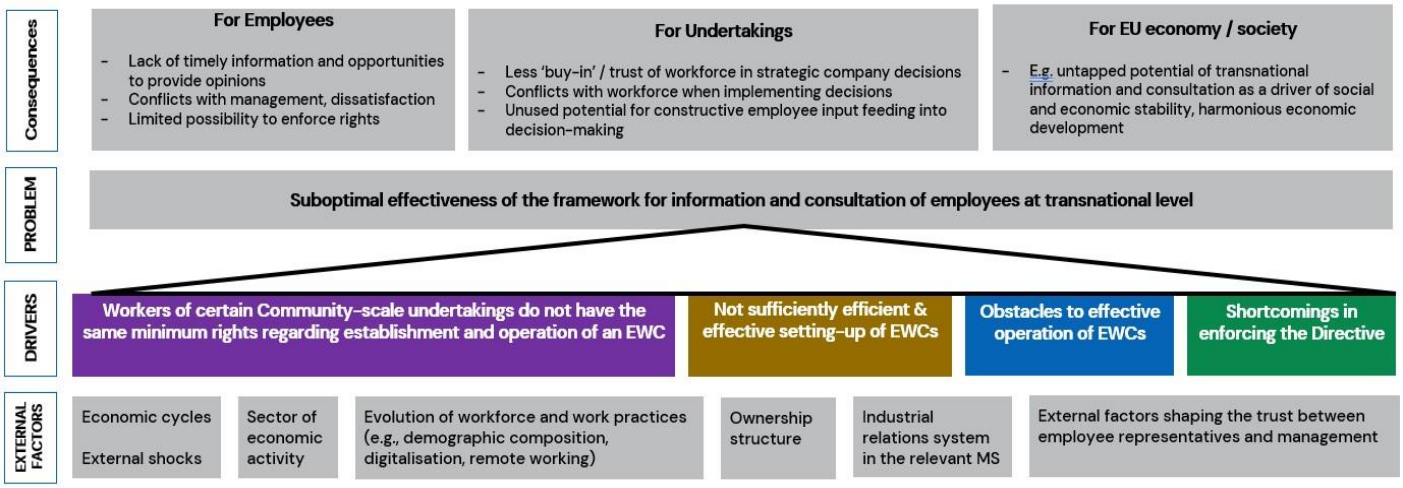
[35] ICF(2023), Section 5.1.2.2.
[36] Ibid.

industrial relations systems, ownership structure and evolution of workforce and work practices, external shocks, internationalisation of corporate activities, trust between the employee representatives and the management). These external factors are described in Annex 10. Moreover, the Directive sets a procedural framework on transnational information and consultation that leaves broad freedom to parties to EWC agreements to tailor the information and consultation process as well as accompanying provisions on resources, training, etc. to their specific situation and needs. These factors make it fundamentally **challenging to quantify/monetise the consequences of the problem**.

Geographically, the consequences affect employees and companies not only in Member States[37] where the affected EWCs are based (see Annex 4)[38], but also in Member States where undertakings belonging to the same group operate. While some of the challenges are more relevant in certain national legal systems than in others[39], their **effects nevertheless propagate across borders due to the inherently transnational nature of EWCs.** Transnational restructuring and accompanying measures can have high local impacts regardless of the location of company's headquarters, especially where the territory specialises in a particular sector, is facing high unemployment or where the undertaking is locally a major employer.

Indirectly, the consequences of the problem could also affect companies linked to Union-scale undertakings in the value chain (located in the EU or outside), as well as the regional economic systems depending on those undertakings more broadly. Subcontractors and networks of businesses, with which the directly affected companies coexist and which they support, can be affected along with their workers, for instance through loss of business due to major restructuring of the multinational undertaking, especially where sudden or unannounced. Such effects are however difficult to estimate, considering that the EWCs remain consultation bodies without having a prerogative on the management's decision.

The below 'problem tree' illustrates how the drivers analysed in the following section relate to the problem this initiative aims at tackling, and the consequences for different stakeholders.



[37] The Directive applies to EU Member States, and to EEA states via the EEA Agreement.
[38] Most EWCs were established under the legislation of DE, FR, BE, IE, SE, NL, IT. While reliable post-Brexit data are not yet available, available information shows that about half of the EWCs (70) formerly based in the UK have moved to IE.
[39] About half of Member States have a low number or no EWCs established under their jurisdiction – see Annex 4.

2.4. What are the problem drivers?

The four groups of drivers (see problem tree) will be presented below.

2.4.1 Workers of certain Union-scale undertakings do not have the same minimum rights regarding establishment and operation of EWCs

The Directive excludes from its scope undertakings with voluntary agreements (323) or Article 14 EWC agreements (28), which were concluded or revised during the transposition period of the Directive.[40] These represents a significant share of the overall 1001 agreements on transnational information and consultation in Union-scale undertakings (see Annex 4).

Voluntary agreements, since not concluded under Union law, do not have to provide for the elements and rights as agreements concluded under the Directive. In contrast, undertakings with Article 14 EWC agreements are exempt only from the changes brought about by that Directive but remain subject to the national provisions implementing the original 1994 Directive. The application of the different legal regimes depending on when the agreement was signed for the first time has created a **complex and fragmented framework for the undertakings and different levels of minimum rights and protection for employees in Union-scale undertakings.**[41]

Though the voluntary agreements were considered by most interviewed stakeholders as equally effective as those concluded under the Directive, trade unions have reported that in some cases these agreements no longer fit the situation of the undertaking, but employees are not entitled to make a request for an EWC. Legal experts assisting EWCs state that voluntary agreements, though generally effective, are more difficult to enforce in some Member States.[42] The different minimum standards remain under the same legal instrument, resulting in unequal treatment between Union-scale undertakings and their employees, more than 30 years after its initial adoption. As the Directive respects the autonomy of the parties and provides enough scope to find company-level solutions, it does not seem justified to shield undertakings with voluntary agreements from requests for establishing an EWC in line with the requirements of the Directive.

Stakeholders' views: **Trade unions** consider that the existing exemptions do not in some cases ensure a level playing field and legal clarity, whereas **employer organisations** argue that longstanding information and consultation bodies in the undertakings covered by the exemptions are often particularly effective and characterised by a deep level of trust and cooperation between workers' representatives and central management. In workshops, among **EWC representatives**, a variety of experiences were reported with regard to the voluntary agreements, depending on corporate culture, on the sector of activity and on the governing legislation (cf. Section 3.2 of Annex 2).

[40] Data source: ETUI, unpublished analysis, 2023.

[41] The legislator made a deliberate choice in the 1994 and 2009 Directives to exempt undertakings with pre-existing agreements from new obligations, in order to stimulate take up of EWCs before these EU rules would enter into force. Consequently, a possibility to request renegotiation of pre-existing agreements has been limited to situations of significant changes in make-up and structure of the undertaking (such as mergers, take-overs or acquisitions) (cf. Impact assessment SEC(2008)2166, p. 20 and 50-51).

[42] ICF(2023), Section 5.2.2.3.

2.4.2. Not sufficiently efficient & effective setting-up of EWCs and gender imbalance

The existing **rules do not adequately cover situations where the management fails to take action following a request to set up an EWC** (see point (i)) **and to provide the necessary means for the establishment of an EWC** (see point (ii)). Also, the **gender representation of employees in EWCs is overall unbalanced** (see point (iii)).

i) Delays in setting up of Special Negotiating Bodies (SNBs): The Directive contains deadlines for the process of the setting up of an EWC. Where the central management refuses to commence negotiations within six months of the request to establish an EWC, an ad-hoc EWC based on subsidiary requirements shall be created.[43] The provision can create **legal uncertainty where the management did not explicitly refuse, but at the same time did not enter into negotiations**. Such situations have to be resolved through national proceedings[44], which can be lengthy or even not accessible in some Member States (see Section 2.4.4.), or for which workers may lack resources. In the evidence gathering, the majority of EWC representatives and managers (64 % overall) did not know or preferred not to answer a question about the length of setting up of their SNB. Those who provided information about the interval between the initial request and the set up of an SNB indicated that it exceeded six months in more than half of the cases.[45]

ii) Lack of sufficient resources: The Directive provides that expenses related to the setting up of the EWC shall be borne by the central management, without limiting this obligation to certain types of cost.[46] SNBs shall have in particular access to expertise[47] and necessary training without a loss of wages.[48] There is a consensus that costs, including the cost of training, are not to be borne by the employee representatives themselves.[49] **Uncertainties however exist over the coverage of costs related to potential legal disputes.** Solely in the NL legislation is coverage of such costs explicitly mentioned in the national transposing provisions. In other Member States, this aspect is not defined and this can lead to disputes or refusal to provide resources to the SNB.[50]

In the evidence gathering,[51] 56 % of employee representatives stated to have experienced problems in setting up of an EWC (compared to 4 % of management). Of those, 42 % cited a lack of expertise.

iii) Gender imbalance in the composition of EWCs: The Directive provides that gender balance shall be reflected in the composition of EWCs.[52] Available evidence suggests that the Directive's **requirement to negotiate, where possible, a balanced composition of EWCs with regard to their gender is not effective** in achieving an equal representation of men and women as the gender

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[43] Article 7(1). Currently, ca 2% (=20) of EWCs are established under subsidiary requirements.
[44] For example a German ruling of 15.07.2016, Groupon, Arbeitsgericht Berlin – 26 BV 4223/16 (First instance). See further Annex 9.
[45] ICF(2023), Section 4.2.1.2. This reflects answers from the EWC representatives and the management.
[46] Article 5(6).
[47] Representatives of recognised trade union organisations may act as experts and advise workers' representatives during the process. Member States may lay down budgetary rules regarding the operation of the SNB and may in particular limit the funding to cover one expert only.
[48] Article 10(4).
[49] Report of the Group of Experts (Commission)(2010). Implementation of Recast Directive 2009/38/EC on European Works Councils – Report of the Group of Experts, p. 44.
[50] In 2019, the UK Central Arbitration Committee (CAC) considered that the employer should pay the legal fees incurred in relation to the proceedings (see further Annex 9).
[51] ICF(2023), Section 4.2.1.2.
[52] Article 6(2)(b).

composition of the EWCs is strongly skewed in favour of men. Insufficient representation of women in bodies such as EWCs might contribute to gender-specific issues or consequences not being adequately considered in the corporate decision-making process or that, conversely, information relevant to women employees might not be disseminated effectively among them. In the 2023 ICF survey, 62 % of respondents indicated that men account for more than 60 % of their EWC members. A mere 2 % reported the same for women. 24 % of respondents said that each gender was equally represented in their EWC.[53] Female EWC members are less likely to be found in more senior functions.[54]

Stakeholders' views: **Trade unions** submit that it is not uncommon for the central management to delay the establishment of the SNB and underline the importance of guaranteeing support by recognised trade union organisations' experts to SNBs and EWCs and their select committees. **Employer organisations**, on the other hand, consider that the provisions on the setting-up of EWCs work satisfactorily. In the evidence gathering, stakeholders generally acknowledged the issue of imbalanced gender composition of EWCs, in particular in male-dominated industries like manufacturing and construction where EWCs have been set up most frequently.

2.4.3. Obstacles to the effective operation of EWCs

Depending on the level of detail of agreements, there can be **unclarity what constitutes a transnational matter** on which the EWC should be consulted on (see point (i)) **and at which moment** in relation to which decision of management. The EWC opinion can also remain **without a follow-up** (see point (ii)). EWCs' capacity to deliver an opinion is sometimes limited due to a **lack of resources or expertise** (see point (iii)) or **due to an excessive use of confidentiality or non-disclosure clauses** by the management (see point (iv)).

(i) Legal uncertainty regarding the concept of transnational matters: EWC competence is limited to transnational matters. This distinguishes them from national bodies under other directives.[55]

The 2018 evaluation concluded that the concept under Article 1(4) has been implemented in all Member States (see Annex 8) and though it is better defined in the Directive, it often remains difficult for EWC practitioners to interpret in concrete cases. The feedback from European social partners during the evaluation revealed: difficulties in some cases over how to interpret the notion of transnationality; and some confusion over the notion of transnationality due to the strategic nature of certain decisions, stock exchange rules and the difficulty of determining if certain matters qualify as transnational.

During the evidence gathering, both employee representatives and managers identified disagreement over the concept of transnational matters as one of the main sources of problems in the information and consultation process.[56] A too narrow interpretation of 'transnationality' limits the effectiveness of the EWC. On the other hand, a too broad interpretation

[53] ICF(2023), Section 5.1.2.1.
[54] ETUI survey of EWC and SEWC representatives (2018). Overview published online.
[55] In particular: Directive 2002/14/EC, Directive 98/59/EC, Directive 2001/23/EC.
[56] ICF(2023), Section 4.2.1.3.

can lead to interference with the competences of the national workers' representatives or to an unjustified additional material and financial burden on the employer.[57]

Despite some existing good practices, such as the inclusion of a transnationality clause with detailed criteria in the agreement, around 36% of EWC representatives reported frequent discussions with management on whether or not an issue is transnational.[58] In the evidence gathering, 43% of employee representatives and 28% of management representatives said that they had experienced problems related to the definition of transnational issues. Some managers consider it challenging to keep EWCs as a transnational forum, as employees' representatives tend to bring up local issues at the EWC meetings.[59] Case-studies[60] indicate that a shared understanding of the issues within the scope of EWC has developed over time in some cases, but there are still instances where EWC representatives perceive management's interpretation of transnationality to be too narrow.

Examples of different interpretations and disputes around the concept of transnational matters is reflected also in national case law (see Annex 9).

(ii) Genuine exchange of views does not take place in all cases: **Two key weaknesses in relation to the exchange of views** between the central management and the EWC have been highlighted during the evidence gathering: **the timing of the consultation and the follow up to the EWC opinion.**

The 2018 evaluation reported a vast majority of EWC agreements reflected the Directive's definition of consultation. Some contain additional provisions such as a list of information to be provided or an extensive list of subjects for consultation. In the evaluation, most social partners considered that the Directive improved the legal framework for the information and consultation process.[61] However, the evaluation recognised that **in some cases the consultation remains only a formal step** rather than an opportunity to seek and consider a substantive opinion from the EWC.[62]

The timing of the consultation of the EWC depends on the specific agreement. Based on the evidence gathering, it is estimated that approximately 42% of EWC agreements contain at least some rules on the timing of consultation. Late consultation has nevertheless been reported as the most frequent problem experienced by EWCs in relation to the consultation procedure.[63] Only a small proportion (ca 20 %) of consultations takes places before the decision on the relevant issue is finalised, whereas in most cases the consultations are carried out before or close to the implementation of the management's decision (44% before and 19% during the implementation process). Close to 10% of EWC representatives report that they were informed and/or consulted only after the implementation of the relevant decision.[64] **The later the consultation of the EWC**

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[57] The Impact assessment for the recast Directive stressed that "the potential risk of bringing up local issues at European level (with a subsequent increase in the number of meetings and the associated costs) where decision-making is centralised would nevertheless need to be avoided" (SEC(2008)2166, p. 54).
[58] ETUI survey of EWC and SEWC representatives (2018). Overview published online.
[59] ICF(2016) Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council, p. 96. Available online.
[60] Turlan, F., Teissier, C., Weber, T., Kerckhofs, P., & Rodriguez Contreras, R. (Eurofound) (2022) Challenges and solutions: Case studies on European Works Councils. Available online.
[61] SWD(2018) 187 final, p. 26.
[62] SWD(2018) 187 final, p. 27-28.
[63] ICF(2023), Section 5.1.2.3. 115 (91 %) out of 126 employee representatives who had experienced problems with the consultation procedure raised the issue of the timing of the consultation ("too late, after the decision has been taken").
[64] ETUI survey of EWC and SEWC representatives (2018), op.cit.

takes place in relation to the management's decision, the less effective the consultation is considered to be by the respondents.

For employers, the timing of information and consultation is closely linked to the issue of confidentiality (see point (iv) below). Managers have reported that the modes and timing of the information provided to employee representatives can vary, depending on the company's need to fulfil stock market requirements. In most cases, information is provided when it is official and certain. The need to be certain is used to justify the timing of the release of information, which, in most cases, is 'just a little before' or 'at the same moment' as the formal announcement of restructuring, and it is always in accordance with confidentiality rules.[65]

The Directive leaves discretion to the parties to the agreement to decide on how the EWC opinion is to be followed up. Where no EWC agreement has been concluded, subsidiary requirements (set out in Annex I of the Directive) oblige the management to provide a reasoned response to any opinion that the EWC might express. This requirement is not obligatory in the EWC agreements concluded under Article 6, so it exists only in some of them. In the evidence gathering, 46 % respondents to the survey said that their agreement contained an obligation on management to give a reasoned response and 33% said that it contained an obligation on management to take account of the EWC's opinion.[66]

<u>(iii) Insufficient resources and subsidiary requirements for EWCs:</u> The Directive provides that EWC agreements must include information on the financial and material resources allocated to the EWC.[67] A vast majority of agreements, including the voluntary (pre-Directive) agreements indeed include clauses on coverage of expenses.[68] Most agreements contain provisions on the EWC's right to solicit expert advice[69] and right to training.[70]

Nevertheless, during the 2018 evaluation, employee representatives reported a lack of resources and expertise as one of the shortcomings of the information and consultation procedure. In the evidence gathering, **access to external expertise and coverage of legal costs** were mentioned by stakeholders as aspects that would benefit from more legal certainty. Employee representatives confirmed that the involvement of external experts is essential, especially during restructuring, and that budget constraints hinder their ability to operate effectively on all levels. Management representatives, on the other hand, expressed concern about incurring unnecessary costs.[71] Based on

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[65] Pulignano V. et al. (2016) op.cit., p. 40-41.

[66] ICF(2023), Sections 4.2.1.3. and 5.1.2.3. These responses include responses both from the management and the employee representatives regardless of the type of agreement (including pre-Directive agreements).

[67] Article 6(2).

[68] According to the 2016 KU Leuven study, 95 % of EWC agreements provide that the company will cover the basic expenses of EWC activity, such as travel and accommodation costs, administrative assistance and communication facilities linked to the operation of the EWC (Pulignano V. et al. (2016) op.cit., p. 53). Similarly, a 2015 ETUI study revealed that 74% agreements provide a general statement of cost coverage – complemented by some specific mentions of various costs covered – while the remaining 26% have a limited list of expenses covered (De Spiegelaere S., Jagodzinski R. (2015), op. cit., p. 40.). Provisions guaranteeing independent financial resources have been introduced in some EWC agreements, but this seems to be very rare.

[69] Based on the ETUI EWC database, almost 70% of EWC agreements contain provisions on the EWC's right to solicit expert advice, with over 80% of these agreements providing for the choice of an independent external expert, around 18% referring to an in-company and/or independent expert, and less than 2% allowing only for support by an in-company expert.

[70] De Spiegelaere S. (2016) op.cit., p. 54. In 2016, the right to training was included in 58 % of the agreements signed. In the same year, two thirds of employee representatives reported having attended training in the past three years.

[71] ICF(2023), Section 4.2.1.3.

available data, among EWCs with access to external support on a continuous basis 68% of EWC agreements provide access to one expert, 27% to two, and 5% to three or more.[72]

Regarding the coverage of legal costs (court fees or costs of a legal representation in case of a dispute), no Member State lays down an explicit requirement for a dedicated budget or coverage of such costs, although these costs are in principle part of the operating expenses of EWCs.[73] This creates legal uncertainty and can give rise to disputes on access to resources. Such disputes are difficult to quantify, as they are not generally reflected in court cases.[74] Some indications about the lack of resources stem from a previous survey,[75] in which ca. 17 % of those EWC representatives who had experienced a dispute stated that the lack of resources was a reason for not bringing a dispute before a court. Nevertheless, mostly other reasons were given for not initiating a legal case (see Section 2.4.4.).

For EWCs operating without an agreement **the subsidiary requirements** provide that operating expenses shall be borne by the central management in order to enable EWCs to perform their duties in an appropriate manner (e.g. cost of meeting organisation, of interpretation, of accommodation and travelling). While the number of EWC operating on subsidiary requirements is low[76], subsidiary requirements serve as benchmark in negotiations of EWC agreements and their impact goes beyond EWCs based on subsidiary requirements. The Parliament and trade unions have criticised that certain rights under subsidiary requirements are insufficient, namely, a lack of clarification of the coverage of legal costs in case of disputes[77] and a requirement for one plenary meeting per year. Survey data shows that EWCs with multiple plenary meetings per year are more likely to consider those meetings effective as a means of consultation.[78]

Regardless of whether an EWC operates on basis of an agreement or subsidiary requirements, the Directive provides that EWC members shall have **access to training without loss of wages**. There is a consensus among stakeholders that under the existing rules costs are not to be borne by the employee representatives themselves.[79] Nevertheless, the 2018 evaluation reported that among those who requested training, some 20 % reported obstacles created by management, while a large majority of EWC members noted that there had been no particular challenges in securing it.

(iv) <u>Confidentiality imposed disproportionately can create obstacles to effective information and consultation:</u> In the 2018 evaluation, **workers' representatives cited extensive use of confidentiality clauses as one of the shortcomings in implementation of information and consultation processes in practice**.[80] The scale of or reasons for the issue were not identified in

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[72] Source: ETUI EWC Database (data available as of June 2023).
[73] SWD(2018) 187 final, p. 34. Some Member States have introduced statutory release from court fees for EWCs (AT, LT, ES, BG, FR, DE, RO, SE, NL) and others have introduced a general regulation concerning the operating costs of EWCs. The latter is the case in the vast majority of the Member States. See Annex 8.
[74] Overall, only a low number of cases concerning EWCs have been brought before the national courts. See Annex 9.
[75] ETUI survey of EWC and SEWC representatives (2018), op.cit.
[76] As of the 1st quarter of 2023, ETUI database records 20 EWCs based on subsidiary requirements. See Annex 4.
[77] For EWCs operating under subsidiary requirements, HU and NL specify that funding of EWCs extends to assistance from legal experts and covers legal costs (see Annex 8).
[78] Data extracts from ETUI survey of EWC and SEWC representatives (2018), op.cit. Specifically, there is a clear correlation between having more than 2 plenary meetings per year and a better perceived effectiveness of such meetings. This data includes all types of EWCs, including those operating on basis of agreements. Approximately half of EWCs have one plenary meeting per year, 38 % have two plenary meetings and 10 % have three or more plenary meetings per year.
[79] Group of Experts (Commission)(2010) op.cit., p. 44.
[80] SWD(2018) 187 final, p. 27-28.

the evaluation, but available research indicates that when confidentiality issues do arise, they are more likely to occur in larger companies and in companies based in liberal market economies, where social dialogue at company level is more prominent.[81]

Member States determine rules for the protection of confidential information within the limits set by the Directive.[82] About half of Member States apply stricter conditions for application of confidentiality clause than those in the Directive and limit the possibility of applying confidentiality to business and trade secrets, or require that confidentiality is justified by a legitimate interest of the undertaking (see Annex 8).[83] In the remaining Member States, undertakings are provided with a wide discretion, in accordance with the existing rules, to impose confidentiality to protect further circulation of information disclosed to EWCs.

Around 87% of EWC agreements contain provisions on confidentiality.[84] In spite of the fact that overall few legal cases concerning alleged abuse of confidentiality clauses have been reported,[85] in the 2018 ETUI survey over 39% of responding EWC representatives replied that management often refuses to give information due to confidentiality, compared to around 34% who disagreed or 'absolutely disagreed' with that statement.[86]

In the evidence gathering,[87] 49% of employee representatives (and 4% of managers) said that the use of confidentiality effectively limits or prevents meaningful consultation, and 15% of managers (and 3% of employee representatives) believe that consultation involves the risk of disclosure of confidential company information. In the evidence gathering workshops, both EWC members and managers highlighted the importance of striking a balance and keeping an open and transparent discussion.

On management's side, confidentiality is an ongoing concern for companies listed on the stock exchange, principally because a trade-off exists between confidentiality and the timing of information and consultation.[88]

***Stakeholders' views*:** **Trade unions** consider that the Directive does not ensure enough legal clarity on essential consultation requirements, such as the need to have sufficient time to carry out an in-depth assessment and prepare an opinion or ensuring a proper follow-up to the EWC opinion. They state that the confidentiality clause is often misused by the management. They also submit that EWCs are not assured sufficient resources (covering e.g. expert advice, training or legal costs), which hinders their ability to engage effectively in information and consultation processes, and that there are often disagreements with central management about the scope of transnational matters. **Employer organisations** consider that the current concept of transnational matters is fit for

[81] ICF(2023), Section 4.2.1.3., and sources quoted therein.
[82] Article 8 of the Directive. See Annex 6.
[83] Analysis by European Centre of Expertise in the field of labour law, employment and labour market policies (ECE)(2023), unpublished.
[84] ETUI EWC database.
[85] For example: Central Arbitration Committee (UK), Verizon, decision of 9 October 2019, No EWC/22/2019. Central Arbitration Committee (UK), Oracle, No EWC/17/2017, para 87 (see Annex 9).
[86] Data extracts from ETUI survey of EWC and SEWC representatives (2018), op.cit.
[87] ICF(2023), Section 4.2.1.3. Responses to this question were received from 90 employee representatives and 13 managers.
[88] Pulignano V. et al. (2016) op.cit., p. 28-31. In the context of that study, only few interviewed managers reported that no solution had been found to the question of confidentiality that was acceptable to management and EWC representatives. The lack of solution occurred in companies where adversarial relations existed between management and EWC representatives and/or there was a marked heterogeneity in expectations among the EWC representatives.

purpose and does not cause any disputes in practice beyond what can reasonably be expected in any corporate setting. They state that many EWC agreements either already provide for specific timeframes for information and consultation procedures and a formal response by management to EWC opinions. Employers consider that the existing obligations to reimburse the trips, accommodation, paid leave for employee representatives, and translation/interpretation costs already puts a heavy financial burden on them.

2.4.4. Shortcomings in enforcing the Directive

The Directive contains provisions on enforcement in accordance with general principles of Union law, respecting the procedural autonomy of the Member States. **Insufficient access to justice and lack of remedies** (point (i)), as well as **ineffective penalties and sanctions for non-compliance** in some Member States (point (ii)) prevent effective enforcement of workers' rights and contribute to the problem of ineffective information and consultation of EWCs.

(i) Insufficient access to justice and lack of effective remedies in some Member States: **Weaknesses have been identified in some Member States as regards the capacity of employees and their representatives to launch legal proceedings**, either due to the lack of resources or because the national legal regimes do not provide a capacity of EWCs or SNBs to bring a legal action before a court. Some **legal regimes also limit the types of disputes or infringements of rights that can brought to court.**

The 2018 evaluation revealed a variety of situations in Member States regarding the capacity of EWCs to access the courts and noted overall weaknesses in the means in place allowing EWCs to enforce their rights.[89] The evaluation reported that there is no consistent practice across Member States as to whether EWCs have the legal status to bring an action before the national courts and the capacity of EWCs to seek legal redress varies across Europe and often depends on trade unions' capacity to act.[90]

There is evidence that access to justice is more difficult in some countries than others (see Annex 8). The Commission received complaints describing a lack of access to justice in IE, against which the Commission launched infringement proceedings in May 2022[91], and FI. It should be noted that around half of Member States (those with few or no EWCs established under their jurisdiction; as described in Annex 4) generally lack experience in enforcement of the Directive under their laws.[92]

In the evidence gathering[93], 13.7 % respondents said there was no access to a court to enforce EWC-related rights in their respective Member State. Other reasons regularly mentioned by EWC representatives for not taking a matter to court were risk of damage of mutual trust with management (28.1%), uncertain outcomes (25%), lengthy judicial proceedings (20.3%), no clarity

[89] COM(2018) 292 final, p. 6-7.
[90] SWD (2018) 187 final, p. 34-36.
[91] Section 10 of the press notice.
[92] 160 national court cases have been identified since 1995 until the first quarter of 2023. Source: ETUI database. Per Member State, EWC-related cases were decided by the courts in FR (50), DE (32), UK (29), ES (14), BE (10), NL (7), AT (4), CZ, RO and IT (3), SE (2), SK, LU, NO (1). Source: ETUI database.
[93] ICF(2023), Section 4.2.1.4.

on how to take a matter to court (18.8 %), lack of effective remedies (15.6%), not enough financial resources (14.1%), not clear choice of competent court (10.9%).[94]

(ii) Ineffective pecuniary sanctions / sanctions for non-compliance in some Member States: Furthermore, in a number of Member States, there are **no effective financial penalties and sanctions for non-compliance with national rules transposing the Directive**.

The 2018 evaluation highlighted **significant differences in the type and level of sanctions available in Member States**.[95] Employee representatives stressed that differences in the level and scope of sanctions set at national level are an obstacle to effective redress and an insufficient incentive for the respect of EWC rights.[96] The evaluation concluded that, in many cases, the nature and level of sanctions are not effective, dissuasive and proportionate. As mentioned under the previous point, lack of effective remedies and sanctions discourage the employees representatives from bringing serious disputes to a court in around 15 % of cases.

In most Member States, sanctions usually consist of a pecuniary sanction imposed on the employer. A comparison between the concrete upper thresholds in national systems shows a significant difference in levels of penalties, also reflecting the diversity of the legal procedures and practice in the Member States more broadly.[97] Only few Member States do not rely solely on penalties to provide for an effective remedy. For example, the French courts have granted in some cases cease and desist orders and obliged companies to comply with the information and consultation rules.[98] (See further Annexes 8 and 9.)

Stakeholders' views: **Trade unions** highlight insufficient access to justice and ETUC attributes the low litigation level to the obstacles of EWCs to access the courts. They consider that the remedies and sanctions guaranteed by the Directive are not sufficiently effective. In contrast, **employer organisations** do not attribute the shortcomings regarding access to justice, sanctions or remedies to the Directive, but to the incorrect transposition of the EU law by certain Member States. They submit that the existing sanctions are sufficient and effective. BusinessEurope argues that the limited number of court cases is not because EWCs lack the means to go to court but because most of them work satisfactorily.

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[94] Similar results were recorded in the 2018 ETUI survey of EWC and SEWC representatives, op.cit. In that survey, 15.7% of EWC members said to have had a serious conflict with management over the functioning of the EWC between 2015–2018. Court action was taken in 16% of these cases. Reasons for not going to court included: the low importance of the issue itself (ca. 36 %), afraid of consequences (ca. 26 %), trade union advised not to go to court (ca. 20 %), no sufficient resources (ca. 17 %), unclarity how to proceed (ca. 13 %), sanctions deemed to small (ca. 11 %), no consensus within the EWC (ca. 7 %), other reasons (17 %).

[95] SWD(2018)187 final, p. 33-36, 57-63.

[96] Ibid.

[97] Generally, sanctions for administrative infractions apply to EWC-related breaches. In most cases, sanctions provided under national laws remain low, the average range being around 5.000-10.000 EUR. Upper limits to sanctions are quite common (the maximum scale ranging from a few hundred EUR to 187.500 EUR (ES). In DE, the maximum administrative fine is 15.000 EUR, although more severe criminal sanctions (pecuniary or custodial) are theoretically also available. Elsewhere, stricter sanctions (e.g. up to 800.000 in BE) or prison sentences may theoretically be imposed in criminal law proceedings. Such sanctions have not in practice been applied to EWC-related offences.

[98] In a judgment of 19 November 2020 (case no 20/06549), the French *Cour de Cassation* upheld the suspension of operations of undertakings on the grounds of a violation of EWCs' information and consultation rights.

2.5.How likely is the problem to persist?

It cannot be excluded that future clarifications by the Court of Justice of the European Union (CJEU) could help mitigate certain of the issues described above, for instance by interpreting the notion of consultation as including a requirement for a written response from management; but it seems unlikely that the CJEU will in the baseline scenario play a significant role in clarifying the issues outlined above considering that, due to the low level of litigation at national level, no cases at all have been yet referred to the CJEU for a preliminary ruling in relation to the 2009 Directive.

In absence of future clarifications by the CJEU or in the absence of EU action, **the above described drivers are likely to persist**, although the driver related to the scope and coverage of the Directive (see Section 2.4.1.) could gradually become less relevant, through a gradual dissolution of pre-Directive agreements (e.g. due to restructuring) and through setting up of new ones under the current rules. This process would however be slow and unsystematic, since the pre-Directive agreements can provide for clauses allowing them to stay in force even when the undertaking changes significantly its structure. The risk is then that the agreement no longer corresponds to the needs of the restructured undertaking.

For the remaining drivers, there are no indications or trends which would lead to the conclusion that the existing problems may resolve.

It is not expected that the drivers would be addressed by the individual Member States. Considering its transnational and procedural nature, very few Member States have adopted national legislation going beyond the prescriptive norms of the Directive. Where the Directive leaves autonomy to the Member States to define their rules or procedures (such as enforcement procedures and sanctions), Member States' laws differ according to their industrial relations regimes and existing administrative and judicial structures (see Section 2.4.4.).

The increasing transnational character of economic activities, companies and restructuring processes are intensifying the need for proper information and consultation at transnational level. **Certain problem issues could be partly mitigated through digitalisation.** For instance, the use of digital working methods can allow for efficient solutions in EWCs' access to training and ad hoc meetings, as evidenced during the Covid 19 pandemic.

Despite these trends, given the context of increased internationalisation and challenges demanding quick management decisions (e.g. due to pandemic, energy crisis)**, there is a risk of an increasing gap between employees' needs and expectations regarding transnational information and consultation, and the actual operation of EWCs.**

3. WHY SHOULD THE EU ACT?

3.1.Legal basis

The Directive was adopted under Article 137 of the Treaty establishing the European Community. In the current Treaty framework, the appropriate legal basis for a revision of the Directive is Article 153(1)(e) in conjunction with Article 153(2)(b) TFEU. Article 153(1)(e) TFEU provides the legal basis for the Union to support and complement the activities of the Member States to improve the information and consultation of workers. In this field, Article 153(2)(b) TFEU empowers the European Parliament and the Council to adopt – in accordance with the ordinary legislative procedure – **directives setting minimum requirements for gradual implementation**, having regard to the conditions and technical rules obtaining in each of the Member States. Possible adjustments to the existing EU rules must hence be without prejudice to Member States'

responsibility and discretion to integrate those requirements into their respective legal and industrial relations systems, particularly with regard to the arrangements for designating or electing employees' representatives, their protection and the appropriate sanctions. The initiative will also preserve the nature and basic purpose of EWCs as an information and consultation – rather than co-determination – instrument.[99] Moreover, the social partners in Union-scale undertakings play a key role in implementing the legislation via the negotiation of EWC agreements. Their autonomy, enshrined specifically in the Directive, is another guiding principle for this initiative.

3.2.Subsidiarity: Necessity of EU action

Only an EU initiative can set common rules on information and consultation of workers at transnational level within the EU. The identified problem drivers (see Section 2) are closely linked to the coverage and content of the obligations under the Directive and create effects in companies and their workers across the EU.

Common minimum requirements at EU level remain necessary to improve workers' right to information and consultation at transnational level across all Member States.[100] Given the cross-border nature of the undertakings/groups within the scope of the Directive and the transnational nature of the matters subject to the information and consultation, individual Member States cannot enact the basic regulatory requirements to define a coherent framework for such information and consultation. Challenges which reduce the effectiveness of workers' right to transnational information and consultation must be addressed at EU level, in particular where they relate to the scope and substance of information and consultation requirements under EU law.

Given the transnational nature of EWCs, actions of individual Member States could address the identified issues only to a limited extent (e.g. by revising their laws on enforcement and sanctions). As described in Section 2.3., in geographic terms, the effects of the problem materialise not only in the Member State where the EWC is based, but also in all those were undertakings belonging to the same group operate. No Member State can thus be excluded from the outset. Consequently, EU action is needed to clarify and further develop the minimum standards that apply to all multinational undertakings of a certain size operating in the EU.

3.3.Subsidiarity: Added value of EU action

The specific EU added value lies in the establishment of minimum standards, below which Member States cannot compete on the single market. These contribute to upwards convergence in employment and social outcomes between Member States, whose economies and labour markets are increasingly interlinked.

By reinforcing the effectiveness of the existing minimum requirements for EWCs, the initiative aims to create a simplified and more consistent legal framework regarding the minimum level of protection of workers. EWCs' potential should be fully exploited in the current context of the twin digital and green transitions and profound industrial transformations, bearing in mind the need to avoid unnecessary burdens, preserve competitiveness and the ability of undertakings to react to rapidly changing market circumstances, and the need to ensure adequate working conditions.

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[99] The legal basis for an EU instrument on co-determination is Article 153(1)(f). This legal basis requires adoption by a special legislative procedure (Article 153(2)).
[100] Recital 45 of the recast Directive.

These considerations are consistent with the 2021 European Added Value Assessment prepared by the Parliament in support of its legislative own-initiative resolution on a revision of the Directive. That assessment concluded that in the future, more systematic information and consultation of workers at transnational level could lead to even greater economic benefits – by fostering job quality, reducing the rate at which people leave their jobs ('quit rate'), reducing the number of redundancies, limiting the costs of structural adjustment, helping to eliminate distortions of competition within the single market and inequalities in treatment of workers, and/or easing the burden on social welfare systems.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

The initiative is intended to address challenges, through EU-level action, related to several principles set out in the European Pillar of Social Rights ('Pillar'), most importantly principle 8 on **Social dialogue and involvement of workers,** principle 2 on **Gender Equality** and Principle 5 on **Secure and adaptable employment**.

4.1. General objective

The **general objective** of this initiative is to **improve the effectiveness of the framework for the information and consultation of employees at transnational level**. This objective is consistent with the existing aims and principles set out in the current Directive: to improve the right to information and to consultation of employees in Union-scale undertakings and groups (Article 1(1)), and to define and implement the arrangements for informing and consulting employees in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively (Article 1(2)). For the purposes of this general objective, effectiveness is to be understood as described in the context of the general problem (Section 2.3.). The basic nature of the Directive as an information and consultation instrument will not be changed in the context of this initiative, given the choice of the legal basis, which allows for the establishment of minimum requirements as to the procedural framework but not for guaranteeing that management decisions are aligned in substance with the opinions of EWCs[101] (see Section 3.1.). This approach and perspective are reflected in the specific policy objectives.

4.2. Specific objectives

The **specific objectives** through which the general objective will be addressed are to:

(1) Avoid unjustified differences in workers' minimum information and consultation rights at transnational level.
(2) Ensure an efficient and effective setting-up of EWCs by preventing delays in the setting up of EWCs, ensuring appropriate resourcing of special negotiating bodies and improving gender-balance on EWCs and special negotiating bodies).
(3) To ensure appropriate resourcing of EWCs and an effective process for their information and consultation by improving legal certainty of key concepts and strenghtening genuine exchange of views between EWCs and central management on transnational matters (see Section 2.3.).
(4) Promote a more effective enforcement of the Directive, including through access to justice for employee representatives, SNBs and EWCs and effective, dissuasive and proportionate sanctions.

[101] The latter provisions would fall under the legal basis in Article 153(1)(f) TFEU .

The specific objective are further clarified by the indicators used to assess the degree to which different policy options would achieve those objectives ("effectiveness"), see Section 7.1.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1. What is the baseline from which options are assessed?

The policy options include a no-policy-change scenario, which serves as a baseline for assessing and comparing the policy options described under Section 5.2.[102] As the policy options include amendments to the Directive, a timeframe of 10 years is assumed for the baseline.[103]

All relevant EU-level policies and measures described in Annex 7 are assumed to remain applicable under the baseline scenario. The national legislation implementing the existing EU level requirements would also continue to apply during the baseline scenario. The fact that no major changes to the national provisions in the field of the Directive have been notified following the transposition of that Directive indicates that the national legislation is stable and unlikely to change.[104]

The proposed Directive on Corporate Sustainable Due Diligence (CSDDD)[105] is likely to be adopted during the baseline period. It would set out obligations for large companies regarding the information and consultation of employees in relation to adverse environmental and human rights impacts in their global value chains. The CSDDD has the potential to achieve synergies with the Directive, as EWCs' opinions can contribute to the development and dissemination of the due diligence policy of multinational corporations. However, that Directive would not affect the legal framework for the operation of EWCs.

Considering the evolution of EWCs over the last years, the number of EWCs is expected to increase at a low linear rate of 9 per year, and the number of Union-scale undertakings at a rate of 3,9%, similarly to the number of employees of those undertakings (see Annex 4).

Under the baseline scenario, the Commission would continue its longstanding and substantial support of projects raising awareness of transnational information and consultation and promoting best practices.[106] Such projects can help alleviate some of the identified problem drivers under the baseline scenario, such as legal uncertainty regarding certain concepts laid down in the Directive and EWC members' perceived lack of expert advice. The Commission would also continue to

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[102] Better Regulation Tool #60.

[103] This timeframe corresponds to the period required for amendments to produce their full impacts, taking into account the likely duration of the legislative procedure at Union level, the transposition period, a possible additional period of deferred application or transitional measures allowing for the adaptation of pre-existing EWC agreements to the new legislative requirements, and a period of practical application by social partners in Community-scale undertakings.

[104] The same is true of possible policy developments at international level. Likewise, it is unlikely that the CJEU would be given the opportunity to address uncertainty regarding the interpretation of the recast Directive, given that no questions on that Directive have thus far been referred by national courts for a preliminary ruling.

[105] COM(2022)71 final.

[106] For 2023, a budget of EUR 2,5 million is available for this purpose, with the main priority to "promote actions aimed at developing employees' involvement in undertakings in particular by raising awareness and contributing to the application of European Union law and policies in this area and the take-up and development of European Works Councils".

monitor the correct transposition of the Directive through a structured dialogue with Member States, and if necessary, infringement procedures.[107]

Despite the actions outlined above, it is unlikely that the identified problem and its drivers will become significantly less relevant in the absence of additional policy measures on EWCs, as evidenced by the fact that the issues identified in the 2018 evaluation since remained unresolved. As the Directive sets minimum requirements and thus a benchmark for individual agreements between central management and employees' representatives, the effectiveness of information and consultation activities on transnational matters is likely to remain suboptimal if the relevant drivers are not tackled through EU action.

Undertakings with a well-functioning EWC could continue to reap the benefits of constructive dialogue at transnational level. In contrast, undertakings experiencing disputes and uncertainty regarding information and consultation requirements would continue to be ill-equipped to implement the radical changes required in the context of climate change and increased automation and digitalisation. Without EU action addressing the problem drivers, it is unlikely that this potential can be harnessed on a larger scale, to benefit the competitiveness of the EU economy as a whole and improve working conditions.

As stated above under Section 2.5., it is unlikely that the CJEU will play a significant role in the baseline scenario. Although the Commission may be able to take up certain grievances by means of infringement procedures, for example, for a lack of conformity with the requirement to provide effective enforcement mechanisms, Member States are much less likely to address that deficit systematically if they are not required to do so by a new EU initiative.

See Annex 12 for detailed explanations of impacts of no EU policy action over the baseline period, by problem area, including quantification where possible. There is no indication of any significant variance in the real costs identified in relation to the problem drivers over the baseline period.

5.2.Description of the policy options

5.2.1. Structure and logic of the policy options

The structure of the policy options mirrors that of the drivers in four distinct problem areas. Therefore, it is appropriate to aggregate the policy measures at the level of problem areas, in accordance with the specific policy objective they aim to achieve. The policy options thus consist of alternative packages of measures addressing a specific problem driver.[108] To ensure a proportionate and targeted impact assessment, the analysis focuses on substantive policy measures likely to have a significant impact on stakeholders. Accompanying measures are identified as such and are not assessed individually. Some measures were discarded for reasons of legality or a clear lack of coherence or proportionality (see Annex 11). The effectiveness, efficiency, coherence and proportionality of the policy options linked to the same policy objective are compared, considering their impacts, to identify the preferred option taking into account the necessary trade-offs between

[107] Infringement proceedings on the Irish system of remedies and access to justice for the enforcement for EWCs' rights were launched in 2022. The dialogue with the Irish authorities on the relevant grievances is ongoing.

[108] As regards the first specific policy objective, the Commission has identified, on the basis of available evidence and its own legal analysis, one appropriate approach to remove the exemptions from the scope of the recast Directive. By way of exception, there is hence only a single policy option, as an alternative to the no-policy change option (baseline), in this case. See Section 5.2.2.

different approaches (see Section 7).[109] In combination, the preferred policy options form the overall preferred policy option for which joint impacts are analysed in Section 8.

Except for problem driver 1, which is linked to the exemptions laid down in Article 14 of the Directive and can therefore not be addressed by a non-regulatory measure, each group of policy options contains a non-regulatory alternative as well as different combinations of legislative amendments. For each specific policy objective, the policy options are organised in the order of escalating intensity of the envisaged policy interventions. Furthermore, a distinction is made between policy measures that entail substantive changes and therefore require an assessment of their significant impacts, and policy measures which are of an accompanying and/or clarifying nature. As the latter merely reinforce the effects of the initiative and address drafting issues in the legal text without changing the existing provisions in substance, they do not warrant a detailed assessment of impacts, in line with the proportionality principle applicable to the better regulation process.

In designing the policy measures and packaging them to form policy options, the Commission was guided by the following key considerations:

(i) the need to give sufficient discretion to Member States in implementing any revised minimum requirements on transnational information and consultation, allowing them to complement those requirements as appropriate and to integrate them into their respective rules, industrial relations traditions and practices, in accordance with the principle of subsidiarity and the Treaty legal base for social policy measures;

(ii) full respect of the autonomy of social partners in giving practical effect to the minimum requirements, which is generally accepted as a key factor for effective information and consultation; the principle of social partner autonomy also entails preserving the possibility for social partners to choose other forms of company-level social dialogue on transnational matters, or to agree to limit themselves to employee involvement at national or local level;

(iii) the fact that business stakeholders generally favour non-binding measures over legislative amendments whereas trade union organisations and employee representatives generally consider non-binding measures ineffective and hence support legislative amendments. Therefore, while various possible combinations between legislative and non-legislative measures could be imagined in theory, stakeholder feedback did not indicate any particular such combination;

(iv) Non-legislative measures, such as the funding of projects to promote the awareness of the transnational information and consultation framework, and the Commission's monitoring of the implementation of the Directive by the Member States form part of the baseline scenario. A legislative initiative would therefore automatically be combined with such continuing non-binding measures. Indeed, the clarifications and specifications to the Directive envisaged in the policy options will enable more effective monitoring measures by the Commission, as the vague and general nature of some key requirements – for instance regarding sanctions and access to justice – has thus far hampered a more frequent pursuit of infringement cases.

For information on the need for adapting the existing national implementing rules in light of specific options, see Annex 8.

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[109] This approach follows the better regulation guidelines on building policy options, specifically the alternative shown in Figure 1b on p. 119 of the guidelines.

The following section describes considered policy options for each of the four main problem areas. The intervention logic below provides an overview of the policy options and their links with the problem drivers and policy objectives.

	Drivers	Problems	General objective	Specific objectives	Policy options	Accompanying measures
SCOPE & COVERAGE	1. Workers of certain Community-scale undertakings do not have the same minimum rights regarding establishment and operation of an EWC	Suboptimal effectiveness of the framework for the information and consultation of employees at transnational level	Improve the effectiveness of the framework for the information and consultation of employees at transnational level	1. to avoid unjustified differences in workers' minimum information and consultation rights at transnational level	1a. - End the exemptions under Art. 14 after a transitional period, enabling workers in undertakings with pre-existing 'voluntary agreements' to request the establishment of an EWC.	Combined with 2b and 2c: clarification that the special negotiating body (SNB) is to be set up and its first meeting convened within 6 months. Combined with 3b and 3c: - clarify existing provisions on format of meetings, training, and expertise for SNB and EWC members (necessary training 'cost-free') Combined with 4b and 4c: - Lay down MSs' obligation to ensure effective access to courts of EWCs and SNBs, including against abuse of confidentiality - Lay down obligation on MS to provide for effective, proportionate and dissuasive sanctions
SETTING UP	2. Not sufficiently efficient & effective setting-up of EWCs			2. to ensure an efficient and effective setting-up of EWCs	2a. (low intervention): Interpretative guidance on effective setting up of EWCs 2b. (medium intervention): - clarify resourcing of SNBs, to cover reasonable legal costs 2c (max. intervention): 2b + gender balance objectives (40% target) to be negotiated into new and revised EWC agreements	
CONSULTATION FRAMEWORK	3. Obstacles to the effective operation of EWCs			3. to ensure the appropriate resourcing of EWCs and an effective process for their information and consultation	3a. (low intervention): interpretative guidance on an effective consultation procedure, including the interpretation of the concept of 'transnational matters', and on the appropriate resourcing of EWCs 3b. (medium intervention): - Clarify concept of transnational matters without significantly broadening it - management to provide reasoned response to EWC opinions before adopting a decision on transnat. matters - clarify resourcing of EWC as regards legal costs & costs of / access to expertise, incl. in subsid. requirements - clarify that central management may declare information confidential only in the legitimate interest of the undertaking + obligation to inform EWC/SNB/employees' representatives, upon request, of the grounds of confidentiality/non-disclosure - subsidiary requirements of at least 2 plenary meetings/year 3c. (max. intervention): 3b (except for the respective first measure of 3b and 3c, which are alternative) + - Expand the concept of transnational matters + require management to justify that a matter is not transnational - provide for a general right to assistance of EWCs by experts of their choice - exempt information sharing with national/local employee representatives from confidentiality restrictions + mandatory requirement of prior judicial authorisation if management wants to withhold information	
ENFORCEMENT	4. Shortcomings in enforcing the Directive			4. to promote a more effective enforcement of Directive 2009/38/EC	4a. (low intervention): Commission recommendation on effective sanctions and access to courts 4b. (high intervention): - Obligation on MSs to notify Commission how access to justice and effective remedies are ensured - When providing for fines to sanction violations of EWC rights, MSs must take into account company turnover 4c. (max. intervention): 4b+ - Sanctions to include financial penalties up to 4% of net worldwide turnover - suspension of management decisions taken in violation of the information and consultation obligation	

5.2.2. Policy options aimed at avoiding unjustified differences in workers' minimum information and consultation rights at transnational level **(Policy Area 1)**

Policy option 1a would bring currently exempted **undertakings in the scope of the Directive.** This concerns undertakings with 'voluntary agreements', which were concluded before Union law was established in this field, and 'Article 14 agreements', concluded or revised during the transposition period of the recast Directive (see Section 2.4.1). This option ensures a consistent, clear, and comprehensive framework for information and consultation at transnational level for all Union-scale undertakings. It aims to guarantee equal access of employees to the rights under the Directive and make all Union-scale undertakings subject to the same obligations to negotiate an EWC agreement on receipt of a valid request. Only one option has been identified, since there is no plausible alternative that could avoid unjustified differences in workers' information and consultation rights.

With respect to **undertakings with Article 14 agreements**, this option would provide for the application of the revised requirements of the Directive, in the same way as those requirements will apply to agreements that are currently already subject to the Directive. The application of revised minimum requirements is likely to entail the need to adapt at least some of the pre-existing EWC agreements. This would be consistent with the approach followed by the 2009 Directive. The transitional period for the adaptation of Article 14 agreements would be two years, just as for undertakings with pre-existing EWC agreements that are not currently exempted from the Directive.

With respect to '**voluntary agreements**', since they were concluded outside the scope of EU law and since, in the absence of a request by the requisite number of employees or employees'

representatives, establishment of EWCs is not obligatory in Union-scale undertakings, removing the exemption of undertakings with such agreements cannot trigger the automatic application of the Directive's requirements to these agreements. Following the removal of the exemption, the employees and management of these undertakings **can maintain their existing arrangements and agreements for information and consultation on transnational measures, without an obligation to renegotiate** them in accordance with the revised Directive. Employees or management will, however, have the **possibility to request** and initiate negotiations of **an EWC** agreement in accordance with the Directive's procedures.[110] As a result, unless the management and employees agree otherwise, a newly established EWC under the Directive would replace the transnational information and consultation body based on the previous voluntary agreement.

Stakeholders views: The **European Parliament** called for an end to the exemption from the Directive with the view to creating a regulatory level-playing field. **Trade unions** and **EWC representatives** mostly support such a measure, but some express reservations regarding the need for renegotiation of existing agreements it may entail.[111] **Employer organisations** prefer to maintain the exemptions, stressing the autonomy of the parties and the need to preserve well-functioning information and consultation mechanisms.[112] In the targeted survey for the supporting study[113], EWC representatives were overwhelmingly in favour (81.7%) of removing the existing exemptions, compared to only 13.2% of respondents on behalf of management. 43.4% of managers did not express any views about this issue. Respondents (combining both employees and management) linked to information and consultation bodies created before the first EWC Directive were less in favour of removing the exemptions (53.7 %) than those with EWCs created under EU rules (69.2%). (See Annex 2)

5.2.3. Policy options aimed at ensuring an efficient and effective setting-up of EWCs **(Policy Area 2)**

Policy options under Problem Area 2 to would provide **more legal certainty** in relation to the timeframe for the initiation of negotiations as well as the resources available to SNBs.

Option 2a involves the issuing of **non-binding interpretative guidance** by the Commission on the rules governing the setting up of EWCs, based on established best practice and with due consideration to the views of European social partners. Such guidance could for instance clarify the timeframe for setting up of the SNB and initiating negotiations, the coverage of SNBs' costs, including legal costs, and how to achieve a balanced gender composition of EWCs.

Option 2b would cover some of the same issues as Option 2a but translate the envisaged clarifications into binding legislative amendments to the Directive.

Substantive changes under option 2b would include a clarification in the Directive that the central management's obligation to bear SNBs' expenses includes also the coverage of reasonable costs of legal advice, representation and proceedings. The limitation to "reasonable" legal costs is designed to prevent cost coverage for frivolous legal actions. The approach of using an abstract legal term is consistent, e.g. with Union rules on legal aid which use the concept of "appropriate"

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[110] Article 5(1).
[111] See Annex 2 and ICF(2023), Sections 5.2.2.1., 5.2.2.2. and 5.2.2.3.
[112] Ibid.
[113] ICF(2023), Section 5.1.2.8.

legal aid.[114] It is not possible to pre-determine more concretely in the legislation whether legal action is warranted in an individual case.

Accompanying measures under option 2b include:
(i) the provision of the Directive prescribing the application of subsidiary requirements "where the management refuses to commence negotiations" would be reformulated to clarify that management is to **convene the first SNB meeting within six months** of the request. The deadline remains unchanged under this option, which merely aims to address the ambiguity of the existing wording.
(ii) The existing **right of SNBs** to training "without loss of wages" would be clarified to address any doubts as to whether undertakings must **cover the costs of necessary training and related expenses**.

Option 2c would introduce, in addition to option 2b, a new **substantive requirement** for the SNB and central management to include an objective of gender-balanced representation when negotiating new or re-negotiating existing EWC agreements. More specifically, that objective would be for the underrepresented sex to account for at least 40% of EWC members, and where applicable select committee[115] members. In line with the approach of the Directive on gender balance on company boards[116], the gender composition of EWCs would not necessarily be representative of the overall workforce in order to meet that objective. Indeed, it would not be conducive to achieving the policy objective if EWCs were to mirror a possible general lack of gender balance in the undertaking. In order not to compromise the functioning of EWCs, the option would however not take the form of a fixed binding quota but allow for a certain flexibility. Parties could tailor the arrangements they agree concerning the gender-balance objective to take full account of the case law of the CJEU on positive action[117], practical constraints linked to the possible lack of suitable candidates of the underrepresented sex in some cases, and the national rules and practices on the election of employees' representatives. The measure would aim to achieve changes in the composition of the vast majority of existing EWCs during the renegotiations (see Section 2.4.2). The same **accompanying measures** as under option 2b would be taken also under 2c.

Stakeholders' views: The **European Parliament** recommended the accompanying measures under options 2b and 2c and the gender balance objectives as per option 3c. Further it recommended shortening the existing negotiating deadline from three years to 18 months and requiring SNBs in need of support by experts to consult trade union representatives by priority and only if needed, further experts of their choice. The latter two measures were discarded for the reasons set out in Annex 11.

Trade unions considered that there is a need for certain improvements and clarifications of the procedure for setting up EWCs, welcoming for instance the clarification described in the first accompanying measure under options 2b and 2c.[118] **Employer organisations** oppose adapting the framework for setting up EWCs and stress the importance of reducing financial strain on

[114] Directive 2003/8/EC (Article 3).
[115] The select committee is a coordinating body comprising at most five members elected from among EWC members. Where a select committee exists, it typically has a special role in the ad-hoc information and consultation on extraordinary circumstances or decisions. Such a body is optional for EWCs subject to negotiated agreements, but mandatory for EWCs subject to subsidiary requirements, cf. point 1(d) of the Annex to the recast Directive.
[116] Directive (EU) 2022/2381.
[117] Cf. Judgment of the Court of Justice of 28 March 2000, *Badeck and Others*, C-158/97, ECLI:EU:C:2000:163.
[118] ICF(2023), Sections 4.2.1.2. and 5.1.2.4.

companies. During the evidence gathering for the supporting study, **both employer and trade union organisations**, while generally supporting the objective of gender balance, **questioned the feasibility of binding gender quotas,** having regard to challenges in some sectors and diverse nominations or selection systems of employee representatives in Member States. Sector and country-specific considerations in this regard would be necessary.[119]

5.2.4. Policy options aimed at ensuring the appropriate resourcing of EWCs and an effective process for their information and consultation **(Policy Area 3)**

Policy options under **Policy Area 3** pertain to various contributing factors: the issue of legal certainty regarding the concept of 'transnational matters', requirements for consultation, including as regards the timing of the follow-up to EWCs' opinions, appropriate resourcing of EWCs to carry out their role effectively, and the matter of confidentiality or non-disclosure of sensitive information.

Option 3a involves the issuing of **non-binding interpretative guidance** clarifying the concept of transnational matters, the need for management to provide a reasoned response to EWCs' opinions, the timing of information and consultation, the coverage of training expenses and the conditions for restricting information based on confidentiality grounds resp. withholding sensitive information from EWCs.

Option 3b would introduce substantive amendments (see below) in the Directive. Except for the measures concerning the subsidiary requirements set out in the Annex to the Directive, all Union-scale undertakings and their EWCs are potentially directly concerned by the amendments described below. Member States would need to implement the amendments into national law and enforce the amended requirements.

Substantive changes under option 3b:
(i) The **concept of transnational matters would be clarified** without significantly broadening it. For this purpose, certain elements of recital 16, such as the scope of the potential effects of a matter, would be incorporated into the enacting terms.

(ii) As regards the procedural requirements for consultation, an obligation on management to provide a **reasoned response** to EWCs' opinions prior to the adoption of a decision on transnational matters would be laid down in the Directive. It implicitly requires management to **take EWCs' opinions into account**, because a reasoned response cannot be provided without having first considered those opinions on their merits.[120]

(iii) The types of **financial and material resources** that must be determined in an EWC agreement would be **specified**, in particular the access to and costs of support by experts, and the costs of legal advice, representation and proceedings. In accordance with the principle of party autonomy, no fixed requirements would be imposed.[121] The option would instead require the SNB and central management to negotiate and determine the coverage of those costs in their EWC agreement, in accordance with applicable national law.

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[119] See Annex 2 and ICF(2023), Sections 5.2.2.1. and 5.2.2.2.
[120] This policy measure thus encompasses in substance the European Parliament's suggestion to state that management "shall" – instead of "may" – take EWCs' opinion into account.
[121] This is consistent with the expert group report of 2010 on the implementation of the recast Directive, which concluded that flexibility is needed to determine who is to bear the costs related to legal actions, taking into account national practice or the relevant EWC agreement (Group of Experts (Commission)(2010), p. 39).

(iv) In order to ensure that effective information and consultation is not undermined by excessive recourse to non-disclosure and **confidentiality restrictions**, it would be clarified that central management may declare information confidential **only in the legitimate interest of the undertaking.** To increase transparency and enable employees' representatives to challenge **confidentiality restrictions or non-disclosure**, management would be required to inform them, upon request, of the grounds justifying the confidentiality/non-disclosure.

(v) Finally, the subsidiary requirements would be amended to require at least two annual plenary meetings of central management with the EWCs that function on the basis of those requirements.

Accompanying clarifications under option 3b: To address uncertainty regarding the interpretation of the requirement to provide EWC members with necessary training "without loss of wages", it would be clarified that undertakings have to cover the **costs of such training and related expenses**. Such clarification would be in line with the existing interpretation of the provision by stakeholders (see Section 2.4.3). It would also be clarified that the parties should agree on the format for EWC meetings, which may make use of virtual as well as physical formats, which is not explicit in the current wording.

Option 3c would involve a more far-reaching policy intervention, by introducing the following substantive amendments, in addition to the targeted measures under option 3b:

(i) The concept of **transnational matters would be substantially expanded** to include notably matters with **potential effects indirectly concerning employees** in two different Member States, as well as **any matters decided in a Member State other than the one in which they produce their effects**, even if those effects are confined to a single Member State. Such amendments would substantially broaden the competence and scope of action of EWCs to matters for which the national or local level of employee representation was thus far considered appropriate. Moreover, in the case of a dispute between the central management and the EWC as to whether an information and consultation is to be carried out, **the central management would be required to justify the absence of transnational issues in writing.** (ii) In terms of **resources**, **a general right of EWCs to be supported by experts** of their choice at the expense of the Union-scale undertakings would be introduced, instead of leaving it to the parties to the EWC agreement to negotiate the conditions for involving experts. (iii) The sharing of information with employees' representatives at national or local level would be exempt from **confidentiality restrictions**, provided that those employees' representatives are subject to equivalent restrictions. In addition, the dispensation of management from its obligation to provide information to EWCs if that disclosure could seriously harm the undertaking would be made subject to a general condition of **prior administrative or judicial authorisation**.

Stakeholders views: The **European Parliament** recommended to broaden the definition of transnational matters, require central management to provide a reasoned response to EWCs' opinion prior to the adoption of the decision, allow for the imposition of confidentiality only in the legitimate interest of the undertaking, require management to provide EWCs with the objective criteria justifying confidentiality, make non-disclosure of information on transnational matters subject to a mandatory prior authorisation, entitle EWCs to request assistance from experts of their choice, require management to bear EWCs' judicial costs and costs of legal representation, and

increase the number of annual plenary EWC meetings from one to two in the subsidiary requirements.[122]

Trade unions and EWC representatives support a clarification of the concept of transnational matters, requirements for a reasoned response by management, ensuring that the latter takes EWCs' opinions into account, and clear provisions on the grounds justifying the withholding of information on transnational matters, strengthening EWCs' entitlement to support by trade union representatives, and increasing the number of annual plenary meetings under subsidiary requirements. In contrast, **employer organisations and management representatives** are sceptical vis-à-vis such measures, stressing notably the need to preserve companies' capacity for fast and efficient decision-making and the importance of protecting sensitive information such as trade secrets and complying with the stock-exchange rules, and cautioning against a giving co-determination powers to EWCs. Employer organisations called instead to alleviate administrative and financial burdens by promoting online EWC meetings .[123]

5.2.5. Policy options aimed at promoting a more effective enforcement of the Directive **(Policy Area 4)**

The effective enforcement of the rights guaranteed by the Directive depends on several factors: (i) compliance monitoring by the European Commission (and if necessary, infringement proceedings), (ii) appropriate sanctioning by national competent authorities, and (iii) effective judicial and/or administrative remedies available to the rightsholders (primarily employee representatives and members of the special negotiating bodies and the EWCs). For the purposes of the first component, Member States would be required to provide the Commission with (and update as necessary) the information on how access to justice is provided for each right. Regarding the other two components, the requirements regarding access to justice and penalties could be clarified or strengthened. The **policy options in Problem Area 4** could be combined with either non-binding or legislative measures relating to the coverage of reasonable legal costs (see options 2a, 2b, 2c, 3a and 3b above).

Option 4a consists of specific Commission recommendations addressed to Member States, clarifying how the latter can comply with their obligation, in accordance with the general principles of Union law, to apply administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in cases of infringement of the obligations arising from the Directive.

Option 4b would include the following s**ubstantive changes**:

(i) To enable the Commission to effectively monitor and ensure the requirement of effective access to justice, **Member States would have to notify the means by which EWCs, SNBs and employees' representatives can bring judicial proceedings in respect of all their rights** under the Directive.[124] This one-off information requirement could be discharged in the framework of the

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[122] The European Parliament recommended certain additional measures in resolution, which were however discarded without detailed assessment of their impacts, for the reasons explained in Annex 11.

[123] See Annex 2 and ICF(2023), Section 5.2.2.2.

[124] While it is legally conceivable to combine such a notification obligation on Member States with Commission recommendations on the enforcement of transnational information and consultation requirements (option 4a), it was considered more relevant and consistent to package that obligation (only) with binding amendments strengthening and specifying the enforcement provisions in the Directive, for the following reasons:

- information on the implementation of the existing enforcement rules in the Directive was already gathered in the context of the evaluation, and updated for the purposes of this impact assessment. Shortcomings were

notification by Member States' of the measures transposing the revision of the Directive. As the relevant information concerns the rules on judicial remedies under national law, it is fully available to the national authorities. Consequently, this option would not impose any reporting or administrative obligations on businesses.

(ii) The level of pecuniary sanctions should **take account of the annual turnover of the sanctioned undertaking or group of undertakings**, as well as of **any relevant aggravating and mitigating factors** related to the gravity, scope, impacts and duration of the offence. Sanctions have to be determined in accordance with principles of effectiveness, dissuasiveness and proportionality (see accompanying clarification below). The rationale of explicitly prescribing the turnover criterion is that the existing fixed lump sums as pecuniary sanctions in the Member States are in practice disproportionately small for undertakings with a large turnover, and thus devoid of any dissuasive effect, see Section 2.4.4.(ii).[125] The payable amount needs to be related to the financial capacity of sanctioned Union-scale undertaking or group[126], in order to ensure the dissuasiveness and effectiveness of this type of sanctions. At the same time, the option requires Member States to ensure the proportionality of any sanctions. The fact that the impacts of non-compliance with the Directive might be limited, including in terms of their geographical scope, must therefore be taken into account by national courts and administrative authorities when determining the percentage of turnover to be levied as a sanction. This option does not specify percentages by way of thresholds or limits for the imposition of fines and **leaves it for Member States to define how individual sanctions are to be determined**, having regard to the sanctioned undertaking's turnover. Member States must in any case avoid potentially excessive penalties.

Accompanying clarification under option 4b: The existing requirements under general principles of Union law **for access to judicial remedies and effective, dissuasive and proportionate sanctions would be incorporated into the enacting terms of the Directive**. This would clarify that these requirements apply **whenever rights under the Directive are infringed**, e.g., where undertakings restrict the dissemination of information on transnational matters or refuse to disclose such information to EWCs on confidentiality grounds, without sufficient justification.

Option 4c would go further by introducing, in addition to the measures under policy option 4c, the following further **substantive changes**:
(i) Determining specific **maximum shares of undertakings' net turnover that could be imposed by way of pecuniary sanctions**: up to 4% where a violation of rights and obligations under the

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identified for some Member States regarding access to justice, as explained in the problem definition. There are no indications that a reporting exercise on the same issues would yield substantively different findings following the adoption of a non-binding Commission recommendation, not least because of the likely limited take-up of such recommendations in the legal systems where the issue was identified as most pronounced. In contrast, following legislative amendments enhancing the enforcement provisions in the Directive, Member States would be legally required to address shortcoming regarding access to justice. In such a context, the reporting obligation is linked to transposition and would have a clear added value in enabling the Commission to monitor compliance;

- when combined with binding legislative amendments, the reporting obligation can be discharged in the framework of the standard procedure for the notification of transposition measures, using the IT tools available for that purpose. The process would also be accompanied by an expert group set up to support the transposition. If a mandatory reporting requirement were to be combined with a non-binding initiative, it is not clear how a similarly efficient process could be ensured.

[125] This rationale is consistent with the approach followed in the proposed corporate sustainability due diligence directive, COM(2022)71 final, Article 20(3).

[126] Limiting the calculation base to turnover in the Union would entail less favourable treatment of European undertakings compared to international groups and place them in a competitive disadvantage.

Directive is found to be intentional, or else up to 2% of global annual net turnover. (ii) Introducing a **right to injunctive relief** allowing EWCs to request the suspension of management decisions taken in violation of the information and consultation requirements under the Directive.

Stakeholders' views: The **European Parliament** called for facilitated administrative and legal proceedings for an effective access to justice for EWCs and special negotiation bodies, including the possibility to request a preliminary injunction for the temporary suspension of management decisions and timely decisions on judicial appeals against the imposition of confidentiality, as well as pecuniary sanctions of up to 4 % of the undertaking's global annual turnover.[127]

Trade unions supported the Parliament's recommendations[128], whereas **employer organisations and management representatives** considered them disproportionate, cautioning against the risk of delays in companies' decision-making and undermining trust between social partners.

5.3. Options discarded at an early stage

A number of policy measures that have either been considered at the early preparatory stages of this initiative or were put forward by social partners during the consultation process have been discarded without a detailed assessment of their impacts, either because it was not possible to establish sufficient evidence to confirm the issue that those measures would have aimed to address, or because the measures were unsuitable to achieve the policy objectives, clearly disproportionate, or incoherent with the existing legal framework. Annex 11 contains a description of those policy measures and the reasons for discarding them.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This section presents key findings with details in Annex 12. However, certain points warrant general clarification, by way of introduction. First, the analysis focuses on the impacts of implementing the policy options in the EU Member States, in line with the geographic scope of a possible amending Directive or non-binding Commission instrument. As the Directive applies also to other **EEA countries**[129], it is reasonable to assume that clarifications or amendments to that Directive would eventually also be adopted EEA-wide. EEA countries have therefore been included in the assessment of impacts.[130] There are no indications that the impacts in the EEA would substantially diverge from those in EU Member States. Second, as undertakings with EWCs are primarily concentrated in the metal, services, chemicals, building, food, agriculture and tourism **sectors**, the identified social and economic impacts across all policy areas will materialise also primarily in those sectors.[131] Third, due primarily to the **geographic distribution** of undertakings'

[127] Insofar as the Parliament also called on Member States to grant legal personality to EWCs and SNBs and to include in the possible sanctions the exclusion from public benefits, aids, subsidies or public contracts, it is explained in Annex 11 why such measures were not included in the policy options.

[128] ETUC went further by requesting administrative or judicial systems allowing extremely fast decisions on the suspension or nullification of management decisions taken in violation of information and consultation obligations vis-à-vis EWCs. See Annex 11 for explanations why such measure has been discarded.

[129] The recast Directive was inserted in Annex XVIII to the EEA agreement by decision No 54/2010 (OJ L 181, 15.7.2010, p. 22) and EEA Supplement No 37, 15.7.2010, p. 29.

[130] The analysis of whether and how national laws might need to be adapted to implement the policy options did not cover non-EU countries, because the scope of application of the considered amendments would be limited to the EU (with the possibility to subsequently expand the amendments to the whole EEA by including them in the EEA agreement).

[131] See Annex 4, figure 5.

headquarters, most EWCs are located in seven Member States, namely DE, FR, BE, SE, NL, IE, IT.[132] Nevertheless, the impacts policy options would affect employees across Member States where the undertaking operates, primarily in the abovementioned sectors, because they are represented by the EWCs.[133] Fourth, most EWCs are subject to the national law of the seven Member States, whereas around 10 Member States have either no or only one EWC body established under their law. The **impacts of certain policy measures can vary depending on which national law is applicable** to an EWC. Some national laws may already contain rights and obligations in line with certain policy measures, which would therefore not require any amendments to the relevant national law. The respective measure would thus not change the situation of undertakings and EWCs subject to those laws. Such cases are pointed out in the presentation of impacts below. Fifth, for the reasons presented in more detail in Annex 12 (Section 1), the initiative will not have any relevant or foreseeable **impacts on consumers, SMEs[134], or the environment**. These types of impact are therefore not discussed separately under each policy area. Sixth, possible impacts on employment are discussed only where relevant in this section, in relation to policy options 2c and 4c, whereas Annex 12 (Sections 2-5) contain further explanations about the reasons why no effects on employment can be anticipated for the rest. Seventh, the **accompanying measures** described above in Section 5 do not involve substantive changes to the existing provisions but mere technical drafting clarifications. These measures are generally assumed to reinforce the effects of the options without producing significant self-standing impacts. Therefore, they do not warrant a detailed analysis of impacts. Eigth, available cost estimates are presented below in terms of average unit costs per option, in relation to the average turnover of the Union-scale undertakings.[135] However, for the following reasons, the scope for meaningful quantification of impacts is limited: (i) the specific characteristics of the transnational information and consultation framework make it fundamentally challenging to establish a causal link between the policy options seeking to develop or clarify that framework, and specific economic or social outcomes. This challenge pertains for instance to the autonomy of social partners in designing and handling the information and consultation process in their respective undertaking, the fact that the establishment of EWCs is only mandatory when employees representatives request it, and external – often behavioural – factors such as the established culture of employee involvement in the respective undertaking. (ii) Costs and benefits of transnational information and consultation tend to be long-term and indirect in nature. (iii) Due to often polarised stakeholder views, key evidence sources are affected by selection-bias and the risk of inaccurate self-reporting by stakeholders.

6.1.Impacts of policy options under Policy Area 1

6.1.1. Economic impacts

Costs for Union-scale undertakings: By removing the exemptions from the scope of the Directive, **option 1a** would expand the right to request the establishment of an EWC to employees of the 323 undertakings with voluntary agreements. Where such requests are made, the latter undertakings may hence face the **one-off adjustment costs and possible marginal opportunity costs** of

[132] See Annex 4, figure 3.

[133] Union-scale undertakings' activities extend by definition to more than one Member State. EWCs represent employees from the different Member States in which the undertaking operates vis-à-vis central management: the recast Directive requires that one seat on the EWC be allocated per portion of employees employed in a Member State amounting for 10 %, or a fraction thereof, of the employees employed in all the Member States taken together.

[134] Given the thresholds set out in the definition of 'Community-scale undertakings' in the recast Directive, the requirements under the Directive do not apply to SMEs. For explanations why there are also no foreseeable indirect impacts on SMEs see Annex 12 Section 1.

[135] For the preferred option, estimates of total costs are developed in Annexes 3 and 4.

negotiating new EWC agreements in accordance with the Directive. There is no way reliably to estimate the likely incidence of such requests, as it depends on internal dynamics within each individual undertaking and EWCs remain voluntary instrument (i.e. a request is needed either by workers or initiated by the management). The average overall costs per negotiation were estimated at ca. EUR 148 000.[136] They may be considered negligible as they correspond to only 0.0006% of the average global turnover of Union-scale undertakings with an EWC or voluntary agreement.[137] These one-off adjustment costs could be offset to some extent where, due to the negotiations of the new agreement, undertakings do not incur baseline costs of renegotiating existing voluntary agreements.[138] For undertakings with voluntary agreements, the upper number of potentially affected companies is 323, whereas there are 28 companies with Article 14 agreements (see Section 2.4.1.). The latter would become subject to the Directive following the removal of the exemptions and hence may have to be re-negotiated to comply with the revised requirements unless they already cover all requirements. The available evidence suggests that most Article 14 agreements (ca. 16 out of 28) are already aligned with the current Directive, but a revision of that Directive is likely to require a renegotiation for adapting the agreement to the new EU requirements. Evidence suggests that re-negotiations on average take less time 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 monetise certain costs linked to meetings (ca. EUR 18 400 per meeting[139]) 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. In any case, the costs of renegotiation even if several meetings are needed should not have any significant economic consequences for businesses. Furthermore, the data gathered indicates that agreements are regularly re-negotiated (on average every 5 years). Therefore, the re-negotiation linked to option 1a could take place within the framework of this regular negotiation, entailing no or limited costs compared to the baseline scenario. There are no indications that **option 1a** would result in higher running costs of EWCs and therefore no **recurrent adjustment costs** have been identified in relation to this option (cf. Annex 12 Section 2).

Benefits for undertakings: **Option 1a** would ensure the equal application of rights and obligations under the Directive to all Union scale undertakings and thus establish a simpler and more coherent legal framework.

Impacts on competitiveness: No such impacts have been identified in relation to **option 1a**. There is no evidence that the setting-up or operation of an EWC under the Directive would have negative impacts on the competitiveness of companies which are currently exempted. The costs for setting up and operating EWCs are negligible in relation to the turnover of companies with EWCs or with voluntary agreement (see above 'Costs for Union-scale undertakings' and Annex 12). Likewise, while studies have shown that the involvement of employees is linked to better performance of undertakings[140], potential positive impacts of policy option 1a on the competitiveness of companies cannot be estimated with any degree of certainty.

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[136] ICF(2016), estimates adjusted to today's prices. See Annex 4 'Analytical methods' (Section 4.3.).
[137] The estimated annual global turnover for undertakings with EWCs or voluntary agreement is € 24 billion (average). ICF(2023), Section 5.1.2.1.
[138] See Section 6.3.1. below and Annexes 4 and 12 for explanations and quantification of renegotiation costs.
[139] See Annex 4 'Analytical methods' (Section 4.4.).
[140] Eurofound (2019) European Company Survey 2019, Workplace practices unlocking employee potential.

Impacts on internal market: Although the deletion of the exemptions under **option 1a** would lead to a less fragmented legal framework at EU level, the associated economic benefits in terms of market efficiency are likely negligible. First, the establishment of an EWC remains a discretionary choice of the social partners in Union-scale undertakings and the take up of EWCs under the revised rules cannot be reliably estimated. Second, the available evidence does not suggest important differences in overall functioning and operational costs of the voluntary agreements and EWCs agreements.

6.1.2. Social impacts

Benefits for employees: While there is no conclusive evidence that the operation of voluntary agreements is less effective than of EWC agreements, **option 1a** would ensure the equal application of minimum rights and obligations to all Union scale undertakings and to their EU employees. Replacing voluntary agreements, where so requested by employees or initiated by the management, with EWC agreements can also facilitate redress because the rights of EWCs are enforceable under EU law, in line with the fundamental right to an effective remedy (Article 47 CFR). Potentially ca. 5.4 million employees could benefit from this alignment of the minimum rights if all 323 undertakings with voluntary agreements would instead establish EWCs operating under the Directive. It is however also possible that the parties will opt to preserve well-functioning voluntary agreements.

6.2. Impacts of policy options under Policy Area 2

6.2.1. Economic impacts

Costs for undertakings: **All policy options** – with regard to the clarification of coverage of reasonable legal costs - could entail some **adjustment costs** when setting up an EWC (one-off costs) or renegotiating an EWC agreement with an SNB (recurrent costs, renegotiations are estimated to occur on average every five years,[141] but do not necessarily involve an SNB). A small increase in costs linked to the coverage SNBs' expenses for legal advice can be expected due to more requests for legal advice from employees' representatives. This is more likely for **options 2b and 2c** owing to their binding character. The data does not allow for a precise estimation of these incremental costs. They would represent only a negligible share of the one-off cost of setting up an EWC (estimated at EUR 148 000 per negotiation procedure, representing ca. 0.0006 % of the average global annual turnover of Union-scale undertakings), or cost of renegotiation of an existing EWC agreement.[142] No additional costs are expected from actions to ensure gender-balance (**option 2c**) as this objective would need to be taken into account when renegotiating an existing EWC agreement or creating a new EWC. Thus, no additional/ad-hoc renegotiation is needed. See Section 3 of Annex 12 for details.

Benefits for undertakings: The policy options could lead to **certain benefits** for undertakings setting up an EWC. The interpretative guidance (**option 2a**) could speed up the negotiation process only to some extent and thereby slightly reduce costs of negotiations, as the number of meetings or disputes could be marginally reduced. The positive impacts are likely to be limited as it would depend on the extent to which the guidance would be taken into account by the stakeholders. The

[141] See Section 4.5 of Annex 4.

[142] In the context of renegotiations, the obligation to cover SNBs' reasonable legal costs would be relevant if an SNB is involved in the renegotiation. The described impacts are not expected to apply to undertakings and SNBs applying the NL legislation, which already contains a requirement for the undertaking to cover reasonable legal costs of employees' representatives (see Annex 8).

improved legal clarity (**options 2b and 2c**) would improve accessing the required legal expertise and avoiding discussions about the scope of the SNB's costs that are to be covered by the management, leading to a more efficient process. Cost savings linked to a reduction of the frequency of issues associated with unclear resourcing of SNBs (for example, reduced risk of disputes, and hence reduced opportunity costs for companies), would compensate some of the above-mentioned additional costs. Given the negligible share of overall negotiation/renegotiation costs in comparison to turnover, the potential direct benefits are however negligible. In light of research showing the beneficial effects of gender balance[143], **option 2c** could have a positive effect on the quality of EWCs' non-binding opinions, and thus indirectly on management decisions on transnational matters.

Impacts on competitiveness: No negative impacts on competitiveness have been identified in relation to any of the options in Policy Area 2. The costs for setting up EWCs are overall negligible in relation to the turnover of companies with EWCs and the clarification of the obligation to cover reasonable legal costs in the process of negotiation or renegotiation would contribute to improved legal clarity regarding the setting up procedure (see above 'Costs for Union-scale undertakings' and Annex 12). Given the evidence from studies showing a positive relationship between female representation and business performance[144], and the potential contribution of more gender-balanced EWCs to the quality of management decisions, it is plausible that **option 2c** might contribute to some extent to fostering companies' competitiveness.

Impacts on internal market: There is no firm evidence of significant direct impacts of the policy options in area 2. Nevertheless, as regards the objective of gender-balanced composition of EWCs under **option 2c**, it can be expected, considering the abovementioned research demonstrating economic benefits of gender balance in relation to various aspects of the economy[145], that increased gender balance on EWCs will contribute, in conjunction with the general benefits of a more effective information and consultation process described above, to delivering benefits such as a higher level of employment and productivity. These benefits however cannot be quantified.

6.2.2. Social impacts

Benefits for employees and undertakings (quality of social dialogue): The interpretative guidance (**option 2a**) is likely to entail only limited positive impacts on the process of setting up EWCs and renegotiations involving the establishment of an SNB. Through guidance on access to legal advice, this option could indirectly improve the quality of future or renegotiated EWC agreements. It could also contribute to a better gender balance within these EWCs by clarifying how the parties may take this need into account. A better informed, smoother negotiating process could also benefit management and the undertaking, e.g., by decreasing legal uncertainty and facilitating clearer and more targeted EWC agreements. However, these positive effects are likely to be limited due to the non-binding nature of the measure and would depend on the extent to which the guidance would be followed by the stakeholders. By providing important binding clarifications of employees' rights during the (re)negotiation process, **options 2b and 2c** entail stronger social benefits. It is however not possible to quantify them. In addition, **option 2c** would also ensure, through specific objectives, a better gender balance in current and future EWCs. Around 60 % of existing EWCs could benefit from this measure. This could improve the quality of social dialogue, with possible indirect positive

[143] See e.g. the findings of the European Institute for Gender Equality (EIGE) in a large scale 2017 study on 'Economic Benefits of Gender Equality in the European Union'.
[144] Ibid.
[145] Ibid.

impacts on working conditions and employment. Therefore, **option 2c** is likely to entail significant positive impacts for employees.

Impacts on fundamental rights: Policy options under Policy Area 2 would improve employees' rights to information and consultation within the undertaking (Article 27 CFR) and would also indirectly bring benefits regarding the right to an effective remedy (Article 47 CFR) and equality between women and men (Article 23 CFR). While benefits under **option 2a** would be limited due to its non-binding nature, **option 2b,** by ensuring that reasonable legal costs are covered by the management, would contribute positively to the quality of the dialogue between employees and management and of the resulting agreements, as well as to the capacity of employees and their representatives to access legal advice and justice. **Option 2c**, would in addition to the coverage of reasonable legal costs also entail positive impacts in achieving a more equitable environment in EWCs by setting specific objective for gender balance in EWCs and thus contribute to better equality between men and women.

6.3. Impacts of policy options under Policy Area 3

6.3.1. Economic impacts

Costs for undertakings: **Option 3a** could create some one-off adjustment costs where parties choose to renegotiate their EWC agreement specifically to align it with the non-binding guidance, which is however not expected to occur often. Partial monetisation of the renegotiation costs (see Section 6.1.1. above) suggest the costs of renegotiation, even if several meetings are needed in most complex cases, should not have any significant economic consequences for businesses. Furthermore, the data gathered indicates that agreements are regularly re-negotiated (on average every 5 years). Where such renegotiations lead to expanding EWCs' right to the coverage of expenses, such as legal costs and expert fees, they could entail an incremental increase in undertakings' costs of running an EWC. However, given that the average overall costs linked to the operation of an EWC are estimated at ca. EUR 300 000[146] (representing ca. 0.0012 % of the average global annual turnover of Union-scale undertakings) such incremental recurrent adjustment costs would likewise account only for a negligible share of undertakings' turnover. The requirement under **option 3b** to address the questions of access to expertise, coverage of training costs (including expenses) and legal costs in EWC agreements would require renegotiation of EWC agreements that do not yet cover those issues. While it is not possible, for lack of comprehensive information about the content of all EWC agreements, to estimate the incidence of such renegotiations with certainty, most agreements include at least some clauses on coverage of expenses (e.g., coverage of expertise, training) (see Section 2.4.3.).[147] In any case, one-off renegotiation costs would account only for a negligible share of undertakings' turnover. Moreover, in a substantial number of cases, the necessary adaptations of EWC agreements could be agreed as part of regular renegotiations, entailing no or only very limited additional costs compared to the baseline.[148] **Option 3b** could entail also limited recurrent adjustment costs for undertakings. Specifically, for each of the undertakings with EWCs based on subsidiary requirements (20), the increase in the number of annual plenary meetings is expected to lead to an additional cost of ca.

[146] ICF(2016), estimates adjusted to today's prices. See Annex 4 'Analytical methods' (Section 4.4.).
[147] ICF(2023), Section 5.1.2.6. In the targeted survey, ca. 35% of respondents among employee representatives and managers (81 out of 233) stated that their EWC agreement did not contain any provisions on financial and human resources.
[148] As mentioned above, EWC agreements are revised on average every 5 years.

EUR 42 000 per year.[149] Moreover, the requirement to address the issues of access to experts, legal costs and costs of training (including related expenses) in EWC agreements could lead to adjustment costs for undertakings in respect of those EWCs where these aspects were not yet clearly regulated. However, the scale depends on the results of autonomous negotiations between parties so cannot be estimated. All of the possible costs described above could at least partially be offset by the benefits for undertakings described further below.

According to management representatives, the requirement of a reasoned response to EWCs' opinions prior to the adoption of a decision on transnational matters (**options 3b and 3c**) could also lead to indirect recurrent costs due to delayed decision-making.[150] However, these concerns are not expected to materialise on a significant scale in practice, as EWCs would remain information and consultation bodies without substantive powers over management decisions, and no such impacts have been substantiated with respect to other types of worker representation bodies that are already entitled to a reasoned response.[151] Furthermore, during the two-stage consultation, employer organisations responded that an obligation to provide a reasoned response to an EWC opinion already exists in many agreements (see Section 2.4.3.).

The amendments under **option 3c** regarding the concept of transnational matters, access to external experts and confidentiality restrictions could incrementally increase one-off renegotiation costs compared to the baseline, as the parties to the agreement may need more time to agree on how to implement these requirements in practice. Moreover, several measures under option 3c are expected to entail recurrent adjustment costs: a broader concept of transnational matters, combined with management's obligation to justify why a matter is not transnational in order to be discharged of the obligation to inform and consult the EWC, is likely to lead to more information and consultation procedures and require increased capacity and resources allocated to EWCs; increased recourse by EWCs to external expertise and related fees; costs linked to the requirement to obtain a prior authorisation in order to withhold information the disclosure of which would seriously harm the undertaking. In proportion to the global turnover of the undertakings concerned, these costs are nevertheless expected to be moderate as they would only incrementally increase the current costs of operating an EWC, described above. However, the indirect costs linked to a substantially broadened concept of transnational matters are likely to be more significant, due to frictions, overlaps and unclear delineation between information and consultation procedures at different levels.[152] Likewise, requiring a mandatory prior judicial authorisation in order to avoid the disclosure of potentially harmful information could lead to delays in decision-making and economic harm, depending on the length of the relevant authorisation procedures.

<u>Benefits for undertakings</u>: **Option 3a** would promote legal clarity regarding the relevant issues to a limited extent and thus potentially deliver small cost savings due to a marginally smaller number of disputes. The general benefits for undertakings linked to having an EWC[153] would likewise be increased due to option 3a, by means of smoother information and consultation procedures, but

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[149] See Annex 4 'Analytical methods' (Section 4.4.). This policy option may affect also EWCs based on agreements, for which the subsidiary requirements can serve as a benchmark during the negotiations. Currently, ca. 50% of EWC agreements provide for one annual plenary meeting. However, such an effect would be a free choice of the parties.
[150] ICF(2023), Section 5.1.2.3.
[151] The requirement of reasoned response by the central management already exists for EWCs operating based on subsidiary requirements (Annex I point 1(a) of the Directive) and bodies of employee representatives at national level.
[152] ICF(2023), Section 5.1.2.3.
[153] For example, reinforcement of mutual trust on both sides of the industrial relationship, better informed strategic decision-making, and better targeted measures accompanying structural change. Cf. Pulignano V. et al. (2016) op.cit., p. 56-57.

only to a negligible extent. As **Option 3b** would clarify the binding legal requirements with respect to several potentially contentious issues regarding those procedures, it is expected to increase legal certainty significantly and ensure more efficient information and consultation, delivering time and potential cost savings for undertakings. Particularly the requirement of a reasoned response prior to the adoption of a decision on transnational matters is expected to promote the trustful relationship between the parties, and thus enable them to exploit better the potential of EWCs to facilitate smooth structural changes in the context of the challenges linked to the digital and green transition. As regards the common elements under options 3b and 3c the described benefits would also apply under **option 3c**, but due to the risk of frictions and overlaps between information and consultation requirements at different levels of representation (due to broadening of the concept of transnational matters), as well as the potential delays and indirect costs described above (e.g. prior authorisation requirement), **option 3c** is not expected to overall increase the benefits of EWCs for undertakings compared to the baseline, and potentially to create negative consequence compared with undertakings without EWCs.

Impacts on competitiveness: Considering that the costs for the renegotiation and operation of EWCs are negligible in relation to the turnover of undertakings with EWCs it is not expected that the options in this policy area would substantially affect undertakings' competitiveness (see above 'Costs for Union-scale undertakings' and Annex 12). In particular, **option 3b** does not contain far-reaching enforcement measures of the kind that were mainly opposed by business organisations and management in the social partner consultation and other evidence-gathering activities. Conversely, while **option 3b** is expected to have significant positive impacts on social dialogue, potential positive effects on the competitiveness of companies cannot be estimated with any degree of certainty. As the ability to take decisions quickly and flexibly are key competitiveness factors for companies, the identified indirect costs under **option 3c** could have a moderate negative impact in this regard, due to possible inefficiencies and delays in the decision-making process (linked to the requirement of a mandatory prior authorisation when withholding potentially harmful information) as well as frictions with information and consultation procedures at national level (due to the broadened concept of transnational matters). Moreover, exempting information-sharing between EWCs and employee representatives at national or local level from confidentiality restrictions would lower the protection of undertakings.

Costs for Member States: Under **option 3c,** Member States would be required to ensure the availability of procedures for the prior authorisation of the non-disclosure of transnational information that could harm the respective undertaking. Although Member States are expected to recoup procedural costs from undertakings through fees, they are likely to incur some additional adjudication costs due to the urgent and novel nature of such procedures, which none of the Member States has thus far established in national law.

6.3.2. Social impacts

Benefits for employees and companies (quality of social dialogue): **Option 3a** is expected to bring limited positive impacts. While it would contribute to better application of information and consultation rights of EWCs, the non-binding status of this option would make its effects uneven. **Option 3b** would create significant positive impacts on the information and consultation process of EWCs. By introducing binding clarifications regarding the concept of transnational matters in the enacting terms of the Directive, it would clarify the scope of EWCs' information and consultation rights, potentially reducing disputes. Since about 40% of stakeholders (43,3 % of employees and 28,3 % of managers) report problems interpreting this concept, this would have a positive impact for a high number of employees and their representatives. Under **option 3b,** the requirement for management to provide a reasoned response to EWC opinions prior to the adoption of a decision on

transnational matters, and the limitation of confidentiality to justified cases[154], would also positively impact the quality of the dialogue at company level. It would namely allow for a timely information exercise and a possibility for the employee representatives on EWCs to share their views and contribute to the decisions of management. For undertakings with EWCs operating on the basis of subsidiary requirements (20), the requirement of at least two 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). The requirement under **option 3b** for the parties to agree on appropriate resourcing, including on coverage of legal costs, of the EWCs could also lead to higher quality information and consultation processes and decision-making, with potential benefits leading to a more involved workforce, improved working conditions across the Union-scale undertaking and alternative solutions or mitigating measures to prevent job losses and promote better adaption to change. **Option 3c** would bring moderate benefits. Some measures under this policy option would clearly be beneficial for employees. For example, broadening the scope of transnational matters would allow for a higher number of issues to be discussed as part of the information and consultation at EU level. However, as the elements of transnationality considered under this option are defined in very broad terms, they could also lead to additional legal uncertainty compared to the baseline[155]. Although these impacts cannot be quantified, it can be assumed that this extension of the definition of transnational matters would be overall negative, leading to conflict with national and local levels of information and consultation. The obligation for management to justify that a matter is not transnational could lead to EWCs' members receiving more information. However, this is rather an indirect impact. On balance, the social impact of broadening the concept of transnational matters under option 3c is likely to be limited. A general right to assistance from experts under **option 3c** could optimise the information and consultation process, with efficiency gains. This is corroborated by the 2018 ETUI survey, which indicates that, in case of restructuring, the support of a trade union coordinator or expert contributed to better decision making. In relation to information and consultation process, **option 3c** would exempt from the confidentiality obligation EWC members when sharing information protected by confidentiality with national or local representatives. This could facilitate the coordination between employees' representatives at different levels with potential benefits for the effective presentation of employees' interests in the consultation procedure. However, the facilitation of cross-border exchange of confidential information could also lead to difficulties in practice (including legal risks for the employee representatives) due to the differences of national legal regimes on protection of confidential information.

Impacts on fundamental rights: Policy options under Area 3 would promote employees' right to information and consultation within the undertaking (Article 27 CFR) and indirectly also the right to an effective remedy (Article 47 CFR). While benefits under **option 3a** would be limited due to its non-binding nature, **option 3b,** by significantly improving conditions for a genuine dialogue on

[154] This measure would entail changes to the legal situation for EWCs and management subject to the national laws of Member States which have taken over the wording of Article 8 of the Directive into their national laws without requiring further justification of the imposition of confidentiality (CY, ES, IE, LU, LV, MT, NL, PL, RO, SI, SK). (See Annex 8).

[155] The evidence gathering by ICF(2023), Section 5.1.2.3., shows that while a great majority of employees' representatives are in favour of including such elements as "matters that affect directly or indirectly more than one Member State", "decisions taken by the headquarters affecting employees in another Member State than the one where the headquarters is located", employers' views have mostly neutral to negative views on the first and mostly negative on the latter.

transnational matters, as described in detail in the section on 'social impacts' above, is expected to have a significant positive impact on the effectiveness of the fundamental right set out in Article 27 CFR. The requirement under that option for the parties to agree how to cover EWCs' legal costs (and in the case of EWCs operating on the basis of subsidiary requirements for management to cover such expenses as far as they are reasonable) would also positively contribute to the capacity of employee representatives to access legal advice and justice. Such benefits would be moderate under **option 3c**. While that option would significantly strengthen EWCs' right to involve external experts (including legal experts) and improve EWCs' access to relevant information by limiting the possibility of management to impose confidentiality or withhold information, the broader concept of transnational matters risks creating new issues of delineation between information and consultation requirements at different levels of representation, possibly legal uncertainty and disputes, and frictions with procedures at national/local level.

6.4. Impacts of policy options under Policy Area 4

6.4.1. Economic impacts

Costs for undertakings: **Option 4a** is expected to entail only very limited additional enforcement costs for undertakings. While no certain assumptions can be made about the implementation rate, there is a plausible risk that those Member States which have thus far not ensured effective sanctions and remedies will be least inclined to follow the Commission recommendations. In such a case, there would be limited impact on undertakings' enforcement costs compared to the baseline. **Option 4b** could create significant enforcement costs for sanctioned undertakings, as the requirement to ensure dissuasive and effective sanctions, and in particular to take into account their annual turnover when determining pecuniary sanctions , could lead to a substantial increase in the amounts of fines imposed in all Member States, considering that penalties are generally negligible under the baseline scenario.[156] However, it is important to note that the national authorities and courts must, when determining the level of sanction, observe the principle of proportionality in relation to the gravity, scope, impacts, duration and other relevant factors characterising the offence. Moreover, these costs would materialise only in a small number of cases: although some policy measures such as the clarified coverage of legal costs (options 2b and 3b) and the improved access to justice under option 4b might facilitate legal actions, the incidence of legal disputes and sanctions in this policy area is expected to remain low, as the prospect of the possible imposition of dissuasive and effective sanctions by Member States' authorities is expected to have rather a deterrent effect which could reduce the number of offences giving rise to legal actions. Moreover, while **option 4b** cannot entirely overcome the existing fragmentation of national provisions on sanctions, given that the relevant Treaty legal basis only allows for the establishment of minimum requirements, it is expected to decrease fragmentation and improve legal certainty compared to the baseline scenario, as Member States would be provided with significantly more specific guardrails than under the current Directive. Under **option 4c**, sanctioned undertakings would face very significant costs in the form of pecuniary sanctions, which based on average turnover of undertakings with an EWC, could be up to 4000 times higher than the highest administrative sanctions currently available in any Member State.[157] Moreover, the possibility of suspending management decisions in the case of a claimed violation of information and consultation

[156] Current administrative sanctions, although varying greatly between Member States, would not exceed € 190.000, representing 0.0008% of the average undertaking with an EWC's worldwide average turnover. Most Member States have however much lower caps on administrative penalties, e.g., € 15.000 in Germany. See Annex 8.
[157] In Spain, an upper limit of € 187.500 applies.

requirements could lead to substantial economic losses in the form of foregone business opportunities.

Impacts on competitiveness: **Option 4a** is unlikely to lead to significant changes in Member States' enforcement practice, and any possible impacts on undertakings' competitiveness (cost and price competitiveness or undertakings' capacity to innovate) would therefore be null or negligible. Such impacts, if any, are also expected to be negligible or very limited under **option 4b**, considering the low incidence of legal action in this policy area and the principle of proportionality that has to be observed when determining the level of sanctions. For sanctioned undertakings, the drastic sanctions and remedies envisaged under **option 4c** are likely to have a moderate to significant impact on competitiveness. While the fines approaching the ceiling of 4% of global turnover are unlikely to be imposed in any but in the most extreme cases, the suspension of management decisions could affect undertakings' ability to seize business opportunities quickly. In the targeted survey[158], a strong majority of management representatives considered that the sanctions envisaged under option 4c would have a negative or very negative impact on the international competitiveness of EU-based companies. Considering that effective and agile decision-making is a key factor for undertakings' competitiveness, it is expected that **option 4c** would have tangible negative effects on competitiveness.

Impacts on consumer prices: Despite the described implications of **option 4c** for the competitiveness of sanctioned undertakings, noticeable consumer price effects are considered unlikely even under this most far-reaching option. Firstly, sanctions and remedies will apply only in a small number of individual cases and are thus unlikely to feed into the pricing considerations of Union-scale undertakings. Secondly, it is expected that competitive pressures on sanctioned undertakings will disincentivise them from passing enforcement costs on to consumers.

Costs for Member States: The one-time notification obligation under **options 4b and 4c** would entail limited **administrative costs for Member States** which would need to collect and send to the Commission information on how EWCs, SNBs and employees' representatives can bring judicial proceedings in respect of all their rights under the Directive. This obligation could be discharged as a part of the standard process of notifying transposition measures via the available IT systems, thus creating only negligible added costs.

By promoting a more effective access to courts, the recommendations under **option 4a** could entail limited **adjudication costs for Member States** choosing to facilitate actions, considering in particular that EWCs are exempted from court fees in eight Member States.[159] The evidence remains inconclusive to what extent **option 3b** would lead to an increase in the number of legal actions brought by rightsholders under the Directive, and thus adjudication costs. Social partners in undertakings usually consider such actions as a last resort and the risk of higher sanctions could also contribute to a better compliance rate. Moreover, the expected higher pecuniary sanctions imposed under this option could offset additional adjudication costs, as such penalties are assumed to accrue to Member States' budgets. This effect would be more pronounced under **option 4c**, which involves the imposition of very significant fines. The drastic sanctions under this option, including also the suspension of management decisions, are also expected to have a strong dissuasive effect and therefore to lead to an overall decrease of infringements, and consequently, legal actions.

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[158] ICF(2023), Section 5.1.2.7.

[159] AT, LT, ES, BG, FR, DE, RO, SE, NL. Cf. ETUC report by Jagodziński / Stoop (2023) Access to Justice for European Works Councils, p. 31.

6.4.2. Social impacts

Benefits for employees and undertakings: As a general rule, strengthened enforcement promotes compliance with information and consultation requirements and thus has a positive impact on application of employees' rights and social dialogue on transnational matters. Under **option 4a**, this benefit is expected to materialise to a limited extent, owing to the non-binding nature and possibly limited take-up of the Commission recommendations. **Option 4b** is expected to significantly improve the implementation of the Directive, and thus social dialogue on transnational matters, as it would ensure improved access to justice for an estimated 4.3 million employees[160] and facilitate compliance oversight by the Commission. The requirement to determine pecuniary sanctions taking account of undertakings' annual turnover is also expected to provide an effective incentive to respect employees' information and consultation rights. While **option 4b** does not lead to a full harmonisation of national enforcement provisions as it leaves autonomy to Member States to determine the types of sanctions for specific infringements and the methodology for determining their level, the explicit requirement that account must be also taken of the sanctioned undertakings' turnover, in addition to other aggravating or mitigating factors (eg. duration, seriousness, impacts of offence), would significantly improve the implementation compared to the baseline. **Option 4c** would create very far-reaching sanctions and remedies, thus ensuring strong deterrence of violations of rights under the Directive. On the other hand, although they remain highly uncertain, potential negative impacts on employment under option 4c, which could significantly affect the financial situation of the sanctioned undertakings, cannot be ruled out given the competitiveness implications described above.

Impacts on fundamental rights: For the reasons set out under 'social impacts', **option 4a** is expected to promote the fundamental rights to an effective remedy and to information and consultation to a limited extent. As mentioned, **option 4b** would deliver better access to justice for a large number of employees and further the quality of social dialogue by ensuring more dissuasive penalties. These effects could amount to moderate to significant benefits in terms of upholding said fundamental rights. The same is true for **option 4c**.

7. HOW DO THE OPTIONS COMPARE?

Having regard to the assessment of impacts of the policy options described in Section 6 and Annex 12, the options are compared per Policy Area based on the criteria of effectiveness, efficiency, coherence and proportionality. A table at the end of this section provides an overview of the comparative scoring of the options against the baseline, in accordance with the considerations in Sections 7.1. to 7.4.

7.1. **Effectiveness**

Indicators of effectiveness for comparing options under Policy Areas 1, 2, 3 and 4	
Policy area 1	- increased number of employees in Union-scale undertakings who can rely on information and consultation rights under Directive 2009/38; - improved clarity and simplicity of the legal framework; - a more consistent and simplified legal framework for Union-scale undertakings

[160] Evidence gathering suggest that between 13-14 % of employees and their representatives do not have access to enforce their rights under the EWC Directive in the Member States (see Annex 12 Section 5).

Policy area 2	- legal clarity and certainty of the process for setting up EWCs; - reduce delays and eliminate obstacles in the setting-up of EWCs; - ensure that special negotiating bodies have necessary means and resources; - a gender-balanced composition of EWCs and select committees
Policy area 3	- improved timeliness and quality of information and consultation on transnational matters; - consistency with management's ability to take decisions effectively - reduce disputes (e.g. concerning transnationality, confidentiality, timing and nature of consultation); - ensure EWCs have necessary means and resources;
Policy area 4	- access of rightsholders to adequate redress and removal of procedural obstacles to legal action; - sufficient deterrence of breaches of the rights under the Directive in all Member States; - consistency with management's ability to take decisions effectively.

Policy area 1: **Option 1a** can effectively expand minimum transnational information and consultation rights to employees of all Union-scale undertakings, overcome the complexity created by the co-existence of multiple legal regimes and achieve a simplified and more coherent legal framework for those undertakings. Option 1a could further improve the quality of transnational social dialogue as it would provide social partners in currently exempted undertakings with an opportunity to establish an EWC, subject to the complete set of rights of the Directive.

Policy area 2: While interpretative guidance (**option 2a**) is expected to facilitate the process of setting up EWCs, its take up is likely to be uneven so it is unlikely to deliver legal clarity and certainty to a large extent. The clarifications of the binding requirements under **options 2b and 2c,** in conjunction with the accompanying measures, significantly reduce the risk of disputes and delays following a request to set up an EWC and ensure that SNBs have the means to secure necessary legal support during the negotiations. **Option 2c** scores highest because it also contributes to achieving a gender-balanced composition of EWCs.

Policy area 3: All options would contribute to increasing legal clarity regarding the operation of EWCs and to promoting a genuine exchange of views. **Options 3b and 3c** are likely to be effective in this regard, while the take-up rate of non-binding interpretative guidance (**option 3a**) is uncertain. Specifically, the requirement for a reasoned response to EWCs' opinion prior to the adoption of a decision on transnational matters, common to **options 3b and 3c**, is an effective tool to improve the timeliness and quality of social dialogue on transnational matters. **Option 3b** is also expected to pre-empt disputes and divergent interpretations by clarifying the concept of transnational matters and management's right to impose confidentiality or withhold information. **Option 3c** would be moderately effective in that regard, as it would increase overlaps between transnational matters and matters reserved to information and consultation at national/local level and create frictions and disputes. The far-reaching measures concerning confidentiality envisaged by **option 3c** could unbalance the relationship between management and EWCs.

As regards the coverage of EWCs' expenses, all options could contribute to increased clarity, but only **options 3b and 3c**, including their accompanying measures, would ensure enforceable rights. However, insofar as **option 3c** confers a broad right on EWCs to involve any experts at the cost of undertakings, it overshoots what is appropriate in the context of this instrument, under which modalities of EWCs' operation, including resources, are to be determined by the parties in their agreement. In this respect, option 3c is therefore less targeted and effective.

Policy area 4: **Option 4a** scores lowest in terms of effectiveness, primarily because the Member States which have thus far not ensured sufficient enforcement of transnational information and consultation rights are least likely to implement non-binding recommendations in this area. **Option 4b** would incrementally strengthen existing general rights to adequate redress, increase the deterrent effect of pecuniary sanctions and facilitate monitoring by the Commission. Its effectiveness would be reinforced also by the accompanying measure. **Option 4c** would introduce

the most powerful sanctions and remedies, including the possibility to suspend the effect of management decisions. On the other hand, option 4c might impinge on undertakings' decision-making prerogative, safeguarded under the Directive. This raises doubts as to its effectiveness.

7.2.Efficiency

Indicators of efficiency for comparing options under Policy Areas 1, 2, 3 and 4	
Policy area 1	- Compliance costs for undertakings (incl. renegotiation costs, possible opportunity costs, expertise costs) - Social costs: effects on quality of social dialogue - Compliance and enforcement costs to the public sector
Policy area 2	- Compliance costs for undertakings - Legal costs of disputes between SNB / employees' representatives and management - Enforcement costs to the public sector (of judicial or other dispute resolution proceedings)
Policy area 3	- Cost of renegotiating EWC agreements with new requirements - Cost of provision by management of expertise and resources for EWCs - Other compliance costs for undertakings (e.g. costs of providing a written response to EWC opinion, justification of absence of transnational issues, criteria for imposition of confidentiality restrictions) - Legal costs of disputes between EWC and management - Opportunity costs / foregone revenue linked to impediments to decision-making of companies (e.g., due to delays caused by I+C procedure) - Overlaps with information and consultation at national level - Enforcement costs to the public sector (of judicial or other dispute resolution proceedings, prior authorisation of non-disclosure of information)
Policy area 4	- Compliance, administrative and enforcement costs to the public sector (of judicial or other dispute resolution proceedings, notification of how to access redress) - Enforcement costs linked to pecuniary sanctions for undertakings - Revenue to public sector (fines) - Potential to halt or delay decision-making of undertakings - Opportunity costs (lost revenue)

Policy Area 1: The deletion of the exemptions under **option 1a** is an efficient way to achieve the social benefits linked to the application of the Directive to all Union-scale undertakings and to their EU employees. The possible one-off adjustment costs and marginal opportunity costs due to the establishment of new EWCs in some of the 323 undertakings with voluntary agreements[161] and the renegotiation of some of the 28 Article 14 agreements represent a negligible share of undertakings' turnover.[162] While the economic and internal market benefits of creating a simplified and more coherent legal framework are expected to be negligible, the identified negligible economic costs are expected to be outweighed by the social benefits of giving all employees the same right to request the establishment of an EWC. The efficiency of option 1a is amplified, for instance, by the fact that the inclusion of currently exempted undertakings in the scope of the Directive ensures justiciability under EU law, in line with the fundamental right to an effective remedy.

Policy Area 2: **Option 2a** is moderately more efficient compared to the baseline, as it is expected to deliver limited positive impacts on the functioning of SNBs while creating only negligible compliance costs for undertakings. Although under **option 2b** undertakings are more likely to incur limited adjustment costs due to SNBs' possibly more frequent recourse to legal advice and remedies, this option performs well against the criterion of efficiency because it promotes a smoother process of negotiating and renegotiating EWC agreements as well as the quality of those

[161] As mentioned in Section 6.1., it is not possible to estimate the incidence of requests to establish an EWC in currently exempted undertakings with voluntary agreements.
[162] See Section 6.1.1. for the estimated average costs of negotiating new EWC agreements and estimated average costs of renegotiation.

agreements. The costs are expected to be negligible considering the turnover of the relevant undertakings. **Option 2c** is highly efficient as it, in addition, promotes a more gender-balanced composition of EWCs without imposing additional costs on undertakings. Costs linked to legal uncertainty or procedural frictions are minimised by the envisaged flexible approach, which consists in allowing parties to agree on arrangements towards achieving the gender balance objective without imposing a hard quota. The risk of tensions with the CJEU case law on positive action or the various national rules and practices governing the selection of employees' representatives is thus avoided. Improved gender balance is expected to be conducive to a better quality of EWCs' opinions, which can in turn positively impact management decisions on transnational matters and thus contribute indirectly to improved working conditions.

Policy Area 3: As **option 3a** could deliver limited social benefits, in terms of a smoother information and consultation process and prevention of disputes due to improved legal clarity, while creating only negligible adjustment costs for undertakings, it is considered moderately efficient. Although **option 3b** would entail certain one-off and recurrent adjustment costs for undertakings with an EWC, those costs should be outweighed notably by the expected social benefits. For instance, option 3b is expected to significantly improve legal clarity and the smooth functioning of the transnational information and consultation process. Consequently, undertakings stand to benefit from the opportunity to better exploit EWCs' potential to facilitate sustainable management choices. Employees, on the other hand, could benefit from a more effective representation of their interests, potentially resulting in better working conditions. In contrast, **option 3c**, while likely to achieve certain social benefits by strengthening the resourcing and information of EWCs, performs worse than the baseline in terms of efficiency as undertakings could incur significant indirect costs linked to slower decision-making if a broadened concept of transnational matters entails frictions, overlaps and unclear delineation between information and consultation procedures at different levels of representation, as well as potentially higher direct costs for companied due to an increased need for capacity and resources of EWCs. Similarly, the need for management to obtain a prior authorisation to withhold potentially harmful information could entail delays in decision-making and hamper the efficiency of the information and consultation process overall.

Policy Area 4: Although **option 4a** would entail only very limited enforcement costs for undertakings and adjudication costs for Member States, it is expected to strengthen the enforcement of rights under the Directive only to a limited extent. In contrast, **option 4b** is considered highly efficient, as it is expected to improve compliance with information and consultation requirements significantly, by facilitating monitoring by the Commission, requiring pecuniary sanctions to be set at a meaningful level, and promoting access to justice for an estimated 4.3 million employees at an overall moderate cost. Considering the associated social benefit of an improved social dialogue on transnational matters, the fact that option 4b could entail significant enforcement costs for sanctioned undertakings does not negate its efficiency, because this measure is mainly expected to have a deterrent effect, and the incidence of legal actions and pecuniary sanctions is likely to remain low. The requirement to consider turnover when determining pecuniary sanctions is not expected to create disproportionate costs even for non-compliant undertakings, because Member States would be legally required to levy sanctions in proportion to the gravity, scope, impacts, duration and other relevant factors characterising the respective offence. Consequently, option 4b is expected to affect competitiveness only to a negligible extent, if at all. In contrast, under **option 4c**, sanctioned undertakings would face the risk of – possibly costly – delays in decision-making and pecuniary sanctions representing a significant share of their global turnover, since the upper limit of 2% or 4% risks acting as an indicator of the very substantial level of pecuniary sanction expected. Although such drastic sanctions are likely to be rare in practice and to nevertheless deliver a strong dissuasive effect and associated social benefits in terms of compliance with information and

consultation requirements, their ability to affect the international competitiveness of sanctioned undertakings prevents a positive efficiency score compared to the baseline.

7.3.Coherence

Indicators of coherence for comparison of options under Policy Areas 1, 2, 3 and 4	
Policy area 1	- EWC Directive objective and principles[163] - Art 27 CFR (workers' right to information and consultation within the undertaking) - Principles of the European Pillar of Social Rights (Principle 8 - protection of social dialogue, recognition of social partners)
Policy area 2	- EWC Directive objective and principles - Principle of effectiveness of EU law - Articles 23 (equality between women and men) and 27 CFR - Principles of the European Pillar of Social Rights, Principle 8 - EU Gender Equality Strategy
Policy area 3	- EWC Directive objective and principles, including the legal basis - Objectives & principle of effectiveness of EU law - Articles 16 (freedom to conduct a business) and 27 CFR - European Pillar of Social Rights, Principle 8 - EU acquis on informing and consulting workers at national / local level[164] - Enforcement costs to the public sector - National rules on confidentiality
Policy area 4	- EWC Directive objective and principles - Principle of effectiveness of EU law and effective sanctions and remedies - Articles 27 and 47 (right to an effective remedy and to a fair trial) CFR - European Pillar of Social Rights, principle 8 - EU acquis on information and consultation workers at national / local level - National enforcement systems

Policy Area 1: **Option 1a** is coherent with the general principles of legal clarity and equal treatment, and employees' right to information and consultation expressed in Article 27 CFR and Principle 8 of the Pillar. By removing the exemptions from the scope, employees of all Union-scale undertakings would be entitled to request the establishment of an EWC, in line with the revised Directive, while having the choice to continue with the voluntary agreement. This approach is consistent with the legislator's choice not to make EWCs mandatory in all Union-scale undertakings.

Policy Area 2: All options in this policy area are coherent with Article 27 CFR and Principle 8 of the Pillar. **Option 2c** is most conducive to increasing balanced representation of men and women in the EWC context, and thus most coherent with Article 23 CFR, Article 6(2)(b) of the Directive and the Commission's Gender Equality Strategy[165], which aims to mainstream the gender perspective into different policy areas. Therefore, **option 2c** is most coherent overall.

Policy Area 3: All options in this policy area are coherent with Article 27 CFR and Principle 8 of the Pillar. They aim to address the lack of clarity of the concept of transnational matters and limit the scope for dispute. Both **options 3b and 3c** require a reasoned response by management to the EWC's opinion, reinforcing an effective dialogue, so giving expression to Article 27 CFR and

[163] The internal coherence with the objectives and basic principles of the Directive is assessed, because in line with the generally positive evaluation of the Directive in 2018, the initiative is intended to address specific shortcomings of the existing framework in a targeted manner, without changing its fundamental nature.
[164] Directives 98/59/EC, 2001/23/EC and 2002/14/EC.
[165] COM(2020) 152 final.

Principle 8 of the Pillar. On the other hand, **option 3c**, which substantially expands this concept, is less coherent with the relevant EU acquis, which requires that employees and their representatives be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of EWCs must be distinct from that of national representative bodies – contrary to them, EWCs are not bodies for negotiating with the management[166] – and must be limited to transnational matters.[167]

Concerning resources, **option 3b** is coherent with the principle of party autonomy enshrined in the Directive, by leaving the necessary flexibility to design solutions corresponding to the specific needs and situation of each EWC and Union-scale undertaking. In contrast, **option 3c** sets binding requirements regarding EWCs' resources and thus is not coherent with this principle.

The existing provisions of the Directive on confidentiality are generally consistent with the corresponding provisions in other relevant EU Directives[168]. By limiting management's right to require confidentiality to cases of legitimate interest, options 3b and 3c would further align the Directive with the wording of Directive 2002/14/EC. Unlike the other options. **option 3c** imposes a new mandatory requirement of prior authorisation where management withholds potentially harmful information. This requirement could lead to significant delays in companies' decision making, which would also not be coherent with Article 1(2) of the Directive and may interfere with the freedom to conduct a business enshrined in Article 16 CFR. It is also not coherent with the existing national laws on the matter, as none of the Member States has thus far used the option to impose such a requirement. Likewise, under **option 3c**, exempting information-sharing between EWCs and national or local employee representatives from confidentiality restrictions creates issues of coherence as it falls within the competence of each Member State to determine the criteria and conditions for imposing confidentiality. National laws could be breached if EWCs were authorised to share information with employee representatives in another Member State where the same information is not subject to an equivalent obligation of confidentiality.

Policy area 4: **Options 4a and 4b** would be coherent with the existing provisions of the Directive and relevant general EU law principles concerning sanctions, remedies and access to justice. They are also aligned with the principle of effective company decision-making (Article 1(2) of the Directive) and the freedom to conduct a business (Article 16 CFR), as they do not introduce specific binding enforcement measures that could interfere with companies' ability to implement the necessary management decisions quickly. However, insofar as a recommendation on enforcement matters in the field of information and consultation (**option 4a**) and the determination of pecuniary sanctions in proportion to company turnover (**option 4b**) would represent novel approaches in the EU's legislative framework on information and consultation, these options are not entirely aligned with other legislation in this field. The high maximum levels of pecuniary sanctions and the possibility to suspend management decisions **under option 4c** are less coherent with those principles and with other EU labour law directives, none of which provides for a concrete set of sanctions, leaving their determination to Member States' procedural autonomy. This autonomy is subject to the general requirement for penalties to be 'effective, dissuasive and proportionate'.

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[166] The information and consultation procedures established in Directives 98/59/EC, 2001/23/EC and 2002/14/EC oblige management to inform and consult the national workers' representatives on the topics specified in the directives '*with a view to reaching agreement*', whereas such requirement is not included in the recast Directive.
[167] Article 1(3) in connection with recital 15 of the recast Directive.
[168] Directive 2002/14/EC (Article 6), Directive 2001/86/EC (Article 8), Directive 2003/72/EC (Article 10).

7.4. **Proportionality**[169]

Policy Area 1: **Option 1a** promotes the objective without going beyond what is necessary to achieve it, while allowing for the possibility to continue transnational social dialogue based on voluntary agreements if neither employees nor management choose to initiate the establishment of an EWC. This option would preserve the principle of social partner autonomy regarding the choice between setting up an EWC or following a different approach with regard to employee involvement on transnational matters. This approach is expected to lead to an expansion of the application of the Directive only to those previously exempted undertakings in which, in the eyes of employees representatives or management, a pre-existing 'voluntary' agreement did not ensure a sufficiently effective framework, compared to the Directive, for transnational information and consultation.

Policy Area 2*:* **Option 2a,** being the least intrusive, appears rather weak in relation to the challenges in the set-up phase, and thus scores low on proportionality. **Option 2b** is suitable to increase legal clarity regarding the setting-up of SNBs and their resources but does not address gender-balance. **Option 2c** would also improve gender balance, without going beyond what is necessary or imposing an excessive burden on undertakings or employees' representatives. Accordingly, **Option 2c** performs best in terms of proportionality. In particular, it would allow for sufficient flexibility to implement the envisaged gender-balance objective without compromising the functioning of EWCs, and to take full account of the case-law of the CJEU on positive action as well as the established national rules and practices for the nomination of employees' representatives.

Policy Area 3: While **option 3a** entails the least costs and no binding new requirements, it is also less likely to ensure the appropriate resourcing of all EWCs and a more effective information and consultation process. **Option 3b** strikes the most proportionate balance between promoting that policy objective and avoiding excessive burden or restrictions on undertakings, whereas several elements of **option 3c** go beyond what is necessary and appropriate. Specifically, **option 3b** clarifies the concept of 'transnational matters' without encroaching on subject-matters of purely national relevance for which EWCs are not the appropriate level of employee involvement. **Option 3b** also does not curtail the autonomy of the parties to the EWC agreement to negotiate tailor-made solutions (e.g. regarding access to experts and training, and coverage of costs). It leaves broad discretion to Member States in implementing the revised minimum requirements, allowing them to integrate those requirements into their respective rules and traditions on the involvement of employees, which vary widely, and where appropriate to complement them. Regarding confidentiality, the compatibility of **option 3c** with the proportionality principle is doubtful insofar as it would require management to seek prior judicial or administrative authorisation to withhold information from an EWC to prevent serious harm to the undertaking. Such a burdensome requirement was thus far not considered appropriate by any Member State.

In light of these considerations, **option 3b** is assessed most positively in terms of proportionality, followed by **option 3a.**

Policy area 4: **Option 4b** would set out Member States' general obligation to ensure an adequate enforcement of the Directive in a binding manner and facilitate a more effective supervision by the Commission of the relevant implementing provisions. Due to their more targeted and effective nature, these measures are more proportionate than the non-binding recommendations under **option 4a**. Specifically, the requirement to take into account turnover when determining pecuniary

[169] Assessed in accordance with Better Regulation Tool #5.

sanctions ensures that sanctions are proportionate to the financial capacity of non-compliant undertakings, and thus dissuasive and effective, while national authorities and courts must at the same time ensure that the percentage of turnover levied as a sanction is fully proportionate in relation to the gravity, scope, impacts, duration and other relevant factors characterising the offence. In contrast, **Option 4c** clearly does not pass the proportionality test. Potentially vast pecuniary sanctions and the possibility to suspend the effects of undertakings' decisions represent excessive burdens, given the limited purview of the Directive to lay down minimum information and consultation requirements leading to non-binding opinions without prejudice to undertakings' decision-making ability.

7.5. Comparative scoring of the options – multi-criteria analysis

Based on the above considerations, policy options are scored from "0" to "+++" ("---") depending on the direction of the impact. "+" ("-") represents a very small positive (negative) effect and "+++" ("---") a very large positive (negative) effect compared to the baseline. 0 means that the option would not constitute a significant deviation from the baseline scenario. The baseline scenario is rated 0. Based on this assessment, a preferred option is identified for all policy areas and then described in Section 8. As regards the criteria of coherence and proportionality, the highest score was not awarded to any policy options including those assessed most positively because, firstly, the Commission's 2018 evaluation established that the Directive is to a large extent already coherent and proportionate as it stands, so there is no scope for drastic improvements against these criteria. Secondly, certain caveats were identified as regards the proportionality and coherence even of the preferred policy options.

Multi-criteria analysis – Overview table					
Policy area	**Policy option**	**Scoring of policy options against the baseline (scale: --- to +++); baseline = 0**			
1		**Effectiveness**	**Efficiency**	**Coherence**	**Proportionality**
	1a	++	++	++	+
	Preferred option for area 1	**1a**			
2					
	2a	+	+	++	+
	2b	++	++	++	++
	2c	+++	+++	+++	+++
	Preferred option for area 2	**2c**			
3					
	3a	+	+	++	+
	3b	+++	++	++	++
	3c	++	-	-	-
	Preferred option for area 3	**3b**			
4					
	4a	+	+	++	+
	4b	++	++	++	++
	4c	++	0	-	--
	Preferred option for area 4	**4b**			
Combined preferred option		**1a + 2c + 3b + 4b**			

8. PREFERRED OPTION

8.1. Selection of the preferred policy option and analysis of combined impacts

Policy area	**Preferred policy option**	**Accompanying measures**
1	**1a:** End exemptions after a transitional period (1a)	n/a
2	**2c:** Clarify resourcing of SNBs (specifically for legal costs); lay down gender balance objectives to be reflected in EWC agreements	Clarify obligation to set up an SNB; clarify coverage of training costs

3	**3b:** Clarify concept of transnational matters, EWC resourcing (legal costs, experts) and conditions for imposing confidentiality / withholding information; require response to EWC opinions prior to the adoption of a decision on transnational matters; require at least 2 annual plenary meetings under subsidiary requirements	Clarify coverage of training costs, incl. necessary expenses, format of EWC meetings
4	**4b:** require Member States to provide information on access to justice / effective remedies regarding all rights under the Directive; penalties (including pecuniary sanctions) to be effective, dissuasive and proportionate; pecuniary sanctions to take account of company's turnover to have a dissuasive effect, as well as of other relevant aggravating or mitigating factors	Clarify obligation to ensure access to justice and sanctions

In light of the comparison in Section 7, **options 1a, 2c, 3b and 4b**, including their respective accompanying measures, present the most appropriate approach to address the problem drivers in light of the initiative's objective. In their combination, they therefore form the preferred overall policy option for this initiative.

The preferred option will in principle lead to a cumulation of the impacts of options 1a, 2c, 3b and 4b, as presented in Section 6 for each area and in more detail in Annex 12. The potential cumulative costs would thus account only for a very small part of the turnover of the affected undertakings and are not – unlike some of the non-preferred options - expected to affect market efficiency or undertakings' competitiveness. Moreover, these costs may be offset by efficiencies generated through increased legal clarity and certainty, although this effect cannot be quantified. The preferred option is in strict compliance with the proportionality principle and ensures the continued internal and external coherence of the Directive, while delivering a simplified and more coherent legal framework for Union-scale undertakings and necessary improvements to the process for the creation, information, and consultation of EWCs as well as the enforcement of the rights under the Directive.

The options forming the preferred overall policy option follow a consistent logic across all policy areas, as they are all designed to improve the effectiveness of the framework for transnational information and consultation while preserving undertakings' ability to take decisions effectively. Therefore, when combined, the options are expected to mutually reinforce one another and achieve synergies, so the overall preferred option surpasses the sum of its parts. These effects are subsequently summarised in qualitative terms:

(i) By creating legal certainty about the **coverage of legal costs**, options 2c and 3b **facilitate the exercise of the right to access to justice** (option 4b). These options are thus synergetic.

(ii) Conversely, by **strengthening access to justice** and the enforceability of EWCs' rights, option 4b **bolsters the social benefits** under options 1a, 2c and 3b. The case for making minimum transnational information and consultation rights available to employees of all Union-scale undertakings (options 1a) is stronger if those rights can be enforced effectively. Likewise, **improving the processes for setting-up and operating EWCs** (options 2c and 3b) depends on effective enforcement. At the same time, option 4b respects the subsidiarity principle by not intruding on Member States' procedural autonomy and the proportionality principle by avoiding imposing disruptive remedies or sanctions liable to unbalance the relations of the parties, which could significantly increase costs for undertakings and threaten the constructive dialogue necessary to put options 1a, 2c and 3b into practice.

(iii) In the same vein, the **clarifications to the legal framework** under options 2c and 3b (e.g., regarding the concept of transnational matters, conditions for imposing confidentiality, coverage of legal and training costs, access to experts, format of meetings) are **expected to reduce the risk of disputes** and thus **limit the potential enforcement costs** under option 4b.

(iv) As option 3b, in particular the new requirement for a reasoned response to EWCs' opinions prior to the adoption of a decision on transnational matters, may give rise to a **renegotiation** of existing agreements, it could speed up the implementation of gender objectives (option 2c) to some extent, although this effect is likely to be limited as EWC agreements are in any case subject to regular renegotiations.

(v) Where several policy options require adaptations to existing EWC agreements, the parties can address them in a single round of renegotiations, so possible additional renegotiation costs would accrue only once for the overall preferred policy option.

vi) Given that the preferred package is expected to increase the effectiveness of the Directive, notably by improving the process for setting-up and operating EWCs (options 2 and 3), allowing the employees in the exempted undertaking to request an EWC (option 1), and improving the enforcement of the rights under the Directive (option 4), it is plausible that the take-up rate of EWCs could increase as a result of this initiative. However, there is insufficient evidence to support or estimate this assumption.

As regards the choice of policy instrument, due to the need to amend the Directive, the preferred option can only be implemented by means of a Directive under the same legal basis.[170]

8.2.REFIT (simplification and improved efficiency)

The 2018 evaluation confirmed that the minimum requirements set out in the Directive do not impose any obligations that would constitute an unreasonable burden for companies. By setting a procedural framework for transnational information and consultation, the Directive allows social partners the autonomy to agree on appropriate solutions in light of their specific needs and circumstances. For example, the Directive does not restrict the use of ICT technologies for information and consultation purposes. Parties may thus choose, for instance, to use online meeting software or automatic translation tools to save costs and achieve efficiencies. They are also free to agree on simplified language regimes for EWC meetings to lower the costs of simultaneous interpretation. Indeed, the Directive does not impose any specific budget to cover EWCs' expenses, including for expert advice or training. Against this baseline, the scope for burden reduction by this initiative is limited. Nevertheless, the need to keep costs for undertakings to the necessary minimum and avoid administrative burdens is taken into account, in accordance with concerns raised by business organisations in the consultation of social partners, throughout the design and assessment of the proposed measures.

8.3.Application of the 'one in, one out' approach

The initiative does not impose any administrative burden[171] on businesses or citizens and therefore does not require offsetting. The adjustment costs created by the preferred option are limited to possible incremental increases of the baseline costs of running EWCs (costs of meetings, training, expertise, legal advice), as well as in certain cases the costs of negotiating new EWC agreements. No reporting or other administrative requirements are imposed on undertakings, and the Directive's flexible approach is maintained by the preferred option, which focuses on ensuring legal certainty and effectiveness and minimising the risk of disputes or delays. Policy options that might have negatively affected undertakings' ability to take decisions effectively were not retained, in strict

[170] Article 153(1)(e) and Article 153(2)(b) TFEU.
[171] As defined in Better Regulation Tool # 58. EU Standard Cost Model.

compliance with the proportionality principle and priorities stressed by business organisations during the consultation of social partners.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Progress towards achieving the objectives of the initiative will be monitored by a series of core indicators related to the policy objectives. These and the related data sources are summarised in Annex 13. The monitoring framework will be subject to further adjustment according to the final legal and implementation requirements and timeline. Taking into account a two-year transposition period and another transitional regime for the adaptation of existing agreements by the parties, the initiative could be evaluated 7 years after it enters into force. This would allow sufficient time for the effects on the setting up and operation of EWCs to materialise and for the evaluation of those effects, with a particular focus on previously exempted undertakings.

ANNEX 1: PROCEDURAL INFORMATION

1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

The lead DG is DG EMPL, DG Employment, Social Affairs and Inclusion.

Agenda planning: PLAN/2023/664

Work Programme reference: Commission work programme 2024 (Annex 1, initiative no. 9)

The initiative is prepared by the Commission in response to the European Parliament's 2023 resolution under Article 225 of the Treaty on the Functioning of the European Union.

2. ORGANISATION AND TIMING

An Interservice Steering Group (ISSG) was established to accompany the work on the initiative. The following DGs participated in the ISSG: SG, SJ, EMPL, BUDG, COMP, EAC, ECFIN, ESTAT, GROW, JRC, JUST, REGIO, TRADE.

The Impact Assessment was discussed in the ISSG on 11 October 2023 (present DGs: SG, EMPL, ECFIN, JUST, ESTAT, SJ, BUDG, COMP).

The Analytical Document accompanying the second phase consultation of social partners on which the Impact Assessment is based, together with the second stage consultation document, was assessed by the ISSG on 14 June 2023 (present DGs: SG, EMPL, BUDG, ECFIN, ENV, ESTAT, JRC, JUST, LS) and adopted following ISC (DGs consulted: SG, SJ, ECFIN, JUST, BUDG, CLIMA, CNECT, COMM, COMP; ENV, ESTAT, FISMA, GROW, JRC, REGIO, TRADE).

The first stage consultation document was assessed by the ISSG on 6 March 2023 (present DGs: SG, EMPL, COMM, ECFIN, ENV, ESTAT, GROW, JUST) and adopted following ISC (DGs consulted: SG, SJ, ECFIN, JUST, DGT, FISMA, TRADE, COMM, GROW, REGIO, ENV, COMP, CNECT, CLIMA, ESTAT, BUDG, JRC).

3. CONSULTATION OF THE RSB

The draft Impact Assessment was assessed by the Regulatory Scrutiny Board (RSB). The RSB meeting was held on 29 November 2023 and the RSB delivered a positive opinion with reservations on 30 November 2023. The revisions made to address the RSB opinion are summarised in the table below.

RSB requests for improvements	Changes made in the IA
(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.	Additional information was provided on the overall information and consultation framework, the interplay between different levels of employee involvement and the specific nature and principles of the Directive (Sections 1 and 2 of the report).
(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.	Additional explanations and examples were inserted regarding the practical operation of the provisions of the Directive (Section 2.1. of the report). The findings in the evaluation of the Directive and the measures taken to address the issues identified in that evaluation have been set out in more detail (Section 2.2. of the report). The available evidence underpinning the problem definition has been further described, and data limitations clearly acknowledged (Section 2.3.). The reasons preventing a more frequent use of infringement procedures have been mentioned (Section 5.2.1.).
(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.	These points have been clarified throughout the report. Specifically, references to a "level playing field" have been adapted to account for the fact that the Directive does not impose the creation of an EWC unless employees' representatives make a request to that effect based on their right under the Directive. It has also been explicitly clarified that the policy objectives do not include an increased rate of creation of EWCs, although a more effective transnational information framework could provide employees' representatives with an additional incentive to request the establishment of an EWC.
(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	The description of the policy options in area 4 was further developed to clarify the rationale supporting the design of measures and the packaging into options. As regards options 4b and 4c specifically, additional explanations were provided regarding proportionality. In particular, it has been explicitly clarified that option 4b, providing that Member States must ensure that account is taken of the undertakings' turnover when determining the level of pecuniary sanctions, at the same time requires that the sanctions remain fully proportionate in relation to the gravity, scope, impacts, duration and

will affect the take-up of EWCs.	other relevant factors characterising the offence. On the other hand, by setting a maximum limit at 2% or 4% of undertakings' global annual turnover, policy option 4c creates a risk that sanctions for breaching rights under the Directive would be set by Member States at disproportionately high level. (Sections 5, 6 and 7).
(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.	The rationale of policy option 1a has been better explained, clarifying that it does not create an obligation to renegotiate existing 'voluntary agreements' and allows for the continuation of their agreements if social partners in the respective undertakings agree (Section 5.2.1.). Regarding enforcement (policy area 4), it has been clarified that in addition to turnover, any other relevant aggravating and mitigating factors are to be taken into account to ensure the proportionality, effectiveness and dissuasiveness of penalties (Section 5.2.4.). As the Commission's efforts to address the lack of dissuasive sanctions – identified as a key issue in the evaluation – through non-binding measures have proved insufficient, it is not expected that the combination of a recommendation on enforcement and an obligation on Member States to inform the Commission how they ensure access to justice would yield better results than strengthened binding requirements in this policy area.
(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 3 overall proportionate given the uncertainty on the magnitude of the problems and the ambition of some of the measures.	Explanations have been inserted in Section 5.2., why it was considered more relevant and consistent to package targeted legislative amendments to improve effectiveness of the Directive and to strengthen its enforcement. It was also considered that key non-legislative measures form part of the baseline scenario (in particular continuation of activities already undertaken by the Commission to foster transnational information and consultation of employees) and that a legislative initiative would provide significantly more added-value, compared to the baseline, than further non-binding 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 assessment of costs and benefit was strengthened in Section 6 and Annexes 3 and 4 of the impact assessment. Regarding the 'voluntary nature' of EWCs, it was clearly explained that the launch of negotiations towards establishment of an EWC in accordance

the range of total cost estimates (including in Annex 3 and when discussing administrative and adjustment costs under the OI:OO approach).	with the minimum requirements of the Directive becomes a legal obligation if the requisite number of employees makes a request to that effect, and that any outcome not involving setting up an EWC must be agreed by both parties. While the principle of social partner autonomy remains a core tenet of the Directive, there is no opt-out from that obligation if employees wish to set up an EWC (Section 2.1.). Concerning cost quantification, estimates of aggregated costs of the preferred option over the baseline period have been elaborated in Annex 4 and integrated in Annex 3.
(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 pecuniary sanctions).	The discussion of competitiveness impacts has been developed in Annexes 5 and 12 to account in a more consistent manner for possible positive impacts of effective transnational information and consultation on companies' competitiveness.
(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.	Data limitations and uncertainties have been acknowledged in the problem definition (Section 2) and assessment of the impacts (Section 6), in addition to the Section 2 of Annex 4.

4. EVIDENCE, SOURCES AND QUALITY

The following Commission reports have fed into the Impact Assessment:

- Report on the implementation by Member States of Directive 2009/38/EC on the establishment of a 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) COM(2018) 292 final and accompanying Staff Working Document SWD(2018) 187 final.

The following expert advice has fed into the Impact Assessment:

1) External studies commissioned from external experts:

- ICF(2023) Study exploring issues and possible solutions in relation to the Recast Directive 2009/38/EC on European Works Council. Available . online HYPERLINK "https://op.europa.eu/en/web/general-publications/publications"
- ICF(2016) Evaluation study on the implementation of Directive 2009/38/EC on the establishment of a European Works Council, p. 96. Available online.
- Reviews by the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE):

Review of national provisions transposing Directive 2009/38 on European Works Councils on confidentiality, non-disclosure of information and gender balance (2023, unpublished analysis)

Review of national rules on enforcement of rights and obligations arising from Directive 2009/38/EC on European Works Councils (2019, unpublished analysis)

2) The European Parliament reports:

- 2021 resolution on Democracy at Work.
- 2023 resolution on revision of European Works Councils Directive

3) Ad-hoc data collections:

- Eurostat, ad-hoc extraction from the EuroGroups Register (2023)
- Data extractions from ETUI EWC Database and ETUI survey of EWC and SEWC representatives (2018) (Overview published online)

4) Eurofound research:

Turlan, F., Teissier, C., Weber, T., Kerckhofs, P., & Rodriguez Contreras, R. (Eurofound) (2022) Challenges and solutions: Case studies on European Works Councils. Available online.

Relevant academic literature, as referred to in footnotes.

ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

1. RESULTS OF THE FIRST PHASE SOCIAL PARTNERS' CONSULTATION

In line with Article 154 of the Treaty on the Functioning of the European Union (TFEU), **the Commission carried out the first phase consultation of European social partners** to seek their views on the need for, and possible direction of, EU action to address the challenges related to the operation of EWCs. This first phase consultation was launched on 11 April and ended on 25 May 2023.

1.1 Overview of responses

Twelve recognised social partners sent replies during the first-phase consultation.

Four trade union organisations contributed to the consultation: European Trade Union Confederation (ETUC), European Confederation of Independent Trade Unions (CESI), European Managers (CEC), Eurocadres.

Eight employer organisations sent replies: Business Europe, SGI Europe, SMEunited, European Chemical Employers Group (ECEG), Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET), European Cleaning and Facility Services Industry (EFCI), Hotels, Restaurants and Cafés in Europe (HOTREC), European Confederation of Woodworking Industries (CEI–Bois)

1.2 Social partners' views on the completeness of the issues identified and the general need for a revision of Directive 2009/38/EC

Trade unions see a need for a legally binding revision of the recast Directive. ETUC and Eurocadres expressly endorse the Parliament's recommendations for such a revision and stresses that the information and consultation process at transnational level can be regulated only by an EU legal act guaranteeing a level playing field by means of minimum requirements. ETUC submits that a right for trade union experts to participate in all SNB, EWC and select committee meetings and to have access to all sites is a necessary condition for supporting and coordinating EWCs' work more effectively. It therefore calls to lay down such rights in the Directive. ETUC queries that the Commission's consultation paper does not address the issue of concretising the definition of 'controlling undertaking' to clarify the inclusion in the scope of the directive of companies operating through management, franchise systems and 50:50 joint ventures. In addition, ETUC states that the consultation paper is missing an opportunity to draw links between due diligence and EWCs. According to ETUC, EWCs must be fully involved in all steps of companies' due diligence plans and policies, including the mapping of potential risks on human rights and the environment across the company operations as well as its supply and subcontracting chains.

The large majority of **employer organisations** argue against a revision of the Directive, considering it fit for purpose. Business Europe stresses the need to give the social partners at enterprise level the space to negotiate agreements that suit their circumstances. According to ECEG, the heterogeneous landscape of EWCs is an accurate reflection of the original intention of the European co-legislators and should be preserved as a key element of the European system of information and consultation of workers in multinational companies. CEI-Bois considers that EWCs' practices need to remain flexible to be applied effectively to different sectors and companies across the Member States and that the Commission should refrain from adding additional regulatory burden on companies that have already opted for the creation of EWCs.

CEEMET cautions that a revision of the EWC Directive would be another setback in the competitiveness of European businesses. If the Directive was nevertheless to be revised, CEEMET urges to propose specific measures alleviating companies from administrative and financial burden and adapting to the new reality of online meetings. EFCI thinks that a legislative intervention increasing companies' responsibilities would weaken EWC's prospects to serve as a shared and constructive solution for all parties involved. HOTREC and CEI-Bois call on the Commission to present a Commission Recommendation and a code of practice / handbook on the matter instead of revising the Directive. CEI-Bois argues that the Commission should refrain from adding additional regulatory burden on those companies who have already opted for the creation of an EWC. Rather, it should aim at simplifying the implementation of the existing rules. BusinessEurope also maintains that a code of practice could be a good basis to help social partners at company level to identify ways of improving their own practice.

Among employer organisations, SGI's members recognise that it may be justified to revise the Directive in order to provide greater clarity of the rules and to organise regular genuine *ex ante* consultations of workers representatives in EWCs on transnational matters. SMEunited recognises the existence of a certain justification to amend the directive without ignoring the current general good functioning of it.

1.3 Willigness to enter into negotiations

The vast majority of responding social partners replied that they were open to negotiations in accordance with Article 154(4) TFEU in principle. ETUC reaffirmed its full commitment to social dialogue and Article 155 TFEU and all responding trade union organisations were open to negotiations. Nevertheless, Eurocadres believed that in the case of EWCs strong legislation is the only way to improve the Directive. Business Europe confirmed that it would look constructively into the possibility of offering negotiations to ETUC with a view to revising the EWCs recast directive under the procedure set out in Article 155 TFEU, if the Commission's second stage consultation of social partners provides a balanced basis for social partners to negotiate. This position was seconded by ECEG, SMEunited, CEI-Bois, HOTREC, and EFCI.

1.4 Social partners' views regarding specific issues and policy options

Regarding the scope of the recast Directive, trade unions support ending the exemption of undertakings with pre-existing information and consultation agreements at transnational level. ETUC argues that the provisions of the Directive must apply to all undertakings to ensure a level playing field and stresses the need for a comprehensive definition of the concept of 'controlling undertaking' to clarify the inclusion in the scope of companies operating through contract management, franchise systems and 50:50 joint ventures. While CESI does not refer to specific policy option, it submits in general terms that the scope could be widened to cover more workers.

Among responding **employer organisations** 5 out of 8 argue in favour of keeping the existing exemptions. EFCI stresses that the grandfathering rules have proven themselves in practice, as the longstanding information and consultation bodies in exempted undertakings are often particularly effective and characterised by a deep level of trust and cooperation between workers' representatives and central management. ECEG does not support an automatic transformation/adaptation of the different types of EWCs into one single model. Instead, ECEG would favour a reflection on how Article 13 of the recast Directive could serve to modernise those agreements. CEI-Bois states that no additional regulatory burden should be added on companies who already have opted for the creation of an EWC.

None of the responding employer organisations elaborated specifically on the idea of including undertakings linked through contractual arrangements into the concept of controlling and controlled undertakings, and thus into the scope of the recast Directive, but SMEunited underlines generally that a possible initiative should not expand the scope of the Directive.

Regarding the procedure on the setting up of EWCs, among **trade unions**, ETUC states that it is not uncommon for central management to delay the establishment of the SNB, and calls for a requirement to constitute and organise a first meeting of the SNB meeting within 6 months of the request, or the subsidiary requirements would automatically apply. While CESI and CEC support the Parliament's recommendation to shorten the three-year deadline for negotiations, ETUC disagrees because that proper coordination, training and agreement on common demands take time. In contrast, according to CESI, practical experience appears to suggest that negotiations can be concluded in a shorter timeframe if both sides are willing and engage constructively. ETUC also calls for objective criteria to determine the location of the "representative agent" and "central management" to avoid regime shopping and use of letterbox companies."

None of the responding **employer organisations** argue in favour of adapting the framework for setting up EWCs. Business Europe takes the view that the challenges identified in the setting up and functioning of EWCs are practical rather than legal and would not be tackled by a revision of the directive. ECEG explains that in the European chemical industry, the establishment of EWCs can easily be arranged in most cases, and that the existing rules are sufficient to fulfil the objectives. CEEMET argues that it is best not to rush the negotiations by reducing the timeframe. HOTREC states that a shorter negotiation deadline could be considered, as long as proportionate and relevant. HOTREC also cautions that some topics require long discussions and that subsidiary requirements should apply only when strictly necessary.

On the concept of transnational matters, all responding **trade union organisations** agree that the concept should be clarified and/or broadened, as recommended by the European Parliament. According to ETUC, the relevant recitals of the recast Directive are not sufficiently taken into account in practice for the determination of the transnational nature of a matter under national law.

The responding **employer organisations** are, for the most part, opposed to a revision of the concept of transnational matters. SGI's members express great concern over the possibility of including in this concept *potential effects indirectly concerning employees in more than one country*, as this could lead to almost every decision or choice of the enterprise to end up on the table of EWCs. CEEMET echos these concerns, fearing that the broad definition recommended by the Parliament could distort the division of competences between national works councils and their European counterparts. HOTREC recalls that transnational issues should not include decision-making bodies in a single state. ECEG considers that the existing concept of transnational matters has proven itself in practice and does not cause any disputes beyond what can reasonably be expected in any corporate setting. In a similar vein, Business Europe refers to a 2016 study of the University of Leuven[172], which underlined that managers and their employees found ways to overcome operational difficulties related, amongst others, to the definition of a transnational scope. EFCI and SMEunited declare openness to a clearer definition of the transnational nature of issues.

With regard to the consultation procedure, among **trade unions,** CESI considers that it should be specified that consultations must necessarily be taken into account by management, and this in a

[172] Pulignano V., Turk J. (KU Leuven)(2016) European Works Councils on the move: management perspectives on the development of a transnational institution for social dialogue.

meaningful way. CESI argues that, in the longer-term, ways could be envisaged to turn EWCs more into negotiating bodies, where their opinions could have even more weight and are not only 'taken into consideration'. ETUC generally supports recommendations of the Parliament, stressing that transnational information and consultation process must be properly conducted and completed before management takes a final decision. According to ETUC, in order for the consultation to be meaningful, EWCs must have sufficient time to carry out an in-depth assessment of the information provided, included when needed with the support of experts, as well as to consult national and regional workers' representatives.

In contrast, among **employer organisations**, Business Europe argues against a 'one-size-fits-all' approach to consultation, suggesting that many EWC agreements either already provide for specific timeframes for information and consultation procedures and a formal response by management to EWC opinions, or the parties to agreements tend to work out the timeframes according to the issue which is being addressed. This view is seconded by ECEG, which advises that neither the existing legal concept of consultation nor its implementation are liable to create any hindrance for the proper functioning of the EWC Directive, workers' representatives usually having sufficient time to review the facts and produce a written opinion. According to CEEMET, the Parliament's recommendations would put employees' representatives in a position to delay important decisions by central management indefinitely, which would reduce management's agility needed in a fast-changing economic world. EFCI recognises that a discussion could take place on the issue of timing, but cautions that the role and function of EWCs should not evolve in the direction of de facto parallel collective bargaining or co-determination powers.

All the responding **trade unions** submit that EWCs are not assured **necessary resources** (covering e.g. expert advice, training or legal costs). ETUC stresses in particular the importance of guaranteeing access to recognised trade union organisation expertise and suggests that trade union experts should have a right to participate in all SNB, EWC and select committee meetings and have access to all sites. CEC refers to the need to fund training of EWC members as well as EWCs administrative and logistical costs.

These views are not shared by the responding **employer organisations**, who stress the importance of reducing the financial strain on companies rather than increasing EWCs' entitlements. CEEMET considers that the existing obligations to reimburse the trips, accommodation, paid leave for employee representatives, and translation/interpretation costs already puts a heavy financial burden on companies.

The **trade unions** see a need to set out specific criteria circumscribing the possibility for management to impose **the confidentiality of information or to withhold certain information** from EWCs. ETUC calls for clear provisions on criteria for withholding of information, and on the grounds based on which EWC members' right to share information with relevant stakeholders (in particular workers' representatives) can be restricted. CESI refers to the risk of companies using 'confidentiality restrictions' in an abusive way.

In contrast, the responding **employer organisations** reject potential amendments to the Directive's provisions on confidentiality and non-disclosure of information. ECEG stresses that the effective protection of confidential information given to EWC members is a basic prerequisite for successful cooperation between management and workers representatives. CEEMET explains that listed companies have to comply with strict rules on when and to whom price sensitive information can be given before public disclosure. CEEMET states that limiting the scope of confidentiality provisions endangers the competitiveness of companies with the consequence of weakening Europe as an innovative and forward-looking industrial and business location. EFCI would also not support

a revision of the text that would limit the autonomy of the management when deciding about the confidential nature of the issue being discussed. While SMEunited recognises that some work on confidentiality might be necessary, it also emphasises that trade secrets must be protected and adding red tape must be avoided. HOTREC argues against reducing the scope of the existing confidentiality provisions, pointing out that consultations take place on sensitive decisions such as mergers or acquisitions.

Concerning **enforcement**, all responding **trade unions** consider that the remedies and sanctions for the enforcement of the rights guaranteed by the Directive are not sufficiently effective. ETUC and CEC specifically endorse introducing provisions on pecuniary sanctions, as recommended by the European Parliament. ETUC supports introducing a right to injunctive relief, enabling EWCs to request the suspension of management decisions taken in violation of their information and consultation rights. In this respect, ETUC requests that administrative or judicial systems are put in place to allow for swift decisions on EWCs' requests for the suspension or nullification of management decisions '24/7 in a few hours'. ETUC further calls for recognising the legal personality of EWCs and requiring central management to provide the necessary financial support for legal proceedings. CESI suggests that the Commission should first further assess why Member States have not been ensuring provision of effective sanctions.

Among **employer organisations**, Business Europe points out that there have been only a limited number of court cases and argues that this is not because EWCs lack the means to go to court but because most EWCs work satisfactorily. Whilst ECEG recognises difficulties in the effective enforcement of EWC rights in some jurisdictions, it does not see them as an expression of a weakness of the Directive but of its flawed transposition at the national level. SGI, CEEMET, HOTREC and EFCI consider the recommendation of the European Parliament for increased pecuniary sanctions disproportionate and unrealistic, arguing that the determination of the level of penalties is a prerogative of the Member States. Regarding the idea of introducing a right to injunctive relief into the Directive, Business Europe submits that this would create significant risks of imposing on companies to freeze or delay decision making, leading to disproportionate penalties, an undermining of the trust and confidence of companies in EWCs and undermining the role of social partners at company level. CEEMET argues that a temporary suspension of the implementation of management decisions would hamper the decision-making process in companies and be a serious intrusion in the corporate governance. CEEMET stresses that the legal framework must not hinder appropriately flexible and responsible entrepreneurial action and must avoid creating a hostile culture where employee representatives may use the tool of preliminary injunction as a threat in the consultations forcing the company to undesired decisions.

In the first stage consultation, **on the issue of gender representation on EWCs and special committees**, CEC and ECEG supported the objective of achieving a gender-balanced composition of those bodies.

2. RESULTS OF THE SECOND PHASE SOCIAL PARTNERS' CONSULTATION

The second stage social partners' consultation was open from 26 July to 4 October 2023. In total, 12 replies from recognised social partners were received. 4 trade union organisations and 8 employers' organisations sent their replies.

2.1 Overview of responses

4 trade union organisations contributed to the consultation: European Trade Union Confederation (ETUC), European Confederation of Independent Trade Unions (CESI), European Managers (CEC), Eurocadres

8 employers' organisations sent replies: Business Europe, SGI Europe, SMEunited, European Chemical Employers Group (ECEG), Council of European Employers of the Metal, Engineering and Technology-Based Industries (CEEMET), EuroCommerce, Hotels, Restaurants and Cafés in Europe (HOTREC), European Confederation of Woodworking Industries (CEI–Bois).

Business Europe, Hotrec, Ceemet, ECEG and SGI Europe do not provide responses to the questions in the consultation document but state their willingness to enter into negotiations with ETUC with a view to concluding an agreement under Article 155 TFEU to improve Directive 2009/38/EC.

2.2 Objectives of a possible EU action

Trade unions and ETUC in particular, support the overall objective to improve the effectiveness of information and consultation of workers at transnational level, as well as the specific objectives of the initiative. ETUC believes that the first specific objective should be 'to ensure that every worker in the EU enjoys the same effective minimum transnational information and consultation rights defined at a high uniform level'.

Employers' organisations believe that an EU initiative should not overly regulate details such as the number of meetings, the manner in which meetings should be conducted, or requirements for a specific type of experts at the European level. EuroCommerce would prefer making use of digital communications. SMEunited considers that the objective to avoid unjustified differences in workers' information and consultation rights at transnational level is too far-reaching. Setting one-fits-all solutions to all companies could be counterproductive for companies.

Trade unions see a need to ensure more effective enforcement and access to justice, fully supporting the measures proposed by the European Parliament to strengthen sanctions. This view is not shared by **employers' organisations**.

2.3 Possible avenues for EU action

Regarding **the scope and coverage of the rules**, ETUC argues that legal uncertainty and regulatory complexity should be reduced by ending exemptions from the scope of the Directive of undertakings with pre-existing agreements. ETUC also demands that franchising and contract management arrangements be brought within the calculation thresholds of community-scale undertakings and within the definition of controlling undertaking. CEC proposes extending the scope of eligible companies to joint ventures.

Among employers, SMEunited, EuroCommerce and CEI-Bois argue for keeping exemptions from the scope of undertakings with pre-existing agreements. EuroCommerce and SMEunited argue that the definition of a controlling undertaking and its application to structurally independent undertakings can be ambiguous and complex. Expanding the scope of the Directive to include such entities requires a clear and evidence-based definition to avoid unnecessary compliance burdens and further complexities. SMEunited states that imposing a 'one-size fits all' uniform information and consultation right disregards the diverse nature of businesses and the variations in their employees' structures

With regard to **the process of setting-up of EWCs**, CESI and CEC agree with the proposal to set a maximum period of 18 months instead of three years for concluding an agreement. In contrast, employer organisations EuroCommerce, SMEUnited, CEI Bois but also, from among trade unions, ETUC, affirm that reducing the negotiation period to less than three years may impose undue pressure on the parties. ETUC also states that clarifications are needed to ensure that the resources to which the SNB is entitled must also clearly include the costs of legal assistance and legal

representation as well as assistance by experts and training. ETUC points to the existing legal uncertainty in the directive regarding the management's obligation to convene the first SNB meeting and to carry out negotiations in regular intervals. Further, ETUC reiterates its call to strengthen the position of the trade union representative as a permanent expert assisting the work of the SNB and EWC. CEC and ETUC support achieving a gender-balanced composition of EWCs and their select committees. Among employers, EuroCommerce and SMEunited believe that imposing a gender quota could pose practical challenges given that employees should be free to nominate their representatives.

Regarding the **consultation framework**, trade unions reiterate their call made during the first stage consultation to clarify key notions of transnational matters, confidentiality and the information and consultation procedure. ETUC reiterates that the end of the information and consultation process must precede the date on which the management takes the final decision. ETUC and Eurocadres support the sharing of information between the EWC representatives and national or local trade union representatives. Among employers, SMEunited considers that a clearer definition of transnational matters would be desirable. They consider the current definition very broad, lacking specific thresholds of employees affected by the matter. CEI Bois and SMEunited believe that the regulation concerning confidentiality is a matter of national concern, and that the consultation process does not require any further definition at EU level. SGI Europe opposes widening the concept of transnational issues.

ETUC asks the Commission to develop the minimum list of issues on which EWCs operating based on **subsidiary requirements** are to be informed and consulted.[173] Trade unions support at least two plenary meetings per year under subsidiary requirements. ETUC stresses that plenary meetings should not be held online.

ETUC, CEC and Eurocadres agree that companies should provide for appropriate **resourcing** of EWCs. All responding trade unions endorse strengthening the position of the trade union representatives in EWCs. Among employers, EuroCommerce states that the allocation of resources for EWCs should be left to the discretion of employee representatives and central management. SMEunited states that no additional costs should be imposed on companies.

With regard to **enforcement**, ETUC proposes to establish a permanent Monitoring Committee (consisting of Member States' representatives, EU-level social partners and the Commission) to ensure the correct application of the Directive through regular exchanges and, in particular, to address and resolve practical problems arising from its implementation. Trade unions generally reiterate their support for the European Parliament's recommendation for pecuniary sanctions at the GDPR level, considering them dissuasive, and for guaranteed access to injunctive relief. They state that all EWCs should have a status ensuring that they have access to judicial remedies. Employers' organisations consider that sanctions involving injunctive relief whereby a company's decision may be suspended if information and consultation requirements were alleged to have been infringed or pecuniary sanctions up to EUR 20 million or 4% of annual turnover for breaches of EWC rights, are neither proportionate nor necessary.

[173] Such as: the decarbonisation strategy of the company; the introduction of artificial intelligence at the workplace and in work processes, the respect of human rights and environmental standards in the supply chain (Due Diligence strategies).

2.4 Views on the possible legal instruments

Trade unions share the Commission's view that the issues and deficits identified can only be addressed with a legally binding instrument and urge the Commission to present a legislative proposal. Those **employers' organisations** which did not limit their response to offering negotiations with ETUC disagree and express preference for a non-binding instrument, such as non-binding guidelines or a Code of Practice drafted with the active participation of EU-level social partners, or a Commission recommendation.

2.5 Willingness to enter into negotiations

Employers' organisations express their willingness to enter into negotiations, believing that only a social partner negotiation could reach optimal results when it comes to the revision of the recast Directive. **Trade unions**, while reaffirming their full commitment to social dialogue, do not intend to negotiate with employer organisations, apart from CEC which favours negotiations. ETUC, CESI and Eurocadres consider that it is urgent to act through a legally binding instrument and that a legislative initiative of the Commission is the most suitable for substantial improvements of the rights of EWCs in this legislature period.

3. OTHER CONSULTATIONS OF STAKEHOLDERS

3.1 Views of EU institutions

The **European Parliament** adopted, in 2021 and 2023, two resolutions on workers' involvement at company level as a way to support democracy at work, and particularly **to reinforce the operation of EWCs**. The **2021 resolution on Democracy at Work** covers areas of worker information, consultation and participation, trade unions, works councils as well as some aspects of company law and corporate governance. It **calls for a revision of the recast Directive**.

The **2023 resolution on revision of European Works Councils Directive** aims at *'strengthening EWCs and their ability to exercise their information and consultation rights, as well as to increase the number of EWCs, while taking into account the different industrial relations systems in the Member States'*. It contains an annex setting out proposals for legislative amendments to the recast Directive, including:

- a wider concept of 'transnational matters' on which information and consultation of the EWC should take place;
- an amended definition of 'consultation', i.e. requiring that EWCs receive a reasoned response to their opinion prior to management adopting the decision, and providing that that opinion must be taken into account by management;
- an obligation on Member States to provide for injunctive relief whereby a company's decision may be suspended if information and consultation requirements were infringed, and for pecuniary sanctions of up to EUR 20 million or 4% of annual turnover, and exclusion from public procurement and subsidies;
- an obligation on companies to provide EWCs with objective criteria for determining if a matter is confidential and for which duration, and requiring companies to secure prior judicial authorisation before restricting access to information which they consider could seriously hamper the company's activities;
- stricter deadlines for setting up an EWC;
- an end to the exemption of undertakings with pre-Directive agreements from the scope of the Directive and subjecting undertakings with all types of existing information and consultation agreements to the revised rules.

The **European Economic and Social Committee (EESC)** has issued a number of opinions, in which it stresses the need for an enhanced role of European Works Councils in the event of large company transformationsand in transnational restructuring processes in the context of the twin transitions.[174] In April 2023, the EESC has adopted an exploratory **opinion on Democracy at Work,** which points to the need to substantially improve effectiveness and resources of EWCs: "e.g. any circumvention or infringement of EWC participation rights should be sanctioned effectively and access to justice should be facilitated. In this context, the EESC welcomes the European Parliament's recent resolution on the revision of the EWC Directive and calls on the Commission to take legal measures in a timely manner."

3.2 Stakeholders' consultation activities

In parallel with the Treaty-based formal consultation of the social partners described in Sections 1 and 2 of this annex, **extensive consultation activities** were conducted in the context of the **supporting study**[175], gathering insights from a diverse pool of stakeholders including workers' organisations, employers' organisations, policy makers, EWC representatives, management of the Union-scale undertakings, legal and academic experts.

These activities consisted of:

- Semi-structured stakeholder interviews
- Online survey of companies with EWCs[176]' – management and employee representatives
- Evidence gathering workshops with management and employee representatives

A public consultation on this initiative was not conducted.

Semi-structured interviews were conducted from mid-April to August 2023 with the following stakeholders:

Figure 1: Overview of targeted interviews of stakeholders

Stakeholder category	Type and number of stakeholders targeted	Sampling / selection method	Number of interviews
Multinational companies (MNCs) with an established EWC/ pre-Directive information and consultation body	management board representatives	Random selection of MNCs with an EWC from ETUI EWC database	12
	EWC employee representatives		12
EU and national social partners	European Trade Union Federations (ETUFs)	Self-selection – identification of relevant contacts	7
	national social partners – employer organisations and trade unions		10
Experts	legal experts or professionals in advisory	Contacts from previous research	16

[174] Opinion of the European Economic and Social Committee of 17 October 2018 on the package on European company law. Opinion of 2 December 2020 'Industrial transition towards a green and digital European economy: regulatory requirements and the role of social partners and civil society'. Opinion of 9 June 2021 'No Green Deal without a Social Deal'.
[175] ICF(2023), see summary of results in Section 5.1 of the study.
[176] Unless indicated otherwise, for the purpose of this summary of results of the stakeholders' consultation, EWCs include different types of EWCs and information and consultation bodies, including pre-Directive bodies.

Stakeholder category	Type and number of stakeholders targeted	Sampling / selection method	Number of interviews
	services		
National authorities (i.e., ministries or ministerial agencies)	Representatives of national authorities in the following Member States (i.e., BE, CZ, DE, ES, FI, FR, IE, IT, PL, SE)	Member States selected based on: • high number of EWCs headquartered in them • geographical balance	10

Source: ICF(2023), Section 5.2.1.

The on-line survey was launched on 18 April and closed on 26 May. It targeted management representatives and employee representatives in identified multinational companies with an EWC. With the aim for answers to be representative of EWCs / companies rather than of individual employee or employer representatives, where there was more than one respondent per company on the management or the employee/EWC side, only the response from the most highly placed representative (e.g., EWC Chair over EWC member) was kept in the sample of responses.

A total of 233 responses were included in the final sample: **180 responses from employee/EWC representatives** (77% of responses) and **53 responses from management representatives** (23% of responses).

The table below provides a breakdown of the sample of responses by EWC type.

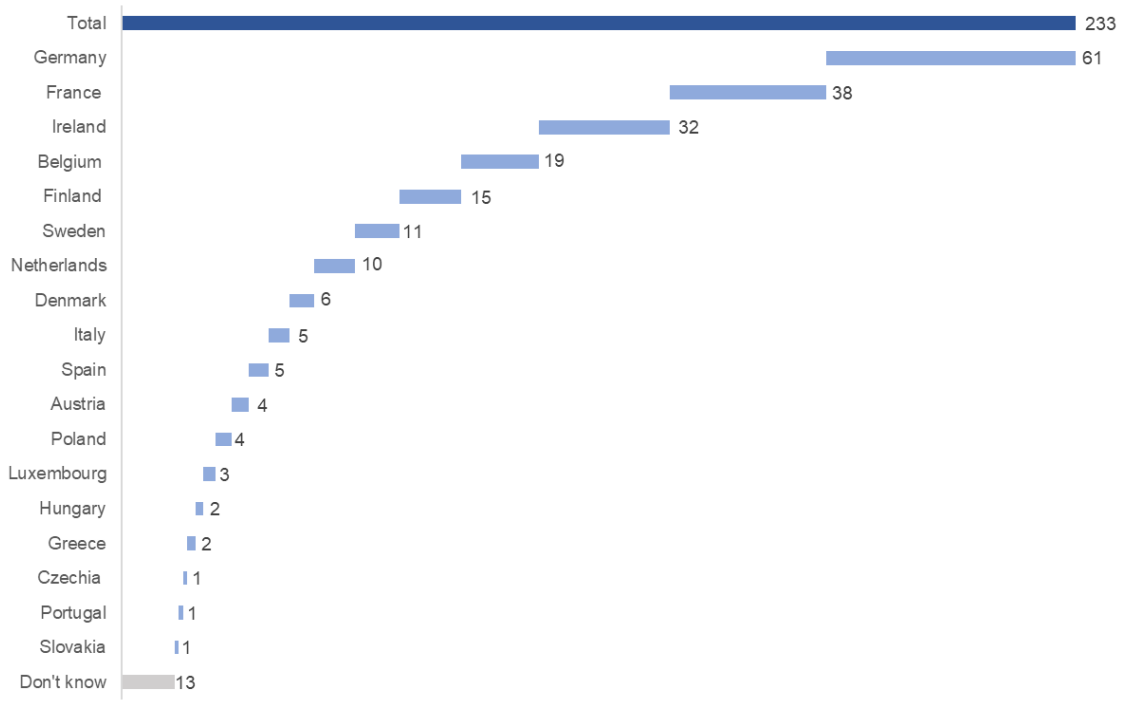
Figure 2: Overview of survey respondents by EWC type

Type of EWC / information and consultation body	Total no. of responses	%	Employee/ EWC responses	%	Management responses	%
Information and consultation bodies created before the first EWC Directive came into effect (before 22 September 1996)	41	18%	27	15%	14	27%
EWC created under the 1994 or 2009 EWC Directives (after 22 September 1996)	160	69%	126	70%	34	65%
Unsure	32	13%	27	15%	5	8%

Source: ICF(2023), Section 5.1.

The sample also reflected the landscape of existing EWCs in terms of the national legislation governing them, with 42% of respondents indicating that the governing legislation of their EWC is either German (26%) or French (16%). Additionally, a sizeable share of respondents (14%) indicated that their EWC is governed under Irish legislation. The chart below provides an overview of the EWCs represented in the sample according to the national legislation governing them.

Figure 3: Overview of survey respondents by the legislation applicable



Source: ICF(2023), Section 5.1.2.1.

Two **evidence gathering workshops** held on 22 June 2023 complemented the information generated from the online survey by gathering further (qualitative) evidence.

The workshops gathered representatives from the management and employee representatives across different multinational companies with an EWC. First workshop gathered EWC representatives of different multinational companies (21 participants), second workshop gathered management representatives of different multinational companies (27 participants). Both workshops had a common agenda, structure and duration (2.5 hours online meeting).

The selection of participants aimed to:

- achieve a balanced representation of different types of EWC / information and consultation body
- achieve geographical balance
- strike a balance between EWCs which have recently experienced problems (e.g., legal disputes with the management) and EWCs that have been well-functioning.

Main findings from these three consultation activities are summarised below:

1. Policy area 1

Targeted interviews

EWCs support removal of existing exemptions from the scope of the recast Directive. However, if management show reluctance to negotiate, concerns arise about a potential gap in the existence of an EWC (e.g. voluntary agreement not replaced with an EWC).

Management of Union-scale undertakings believe ending of exemptions is unnecessary, as flexible renegotiation occurs naturally. Rigid procedures are unhelpful.

EU and national employers' associations express general opposition to the abolition of exemptions. Existing tailored agreements are deemed effective, and a one-size-fits-all approach is unsuitable.

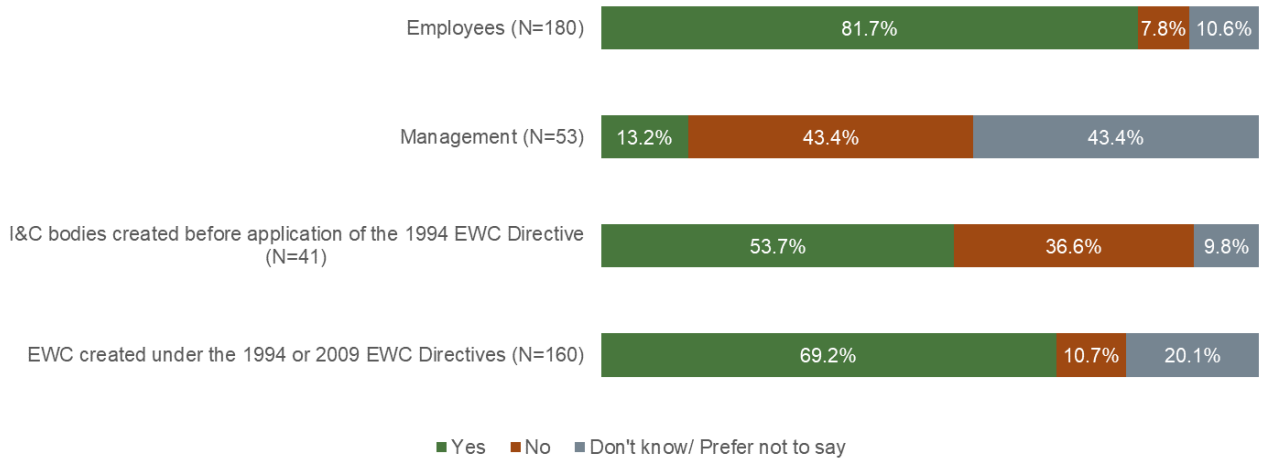
EU and national trade unions generally support removing of exemptions and renegotiating existing agreements to harmonise EWCs functioning. In addition, such renegotiations would facilitate the integration of structural changes or updates in the workplace that impact on working conditions, especially addressing those that are key concerns for trade unions such as digitalisation.

Legal experts are overall in favour of removing of exemptions as this would guarantee equal access to justice across all EWCs, regardless of the company or the signature date of the agreement.

National authorities generally support removing of exemptions. This is clear in the FR position, which highlights the inconsistencies in the agreements in force and proposes allowing sufficient time for multinational companies to revise their existing EWC agreements. The other countries (ES, NL, PL) report a small number of pre-Directive EWC agreements and as such do not see the ending of exemptions as having significant impacts.

In the online survey, on the possibility of **removing of exemptions** employee/EWC representatives were overwhelmingly in favour (81.7%; 147 out of 180 respondents) compared to only 13.2% of respondents on behalf of management (7 out of 53 respondents). Respondents (combining both employees and management) of information and consultation bodies created before the first EWC Directive were less in favour of removing the exemptions (53.7 %) than those with EWCs created under EU rules (69.2%).

Figure 4: Replies to the survey question "Are you in favour of ending exemptions of companies with agreements signed before the first Directive entered into application?"



Source: ICF(2023), Section 5.1.2.8. N=233

In the **workshops with EWC and management representatives**, management representatives agreed that voluntary agreements tend to be effective and cost-efficient, as long as both parties acted in good faith. Participants expressed concern about imposing more rules and structures especially where there is already a well-established social dialogue.

Among employee representatives, a variety of experiences were reported depending on corporate culture, on the sector of activity and on the governing legislation. There was the perception that voluntary agreements offer flexibility for addressing transnational issues. Participants agreed that while renegotiations of EWC agreements can improve functionality, success in the renegotiation

process varies. No comments were expressed on the possibility of ending exemptions under Article 14.

2. Policy area 2

Targeted interviews

EWCs emphasise access to training, expert support, and trade union assistance for better negotiation outcomes. While gender balance is endorsed in theory, issues are raised about the practicality of imposing gender quotas that may also be detrimental to the nomination of suitable representatives based on experience and competence.

Management of Union-scale undertakings on the whole support gender balance as a principle but consider that gender quotas would be too difficult to enforce legally.

EU and national employers' associations raise concerns with regard to the coverage and definition of "reasonable" legal costs. There is opposition to resorting to legal action in EWC negotiations. The complexity in establishing SNBs and the unnecessary involvement of outside experts are also highlighted. They consider the issue of gender balance as issue for employee representatives to deal with, but caution that that gender quotas would be difficult to implement.

EU and national trade unions are in favour of the inclusion of provisions guaranteeing expert support, in particular trade union involvement, fair election processes and adequate resources to ensure effective SNB establishment. Implementing quotas for gender balance would be complex due to variations in workforce composition across sectors. Rather, achieving gender balance could feature as an intention in EWC agreements – a trend that is currently being observed.

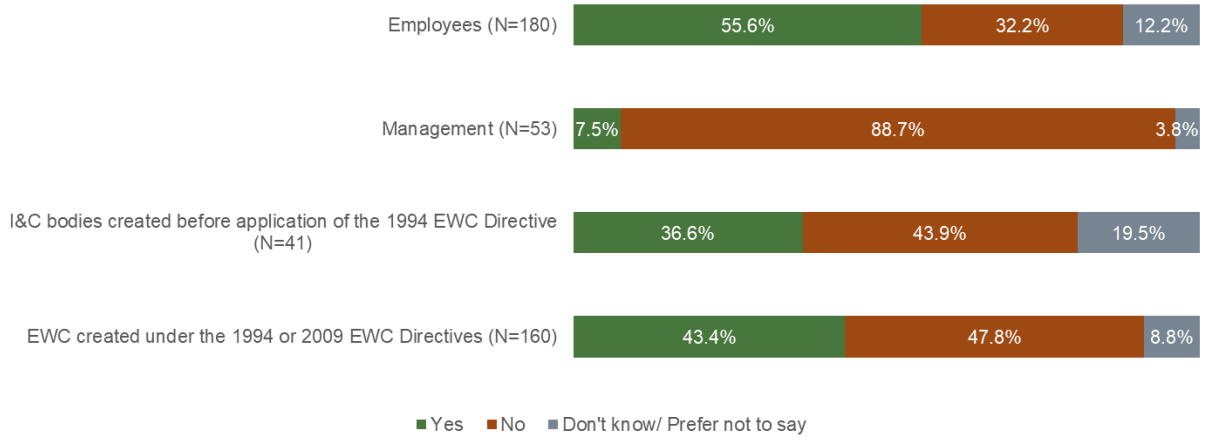
Legal experts overall agree on clearer timeframe for the establishment of the SNB. While legal experts representing employees emphasise the importance of SNB's access to resources, training and legal support and recognise the role of trade unions in facilitating effective social dialogue, legal experts representing employers highlight the need for clear guidelines on legal costs to ensure that these do not become disproportionate. Overall, experts are sceptical about introducing gender balance quotas in the EWC Directive.

National authorities overall support clearer timeframes for the setting up of SNBs. As regards resources, FR proposes evaluating "reasonable costs" based on expertise relevance, number of requests, and quality, cautioning against rigid themes and advocating EWC choice of experts with cost considerations. ES questions the need for SNBs to cover legal costs, as ES law already covers these expenses. BE considers the provision on access to expertise unnecessary due to their existing tradition of union experts and trade union support in BE. National authorities are cautious of introducing an obligation for gender quotas in the composition of EWCs as they may not be reflective of the gender composition in the workforce of multinational companies. While gender balance in representation is welcome in principle, it may not be practical to implement.

In **the online survey**, 55.6% of responding employee/EWC representatives (100 out of 180 respondents) indicated having experienced problems in the process of setting up of an EWC compared to 3.8 % of respondents among managers (2 out of 53 respondents). The only problem mentioned by the managers related to the length of the negotiations. By comparison, around three quarters of employee/EWC representatives who have experience problems reported: no effective

access to justice or remedies in the case of breaches of obligations by the company (79%); lack of expertise for setting up the EWC (76%); delays in setting up of the SNB (74%).[177]

Figure 5: Replies to the survey question: "Have you experienced any problems/issues related to the procedure for setting up your EWC?"



ICF(2023), Section 5.1.2.4. N=233

On the possibility of including a provision to ensure **gender balance** in the composition of the EWC, both stakeholder groups had similar views. 36.1 % of respondents on behalf of management and 35.8 % on behalf of employee/EWC representatives were in favour (84 out of 233 respondents in total). Conversely, 47% of respondents on behalf of management (25 out of 53) and 38% of responding employee/EWC representatives (65 out of 180) were not in favour of such measure.[178]

In the **workshops with EWC and management representatives**, management representatives overall favoured flexible timeframes and encouraging gender balance, but without enforcing quotas. Challenges were discussed regarding gender representation, particularly in male-dominated industries like manufacturing. The EWC representatives emphasised the importance of ensuring a smooth set-up procedure, usually requiring appropriate trade union support and training. Balanced gender representation is a positive goal but faces challenges in sectors with low female workforce percentages and diverse nominations or selection systems of employee representatives in Member States. Sector and country-specific considerations in this regard would be necessary.

3. Policy area 3

Targeted interviews

EWCs generally support revising the definition of transnationality but differ on specifics. Some want to insert examples, while others fear that examples would narrow the scope. EWCs overall favour a need for management to justify when a matter is not transnational. Training for EWCs on transnationality is recommended to ensure effective advocacy of workers' interests. EWCs report on ineffectiveness of the consultation procedure and support provisions ensuring employee consultation and reasoned responses from management before the management decision is taken.

[177] Respondents (consisting of both employees and management) for EWCs created under the 1994 or 2009 Directive indicated having experienced problems in setting up their EWC more frequently compared to respondents for information and consultation bodies created before the first Directive came into effect (43.4% vs. 36.6%; 69 respondents out of 160 vs.15 respondents out of 41).
[178] Remaining respondents preferred not to answer.

Some EWCs mentioned shortcomings in accessing free training and external expertise. EWCs overall favour the options proposed to revise rules around confidentiality and non-disclosure for the sake of improving transparency. They however acknowledge the challenges of defining objective criteria and varying national laws regarding confidentiality. Awareness-raising and training are suggested for handling confidentiality matters between EWC members and local committees.

Management of Union-scale undertakings oppose broadening the transnationality definition, citing concerns of increased EWC interference, and believe that further specifying the definition would have to contend with different perspectives on what constitutes transnational matters. Regarding procedures and resources, management representatives find current procedures for consultation of EWCs effective. Many highlight that consultations with the EWC already takes place before decisions are made. Some management representatives support the obligation to provide reasoned responses to EWCs' opinions. Overall, management representatives show goodwill in providing free training to EWCs to perform their duties even if the costs borne by employers can be high. Management representatives oppose revising confidentiality arrangements due to concerns over information leaks and control. They all find that making the non-disclosure of information to the EWC subject to prior or judicial authorisation is unnecessary.

EU and national employers' associations express concerns over the lack of clarity in defining transnational matters, highlighting potential excessive consultations and delays in time-sensitive projects. They criticise proposed changes as vague and urge a practical approach, emphasising the need for clear boundaries, legal certainty, and differentiation between local and transnational issues. They oppose any measures which would potentially transform the EWC into a decision-making body and shift focus away from consultation and information. They support practical rules for making consultation more efficient while preserving trust and flexibility. They consider that a requirement to provide a written response would delay the decision-making process and not necessarily mean better outcomes from the EWC's perspective. Employers' associations highlight a need for confidentiality provisions that strike a balance between protecting sensitive information and facilitating effective information and consultation processes.

EU and national trade unions are in favour of a broader definition of transnational matters to ensure a thorough examination of company proposals and recognise supply chain interconnections. They stress the need for clarity, inclusion of relevant elements, and updated frameworks to address challenges such as proving transnational impact and handling restructuring plans. Transnational issues encompass not only job losses but also changes in working methods and job quality. Trade unions support changes that improve transparency and effective communication, that guarantee appropriate resourcing for training and expertise. The consider that all recommendation of the European Parliament would improve inclusion of workers' perspectives in the consultation process to ensure meaningful engagement and decision-making. They argue for stricter rules for applying confidentiality provisions and emphasise the importance of striking a balance between confidentiality and transparency to ensure effective consultation and representation of workers' interests.

Legal experts overall highlight the challenges in defining transnational matters and call for some clarity to avoid disputes. Experts who work with EWC employee representatives argue that the definition should be broadened to any phenomenon that has effects on working conditions within a company as a whole rather than being limited to developments affecting a given number of countries. With regard to the information and consultation procedure, legal experts highlight the importance of clear guidelines, especially on timeliness. For legal experts representing employees, adequate resourcing, and free training for EWCs would improve their effectiveness in the consultation process. The also stress the need for clear and objective criteria for applying

confidentiality, the importance of transparency in explaining the reasons and duration of confidentiality, and the necessity of facilitating coordination and exchange between different levels of employee representation while ensuring adequate safeguards for sensitive information.

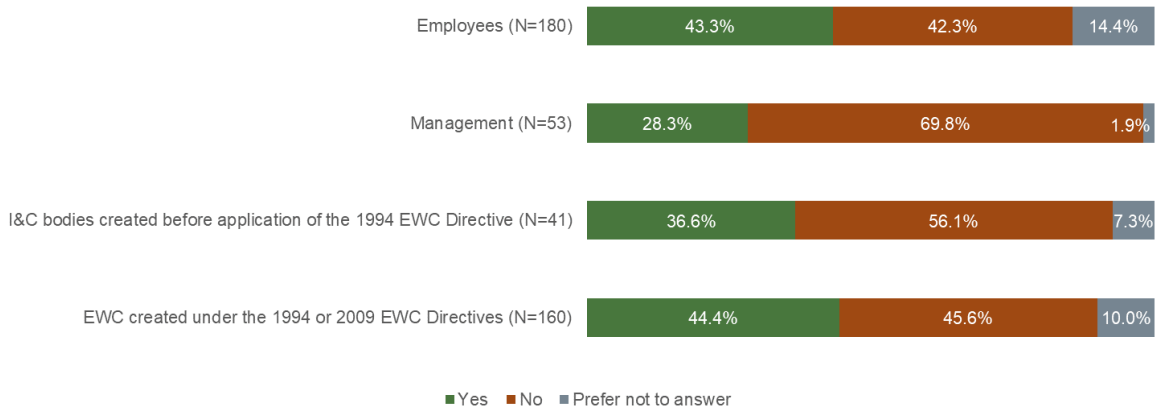
National authorities have diverse views on the concept of transnational matters. BE and SE support clarification of the term to address differing interpretations of transnationality. However, SE has reservations about widening the scope of the definition. PL welcomes proposals that provide more specific information on transnational matters, despite potential consultation procedure prolongation. NL believes the current definition is sufficient. FR proposes integrating environmental issues into the definition but opposes obligation on management to justify non-transnational matters. DE supports incorporating Recital 16 into the legal provision and introducing a provision for management to justify non-transnational matters. ES supports clarifying the concept of transnational matters and favours a provision that requires written justifications from management. CZ maintains a neutral stance and prefers non-binding guidance to enhance the current directive.

Addressing the issue of timeliness and obliging a reasoned response from management to the EWC opinion was overall supported by the national authorities. ES would be in favour of a requirement on the management to provide a reasoned response to the EWC opinion prior to the decision being implemented or adopted. NL states that such a requirement would be aligned with Dutch Works Council practices. SE emphasises the importance of respecting national labour laws while allowing reasonable timeframes for consultation.

National authorities' support for amending provisions on confidentiality and non-disclosure of information is overall limited. SE emphasises the need for balance and practicality in implementing confidentiality rules. BE sees no need for involving the court in determining confidentiality. PL finds its transposition of confidentiality rules satisfactory and views the proposed amendments as unnecessary. NL has well-established rules on confidentiality and does not support exempting EWC members from confidentiality obligations when sharing information with national or local works councils. ES suggests striking a balance between transparency and confidentiality, defining objective criteria, and avoiding administrative or judicial authorisation requirements.

In the **online survey**, as regard the concept **transnational matters**, 43.3% of responding employee/EWC representatives (78 out of 180) indicated having experienced problems in their EWC compared to 28.3% of respondents among managers (15 out of 53 respondents).

Figure 6: Replies to the survey question: "Have you experienced any problems/issues relating to the definition of the concept of 'transnational matters' in your EWC?"

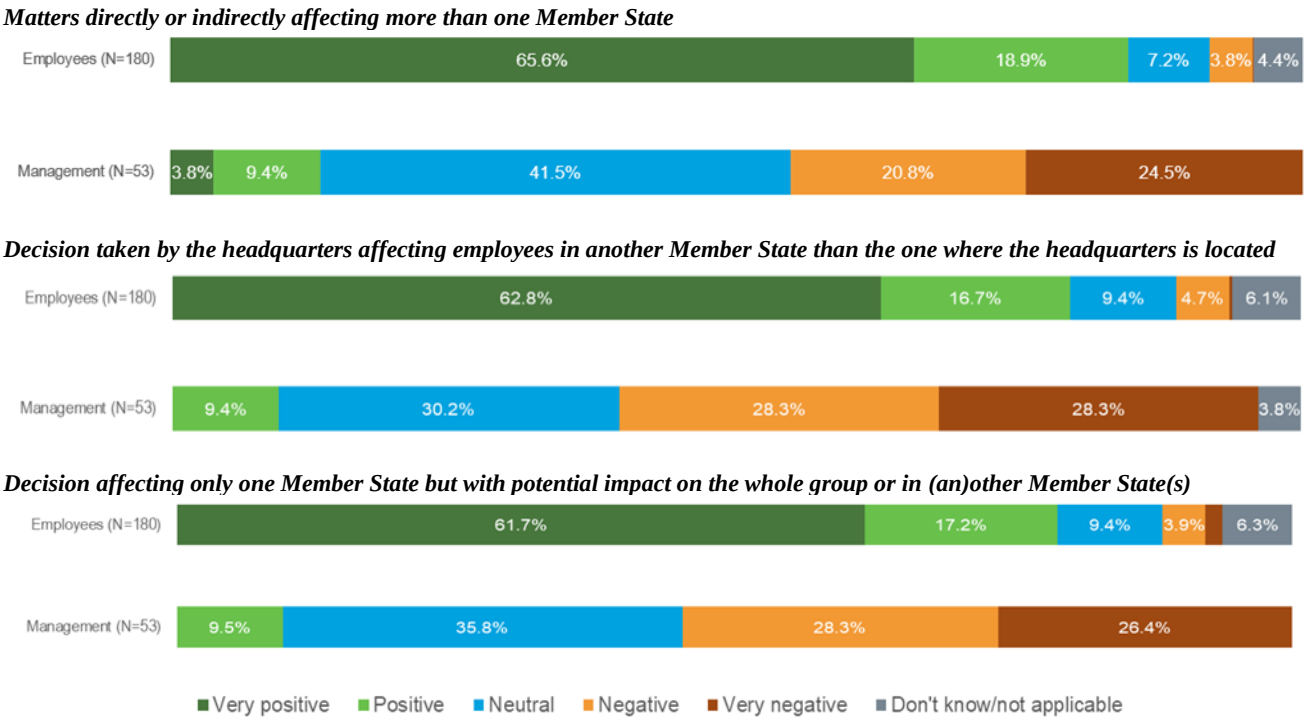


ICF survey(2023), Section 5.1.2.3 -. N=233

The results show disparity of views between management representatives and employee/EWC representatives relating to the possibility of broadening the definition of transnational matters. A majority of respondents on behalf of management consistently expressed mostly negative or very negative views on impacts of policy option 3 on effectiveness of the EWC, efficiency of the functioning of the EWC, on legal certainty and clarity, as well as mostly negative views on the impact of a broadened definition on companies' competitiveness. Conversely, a majority of employee/EWC representatives viewed this policy option positively or very positively with regard to the same types of impacts.

The below figure provides illustrates views of both stakeholder groups on option 3c's impact on legal certainty and clarity:

Figure 7: Replies to the survey question: "What would be the impact on legal certainty and clarity if the definition of transnational matters included also the following elements"

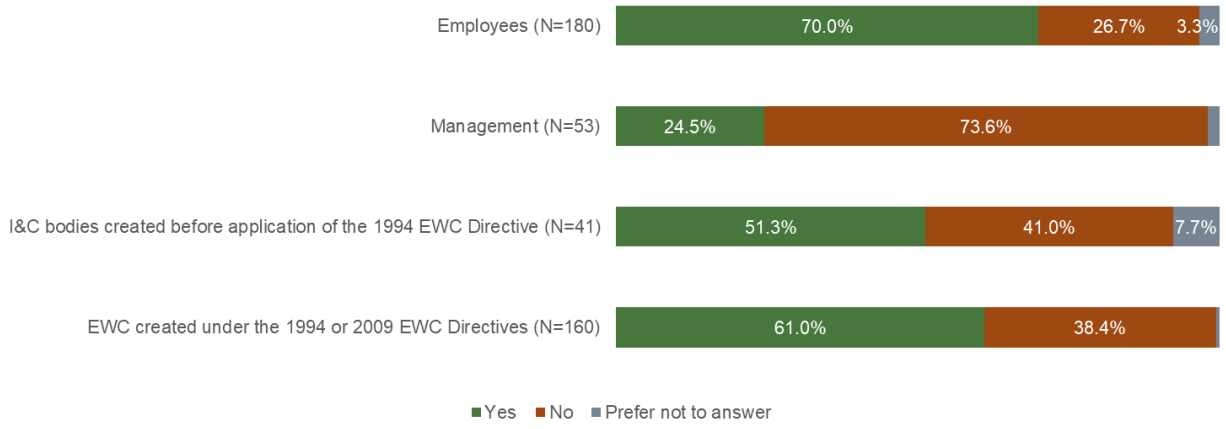


ICF(2023), Section 5.1.2.3. N=233

Regarding **consultation procedures**, 70% of responding employee/EWC representatives (126 out of 180 respondents) indicated having experienced problems in their EWC while 73.6% of respondents on behalf of management (39 out of 53 respondents) indicated having never experienced any problems in that respect.[179]

[179] A greater share of respondents for EWCs created under the 1994 or 2009 Directive indicated having experienced problems in relation to the consultation procedure than respondents for bodies created before the first Directive came into effect (61% vs. 51.3%; 98 respondents out of 160 vs. 21 respondents out of 41).

Figure 8: Replies to the survey question: "Have you experienced any problems/issues related to the consultation procedure in your EWC?"



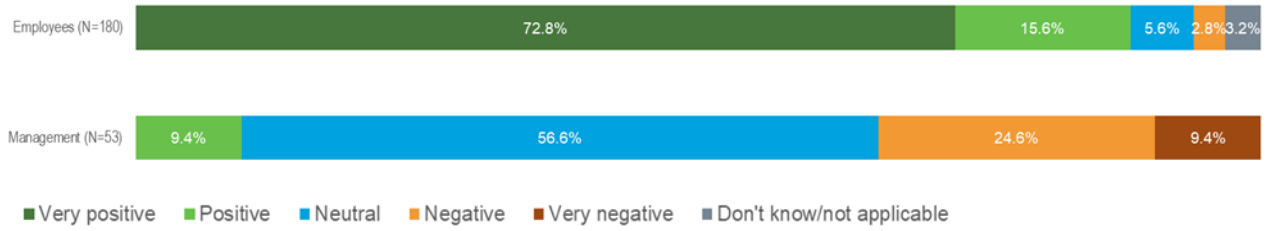
ICF(2023), Section 5.1.2.3. N=233

Timeliness of the consultation procedure was the most frequent problem identified among the responding employee/EWC representatives who have experienced problems (91%). For management representatives, the most frequent problem identified related to the risk that confidential company information would be disclosed in the consultation procedure (62% of respondents).

On the policy option (3b and 3c) to provide a reasoned response on the EWC's opinion, a majority respondents among management have a neutral or negatives views on the impact of such a requirement on effectiveness, efficiency of the EWC and legal certainty. 43.3 % consider that such option would have a negative impact on competitiveness of EU companies. Conversely, a vast majority of employee/EWC representatives believe that these would generate positive or very positive impacts on legal certainty and clarity (88.4 %), efficiency of the EWC (81.2 %) and effectiveness of the EWC (85,5 %), as well as that the measure would have positive impacts on companies' competitiveness (75.5 %).

The figure below shows the difference of views of management and EWC/employee representatives on the perceived impacts on legal certainty and clarity of the policy measure requiring a reasoned response to the EWC opinion.

Figure 9: Replies to the survey question: "What would be the impact on legal certainty and clarity of laying down an obligation on management to provide a reasoned response on the EWC's opinion?"



ICF(2023), Section 5.1.2.3. N=233

In the **workshops with EWC and management representatives**, management representatives raised potential conflicts between EWCs and local legislation, with worries that broadening the concept of transnational matters covered by EWCs could disrupt their own functioning.

Multinational companies emphasised stressed the importance of fast decision-making at the local level. Some companies took a broader interpretation of transnationality in their agreements, emphasizing the importance of sharing information and maintaining transparency. EWC representatives identified challenges related to confidentiality, the definition of transnational matters, and access to external expertise and resources. The participants agreed that clear guidelines for defining transnational matters are needed, taking into account their impact on European employees and their potential magnitude. Different experiences were reported regarding the use of confidentiality clauses: some participants find them unnecessary and advocate for transparency, while others acknowledge the importance of confidentiality but want to strike a balance with the need for information sharing and consultation. There was agreement overall that decision-making processes should allow sufficient time for EWCs to provide input and opinions before final decisions are made. Participants also agreed that access to external experts is important, and EWC agreements should specify such rights. The participants overall expressed the view that limited resources and budget constraints hinder the ability of EWC to engage effectively in information and consultation processes.

4. Policy area 4

Targeted interviews

EWCs unanimously support a requirement on Member States' to grant EWCs and SNBs access to courts. Pecuniary sanctions linked to company turnover and introducing a right to an injunction allowing temporary suspension of management decision are seen as useful in incentivising compliance by management, but some EWC representatives point out that such sanctions would potentially harm companies and result in detrimental repercussions for employees.

Management of Union-scale undertakings consider that guaranteeing EWC and SNB access to justice and introducing the right of injunction for EWCs to suspend the implementation of management decisions until the information and consultation procedure has been duly conducted will encourage more court cases and goes against the importance of promoting cooperation between the company and the EWC. Management representatives unanimously reject very high pecuniary sanctions recommended by the Parliament as this would create competitive disadvantages for companies and be counterproductive for employees too.

EU and national employers' associations express concerns about the considered options for revising the enforcement provisions of the EWC Directive, highlighting potential negative impacts on decision-making, corporate governance, and employer-employee relationships. They call for a balanced and pragmatic approach that takes into account the specific needs of companies and Member States.

EU and national trade unions state that there is a necessity to harmonise the national legal frameworks on access to justice for achieving a level playing field for EWCs, and to strengthen the dissuasive nature of sanctions to enhance the effectiveness of EWCs.

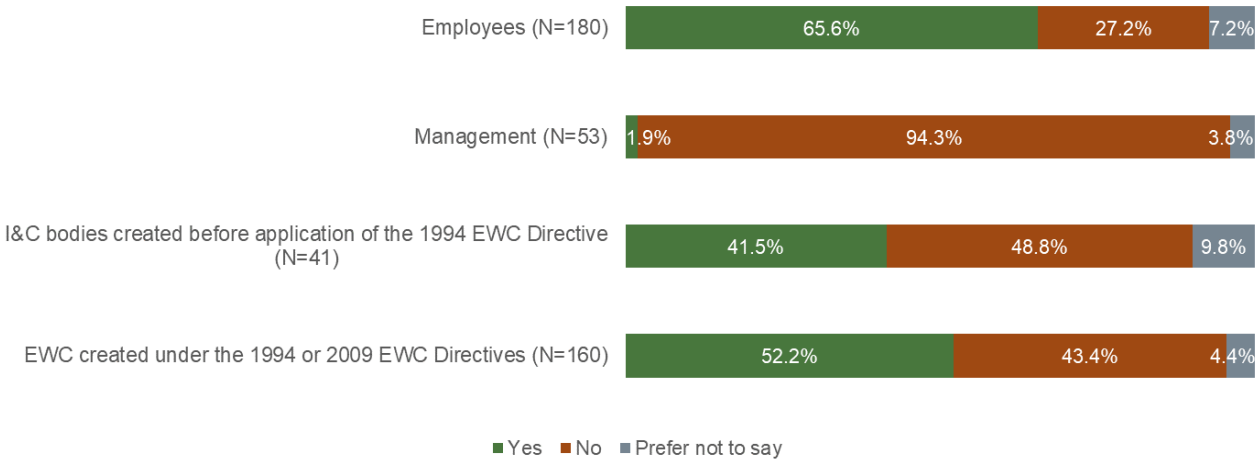
Legal experts underline the need for standardised processes for EWCs to access justice, and for the inclusion of dissuasive sanctions. Experts working with management representatives however view fines for non-compliant companies as counterproductive when tied to annual turnover percentages.

Among national authorities, DE and SE express concerns about conflicts over official representation, asking for further clarity. BE has well-established courts for employment conditions and finds the existing system effective, with high potential sanctions acting as a deterrent and incentivising the formation of EWCs. PL supports possible amendments relating to EWC resources

and legal capacity but cautions against complex administrative and judicial procedures and disproportionate fines. FR suggests specifying resources allocated to EWCs but does not support the right to seek a preliminary injunction. Introducing pecuniary sanctions in the directive would be problematic and not aligned with NL law on local works councils. FI sees challenges with preliminary injunctions and considers pecuniary sanctions counterproductive.

In the **online survey,** majority of respondents among employee/EWC representatives (65.6 %) stated to have experienced problems related to enforcement of their EWC rights and obligations, compared to 1.9% of management representatives.

Figure 10: Replies to the survey question: "Have you experienced problems/issues related to enforcement of your EWC rights and obligations provided by the existing rules?"



ICF(2023), Section 5.1.2.7. N=233

The policy option involving far-reaching **sanctions** (option 4c) could, according to management representatives, have unintended consequences. Increased penalties may harm competitiveness, result in job cuts, and deter investment. Stricter legal processes would undermine trust and hamper constructive social dialogue, while injunctions could disrupt business decisions and upset the balance of power between EWC and management. On the other hand, a majority of employee/EWC representatives saw the same option having the potential to generate positive impacts on compliance with rights and obligations under the Directive (85%; 153 out of 180 respondents) and on effectiveness and efficiency of the EWC (87.2%; 157 respondents). They were however less likely to find the impact of these sanctions as positive from the perspective of the company's competitiveness (69.4%; 152 respondents).

Employee/EWC representatives consider that sterner sanctions would encourage effective communication between workers and management, providing the EWC with greater leverage. However, according to them, sanctioning methods that lead to job losses would defeat their purpose.

In the **workshops with EWC and management representatives**, management representatives raised concerns about the potential competitive disadvantage European companies could face if heavily sanctioned obligations regarding consultation were imposed. This could also negatively impact cooperation between management and employees. The effectiveness of the current framework was highlighted, with minimal disputes over the past 25 years. Concerns were expressed about enforcement rules disrupting the EU market. The potential impact of GDPR-sized fines was discussed, which could lead to reduced interactions with the EWC due to increased legal risk. The

EWC representatives highlighted the importance of access to justice for EWCs. Timely access and coverage of legal costs, along with stricter sanctions, were identified as crucial. Stricter sanctions with real impact, including alternative solutions like delayed implementation of decision or loss of operating rights, were proposed. Publicity and transparency could also address non-compliance, but potential negative effects on employees were recognised.

ANNEX 3: WHO IS AFFECTED AND HOW?

1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

For employees of Union-scale undertakings and their representatives, the initiative mainly introduces rights, improves their entitlements in relation to transnational information and consultation, increases legal certainty, and gives better access to justice. The ca. 5.4 million EU/EEA employees (and their representatives) of the currently exempted undertakings with 'voluntary agreements' (323) would gain the right to request the establishment of an EWC in order to benefit from an equal application of minimum rights and obligations enforceable under EU law. Together with management, they can also opt to preserve well-functioning voluntary agreements. EWCs in undertakings with 'Article 14 agreements', which remained subject to the legislation transposing the 1994 EWC Directive, will be able to rely on the revised requirements of the Directive, as all other EWCs. In the context of requests to establish a new EWC, employee representatives in the large majority of Member States would gain a clear entitlement to the coverage of their reasonable legal costs and more legal certainty regarding management's obligation to initiate negotiations within six months. The workforce of Union-scale undertakings would also benefit from the objective to ensure a balanced gender composition of EWCs, which is to be reflected in newly concluded or renegotiated EWC agreements. During the information and consultation process, EWCs which are not yet entitled to a reasoned response from management to their opinion, prior to the adoption of a decision on transnational matters, would gain such a right. This will help them to engage in a genuine dialogue with central management on transnational matters. This dialogue is also facilitated by clarifications of the essential concept of transnational matters, defining the scope of the information and consultation activities of EWCs, and by the limitation of confidentiality obligation to justified cases. For EWCs operating on the basis of subsidiary requirements (20), the requirement of at least two plenary meetings per year would lead to a more regular information and consultation on transnational matters. For EWCs, SNBs and employees' representatives who currently do not have effective remedies to enforce all their rights under the Directive, the initiative would improve access to justice.

For union-scale undertakings and their central management, the initiative imposes certain new obligations and costs, while also delivering benefits relating to a simplified and more coherent legal framework and better employee involvement on transnational matters. In the currently exempted undertakings with 'voluntary agreements' (323), central management would have to initiate negotiations of a new EWC, if requested by employees (or their representatives) in accordance with the Directive. This will entail costs for those undertakings estimated at ca. EUR 148 000 per negotiation. Generally, during negotiations or renegotiations involving an SNB, undertakings will be legally required to cover - in addition to other costs incurred in the setting-up phase - also the SNB's reasonable legal costs, which is currently not explicitly required in the large majority of Member States. Where necessary to align existing EWC agreements with the revised requirements – e.g., to address the coverage of EWCs' expenses for legal or expert advice and training – central management must engage in renegotiations with EWCs or SNBs, including in the 28 undertakings with 'Article 14 agreements' which are currently exempted from the application of the Directive. 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 monetise certain costs linked to meetings (ca. EUR 18 400 per meeting[180]) between

[180] See Annex 4 'Analytical methods' (Section 4.4).

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, however, not be taken as an approximation of those overall costs. In any case, the costs of renegotiation even if several meetings are needed should not have any significant economic impact. Moreover, in a substantial number of cases, the necessary adaptations of EWC agreements could be agreed as part of regular renegotiations, entailing no or only very limited additional costs compared to the baseline.[181] Undertakings could also face an incremental increase in the costs of running an EWC, for instance in relation to the obligation to provide a reasoned response to the EWC. Undertakings with EWCs based on subsidiary requirements (20) would bear additional cost of ca. EUR 42 000 for the required second plenary meeting per year.[182] Finally, in cases of breaches of obligations, the undertakings would face a risk of higher pecuniary sanctions. The occurrence of legal disputes and application of penalties is however expected to remain low.

The initiative does not include any reporting requirements falling under the One-In:One-Out approach. Specifically, as the Directive does not require but merely allows undertakings to restrict the dissemination of confidential information or to withhold certain information, the requirement to inform employees' representatives, upon request, of the grounds justifying such restrictions does not amount to a reporting requirement. Moreover, the requirement to provide a reasoned response to EWC opinions is a core information and consultation activity rather than reporting.[183] Related costs are therefore considered as adjustment costs.

All <u>Member States</u> would have to amend their legislation implementing the Directive. They would need to collect and notify to the Commission information on how EWCs, SNBs and employees' representatives can bring judicial proceedings in respect of all their rights under the Directive. This obligation would entail limited administrative costs although it could be further minimised as a part of the standard process of notifying transposition measures via the available IT systems. By promoting a more effective access to courts, the preferred option could potentially entail additional limited adjudication costs for Member States, considering in particular that EWCs are exempted from court fees in eight Member States.[184] This will affect primarily Member States which have thus far not guaranteed effective remedies for rightsholders under the Directive. The expected higher pecuniary sanctions are assumed to accrue to Member States' budgets.

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[181] EWC agreements are revised on average every 5 years.

[182] This may affect also EWCs based on agreements, for which the subsidiary requirements can serve as a benchmark during negotiations. Currently, ca. 50% of EWC agreements provide for only one annual plenary meeting. However, such an effect would be a free choice of the parties.

[183] Already in the baseline scenario, the existing text of Directive 2009/38/EC requires that a 'dialogue' and 'exchange of views' be established between management and employees' representatives on transnational matters (this is more clearly reflected in point 1(a) of Annex I of the Directive for EWCs which do not operate on the basis of agreements). This existing requirement implies that EWCs' opinions cannot remain a 'one-way-street' but management must respond to them to ensure a genuine dialogue. The envisaged explicit requirement of a reasoned response will clarify this core feature of the consultation obligation. It implicitly requires management to take EWCs' opinions into account, because a reasoned response cannot be provided without having first considered those opinions on their merits. It will clarify an implicit obligation in the information and consultation process.

[159] AT, LT, ES, BG, FR, DE, RO, SE, NL. Cf. ETUC report by Jagodziński / Stoop (2023) Access to Justice for European Works Councils, p. 31.

2. SUMMARY OF COSTS AND BENEFITS

The tables below provide an overview of the benefits and the costs of the preferred policy option. As benefits are not quantifiable, a qualitative justification and an explanation is provided. Costs are quantified whenever possible, and when this is not possible, a qualitative justification and an explanation is provided.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Market efficiency from a simplified and more coherent legal framework regarding transnational information and consultation rights	Not quantifiable, expected to be negligible.	This benefit is relevant for the currently 3970 Union-scale undertakings[185]. By removing the exemptions from the scope of the Directive, undertakings would have a less fragmented, simpler legislative framework. On the employees' side, it would primarily be relevant for: - the ca. 5.4 million EU/EEA employees of the 323 currently exempted undertakings with 'voluntary agreements';[186] - the ca. 465.000 employees of undertakings with EWC agreements that currently remain subject to the 1994 EWC Directive (28).[187]
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.	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. 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. Cost saving regarding the renegotiation of existing EWC agreements benefit the unknown share of the 678 undertakings with an EWC[188] 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

[185] 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), Section 3.2.1.
[186] Estimated average number of EU employees per undertakings with an EWC is 16.600. Cf. Annex 4.
[187] See footnote 164 above.
[188] 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.

		meetings in complex cases. Based on the available evidence, it was possible to monetise certain costs linked to meetings (ca. EUR 18 400 per meeting[189]) 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.	This benefit is relevant for the currently 678 undertakings with an EWC and their ca. 11.3 million employees[190], as well as parties to future EWC agreements, including potentially the parties to the currently 323 'voluntary agreements'. 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.
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.	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). 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. 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). 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).

[189] See Annex 4 'Analytical methods' (Section 4.4).
[190] Estimated average number of EU employees per undertakings with an EWC is 16.600. Cf. Annex 4.

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) 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 pecuniary sanctions 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 pecuniary sanctions is likely to lead to higher penalties. While pecuniary sanctions 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: - 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 new EWC agreement (costs incurred by an uncertain share of the currently 323 exempted undertakings with 'voluntary agreements') Based on hypothetical assumptions regarding the rate of creation of new EWCs in previously exempted undertakings, aggregated costs for all such undertakings range from ca € 12m to ca. € 36m: - ca € 12m if an EWC would be requested in 25% of those undertakings; - ca. € 24m assuming a creation rate of 50%; - ca. € 36m assuming 75%.	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.	N/A	N/A
Renegotiating EWC agreements	Direct adjustment costs	N/A	N/A	Average costs of renegotiation could not be reliably quantified.[191] Evidence suggests that a re-negotiation	N/A	N/A	N/A

[191] 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.).

				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. Based on hypothetical assumptions regarding the share of EWC agreements that will need to be renegotiated and the number of meetings required for that purpose, these one-off costs could fall in the following ranges: - if 25% of existing EWC agreements were renegotiated, aggregated costs would range between ca. € 3,1m (if one meeting would be required per renegotiation) to ca. € 12,5m (if four meetings would be needed) - if 50% of			

				existing EWC agreements would be renegotiated, aggregated costs would range between ca. € 6,2m (if one meeting would be required per renegotiation) to ca. € 25m (if four meetings would be needed); - if 75% of existing EWC agreements would be renegotiated, aggregated costs would range between ca. € 9,4m (if only one meeting would be required per renegotiation) to € 37,5m (if four meetings would be needed)			
Covering reasonable legal costs of special negotiating bodies	Direct adjustment costs	N/A	N/A	N/A	Possible marginal 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.	N/A	N/A
Potentially more	Direct adjustment costs	N/A	N/A	N/A	Possible incremental	N/A	N/A

extensive coverage of EWCs' expenses for legal and expert advice and training; reasoned response to EWC opinions					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. Based on hypothetical assumptions regarding the possible marginal increase in these costs, the combined effect of all measures under the preferred option could entail aggregated costs for all EWCs (678 existing and 90 created in the baseline period) over the baseline period, in the following range: - ca. € 55,1m assuming a 5% increase in operating costs; - ca. € 110,2m assuming a 10% increase in operating costs; - ca. € 165,3m assuming a 15% increase in operating costs.		
One additional	Direct adjustment costs	N/A	N/A	N/A	Ca. € 42 000 for an	N/A	N/A

plenary meeting per year					additional annual plenary meeting (applies for 20 undertakings with an EWC based on subsidiary requirements) On this basis, aggregated costs for undertakings concerned (20) over the baseline period would amount to ca. € 4,2m		
Notification of information on judicial proceedings available to enforce min. rights of the Directive	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 transposition measures via the available IT systems	N/A
	Direct regulatory fees and charges	N/A	N/A	N/A	N/A	N/A	N/A
Payment of higher pecuniary sanctions	Direct enforcement costs	N/A	N/A	N/A	Higher pecuniary sanctions 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 pecuniary sanctions 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
Net administrative burdens*	N/A	N/A	N/A
Adjustment costs**	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') Based on hypothetical assumptions regarding the rate of creation of new EWCs in previously exempted undertakings, aggregated costs for all such undertakings range from ca € 12m to ca. € 36m: - ca € 12m if an EWC were requested in 25% of those undertakings; - ca. € 24m assuming a creation rate of 50%; - ca. € 36m assuming 75%. Costs incurred during	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. Based on hypothetical assumptions regarding the possible marginal increase in these costs, the combined effect of all measures under the preferred option could entail aggregated costs for all EWCs (678 existing and 90 created in the baseline period) over the baseline period, in the following range: - ca. € 55,1m assuming a 5% increase in operating costs; - ca. € 110,2m assuming a 10% increase in operating costs; - ca. € 165,3m assuming a 15% increase in operating costs.	

	renegotiation of an EWC agreement. Average costs of renegotiation could not be reliably quantified.[192] 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. Based on hypothetical assumptions regarding the share of EWC agreements that will need to be renegotiated and the number of meetings required for that purpose, these one-off costs could fall in the following ranges: - if 25% of existing EWC agreements were renegotiated, aggregated costs would range between ca. € 3,1m (if one meeting would be required per renegotiation) to ca. € 12,5m (if four meetings would be needed) - if 50% of existing EWC agreements were renegotiated, aggregated costs would range between ca. € 6,2m (if one meeting would be required per renegotiation) to ca. € 25m (if four meetings would be needed); - if 75% of existing EWC agreements were renegotiated, aggregated costs would range between ca. € 9,4m (if only one meeting would be required per renegotiation) to € 37,5m (if four meetings would be needed)	€ 42 000 for an additional annual plenary meeting (costs incurred by the 20 undertakings with an EWC based on subsidiary requirements). On this basis, aggregated costs for undertakings concerned (20) over the baseline period would amount to ca. € 4,2m.	
Citizens			
New administrative burdens (INs)	N/A	N/A	N/A
Removed administrative burdens (OUTs)	N/A	N/A	N/A

[192] See footnote above.

Net administrative burdens*	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

3. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

IV. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG no. 8 – decent work and economic growth	By improving the quality of transnational information and consultation and reinforcing access to justice for employee representatives, the preferred option will foster the social dimension of the green and digital transitions. It is likely to contribute to socially sustainable strategic decision-making and mutual trust between management and the workforce in Union-scale undertakings, and thereby to more sustainable and equitable working conditions.	The progress towards SDG no. 8 is not quantifiable.
SDG no. 5 – achieve gender equality and empower all women and girls	By requiring parties to EWC agreements to agree on the objective of achieving a gender-balanced composition of EWCs (= underrepresented gender to hold at least 40% of the seats), the preferred option will contribute effectively to SDG no. 5. Currently, women are underrepresented on ca. 60% of EWCs.	A more balanced gender-composition of EWCs is likely to contribute to broader indirect economic and social benefits, as well as more equitable working conditions, by enabling better strategic decision-making and more representative EWC opinions.

ANNEX 4: ANALYTICAL METHODS

This annex describes the analytical methods used for the purposes of this impact assessment. After providing an overview of the analytical methods used (Section 1), general explanations are provided regarding evidence / data limitations as well as remedial measures taken to address those limitations (Section 2). Subsequently, detailed information is provided on the methodology for the analysis of the baseline (Section 3) and impacts of policy options (Section 4).

1. Overview of analytical methods used

The following methods were used to develop this impact assessment:

- **Economic analysis**: To the extent possible given the available data, the consequences of taking no EU-action (baseline) and the impacts of the policy options were monetised based on quantified cost-analysis, as described in detail in Sections 3 and 4 below. Benefits are analysed largely in qualitative terms, for the reasons explained in Section 2 below.

- **Legal comparative analysis and case-law analysis**: In order to complement the information on Member States' legislation on transnational information and consultation gathered by the Commission when monitoring the transposition of the Directive and for the 2018 evaluation of that directive, legal comparative analyses were carried out by the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE) on:
    - national provisions transposing Directive 2009/38 on European Works Councils as regards confidentiality, non-disclosure of information and gender balance;
    - national provisions concerning the enforcement of rights and obligations arising from Directive 2009/38/EC on European Works Councils.

  See Annex 8 for an overview of the findings of these analyses.
  In addition, case law of Member States' courts was analysed to inform the problem definition, see Annex 9 for the findings.

- **Survey and interview methodology**: In the context of the supporting study (ICF 2023), evidence from key stakeholders (management and employees' representatives in undertakings with an existing EWC or transnational information and consultation body, national social partners, Member State authorities) was collected by means of an online-survey, workshops, and targeted interviews. The population, methodology and results of these data-gathering approaches are described in Annex 2.

- **Statistical analysis**: ETUI's EWC database and the large-scale survey of EWC representatives done by ETUI in 2018 are key evidence sources. Experts from ETUI provided the Commission services with new additional ad hoc data extractions to support this impact assessment. Using data analysis software, views of EWC representatives on different issues were cross-tabulated to complement primary survey data regarding the setting-up of EWCs and functioning of transnational information and consultation. Moreover, Eurostat provided an ad-hoc data extraction from the EuroGroups Register, to determine the number of undertakings falling under the definition of 'Community-scale undertaking' laid down in Directive 2009/38.

- **Literature review**: The supporting study (ICF 2023) and the Commission services carried out a comprehensive desk research and analysis of literature on the issues of relevance for

this impact assessment. See ICF(2023), Annex – Section 1, for a list of relevant literature and Annex 1 of this impact assessment for an overview of the key sources.

2. General remarks regarding data / evidence limitations and remedial measures

Certain challenges relate to the characteristics of the policy field of the initiative, and of the stakeholders. The topic of transnational social dialogue within undertakings is the subject of often polarised stakeholder views. For instance, as mentioned above, the large-scale survey of EWC representatives done by ETUI in 2018 and ETUI's EWC database are key evidence sources, but clearly affected by selection-bias and the risk of inaccurate self-reporting by stakeholders. Throughout the various evidence gathering activities, this was addressed by seeking the views of a broad range of relevant stakeholders in addition to management and EWC representatives, such as legal experts, representatives of relevant national authorities, European and national social partners. Moreover, when presenting the results of the evidence gathering, the sources of the reported views are systematically stated. Results are not aggregated across different stakeholder groups, in view of the polarisation described above.

Furthermore, while it is expected that a better functioning social dialogue in Union-scale undertakings will deliver both social and economic benefits – e.g., in the form of a more involved workforce, better quality jobs, improved openness and adaption to change – the analysis of such impacts is necessarily qualitative in nature (see Annex 12 for detailed explanations on those benefits). Benefits of transnational information and consultation tend to be long-term and indirect in nature and depend on intangible factors such as the engrained culture of employee involvement in the respective undertaking. Moreover, the recast Directive sets a procedural framework on transnational information and consultation that leaves broad freedom to parties to EWC agreements to tailor the information and consultation process as well as accompanying provisions on resources, training, etc. to their specific situation and needs. These factors make it fundamentally challenging to establish a causal link between the regulatory framework defining the baseline, as well as policy options seeking to develop or clarify that framework, and specific economic or social outcomes. Nevertheless, efforts were made to quantify/monetise both the consequences of the problem under the baseline scenario and the impacts of policy options to the extent possible, as described in detail in Sections 3 and 4 below.

Due to the structure of the stakeholder population and the polarisation of their policy views, there is a risk of bias also in the literature and other evidence sources on transnational information and consultation. To mitigate the risk of a skewed evidence base, information from potentially biased sources has been cross-checked with evidence from other sources to ensure robustness. Moreover, the respective data sources are specified transparently to acknowledge possible biases. In the framework of the supporting study, a set of quality criteria was applied for the purposes of identifying and reviewing the key sources of literature.

Certain data derive from small samples or stem from the analyses carried out in 2016 for the purposes of the evaluation of the Directive. While various avenues were explored in the framework of the supporting study to provide more up-to-date quantified estimates of relevant costs (such as negotiation costs and operating costs of EWCs), only partial estimates of certain cost elements proved feasible, due to a lack sufficient information on all relevant cost factors. Nevertheless, the new partial cost estimates usefully complement older overall estimates, as they allow to confirm the latter's continued relevance through partial triangulation. Specific limitations regarding individual data points are explained in Sections 3 and 4 below.

3. Methodology for the assessment of the baseline

The assessment of the baseline is carried out over a 10-year period. For this purpose, the following trends were considered:

- **Stationarity:** based on the information gathered from consultation and other evidence compiled, it was assumed that the extent and frequency of problems concerning the setting-up and operation of EWCs will remain relatively stable over time. Therefore, the stationarity of these values is assumed.
- **Linear growth:** building on the knowledge gathered through desk research and stakeholder consultation, it emerged that the number of active EWCs per year, net of terminated/inactive EWCs, is continuously growing at a roughly constant rate. To account for such growth over time, for the variables considered dynamic, a hypothesis of linearity is assumed. External factors are also considered where relevant.

3.1. Population affected

Number of eligible companies

According to the Eurostat data, in 2021, 3676 multinational companies operational in the EEA constituted an undertaking or group of undertakings within the scope of the Directive, employing close to 30 million workers in the EEA.[193] Taking into account the annual growth rate[194], the estimate for 2023 is **3,970 eligible companies** with a total of **31.7 million employees**.

For a multinational to be covered by the EWC Directive, it needs to employ over a thousand employees in total and at least 150 in two EU Member States. Most EWCs are established in multi-national companies ('MNCs') with more than 5,000 employees. In a sample of eligible companies analysed by Eurofound[195], companies with more than 10,000 employees in the EU were twice as likely to have established an EWC than companies with fewer than 5,000 employees.

Number and demographics of EWCs

Based on the ETUI database[196], EWCs or agreements on transnational information and consultation[197] are operating **in around 1000 companies.** Figure 1 provides an overview per type of EWC or information and consultation agreement.

[193] Source: Eurostat, ad-hoc extraction from the EuroGroups Register. For further information, please see: Employment in large-scale multinational enterprise groups - Statistics Explained (europa.eu)

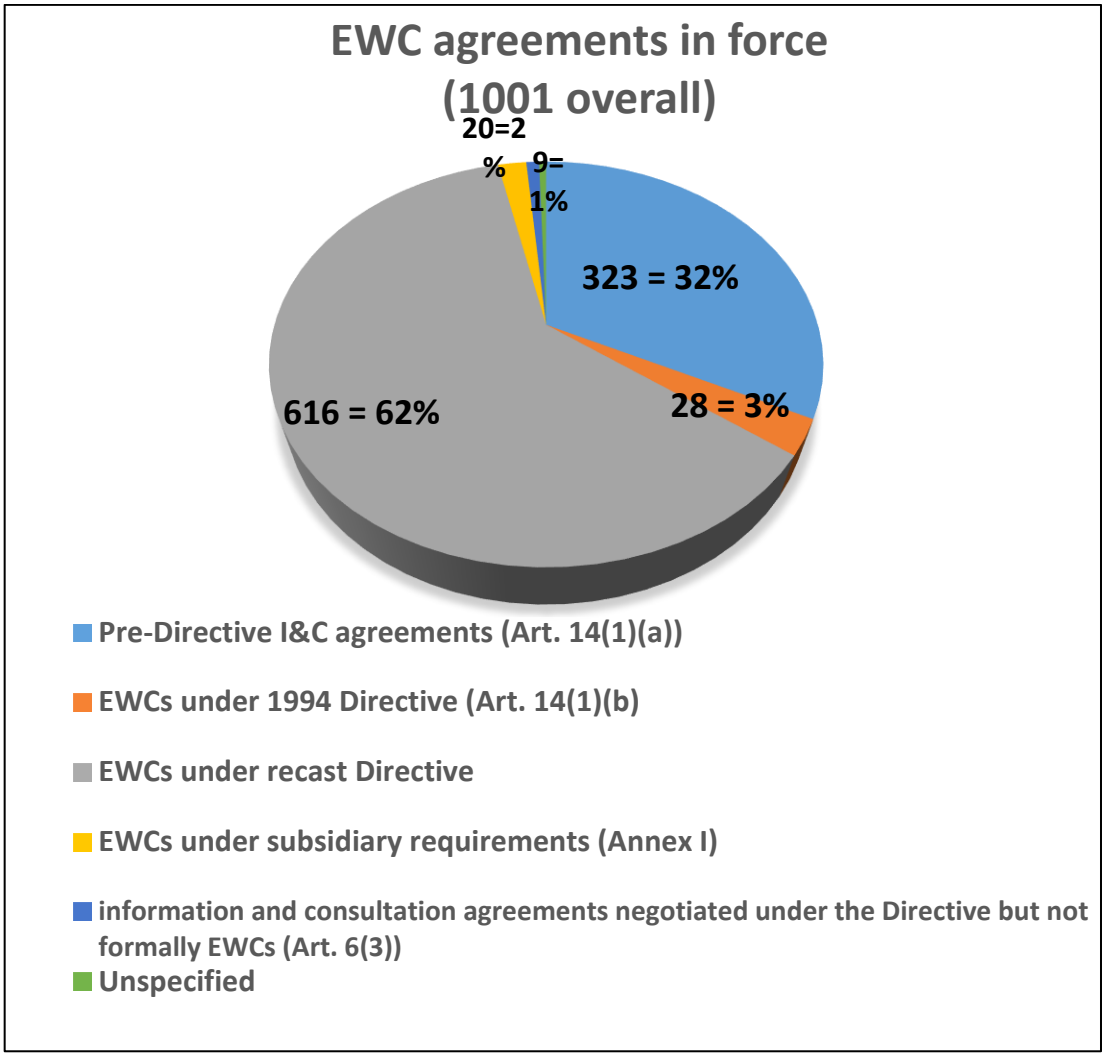
[194] In the years for which this indicator was measured (i.e., 2019-2021), the number of eligible companies grew by 3.92% on a yearly basis.

[195] Kerckhofs P. (Eurofound)(2015). European Works Council developments before, during and after the crisis. Available online.

[196] ETUI EWC database, 2023. Accessible at: https://www.ewcdb.eu

[197] In the following section, where not specified, references to "EWCs" include pre-directive agreements on transnational information and consultation ("voluntary agreements").

Figure 1: EWC bodies by type of agreement



Source: ETUI (2023)

The number of EWCs has been relatively stable in the last decades, around 20 new EWCs being created each year. The take up rate and the overall number has not changed significantly since the adoption of the Directive, newly established EWCs taking the place of those dissolved, mainly due to restructuring (mergers), the net annual growth rate is estimated at 9 additional EWCs.

The number of active EWCs is the net difference between:

- the annual growth rate of EWCs (based on the 2017-2022 average growth, excluding 2020[198] as an outlier due to Covid-19 pandemic, as described above)[199]; and

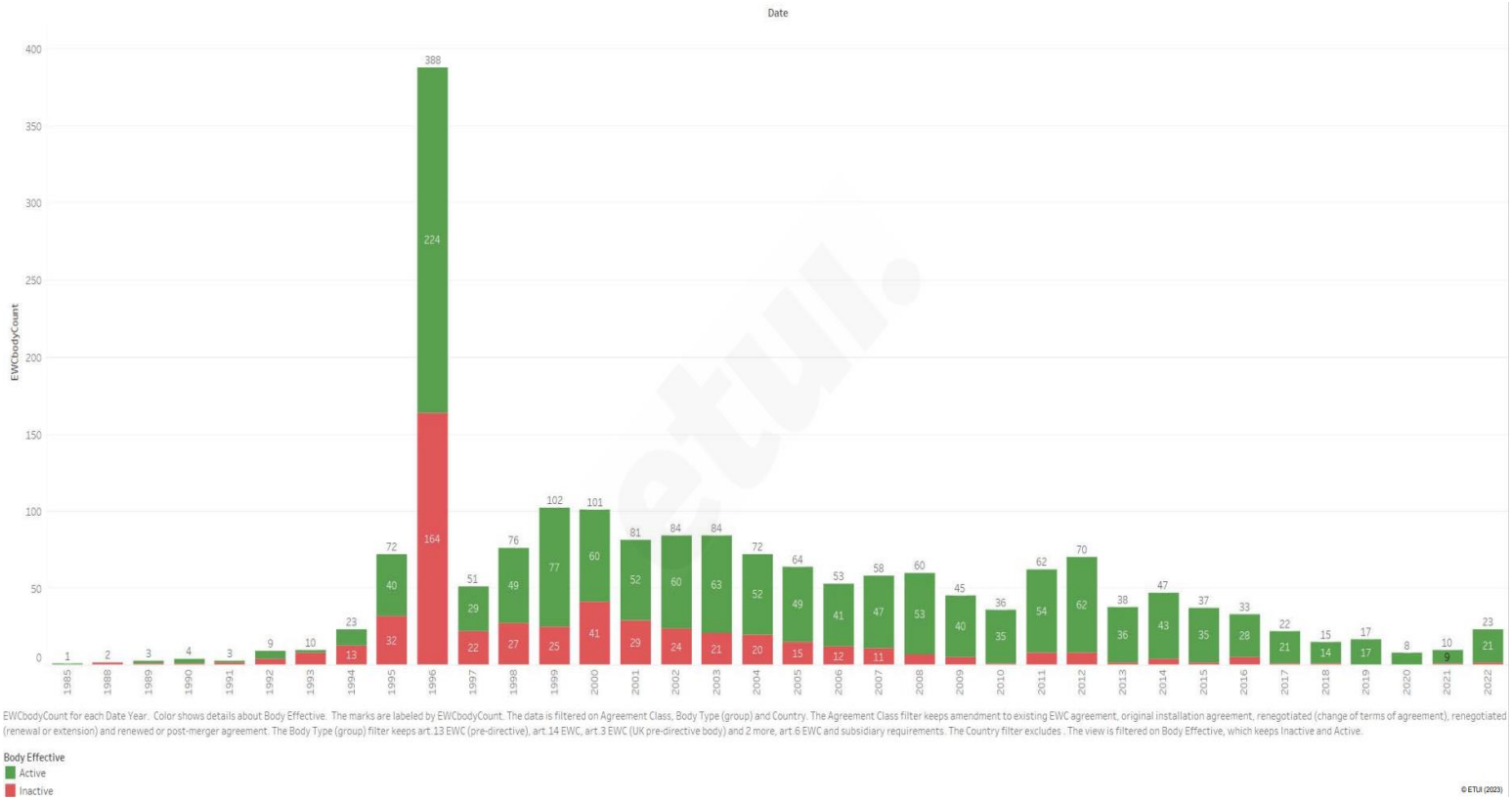
[198] Due to the exceptional economic situation linked to the Covid-19 pandemic in 2020, the growth rate during that year is a non-representative outlier. To ensure the relevance of growth estimates, that year is therefore discarded for the purposes of calculating the average.

[199] Limitation: external factors, such as the effects of the Russian War on Ukraine and other geopolitical turmoil may influence the growth in the number of EWCs and potential EWCs. Yet, a robust trend was impossible to define, due to diverging data and lack of conclusive studies. Hence, the growth of EWCs and their potential number is assumed to be linear.

- the annual rate of EWCs becoming inactive (based on the 2017-2022 average growth, excluding 2020 as an outlier due to Covid-19 pandemic).

Figure 2 shows the total number of EWCs established each year from 1985 to 2022. The portion in green indicates the EWCs that are still in activity as of 2023, while the portion in red shows those that are known to be inactive.

Figure 2: Trend in the establishment of EWCs

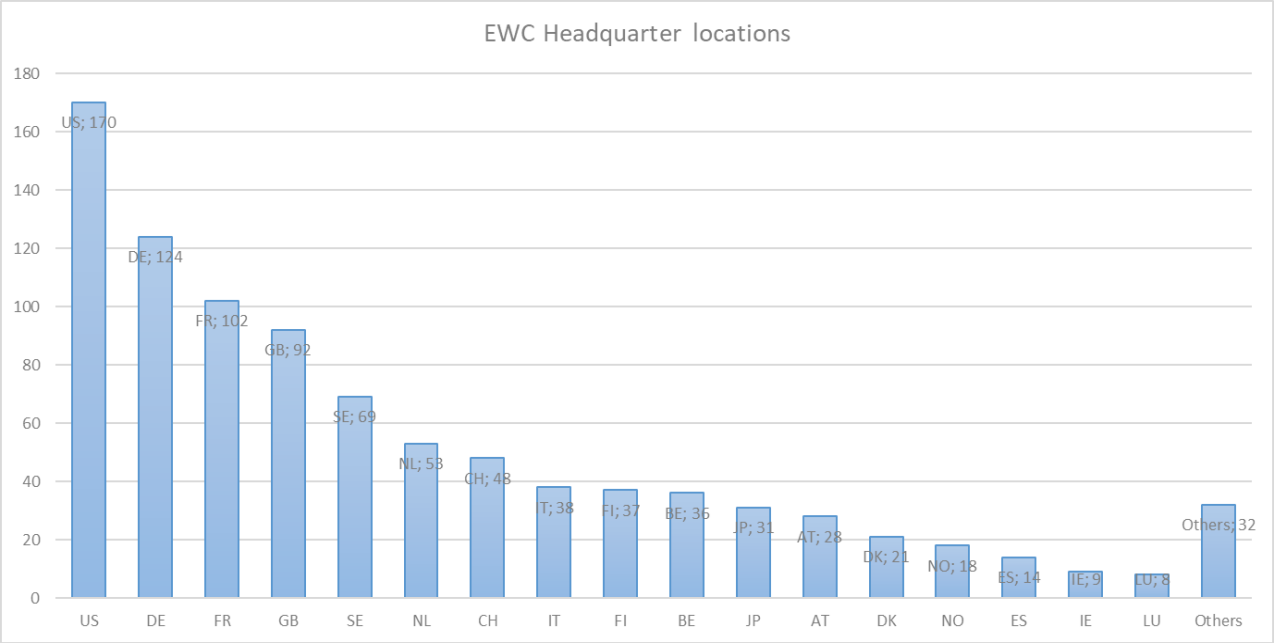


Source: EWC Database (ETUI, 2023)

EWCs represent the **European employees** of a multinational company, **whether it is headquartered within or outside the EU.** If the companies' headquarters are situated outside the EU, the EWCs must be established under a jurisdiction of an EU/EEA Member State. The largest number of EWCs are located in multinational companies **headquartered**[200] in the US (170), DE (124), FR (102), UK (92), SE (69), NL (58), CH (48), IT (38), FI (37), BE (36), JP (31). (Figure 3)

[200] Headquarters are determined by the seat of the central management of the multinational company indicated in the EWC agreement or, if not stated explicitly, the global ultimate owner (GUO) and the respective country of the central administration/registered seat of the company are determined. (source: ETUI)

Figure 3: EWC bodies currently active, by country of headquarters



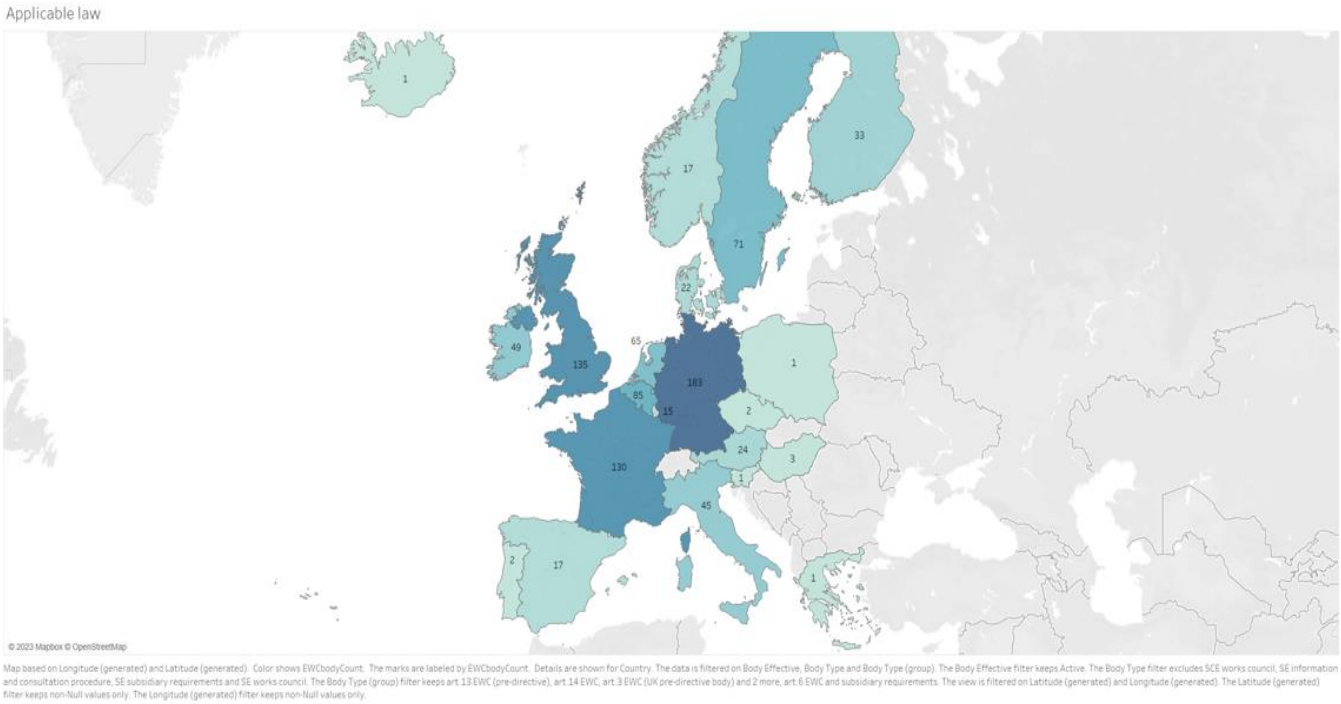
Source: EWC database (ETUI, 2023)

As stated above, **EWCs must be established under the legislation of a Member State.** The large majority of EWCs have been established under legislations of DE, UK[201], FR, BE, SE, NL, IE, IT. At the same time, around 10 EU Member States have either no or only one EWC body established under their rules.[202]

While reliable **post-Brexit data are not available**, the replies to the survey conducted by ICF in the supporting study gives indications that t**he most frequent location of EWCs legislation applicable after the Brexit are DE, FR, and IE**. The sample of respondents to the survey was however not representative.

Figure 4: Governing legislation of the EWCs (pre-Brexit)

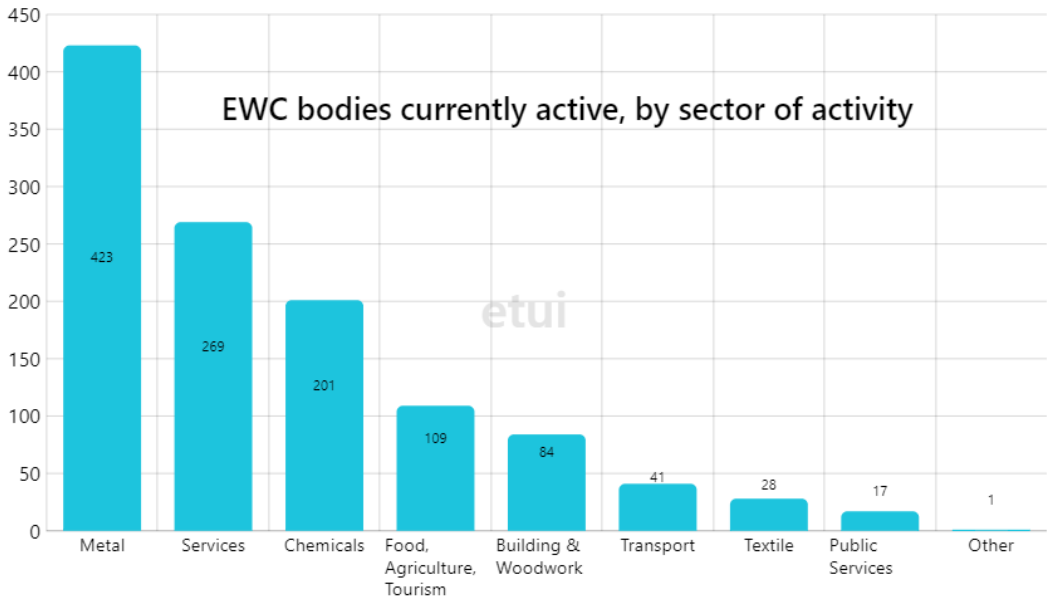
[201] The UK's withdrawal from the EU had the consequence that the EWCs based in the UK had to be established in another EU Member State. Based on available information, about half of the EWCs (70) formerly based in the UK have moved to IE.
[202] Source: ETUI database.



Source: EWC database (ETUI, 2023, data does not take into account the post-Brexit situation)

By sector of activity, the majority of EWCs are concentrated in **large metal, services or chemical multinational companies.**

Figure 5: EWC bodies per sector of activity (ETUI, 2021)



Source: EWC database (ETUI, 2023)

Overall, EWCs are not equally spread across all sectors. According to ETUI (2015),[203] the main reason for the variation in the number of EWCs between sectors lies in the differing characteristics of companies according to sector, namely as regards:

- company size;
- companies that operate on sites with a high concentration of employees (factories or production facilities) facilitate worker organisation;
- companies in sectors where the workforce is spread across different States (e.g. building or transport industries) tend to establish EWCs

Number of employees

Two main relevant populations of employees are considered as part of this impact assessment:

(a) **EU employees working in companies that currently have an EWC or information and consultation agreement on transnational matters:** *population of employees = 1001 * average number of employees per undertakings with an EWC*, with the assumption that there is one EWC per company.

(b) **EU employees that would potentially fall under the scope of the Directive**, as they work for eligible undertakings (i.e., irrespective of whether these undertakings have an EWC at present).

Figure 6. Employees with an EWC or under the scope of the Directive, EU/EEA, 2023, estimates

Source	Average number of EU/EEA employees per undertaking that currently has an EWC	Employees in undertakings that currently have an EWC (2023)	Employees potentially under the scope of the Directive / in eligible undertakings (2023)
Eurostat, EuroGroups Register, 2023	n/a*	n/a*	31.7 Mn
ICF study, 2016	16,612	16.6 Mn	n/a*
ICF 2023, (targeted survey)	34,321**	34.4 Mn**	n/a*

[203] De Spiegelaere S.; Jadodzinski R. (ETUI) (2015) European Works Councils and SE Works Councils in 2015. Facts & Figures.

* A reliable estimate cannot be provided based on this data source. Mostly large or very large multinational undertakings have established an EWC, whereas the Directive applies to multinational undertakings with at least 1.000 EU employees and more. As the survey responses to the surveys referred to undertakings with an established EWC, they cannot, therefore, be assumed to be representative of the overall population of eligible companies. Conversely, the average number of employees across all eligible undertakings, calculated based on the available Eurostat data, would not be relevant for undertakings with an EWC as the latter are significantly larger than the average.

** The 2023 ICF survey led to higher estimates of EU employees per company with an EWC (34.321) based on 31 responses (not representative and not consistent with other data sources). This number is likely to be over-estimated.

Figure 6 summarises the available estimates for these two populations, based on the most recent sources available:

- **ICF 2016 study**[204] reported an estimate of average of 16,612 (EU/EEA) employees per company with an EWC. The study also noted that the declining trend (down from estimated 29,000 EU employees per company with an EWC in an impact assessment before the Recast[205]) was due to smaller companies setting up EWCs after the Recast.
- **ICF 2023 targeted survey**[206] of companies with EWCs, carried out to support this impact assessment, reports an average of 34,321 (EU) employees per company (based on 31 responses). The targeted survey also delivers a **median value** of 13,000 EU employees per company with an EWC, which is more in line with results from other sources. The excessively high mean value is likely to be due to a number of factors, including self-selection of respondents, small sample size, self-report bias, and outliers skewing the average.
- **Eurostat data**[207] indicates that 29.6 million EU employees are eligible to be covered by an EWC as of 2021, which would correspond to 31.7 million EU employees in 2023 assuming a constant growth of 3.42%, based on the growth rate in the years for which this indicator was measured (i.e., 2019-2021). No Eurostat data is available on the distribution of EWCs by company size. The 2021 Eurostat estimate of the overall population of EU employees within the scope of the Directive cannot deliver a reliable estimate of the average number of EU employees per undertaking that currently has an EWC. As mostly large or very large multinational undertakings have established an EWC, applying the average number of employees across all eligible undertakings to those with an EWC would likely lead to a significant underestimation for the latter. Indeed, the Eurostat estimate of the population of EU employees within the scope of the Directive also includes Union-scale undertakings that do not currently have an EWC, which are likely to be smaller than those that already have one, given the trend observed in the ICF 2016 study and the Commission 2018 evaluation. For the same reasons, the inverse process (i.e., using the number of EU employees in companies that currently have an EWC, based on the available sources, to calculate the average number of EU employees per eligible company) would lead to an overestimation of the 'eligible' workforce.

From the three data sources, two estimates that appear to be consistent are the Eurostat figures for employees covered by the Directive and the ICF 2016 study estimate for employees in companies

[204] ICF(2016), p. 61.
[205] COM(2008) 419 final. SEC(2008) 2167.
[206] ICF(2023), Section 5.1.2.1.
[207] Eurostat, ad-hoc extraction from the EuroGroups Register.

that currently have an EWC. These two are therefore the preferred estimates for the respective population of EU employees concerned, while the data from the 2023 ICF targeted survey are not considered for the reasons explained above. Due to the overall stable number of EWCs over the last decade, the 2016 estimate of the number of EU employees in companies with EWCs remains valid.

For estimating impacts, the following numbers of employees affected have therefore been relied on:

(a) **EU employees working in companies that currently have an EWC or an information and consultation agreement on transnational matters:** 16.6 million EU employees (ICF, 2016).
(b) **EU employees that would potentially fall under the scope of the Directive**: 31.7 million EU employees (Eurostat, 2023).

Temporal scope

Following common practice in impact assessments, the costs and benefits are assessed over a period of 10 years (2023-2033). Therefore, the development of the baseline starts from the year 2023 (year 0 of the exercise). There is no indication of substantial variance in the real costs over the baseline period. In any case, given that costs related to the setting-up and operation of EWC account for only a negligible share of the average turnover of the relevant undertakings, significant monetary costs can be ruled out with certainty for all of the policy measures forming part of the preferred option. With a view to focusing the analysis on the elements that are relevant for the necessary policy choices, in accordance with the principle of proportionality, it is appropriate to assume that the real costs will remain stable over the baseline period, without the need to develop separate estimations beyond the status quo.

For the purposes of the assessment, it is considered that the revised Directive will enter into force in year 2, and that Member States will have two years for transposition (year 4), while the transposition measures will enter into effect as of year 6.

Inflation

In consideration of the presence of some comparatively old sources (from 2016 and 2018), it was considered important to include in the analysis also the trends on the inflation rates within the EU.

The inflation rate is applied to 'old' data to conform them to 2022 prices based on the IMF's World Economic Outlook (WEO) database[208].

The approach is applied to the staff costs for businesses and to other monetary amounts.

[208] IMF WEO database, op.cit.

3.2. Overview of data indicators

Figure 7 provides an overview of available main data indicators defining the baseline in 2023.

Figure 7. Overview of data indicators

Data information					Methodological approach		
Indicator	**Value(s)**	**Sample size**	**Data limitations**	**Source(s)**	**Key assumptions**	**Rationale**	**Comments**
N. of EWCs (total)	1001[209]	All EWCs	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	Fixed annual net growth in absolute terms: +9. *The number of EWCs could grow with more companies relocating to Europe, yet a trend cannot be established with the current data.*	Net annual growth (absolute terms) = total new annual EWCs – annual inactive EWCs. The figure is based on the 2009-2022 average.	
Average creations of EWC EWCs per year	+19.9	All EWCs (2009-2022)	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	Fixed annual number of new active EWCs	The figure is based on the 2009-2022 average.	
Average dissolutions of EWCs per year	-10.9	All EWCs (2009-2022)	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	Fixed annual number of new inactive EWCs	The figure is based on the 2009-2022 average.	
N. of art. 6 EWCs (recast	616 (62 %)	All EWCs	Non-exhaustive database (dependent	ETUI EWC Database (2023	Fixed annual net (linear) growth: +8.72 (96.9% of new	New EWCs to be Article 6 EWCs, progressively	Incorporating decimal values in the

[209] The ETUI Database also includes five "body type to be specified", and nine "information and consultation procedure", in addition to the EWCs of a specified type listed in this table.

Directive EWCs)			on information received from stakeholders)	extraction)	EWCs)	increase as a share of the total and replace pre-directive agreements. Assumed fixed ratio between new art. 6 EWCs and new EWCs under subsidiary requirements.	calculation of annual net creation of EWCs, (e.g., 8.72 yearly net increase in art. 6 EWCs) facilitates the incorporation of the small share of EWCs with subsidiary requirements in the analysis, with resulting figures rounded for optimal presentation.
N. voluntary agreements (pre-directive)[210]	323 (32 %)	All EWCs	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)		No new pre-directive agreements. Projected decrease as a share of the total and possibly in absolute terms. Replacement by Art. 6 EWCs (cf. above).	
N. of art. 14 EWCs	28 (2.8%)	All EWCs	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)		No new art. 14 EWCs. Projected decrease as a share of the total and possibly in absolute terms. Replacement by Art. 6 EWCs	16 of these bodies report already applying requirements of the Directive.
N. of EWCs with subsidiary requirements	20 (2.0%)	All EWCs	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	Fixed annual net (linear) growth: +0.28 (3.1% of new EWCs)	New EWCs with subsidiary requirements are possible, but their overall limited share to the total is likely to remain stable. Assumed fixed ratio between new art. 6 EWCs	See comment on rounding under "N. of art. 6 EWCs"

[210] This includes 41 UK pre-directive agreements recorded in the ETUI EWC database.

						and new EWCs under sub. req.	
N. of eligible companies	3,676 potentially eligible companies (2021)	N/A		Eurostat EuroGroups Register (2023 extraction)	To grow linearly at 3.9% annually → 3,970 eligible companies (2023)	Baseline value is the 2021 one. The growth rate is based on the average annual growth rate between 2019 and 2021). *The number of eligible companies could be growing with more companies relocating to Europe.*	No other reliable data or estimate is available.
N. of EU employees within the scope of the Directive	29,649,200 (2021)	N/A		Eurostat EuroGroups Register (2023 extraction)	To grow linearly at 3.4% annually → 31.7 million EU employees (2023)	Starting value is the 2021 one. The growth rate is based on the average annual growth rate between 2019 and 2021). *The number of employees within the scope of the Directive would grow roughly in line with the growth in eligible companies.*	No other reliable data or estimate is available.
N. of EWCs by country of HQ	See Figure 3 of this annex	All EWCs	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	Linear growth in absolute terms. Fixed proportions.	No evidence suggesting the distribution across countries will change over time in the baseline.	
N. of EWCs by EU applicable law	See Figure 4 of this annex	All EWCs	Non-exhaustive database (dependent on information received from stakeholders) Reliable post-Brexit data are not available	ETUI EWC Database (2023 extraction)	Linear growth in absolute terms. Fixed proportions.	Except for the impact of the UK's withdrawal from the EU, there is no evidence of substantial changes to distribution across applicable laws in the baseline. EWCs previously based in the UK (135 as per the latest count) have relocated to	The replies to the ICF 2023 targeted survey indicate that the most frequent location of EWCs legislation applicable after the Brexit (DE, FR, IE). The sample of respondents to the survey was however not representative.

						another EU Member State (often to IE), but reliable statistics on their relocation per country is not yet available as of date.	
N. of EWCs by sector of activity	See Figure 5 of this annex	All EWCs	Data not up-to-date, does not follow NACE rev 2 Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (latest published data)	Linear growth in absolute terms. Fixed proportions.	No evidence suggesting the distribution across sectors will change over time in the baseline.	The respondents to the ICF 2023 targeted survey correspond the proportion of distribution of EWCs across sectors as recorded by ETUI across sectors. The sample of respondents to the survey was however not representative.
Gender composition in the EWC	24% of respondents reports equally represented, 2% >60% women, 62% >60% men.	233 respondents (180 employees, 53 management)	Not representative sample	ICF Targeted survey (2023)	Fixed proportions over time.		Evidence is not conclusive as to whether the overall gender composition of industries/ companies/EWCs might change significantly in a 10-year span.
Number of representatives per EWC	Average: 27	All EWCs	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	To remain unchanged on average.	No evidence suggesting this indicator will change over time in the baseline.	

Average n. of EU employees of companies with EWCs	16,612 per company with an EWC See Figure 6 of this annex	37 employer and employee representatives	Small sample size	ICF 2016 evaluation study	To remain unchanged on average.	No evidence suggesting this indicator will change over time in the baseline.	The 2023 ICF survey led to higher estimates of EU employees per company with an EWC (34.321) based on 31 responses (not representative and not consistent with other data sources). The ICF 2016 study provides lower average figures for number. Since there is no evidence of an upward trend and since the 2016 ICF estimate corresponds more closely with the overall population estimate by Eurostat , this data indicator is used.
Turnover (EU) of companies with EWCs (€ bn)	EUR ca. 14 bn	11 respondents	Not representative, small sample	ICF Targeted survey (2023)	To remain unchanged on average. Projected figures adjusted for inflation.	No evidence suggesting this indicator will change over time in the baseline.	
Turnover (global) of companies with EWCs (€ bn)	EUR ca. 24 bn	33 overall respondents	Not representative, limited sample	ICF Targeted survey (2023)	To remain unchanged on average. Projected figures adjusted for inflation.	No evidence suggesting this indicator will change over time in the baseline. See sensitivity analysis in section 6 of this annex.	
Average costs for setting-up of an	€119,207 for Recast EWCs	37 employer and employee	Small sample size, potential bias	ICF 2016 evaluation	Point estimate based on 2014 prices, adjusted for inflation.		The estimate does not include potential costs

EWC		representatives			→ € 148.000		of fees/expenses for experts' services.
Average annual cost of running EWC)	Average fixed costs: €165,00 Min: €45,000 Max: €500,000 Estimated overall annual costs (including employees time): € 240.000	20	Potential bias,small sample size	ICF 2016 evaluation	Overall costs based on 2014 prices adjusted for inflation → € 298.000	Given the flexibility provided by the directive and the differences between the size and operation of multinational undertakings, the large difference between the individual values corresponds to the trend observed during the Commission 2008 impact assessment (SEC(2008)2166) and previous studies (e.g. Pulignano V., Turk J. (KU Leuven) (2016)).	The estimate of average overall costs of operation of EWCs of 240.000 € (taking into account not only fixed costs but also expenditure related to the time spent by employees on EWC-related activities) was recognised in the 2018 Commission evaluation (SWD(2018) 187 final, p. 37)
	Average annual costs: €288.000 Min: € 50.000 Max: € 900.000	12 interviews (6 provided information on overall costs)	Potential bias, small sample size	Interviews with management of Union-scale undertakings with EWCs in the context of ICF 2023 study	Stability of real costs in relation to the overall average turnover.		The average value is close to the 2016 estimate adjusted for inflation (cf. above).
Number of plenary meetings per year	79.36% (646) have one, 26.29% (214) have two, the rest (29) have three to six	889	Non-exhaustive database (dependent on information received from stakeholders)	ETUI EWC Database (2023 extraction)	Fixed shares over time.	No evidence suggesting this indicator will change over time in the baseline.	
	0.87% say <1 meeting per year; ca. 50% say one; 38% say two; ca. 10% say 3 or more	1496 EWC representatives	Potential Bias	ETUI 2018 survey of EWC and SEWC representatives			

Unitary cost of plenary meetings	35% <25k, 15% 25-50k, 30% 50-70k, 10% 75-100k, 10% 100-200k, 0% >200k	20 employer representatives	Small sample size, potential bias	ICF 2016 evaluation		No evidence suggesting this indicator will change over time in the baseline.	
Number of court cases in Member States	160 court cases recorded since 1997 and until the beginning of 2023	All MS		ETUI collection of case-law			Court cases are concentrated in jurisdictions with higher numbers of multinationals with EWCs. No cases have been brought before the Court of Justice on the recast Directive so far.

4. Methodology for the monetisation of costs

4.1. Introductory remarks regarding types of impacts and affected stakeholders

This section outlines the methodology used to monetise costs for the purposes of the baseline scenario and the assessment of certain impacts, in particular economic impacts and impact on competitiveness. The methodology is in line with the relevant Better Regulation Tools[211].

Impacts have been assessed in relation to the stakeholder groups affected:

- Union-scale undertakings or groups of undertakings and their central management ('undertakings');
- employees of Union-scale undertakings or group of undertakings and their representatives ('employees');
- Member States (National authorities), i.e., public administrations in charge of implementing and monitoring the application of EWCs requirements ('national authorities').

In line with Better Regulation rules, the possibility of impacts on SMEs, consumers, the broader economy, and the environment have also been considered. However, for the reasons explained in Annex 12 Section 1, any relevant foreseeable effects of the initiative can be ruled out in those respects. These types of impact are therefore not discussed in detail for each policy option, in accordance with the principle of proportionality of impact assessments.

The following section describes the methodological approach with regard to the **monetisable impacts.** Non-monetisable impacts, in particular social costs and benefits and broader economic impacts, have been assessed qualitatively in terms of trends, using the methodological approaches outlined in Section 1 of this Annex. For an overview of all identified impacts per policy area and per stakeholder group see Annex 12.

4.2. Categorisation of monetisable economic costs

Given the limited available evidence and the nature of social impacts related to transnational information and consultation, as outlined in Section 2 of this Annex, monetisation was possible for certain economic impacts only. The monetization exercise mostly focuses on the estimation and quantification of **direct costs** associated with existing and potential new requirements regarding EWCs. These costs were assumed to comprise both:

- **one-off costs**, i.e., costs that arise only once; and,
- **recurring costs**, i.e., costs that are incurred by the affected parties on a continuous basis.

As far as possible, monetisable costs and benefits were estimated for **undertakings and national authorities,** whereas no monetisable costs and benefits have been identified under the policy areas in relation to employees.

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[211] Better Regulation Tools #56, #57, #59.

Certain costs have not been quantified where it is not possible to do so meaningfully, such as the costs resulting from clarification in Article 6 that the element of the EWC agreement on resourcing should include legal and training costs (policy options 3b and 3c). Given that such aspects would be negotiated between the parties to the agreement, and indeed may already be covered in the existing EWC agreement, and the costs that could be incurred in the case of legal action or in respect of training cannot be predicted, we conclude that it is not possible to arrive at a meaningful quantification. Such considerations also apply to enforcement costs (policy options 4b and 4c), as it cannot be predicted whether an undertaking would be sanctioned in the future for non-compliance with the obligations under the Directive and, if so, what the level of the sanction would be applied in a concrete situation. In this respect, indications can be given only in relation to the theoretically possible maximum level of sanctions under policy area 4c (see Section 4.1.2 below).

4.3. One-off costs for undertakings – unit costs

In this section, available quantification regarding one-off costs are presented per undertaking potentially affected. Estimates of aggregated total one-off costs are presented under the subsequent heading 4.4.

Setting up of an EWC ('Negotiation costs')

Negotiation costs for setting up an EWC are considered one-off adjustment costs for undertakings. The average overall costs per newly established EWC were estimated at ca. EUR 148.000. This estimate is based on the evidence gathered for the 2016 study supporting the evaluation of the Directive, adjusted for inflation.[212] It does not include the fees of experts consulted by either negotiating party, which depend on too many unknown – in particular behavioural – variables to be monetised. It nevertheless represents the most comprehensive available approximation of overall costs linked to the setting-up of new EWCs.

In order to verify the continued relevance of this estimate and the robustness of monetisation for this impact assessment, cost components linked to the setting-up of new EWCs were disaggregated, and to the extent possible, newly monetised based on a partly different methodology, described below. The results of the two separate sets of estimates are consistent, as the elements for which no new calculation was possible (e.g., employees' time dedicated to the preparation of meetings, training fees and expenses, legal costs) plausibly account for the difference.

It is important to stress that none of the policy options would oblige undertakings to establish an EWC in the absence of a request to that effect by employees (or employees' representatives), as specified in the Directive. Therefore, the costs of setting up an EWC can be linked only to policy **option 1a** as regards the 323 previously exempted undertakings with 'voluntary agreements', which could face requests for the establishment of an EWC when the exemptions of those undertakings are removed. The available evidence does not allow reliably to estimate in how many cases such requests might be made, as this depends on unknown behavioural and situational factors specific to the existing social dialogue processes in each undertaking. The estimates of total costs

[212] See ICF(2016), Section 7.1.1., for details.

related to the establishment of EWCs in previously exempted undertakings (see Section 4.4. below) are based on very broad hypothetical ranges to account for that uncertainty.

(a) Assumptions for the monetisation of certain cost factors linked to the setting-up of new EWCs, developed for this impact assessment

The following assumptions were made for the calculation of certain cost components linked to the setting-up of new EWCs:

- **Time cost**: labour cost has been chosen as a suitable metric to estimate the costs of negotiation meetings, as it is supported by a robust methodology, and it is easily comparable across different items. The labour costs for employees are based on 2022 Eurostat figures for industry, construction and services[213] and on 2018 Eurostat figures (adjusted with the EU labour cost index growth) for managers in companies of 250 or more employees[214]. The below table summarises these EU average hourly labour costs.

Figure 8. Hourly wages for employees and managers, 2022 prices

	EU-27 average hourly wages
Employees operating in industry, construction and services	€30.5
Management	€34.9

Based on the evidence gathered for the study supporting the 2018 evaluation of the Directive, it was assumed that approximately 9 employee representatives and 3 management representatives take part in the negotiation process.[215] The assumption about time costs concerns only the time spent in meetings between management and the SNB to negotiate the EWC agreement (for lack of sufficiently robust evidence, it does not account for the set-up time of the SNB, training time or time that is required to meet other SNB members from other countries, pre-meeting prep time and debriefing, administration etc.). The 2016 ICF study assumed, based on stakeholder feedback, that a negotiation requires 3 full days on average, which remains valid for this analysis in the absence of any contradicting evidence. The below table therefore includes estimates for three one-day meetings of 8 hours.

- **Other costs:** Travel costs (based on Eurostat Tourism statistics) and interpretation costs (i.e., labour costs of three interpreters per day[216]) have been added to the time costs identified. Mirroring the assumptions already applied in the ICF 2016 study and previous IA study (2008), it is assumed that negotiation meetings last one day (thus the translation costs have been calculated for one day

[213] Eurostat figures for industry, construction and services, available at: Statistics | Eurostat (europa.eu)
[214] 2018 Eurostat figures (weighted average by size of company), available at: Statistics | Eurostat (europa.eu). These figures were adjusted for the labour cost index, available at: Statistics | Eurostat (europa.eu).
[215] Cf. ICF (2016), p.107.
[216] Eurostat figures for professional, scientific and technical activities, available at: Statistics | Eurostat (europa.eu)

only). It is further assumed that all the employee and management representatives involved in the negotiations require travel and three nights of accommodation, all the meetings are provided with simultaneous translation, and the interpreters also require travel and one night accommodation.

Finally, it is assumed that the below costs will follow the inflation rate and remain stable in real terms over time. Despite the current situation characterised by high inflation, the latter is expected to continue to decline and converge with the ECB target rate over the baseline period[217].

(b) Calculations

Figure 9. Average costs for three SNB meetings of 1 day each, 2022 prices

Types of costs	Costs, in €
Time costs	
Employees (#9)	€6 588
Management (#3)	€2 514
Other costs	
Travel and accommodation costs (#15)	€43 155
Interpretation costs (#3)	€ 2 994
Total costs per EWC for three meetings of negotiation	€55 251

(c) Limitations

The cost factors monetised based on the described methodology do not represent the total costs of setting up an EWC. For instance, SNBs have the right to training without loss of wages and to be assisted by an expert of their choice. However, a general paucity of data on these costs and their frequency prevents a sufficiently robust monetisation, because these items depend on various uncertain – in particular behavioural and situational – variables. The partial monetisation of costs linked to SNB meetings is therefore used to confirm the continued validity of the more complete estimate of setting-up costs developed for the purposes of the 2018 evaluation, rather than as an approximation of the overall costs.

Sanctions

(a) Preliminary clarifications

As stated above, enforcement costs for undertakings resulting from sanctions cannot be estimated, since it cannot be predicted whether an undertaking would be sanctioned in the future for non-compliance with the obligations under the Directive and, if so, what would be the level of the sanction in a concrete case. Indeed, the evidence gathering[218] did not yield comprehensive information about the frequency and amount of sanctions applied by national authorities in proceedings on EWC-related matters. The procedural

[217] European Commission, European Economic Forecast – Summer 2023.
[218] ICF(2023), Sections 4.2.1.4. and 5.2.2.4.

and judicial landscape concerning the enforcement of EWCs rules is extremely heterogeneous and court cases are not frequent (see Annexes 8 and 9). Generally, pecuniary sanctions for **administrative infractions** are applied to EWC-related breaches. In most cases, the sanctions under the national laws remain low, the average range being around € 5.000-10.000 or even lower in some countries. Upper limits to sanctions are quite common, the maximum scale ranging from a few hundred EUR to € 187.500 (ES) for very serious offences. In DE, the country with highest number of EWCs, the maximum possible administrative fine for EWC-related breaches is € 15.000, although more severe criminal sanctions (pecuniary or custodial) are theoretically also available. Likewise, in some other countries, more severe sanctions (e.g. up to € 800.000 in BE) or prison sentences may theoretically be imposed in criminal law proceedings. Application of such sanctions to EWC-related offences has not occurred in practice.

The information and data analysed suggests that undertakings are seldom fined for violating the rules relating to EWCs, and even less frequently do they receive the maximum sanction available in the national law. There is no evidence that the incidence of legal disputes and sanctions in this policy area would increase if the policy options lead to an increase in the level of sanctions. On the contrary, more dissuasive pecuniary sanctions could also indirectly lead to a better rate of compliance with the obligations laid down in the Directive. Hence, this item has been calculated as a one-off cost.

(b) Calculation

Monetised indications can be given only in relation to the theoretically possible maximum level of sanction under **policy option 4c**. For that purpose, the 4% of average global turnover of undertakings with EWCs (€24 bn[219]) was estimated on the basis of information provided by the respondents to the targeted survey done for the supporting study. To this, we compared the maximum potential administrative sanction currently available in a Member State (€ 187.500 (ES)) identified above. The turnover is assumed to follow the inflation over time and should therefore remain stable in real terms. A sensitivity analysis is provided at the end of this annex to consider different scenarios for the evolution of companies' average global turnover.

In contrast, it is not possible to quantify the impact of requiring Member States to take into consideration the turnover of Union-scale undertakings when determining pecuniary sanctions (**policy option 4b**). While it is plausible to assume that the level of sanctions should increase under that option compared to the often disproportionately low baseline, the determination of sanctions would remain a matter for national administrative and judicial authorities. These authorities can take into account various other case-specific factors, such as the gravity, duration and consequences of the relevant infringement, aside from undertakings' turnover. Therefore, it is not possible to make any sufficiently robust assumptions about the scale of the expected increase in the level of pecuniary sanctions.

(c) Limitations

Because of the paucity of cases available, the low likelihood of receiving a maximum fine and the vast heterogeneity of national frameworks, the calculations provided above

[219] ICF(2023), Section 5.1.2.1 and Section 3 of Annex (Data mapping).

should only be intended as an indication of the theoretical upper ceiling of costs linked to pecuniary sanctions under the most far-reaching policy measure under consideration (policy option 4c), as more accurate and precise estimates cannot be derived. While it is theoretically possible that the same undertaking could be sanctioned several times over the baseline period, the monetisation of pecuniary sanctions is discussed in terms of one-off costs, given the very low incidence of such sanctions in the past. This low incidence is not expected to increase substantially as a result of this initiative.

4.4. One-off costs for undertakings – estimates of total costs

In light of comments of the Regulatory Scrutiny Board, the available quantified cost estimates were used as a basis to estimate total aggregated costs for the affected population of undertakings.

Costs related to the establishment of new EWCs in currently exempted undertakings with 'voluntary' agreements on transnational information and consultation

(a) Assumptions

As explained above, the envisaged amendments would not make the establishment of an EWC automatic for currently exempted undertakings in which 'voluntary' agreements on transnational information and consultation were concluded before the first EWC Directive was transposed in 1996. The estimated average costs of ca. EUR 148.000 for the negotiation of a new EWC agreement would arise only where the requisite number of employees or employees' representatives makes a request to that effect, or management initiates such negotiations on its own initiative. Given the available evidence, no reliable assumptions can be made of how many of the concerned undertakings would be requested to establish an EWC. In order to nevertheless give an indication of the possible total one-off costs linked the negotiation of new EWC agreements in those undertakings, broad hypothetical ranges are provided assuming that requests to that effect would be made in 25%, 50% or 75% of those undertakings. In theory, the lower bound could even by 0%, if no valid request to launch negotiations towards an EWC is made in any of the undertakings currently with voluntary agreements.

(b) Calculations

The number of currently exempted undertakings with 'voluntary' agreements (323) is multiplied by the unit costs linked to the negotiation of new EWC agreements of EUR 148.000 and the assumed proportion of cases in which employees or their representatives would request such negotiations, ranging between 25% and 75%. The theoretical cost if the establishment of a new EWC were requested in all of those undertakings is also provided for information, although it does not represent a realistic scenario.

Population: voluntary agreements (323)	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Rate of creation of EWCs in previously exempted undertakings	25%	50%	75%	100%
Total costs of setting up new EWCs as a result of removing the exemptions of pre-1996 voluntary agreements (one-off)	11.951.000 €	23.902.000 €	35.853.000 €	47.804.000

(c) Limitations

Due to the lack of robust evidence, only a very broad range of possible one-off costs linked to the negotiation of new EWC agreements in previously exempted undertakings can be provided. These estimates can provide a rough approximation and order of magnitude, depending on the hypothesis in how many of the previously exempted undertakings negotiations for an EWCs would be launched. The real costs depend on various unknown – often behavioural – factors, such as the perceived well-functioning and culture of social dialogue between employees' representatives and management in the respective undertaking.

Costs related to the renegotiation of existing EWC agreements

(a) Assumptions

The amendments envisaged under the preferred policy option will apply also to pre-existing EWCs. It is therefore assumed that certain revisions will be necessary to align those agreements with the revised minimum requirements. The impacts depend crucially on the arrangements agreed between the social partners and the content of their existing agreements, which will determine for instance whether a renegotiation is needed and if so, to what extent. However, no database of the detailed content of existing agreements exists. In the absence of comprehensive or systematic information about the content of existing EWC agreements, different scenarios are assumed to obtain ranges of possible costs linked to the renegotiation of those agreements. For the purposes of this calculation, a hypothetical range is established assuming that 25%, 50%, or 75% of EWC agreements need to be adapted. The lower bound of this range accounts also for the fact that EWC agreements are renegotiated on average every five years under the baseline scenario,[220] and many of the changes needed to align with the revised minimum requirements could in practice likely be made in the framework of such regular renegotiations, without additional meetings.

As explained above, no comprehensive quantified data on the costs of renegotiating an EWC agreement is available. Monetised estimates have however been developed of certain cost factors linked to meetings held for the purposes of such renegotiation. These estimates are presented under Section 4.5 below as recurrent costs for the baseline scenario, because EWC agreements are renegotiated on average every five years. In terms of impacts of the policy options, renegotiation costs are one-off costs as they pertain only to the possible initial need to align existing agreements to the revised minimum requirements once those requirements have been transposed.

Based on the available evidence, renegotiations may require only a single such meeting, buy may also require two, and in complex cases even four meetings. Therefore, the total costs are estimated as hypothetical ranges corresponding to the varying number of renegotiation meetings.

(b) Calculations

[220] According to the ETUI data, 91% of the companies in their sample underwent a restructuring process over the past three years. Hence, accounting for delays in starting the renegotiation process, it is assumed that on average, a renegotiation happens every 5 years.

In order to provide an approximate range of the possible total costs linked to the renegotiation of existing EWC agreements, the different shares of undertakings with such agreements (25%, 50%, 75% of a total of 678) were multiplied by the available quantified cost elements linked to renegotiation meetings (€18 417), assuming, in three hypothetical scenarios, that either one, two or four such meetings would be required, depending on the scope of necessary adaptations and the complexity of the negotiations.

Population: proportion of existing EWC agreements (in total 678) requiring renegotiation as a result of the initiative	Scenario 1: one meeting	Scenario 2: two meetings	Scenario 3: 4 meetings
Total costs of renegotiation (one-off) assuming that 25% of EWC agreements are renegotiated	3.121.681 €	6.243.363 €	12.486.726 €
Total costs of renegotiation (one-off) assuming that 50% of EWC agreements are renegotiated	6.243.363 €	12.486.726 €	24.973.452 €
Total costs of renegotiation (one-off) assuming that 75% of EWC agreements are renegotiated	9.365.044 €	18.730.089 €	37.460.178 €

(c) Limitations

The ranges of total costs are hypothetical, as no reliable indicator is available allowing to estimate an average number of meetings per renegotiation, or the proportion of EWC agreements that will require renegotiations. For limitations regarding the estimation of costs of renegotiation meetings see next Section 4.5.

4.5. Recurrent costs for undertakings – Unit costs

Costs related to the operation of EWCs (annual average costs per undertaking with an EWC)

As EWCs do not have own revenue sources, they depend on resources provided by undertakings. The latter are therefore assumed to cover all relevant cost items linked to the running of EWCs (e.g., meeting costs, travel costs, training fees and expenses, costs of external expertise, employees' time dedicated to EWC-related tasks, etc.). Only some of these items could be estimated individually in monetised terms, as explained in the subsequent headings of this section.

The available evidence nevertheless allows for an approximate quantification of undertakings' average overall costs linked to the operation of an EWC. These overall unit costs are estimated at EUR 297.500 per year. The starting point for this estimation is the monetisation developed in the 2016 study supporting the evaluation of the Directive, which was recognised by the Commission in that evaluation.[221] That estimate of EUR 240.000 was adjusted for inflation for the purposes of this impact assessment. It notably took into account not only fixed costs but also expenditure related to the time spent by employees on EWC-related activities.

[221] Cf. SWD(2018) 187 final, p. 37.

As the abovementioned estimate was based on stakeholder feedback regarding a relatively small sample of 20 undertakings, further evidence on the operating costs for EWCs was collected during the interviews with management for the 2023 supporting study[222] to verify the continued relevance of that estimate and ensure the robustness of the cost monetisation. The collected feedback validated the assumption that undertakings in principle bear all costs linked to the operation of EWCs in practice.

The 2023 estimates result in a very similar average of close to EUR 300.000, confirming that the previous monetisation represents a realistic estimate.

In both evidence gathering exercises, individual stakeholder estimates of undertakings' annual costs linked to the operation of EWCs varied widely, ranging from around EUR 50.000 to ca. EUR 900.000. This broad range is linked to the high degree of flexibility afforded by the directive and the differences between the size and operation of multinational undertakings. It corresponds to a trend observed already in the Commission 2008 impact assessment[223] and previous studies[224].

As undertakings would bear EWCs' operating costs also in the baseline scenario, these costs are not as such impacts of this initiative. Certain policy measures may lead to an incremental cost increase, e.g., in relation to legal costs or the time required by management for preparing a reasoned response to EWC opinions. Under Section 4.6 below, an approximation of the total costs linked to increased operational costs is provided in terms of a range to account for uncertainty, as they depend on various uncertain – often behavioural – factors. Given that EWCs' overall operating costs under the baseline represent only a very small share of the average turnover of Union-scale undertakings (cf. the overview tables at the end of this annex), it can be assumed with a high degree of certainty that the possible increases due to the policy options would likewise remain at a negligible level regarding this cost factor.

Costs of plenary meetings of EWCs based on subsidiary requirements (average cost for one plenary meeting)

(a) Assumptions

Those EWCs operating under subsidiary requirements (20) have one plenary meeting per year.[225] For EWCs operating on the basis of agreements, the frequency of plenary meetings is determined in the agreement concluded with the SNB.[226] The organisation of one additional plenary meeting as provided under policy options 3b and 3c would entail the following additional costs for undertakings with EWCs operating under subsidiary requirements:

[222] ICF(2023), Section 5.2.2.1.
[223] SEC(2008)2166.
[224] e.g. Pulignano V., Turk J. (KU Leuven) (2016), op.cit.
[225] In addition to the annual plenary meetings of EWCs based on subsidiary requirements, the select committee of such EWCs may have several extraordinary meetings with central management. However, as none of the problem drivers or policy options pertains to such extraordinary meetings, no separate cost monetisation was undertaken in that respect.
[226] Cf. Figure 7 above for estimates of frequency of these meetings in the existing agreements.

- **Time costs:** It is assumed that an EWC is composed on average of 27 members[227], and in addition to the EWC members 3 managers or their experts representing the central management participate in the plenary meeting. Hence the labour costs were calculated for 27 EWCs members and 3 managers, for a full day. The data on labour costs for employees and managers are identical to those explained above in relation to the negotiation costs.

- **Travel and accommodation costs:** based on the evidence gathered, the average travel and accommodation costs are calculated for all 27 employee representatives, 3 management representatives and 3 interpreters, as it emerged that EWCs' plenary meetings are often held in different venues. According to Eurostat data (Expenditure by duration, purpose, main destination of the trip and expenditure category), the average EU cost of a business trip, including transportation and accommodation, was €876 (accommodation for one night and the return flight) in 2022.[228] This cost is expressed in real terms and assumed to follow the inflation over time.

- **Interpretation costs:** The labour costs for interpreters are expressed in real terms[229], based on 2022 figures from Eurostat for professional, scientific and technical activities.[230] In the absence of evidence to the contrary, it was assumed that 3 interpreters on average would participate in the EWC meetings.

- **Expert costs:** 68% of respondents to the 2018 ETUI survey reported having involved 1 expert for the preparation of and support during plenary meetings, while 27% of the respondents indicated having the support of 2 experts. In the absence of robust evidence and given the high heterogeneity characterising the use of experts, it was assumed that each expert would work 5 full days (8 working hours/day) for the preparation of and support during one plenary meeting. This assumption is supported by the information gathered from the ETUI data extraction[231] and survey[232], which suggest that the experts, when involved, also help the members to prepare for the discussions in the meeting agendas. The below estimates for the expert costs are based on the EU average labour cost level for people working in professional, scientific and technical activities.[233] This covers activities requiring a high degree of training and making specialised knowledge and skills available to users.[234] The real labour costs are assumed to remain stable over time.

- Hence the **overall labour cost** has been calculated for a plenary meeting of an EWC operating under subsidiary requirements, involving 27 EWC members (i.e.,

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[227] ETUI EWC database (2023 extraction).
[228] 2021 Eurostat figures, adjusted for inflation.
[229] Adjusted for inflation.
[230] Eurostat figures for professional, scientific and technical activities, available at: Statistics | Eurostat (europa.eu)
[231] ETUI EWC database (2023 extraction)
[232] Eurostat figures for industry, construction and services, available at: Statistics | Eurostat (europa.eu)
[233] Eurostat figures for professional, scientific and technical activities, available at: Statistics | Eurostat (europa.eu)
[234] Eurostat (2008), NACE Rev. 2 – Statistical classification of economic activities in the European Community.

average number of members), 3 management representatives and 3 interpreters, for a full day. In addition, costs of experts taking part in plenary meetings and supporting their preparation have been calculated. It is assumed that the costs set out below will follow the inflation and remain stable in real terms over time.

(b) Calculations

Figure 10. Costs for access to experts per plenary, 2022 prices

	Costs of experts / plenary meeting
0 expert (5% of EWCs)	€0
1 expert (68% of EWCs)	€1 664
2 experts (27% of EWCs)	€3 328
Weighted average expert costs	€ 2 030
Each expert is assumed to work 5 full days for the preparation and support during one plenary meeting	

Figure 11. Costs for one additional EWC plenary meeting per year, 2022 prices

Types of costs	Costs, in €
Time costs	
Employees (#27)	€6 588
Management (#3)	€838
Other costs	
Travel and accommodation costs (#33)	€31 647
Experts (cf. figure 10 above)	€2 030
Interpretation costs (#3)	€998
Total costs per one plenary meeting	€42 101

(c) Limitations

In the absence of sufficient evidence, the above estimates do not include certain costs, such as the time invested by EWC members or management for the preparation of the plenary meetings, the preparatory meetings prior to the plenary, and some possible overhead costs. Therefore, it is likely that the overall costs of plenary meetings are underestimated.

It must be recognised that the costs for one plenary meeting can vary greatly between the undertakings, similarly to the operating costs, depending on the size of the company, the number Member States involved and the language regime of the meetings. As an illustration of the divergent costs, in the 2016 ICF study[235] the following approximate costs of one plenary meeting were reported by a sample 20 respondents (2014 prices not adjusted for inflation):

- Less than €25 000 by 35 %
- €25 000 - € 50 000 by 15 %

[235] ICF(2016), p. 126.

- € 50 000 - € 70 000 by 30 %
- € 75 000 - € 100 000 by 10 %
- € 100 000 - € 150 000 by 5 %
- € 150 000 - € 200 000 by 5 %

Costs for access to training

(a) Assumptions

62% of the respondents to the 2018 ETUI survey indicated that they participated in training on average once every three years, for a mean duration of 2.2 days. This result was used to calculate the labour costs[236] of participation in training.

In addition to the labour costs, an average fixed cost of €12,000, based on the 2016 ICF study and adjusted for inflation[237], was assumed to cover the annual training needs of one EWC (trainers and possible venues).

The below costs are assumed to track inflation and therefore to remain stable in real terms over the baseline period.

(b) Calculations

Figure 12. Annual costs for access to training per EWC, 2022 prices

Type of costs	Costs, 2022 prices
Time costs	€2 995
Fixed costs	€14 875
Total costs	**€17 870**

(c) Limitations

The fixed cost estimates rely on a very limited sample of respondents to the 2016 ICF study. Therefore, they should be treated with caution.

Re-negotiation costs

Based on the available evidence, it was possible to monetise certain costs linked to meetings 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 the caveats set out below, but should not be taken as an approximation of those overall costs.

As mentioned above, it emerged from the stakeholders' consultations, especially the interviews and the data-gathering workshops, that EWC agreements are renegotiated at

[236] The labour costs for employees are based on 2022 Eurostat figures for industry, construction and services, see the above explanations on these costs, in the section concerning the setting-up of new EWCs.
[237] International Monetary Fund, World Economic Outlook Database, April 2023 (Inflation, end of period consumer prices).

different times during their life cycle, especially in cases of restructuring and mergers. According to data from the 2018 ETUI survey, 91% of the companies in their sample underwent a restructuring process over the previous three years. On this basis, accounting for delays in starting the renegotiation process, it is assumed that on average, a renegotiation happens every five years. Therefore, the costs described below are expected to apply at that rate under the baseline scenario.

It is likely that the initiative will entail additional or anticipated renegotiations. As explained under Section 5.4 above, the share of agreements for which this will be the case cannot be quantified reliably, as it depends on uncertain variables – such as the content of the agreement and the respective frequency of renegotiations under the baseline – characterising each case.

(a) Assumptions

The following assumptions were made to estimate certain costs linked to renegotiation meetings:

- **Frequency:** renegotiation costs have been categorised as recurrent adjustment costs for management.
- **Time costs:** according to available information, the renegotiation process takes in most cases less time than the setting-up of an EWC (sometimes only one meeting is required for renegotiations, but in complex cases this process can become lengthier and involve multiple meetings). However, data on the duration of the process are fragmented and considered unreliable. Therefore, it was decided to calculate the time cost per meeting only. In the absence of clear evidence on the number of representatives participating in a renegotiation, it was assumed that a third of the average number of EWC members (9) and 3 management representatives would take part. The hourly labour costs for employees and management are those used to calculate the negotiations costs, see above.
- **Other costs:** travel costs and interpretation costs have been added to the time costs identified. Mirroring the assumptions already applied in the ICF 2016 study and previous IA study (2008), it is assumed that all the meetings last one day (thus the translation costs have been calculated for three days), that all the employee representatives require travel and accommodation, and that all the meetings are provided with translation. In the absence of evidence to the contrary, it was assumed that 2 interpreters would participate in the renegotiation meetings. They would also require travel and three nights of accommodation.

The below costs are assumed to track inflation and therefore to remain stable in real terms over the baseline period.

(b) Calculations

Figure 13. Re-negotiations costs per meeting (2022 prices)

Types of costs	Costs, in €
Time costs	
Employees (#9)	€2 196
Management (#3)	€838
Other costs	
Travel and accommodation costs (#15)	€14 385

Interpretation costs (#3)	€998
Total costs per EWC for one meeting of renegotiation	€18 417

(c) Limitations

The above calculations are for one meeting only. Although evidence suggests that a re-negotiation process lasts less long than the process for setting up a new EWC, re-negotiations might require multiple meetings in complex cases.

Furthermore, the evidence gathered does not allow to determine with a high degree of certainty the average number of participants (employee representatives, management and interpreters) that would be involved in a re-negotiation. The assumption that re-negotiations involve on average the same number of people as the negotiations for setting up a new EWC (9 employee representatives, 3 managers and 3 interpreters) could lead to an under- or over-estimation of the renegotiation costs.

Finally, and in the absence of sufficient evidence, the above estimates do not include certain cost factors, such as the time invested for the preparation of the renegotiation meetings, the costs of possible preparatory meetings prior to the renegotiation, some possible overhead costs, and the use of expertise by the EWC and/or the management. Therefore, the partial estimate of meeting costs is not an approximation of the overall re-negotiation costs.

4.6. Recurrent costs for undertakings – estimates of total costs

Marginal increases in the costs of operating an EWCs resulting from amendments to the Directive

(a) Assumptions

As mentioned above, it is assumed that the operation of an EWC costs undertakings EUR € 297.500 on average per year. Possible cost increases due to the amendments to the Directive are uncertain but are expected to remain very limited as the changes are limited to specific items, representing a fraction of overall costs.

In order to nevertheless provide a range of quantified estimates, it is assumed that such increases might amount to 5%, 10% or 15% of average annual costs of operation of an EWC. The expectation that any cost increases, compared to the baseline, will be marginal is based on the following considerations:

- As regards the planned clarifications of the resourcing of EWCs, it needs to be considered that many EWC agreements already contain provisions on the coverage of costs linked to training and involvement of experts and that the recast Directive already gives EWC members the right to training “without loss of wages”. Moreover, the costs associated with training are, as a general rule, already covered by undertakings.
- Likewise, while more explicit provisions on coverage of legal costs could facilitate the launch of legal action in some cases, clearer provisions on the EWCs’ entitlement to the coverage of resources is likely to reduce the incidence of disputes related to EWC funding.

- There is no evidence suggesting that the requirements to provide a reasoned response to EWC opinions prior to the adoption of a decision on transnational matters or to specify, upon request, the grounds for declaring certain information confidential or withholding it would entail significant recurrent adjustment costs for undertakings. The former requirement already exists in relation to EWCs operating on the basis of subsidiary requirements and management needs to already fulfil a similar obligation during the consultation procedure of national employee representatives, and no particular cost issues have become apparent in those contexts. Moreover, during the two-stage consultation, employer organisations responded that an obligation to provide a reasoned response to an EWC opinion already exists in many agreements.

It is furthermore assumed that the amendments to the Directive would produce their effects during the last five years of the baseline period, taking into account the likely duration of the legislative procedure, the transposition period, and the envisaged two-year period of deferred application to allow stakeholders to prepare for and adapt to the revised requirements.

A net creation rate of 9 additional EWCs per year is assumed, as explained above for the baseline scenario. There is insufficient evidence for making any assumptions about the impact of the initiative on the take-up of EWCs.

(b) Calculations

In order to provide an estimated range of increases in the operational costs due to the initiative, a 5%, 10% or 15% hypothetical increase is calculated, in a first step, for the currently existing population of EWCs (678) over the relevant part of the baseline period, i.e. over five years.

Range of possible increases in costs for operating the currently existing EWCs, due to the initiative			
Population: existing EWCs (678)	Scenario 1	Scenario 2	Scenario 3
% of additional costs compared to average EWCs operating costs	5%	10%	15%
Annual costs of operation of EWCs resulting from amendments to the Directive (recurrent)	10.085.250 €	20.170.500 €	30.255.750 €
Total costs of operation of EWCs resulting from amendments to the Directive for those existing in the year 2023 (recurrent)	**50.426.250 €**	**100.852.500 €**	**151.278.750 €**

In a second step, the cost increases, compared to the baseline, are calculated for the overall 90 additional EWCs assumed to be created over the baseline period. For the purposes of calculating the total costs over the relevant remaining part of the baseline period, the newly created EWCs are grouped together by year of establishment. The annual cost increase is then multiplied by the number of years during which the costs would accrue for each of those groups.

Range of possible increases in costs for operating future EWCs to be created over the baseline period			
Population: new EWCs (9/year)	Scenario 1	Scenario 2	Scenario 3
% of additional costs compared to average EWCs operating costs	5%	10%	15%

Total costs of operation of EWCs resulting from amendments to the Directive for those created within 2023 and 2027 (=45) under the baseline (recurrent) (= annual operating cost increase for 5 EWCs, multiplied by 5 years)	3.346.875 €	6.693.750 €	10.040.625 €
Total costs of operation of EWCs resulting from amendments to the Directive for those created in 2028 (= 9) under the baseline (recurrent) (= annual operating cost increase for 9 EWCs, multiplied by 4 years)	535.500 €	1.071.000 €	1.606.500 €
Total costs of operation of EWCs resulting from amendments to the Directive for those created in 2029 (=9) under the baseline (recurrent) (= annual operating cost increase for 9 EWCs, multiplied by 3 years)	401.625 €	803.250 €	1.204.875 €
Total costs of operation of EWCs resulting from amendments to the Directive for those created in 2030 (9) under the baseline (recurrent) (= annual operating cost increase for 9 EWCs, multiplied by 2 years)	267.750 €	535.500 €	803.250 €
Total costs of operation of EWCs resulting from amendments to the Directive for those created in 2031 (=9) under the baseline (recurrent) (= annual operating cost increase for 9 EWCs	133.875 €	267.750 €	401.625 €
Total costs of operation of EWCs resulting from amendments to the Directive for those created in 2032 under the baseline (recurrent)	0 €	0 €	0 €
Total costs of operation of EWCs resulting from amendments to the Directive for those created within the baseline (recurrent)	**4.685.625 €**	**9.371.250 €**	**14.056.875 €**

On the basis of these hypothetical assumptions, the overall aggregated increases in operating costs due to the initiative, over the baseline period, for all EWCs (existing EWCs (678) and EWCs created under the baseline (90)) would hence fall within the following range:

- **55.111.875 €,** assuming a 5% increase in operating costs;
- **110.223.750 €,** assuming a 10% increase in operating costs;
- **165.335.625 €,** assuming a 15% increase in operation.

(c) Limitations

The impact of the initiative on the recurrent costs of operating an EWC are highly uncertain, as it would be up to the management and employees' representatives to negotiate and agree on the detailed arrangements for the coverage of costs (legal costs, training costs, costs of expertise, etc.). The comparison to baseline costs is complicated by the fact that there is no comprehensive or systematic data on the content of all EWC agreements.

Moreover, it cannot be ruled out that the initiative might have an impact on the take-up of EWCs. A more effective functioning and enforceability of transnational information and

consultation requirements could provide additional incentives for the creation of new EWCs. If such a scenario materialises, the undertakings concerned would bear the costs of operating EWCs under the revised minimum requirements However, as mentioned above, there is insufficient evidence for making any assumptions about the impact of the initiative on the take-up of EWCs.

Total costs linked to the requirement of one additional annual plenary meeting for EWCs based on subsidiary requirements

(a) Assumptions

As explained above, it is assumed that undertakings with EWCs based on subsidiary requirements bear a cost of EUR 42.101 for one plenary meeting. There are 20 such EWCs, for which an additional annual plenary meeting will be required under the preferred option. The costs linked to that requirement are assumed to materialise over the last five years of the baseline period, as for the other recurrent costs.

(b) Calculations

In order to calculate the total aggregated costs linked to the requirement of one additional annual plenary meeting with EWCs based on subsidiary requirements, the cost of one such meeting is multiplied by the number of such EWCs (20) and by the number of years during which those costs would accrue (five):

Population: EWCs operating on the basis of subsidiary requirements (20)	
Annual costs for one additional meeting/year	842.020 €
Total costs for one additional meeting/year	**4.210.100 €**

(c) Limitations

As explained above, the estimated costs per plenary meeting do not necessarily capture all costs linked directly or indirectly to such meetings.

Moreover, the planned amendment of the subsidiary requirements in the Annex to the Directive might prompt social partners in other undertakings to align their EWC agreements. This benchmark effect of the subsidiary requirement is not reflected in the cost estimates, because firstly, it is entirely dependent on social partners' agreements and hence difficult to quantify. Secondly, with respect to EWCs based on agreement, the possible additional cost of holding two annual plenary meetings instead of one is not an impact of a binding requirement but results from a voluntary choice of social partners.

5. Overview of monetised cost estimates in the study supporting the 2018 evaluation and costs monetised for this impact assessment

While the study supporting the 2018 evaluation of the Directive (ICF, 2016) sought to provide estimates of overall costs pertaining to the setting-up and operation of EWCs, the evidence gathered for this impact assessment allowed only for a partial monetisation of certain disaggregated cost factors. This explains the large differences between certain cost estimates. Such differences are therefore not evidence of inconsistency or

divergences, but to the contrary, the partial monetisation for this impact assessment is considered consistent with the previous overall estimates, given that the cost factors which could not be newly monetised plausibly account for the differences. The respective monetisation exercises are thus complementary and considered to confirm the continued relevance of the 2016 estimates, adjusted for inflation.

Figure 14. Overview of ICF 2016 cost estimates and 2023 cost estimates

Costs for recast EWC			
	ICF 2016 (2014 prices)	**ICF 2016 (2022 prices[1])**	**2023 estimates[238] (2022 prices)**
Setting-up	€119 208 (estimate of overall average costs, without training of SNB members)	€147 750€	€55 251 (estimate for three SNB meetings without costs of training, expertise, preparatory time and meetings, costs of pre-SNB phase) € 18 417/ meeting
Annual costs for running an EWC	€240 000 (estimate of overall average annual costs)	€297 500	€42 101/plenary meeting €288.000 / average annual costs (estimate based on a small number of interviews)
Re-negotiation costs	No data	-	€18 417/meeting
Legal advice	€15 000/legal issue	€18 600/legal issue	No calculation
Training	€12 900[2] (estimate of annual budget per EWC)	€15 500	€17 870
[1]2014 estimates, adjusted for inflation (based on IMF inflation rates, end of period consumer prices)			

6. Sensitivity analysis

The average global turnover of undertakings with an existing EWC is estimated to be around €24 billion. This average global turnover estimate stems from 33 answers to the 2023 ICF targeted survey, which represents about 3% of the total number of existing EWCs. Furthermore, this impact assessment assumes a stable average global turnover in real terms, which should track the inflation rates in the countries where the undertakings are established.

The low level of responses to the targeted survey and the assumption that the evolution of average global turnover will track inflation creates uncertainty regarding this estimate and its evolution in the future. For that reason, a sensitivity analysis is performed to assess the costs/average global turnover ratio in case of lower estimates for turnover. The following two scenarios were considered: an average global turnover lower by 25% and 50% compared to the retained estimate. This sensitivity analysis does not include

[238] The calculations were made by the Commission services on basis of elements provided by the supporting studies (ICF(2016) and ICF(2023)) and Eurostat data.

scenarios with higher estimates for turnover given the already very low ratios of cost items to turnover.

Figure 15. Sensitivity analysis for the average global turnover of undertakings with an existing EWC

Type of costs per undertaking	Costs, 2022 prices	Scenario 1: costs/average global turnover of €24 bn	Scenario 2: costs/average global turnover of €18 bn	Scenario 3: costs/average global turnover of €12 bn
Setting-up	€147 750€	0.00061%	0.00082%	0.00123%
Annual costs for running an EWC	€297 500	0.00124%	0.00165%	0.00248%

The table above shows that even in a conservative scenario where the present or future average global turnover for undertakings with an EWC would be two times lower than the estimate retained in this report, the monetised cost still represents a very small share of the turnover. Moreover, it is worth reiterating that the costs related to the running of EWCs, including the costs of training, renegotiations (about every five years), experts' fees, annual and extraordinary meetings, employees' time spent on EWC-related activities, etc., apply under the baseline scenario. While some of the policy options may lead to a certain increase in some of those costs factors, such possible increases cannot be quantified as they depend on too many uncertain – often behavioural – variables. Nevertheless, the fact that even the overall baseline costs of running an EWC account only for a very small part of undertakings' turnover, as confirmed by the sensitivity analysis, allows the certain conclusion that any realistic cumulative increases due to the policy options will also be insignificant for undertakings. Moreover, as regards one-off costs, the costs of setting-up a new EWC can be attributed to this initiative only in cases where currently exempted undertakings with 'voluntary agreements' (323) are requested by their employees to establish an EWC, following the removal of their exemption from the scope of the directive (policy option 1a). It is not possible to estimate in how many cases such requests will be made in practice, as this depends on the specific situation and choices made in each of those undertakings. As explained, should management and employees agree to continue to operate based on a well-functioning voluntary agreement, they could do so simply by not triggering the Directive's procedures for the negotiation of an EWC agreement. In any case, as confirmed by the sensitivity analysis, the costs of setting up an EWC would be negligible in proportion to undertakings' turnover.

ANNEX 5: COMPETITIVENESS CHECK

1. OVERVIEW OF IMPACTS ON COMPETITIVENESS

Dimensions of Competitiveness	Impact of the initiative (++ / + / 0 / - / -- / n.a.)	References to sub-sections of the main report or annexes
Cost and price competitiveness	0	Section 6 of the main report and Annex 12
International competitiveness	0	Section 6 of the main report and Annex 12
Capacity to innovate	0	Section 6 of the main report and Annex 12
SME competitiveness	n.a	Section 6 of the main report and Annex 12

2. SYNTHETIC ASSESSMENT

The costs of the preferred option are expected to be negligible for undertakings, as they account for less than 0.001% of their average global annual turnover. Specifically:

- Some of the 323 currently exempted Union-scale undertakings with 'voluntary agreements' would incur one-off adjustment costs estimated at ca. € 148 000 linked to the setting-up of a new EWC, if requested by their employees. This corresponds to approximately 0.0006% of the average global turnover of such undertakings.
- Some of the currently 678 Union-scale undertakings with an EWC would incur one-off adjustment costs linked to the renegotiation of their agreements. While it is not possible to provide a reliable estimate of average overall costs of renegotiation, evidence suggests that a re-negotiation process is shorter than the process for setting up a new EWC. Based on the available evidence, it was possible to monetise certain costs linked to meetings (ca. EUR 18 400 per meeting[239]) 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, however, that it should not be taken as an approximation of those overall costs. In complex cases, several renegotiation meetings can be needed. But even in that scenario, these costs should not have any significant economic impact on Union-scale companies.
- There could be an incremental increase in undertakings' costs of operating an EWC (currently on average ca. € 300 000 per year) due to a better coverage of training costs, legal costs and experts' fees. For instance, it cannot be excluded that the incidence of legal actions might marginally increase due to the measures relating to legal costs and improved access to justice. However, there is

[239] See Annex 4 'Analytical methods' (Section 4.4).

insufficient evidence for estimating the scope of such an increase but it is certain to represent a negligible share of undertakings' global annual turnover. In particular, the fact that non-compliant undertakings' turnover is to be taken into account to determine sanctions is not expected to entail a substantial burden, because any sanctions are required to be proportionate in relation to gravity, impacts, scope, duration and other relevant criteria characterising the offence.

- Each of the 20 undertakings with an EWC based on subsidiary requirements is expected to bear costs of € 42 000 for an additional annual plenary meeting.

The preferred option is not expected to negatively impact or delay decision-making of companies. While the management representatives have considered that the requirement of a reasoned response to EWCs' opinions prior to the adoption of a decision on transnational matters could lead to indirect recurrent costs due to delayed decision-making,[240] these concerns are not expected to materialise in practice. Under the preferred option, EWCs would remain information and consultation bodies without substantive powers over management decisions, and no such impacts have been substantiated with respect to other types of worker representation bodies that are already entitled to a reasoned response.[241] The legal text would specifically allow for urgency to be taken into account, and management would be free to expedite the reasoned response as necessary. Furthermore, during the two-stage consultation, employer organisations responded that an obligation to provide a reasoned response to an EWC opinion already exists in many agreements (see Section 2.4.3. of the Impact Assessment).

Any negative effects on undertakings' cost and price competitiveness, international competitiveness and capacity to innovate can therefore be ruled out.

As the envisaged policy measures would not apply to SMEs and no indirect effects on SMEs are foreseeable, the initiative is not relevant for SME competitiveness.

The initiative is expected to create certain economic benefits for undertakings. For instance, more effective information and consultation on transnational matters is likely to enable better strategic decision-making, promote a more trustful relationship between management and the workforce, and bolster undertakings' ability to manage necessary structural changes in the context of the digital and green transition in a sustainable manner. Moreover, a more balanced gender-composition of EWCs is expected to contribute to a more equitable representation of employees' interests, which can provide a better basis for companies' decisions. However, such an effect cannot be attributed to the initiative with any degree of certainty, given the interplay between employee involvement at national and transnational level and the non-binding nature of EWCs' opinions. Therefore, while limited benefits can be assumed in terms of cost/price competitiveness, international competitiveness and capacity to innovate, it should however be stressed that the assumption of a causal link between the initiative and those benefits is characterised by a high degree of uncertainty, because the outcomes of transnational information and consultation depend to a large extent on external

[240] ICF(2023), Section 5.1.2.3.

[241] The requirement of a reasoned response by the central management already exists for EWCs operating based on subsidiary requirements (Annex I point 1(a) of the Directive) and employee representation bodies at national level.

behavioural factors, in line with the principle of social partner autonomy rather than the procedural changes considered under this proposal.

Having regard to the above, the expected impacts of the initiative on competitiveness are estimated to be null to positive. No negative impacts on competitiveness of the preferred policy package have been identified. Potential positive impacts on competitiveness of the preferred policy package may be achieved through improved effectiveness of the information and consultation processes in the undertakings, as described above, but such benefits cannot be reliably estimated or substantiated by a robust evidence.

ANNEX 6: DEVELOPMENT AND CONTENT OF THE RECAST DIRECTIVE

The origins of today's legislation on European Works Councils date back to the 1980s with the very first proposal known as the 'Vredeling directive'. While this proposal was ultimately not adopted due to a lack of agreement between European social partners, several multinational companies voluntarily started creating transnational bodies to facilitate exchanges between management and worker representatives. Such experiences were subsequently taken into consideration by the Commission when preparing the proposal for the first Directive on European Works Councils, put forward following the lack of agreement between social partners in this area. The first EWC Directive[242] was finally adopted in 1994 as a Council directive under the Agreement on social policy[243].

Several shortcomings became evident following the entry into effect of the 1994 EWC Directive, such as the low number of new EWCs created[244] and legal uncertainty hampering the proper implementation of some provisions. Following the consultation of social partners, the Commission adopted a legislative proposal for a recast of the 1994 Directive in July 2008.[245] The European Parliament and the Council adopted Directive 2009/38/EC ('recast Directive') on 6 May 2009. Some amendments introduced by the co-legislators reflected a joint position of the social partners put forward during the adoption process in a joint letter to the Council Presidency in August 2008.[246]

The recast Directive aimed at addressing the implementation shortcomings of the original instrument:

- ensuring the effectiveness of employees' transnational information and consultation rights,
- increasing the number of EWCs established while enabling the continuous functioning of existing agreements,
- resolving the problems encountered in the practical application of Directive 94/45/EC and remedying the lack of legal certainty resulting from the formulation of some of its provisions or the absence of certain provisions,
- and ensuring that Union legislative instruments on information and consultation of employees are better linked.

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[242] Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 254, 30.9.1994, p. 64–72.

[243] Agreement on social policy annexed to Protocol 14 on social policy annexed to the Treaty establishing the European Community.

[244] SWD (2018) 187, p. 21-22

[245] Commission proposal COM(2008) 419 final and Impact Assessment SEC(2008) 2166.

[246] ETUC and BusinessEurope (2008), Joint advice by the social partners on the European Work Council 'recast' Directive. See key documents (http://www.worker-participation.eu/European-Works-Councils/Recast-Directive/Chronology-of-the-EWC-Recast-review-Key-docs), 29 August 2008.

In October 2015, the recast Directive was amended[247] to include seafarers in its scope of application.

The Directive includes the following main substantive provisions:

- *General principles and concepts of information and consultation*: Article 1 stipulates that its aim is to improve the right to information and consultation of employees in multinational companies of certain size and that the arrangements for informing and consulting employees must follow the general principle of effectiveness while enabling the undertaking to take decisions effectively and that the scope of the information and consultation under the Directive is to be limited to transnational issues (the Directive contains criteria to determine the transnational nature). Article 2 of the Directive adds definitions of information and consultation, including the concepts of timing and content appropriate to the information and consultation.
- *Opening and process of negotiations:* Article 1 stipulates that an EWC or a procedure for informing and consulting employees is to be established where so requested by the employees or when initiated by the central management.[248] Article 5 sets out negotiation procedure for establishing an EWC; it also introduces the obligation to inform the competent workers' and employers' organisations of the start of negotiations.
- *Procedure to set up an EWC:* Article 6 sets minimum requirements of the content of EWC agreements (Article 6(2)) or information and consultation agreements (Article 6(3)). However, specific modalities of functioning of each EWC is to be defined by the parties to the agreement, i.e. 'special negotiating body'[249] and the central management. The Directive does not prescribe what should be the content of the agreement, but rather lists topics on which the SNB and the central management should agree.[250] Where parties are not able to reach such an agreement within a time limit specified in the Directive, subsidiary requirements set out in Annex I to the Directive apply.[251] A vast majority of EWCs are governed by an agreement signed between the parties.[252]
- *Minimum rights and obligations:* Articles 8 (Confidentiality), 9 (Operation of the European Works Council and the information and consultation procedure for workers) and 10 (Role and protection of employees' representatives) include rights and obligations that apply in relation to the EWCs based on agreements or subsidiary requirements, regardless of whether they are specified in the EWC agreement. Article 10 specifies that the members of an EWC must have the

[247] Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers.
[248] See further Article 5(1).
[249] Special negotiating body is a temporary body of employees representatives established in accordance with Article 5(2) of the Directive. In accordance with the principle of subsidiarity, Member States are free to determine the method to be used for the election or appointment of the members of the employees' representatives.
[250] Article 6(2).
[251] Article 7.
[252] Only around 20 EWCs are governed by subsidiary requirements at present. Data source: ETUI (April 2023).

means required to apply the rights arising from the Directive to represent collectively the interests of the employees. It also places an obligation on the employees' representatives to report to the employees they represent and gives employees' representatives the right to be provided with training without loss of salary.

Article 8 sets the following rules on confidentiality and right to refuse disclosing certain information:

"Member States shall provide that members of special negotiating bodies or of EWCs and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence. The same shall apply to employees' representatives in the framework of an information and consultation procedure. That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office." (Article 8(1)).

"Member States shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them. Member States may make such dispensation subject to prior administrative or judicial authorisation." (Article 8(2)).

- *Links between the levels of information and consultation of employees:* Article 12 of the Directive establishes the principle of a link between the national and transnational levels of information and consultation of employees, with due regard for the representative bodies' competences and areas of action. This link may be specified in EWC agreements themselves, with due respect of the provisions of national law and/or practice on information and consultation of workers. If the agreement does not cover this interaction, the information and consultation must be conducted both at national and European level in such a way that it respects the competences and area of action of the employee representation bodies.[253] In any case, the information and consultation of an EWC shall be without prejudice to rights and obligations under other EU information and consultation instruments.[254]
- *Adaptation clause:* Article 13 provides a procedure for adaptation of agreements in force to, where the structure of the undertaking or group of undertakings changes significantly. The procedure can be initiated by the central management or at least 100 of employees.
- *Continuity:* Under Article 14 undertakings with agreements concluded before the 1994 Directive entered into application are not subject to the obligations arising from the Directive. Neither its predecessor nor Directive required systematic renegotiations of already existing information and consultation agreements in the eligible companies. The Directive also exempts from its scope undertakings with

[253] Recital 37 indicates that the information and consultation of an EWC should take place either before or at the same time as the national information and consultation process.
[254] Directive 2002/14/EC, Directive 98/59/EC and Directive 2001/23/EC.

agreements negotiated or revised during the transition period between June 2009 and June 2011.[255]

- *Subsidiary requirements:* the Annex I to the Directive lays down the rules applicable in the absence of agreement between the management and employees representatives concerning an EWC's establishment, composition and competences.
- *Enforcement provisions:* In addition to the general requirements of the 1994 Directive for the Member States to provide for 'appropriate measures in the event of failure to comply with this Directive', and more specifically, to ensure that 'adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced', the Directive added two elements on enforcement and sanctions:

  Firstly, the addition of Article 10(1): 'Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall have the means required to apply the rights arising from this Directive, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.'

  Secondly, two new recitals: 'The Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.' (recital 35) 'In accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive.' (recital 36)

  Recital 36 mirrors the general principle of effective remedy, enshrined in the first paragraph of Article 47 of the Charter of Fundamental Rights, as interpreted by the Court of Justice of the European Union.[256] Under this principle, Member States have the obligation to provide for effective remedies whenever rights guaranteed under Union law are not respected, having regard to the procedural autonomy of Member States, the principles of proportionality and subsidiarity and EU competence under Article 153 TFEU (i.e. EU competence for 'minimum requirements for gradual implementation').

[255] Consequently, the obligations arising from the recast Directive do not apply to undertakings with such agreements. Indeed, the objective of the Directive was to increase the number of EWCs while 'enabling the continuity of existing agreements' (Recital 7).

[256] In the Impact Assessment for the recast Directive, the Commission considered that "a further reinforcement or more detailed prescription of sanctions would not be in conformity with the subsidiarity principle, as the responsibility for establishing appropriate, dissuasive and proportionate sanctions lies, as a general principle, with the Member States" (Impact assessment SEC(2008)2166, p. 46).

ANNEX 7: COHERENCE OF THE RECAST DIRECTIVE WITH OTHER UNION LEGISLATION AND POLICIES

The EU's legal framework governing information and consultation at national level has developed over several decades. Several directives set our rules on information and consultation of workers' representatives. Directive 98/59/EC[257] does so in the context of collective redundancies, Directive 2001/23/EC[258] sets out rules on information and consultation of workers' representatives, or in their absence of workers themselves, in the event of a transfer of an undertaking, while Directive 2002/14/EC[259] establishes a general framework for information and consultation of workers at national level. **Article 12 of the Directive provides that information and consultation of an EWC should be linked to that of national employee representation bodies, with regard to the competences of each.**

With regard to the type companies, Directives 2001/86/EC and 2003/72/EC[260] provide for the establishment of representative bodies for information and consultation on transnational issues in European companies ('SE') and European Cooperative Societies ('SCE'). The Directive does not apply to these companies that are, at the same time, Union-scale undertakings or groups of undertakings, unless the negotiations on workers' involvement in the SE or SCE have not been opened or have been terminated by the special negotiation body.[261]

Other EU instruments relevant in case of restructuring require also information and consultation of worker representatives at the national level which complements the information at the transnational level, including Directive 2004/25/EC[262], Directive (EU) 2017/1132[263] (as amended by Directive (EU) 2019/2121[264]) and Directive (EU) 2019/1023[265].

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[257] Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.8.1998, p. 16–21.

[258] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16–20.

[259] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29–34.

[260] Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, OJ L 294, 10.11.2001, p. 22–32.
Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, OJ L 207, 18.8.2003, p. 25–36

[261] Article 13(1) of Directive 2001/86/EC and Article 15(1) of Directive 2003/72/EC.

[262] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142, 30.4.2004, p. 12–23.

[263] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), OJ L 169, 30.6.2017, p. 46–127.

[264] Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, OJ L 321, 12.12.2019, p. 1–44.

[265] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to

For reasons of effectiveness, consistency and legal certainty, the EU acquis collectively requires that workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, **the competence and scope of action of EWCs must be distinct from that of national representative bodies – contrary to them, EWCs are not bodies for negotiating with the management[266] - and must be limited to transnational matters.[267]**

A 2015 Eurofound study[268] has identified a variety of situations in the Member States how the process of information and consultation of the EWC is linked to local-level information and consultation. This can also be influenced by the set up in national industrial relations mechanisms. For example, the existence of co-determination rights, the possibility to apply for injunctions or sanctions to enforce local-level information and consultation rights may influence the way Member States and social partners at each level perceive the issue of linking.[269]

Overall, **the Directive is considered to be generally highly consistent with other EU legislation addressing workers information and consultation rights.[270]** While the obligation of information and consultation under the Directive is limited to transnational matters, the content of such matters is not prescribed. Therefore, **synergies can occur between the Directive and any EU policy field that stands to benefit from the involvement of EWCs,** in particular in the context of the twin transitions.

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increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), OJ L 172, 26.6.2019, p. 18–55.

[266] The information and consultation procedures established in Directives 98/59/EC, 2001/23/EC and 2002/14/EC oblige management to inform and consult the national workers' representatives on the topics specified in the directives '*with a view to reaching agreement*', whereas such requirement is not included in the recast Directive.

[267] Article 1(3) in connection with recital 15.

[268] Dorssemont F., Kerckhofs P. (2015) Linking information and consultation procedures at local and European, page 1.

[269] SWD(2018)187, p. 29.

[270] SWD(2018)187, p. 43.

ANNEX 8: OVERVIEW OF MEMBER STATES' TRANSPOSITIONS OF THE RECAST DIRECTIVE IN RELATION TO RELEVANT POLICY AREAS

This Annex presents an overview of the national regulatory frameworks on the policy areas described in problem definition (Section 2.4. of the main report).

1. POLICY AREA 1

Exemption from the scope of the Directive:

All Member States have transposed Article 14 of the Directive and therefore provide for exemptions from the scope of the EWC laws of undertakings with voluntary agreements or with Article 14 agreements.

All Member States would have to amend existing legislations if exemptions were removed in line with policy option 1a.

2. POLICY AREA 2

Deadline for commencing negotiations following a request:

National laws transposed deadlines under Article 7(1) of the Directive. In five Member States (AT, HR, DK, LT, SK) the national provision can be interpreted in a way that a meeting should have been held within the 6 months. In all other Member States, the transposing provisions take over Article 7(1) in similar terms or verbatim. In NL, the application of the deadline of 6 months is clearly limited to situations where management has given evidence that it will not commence negotiations with the SNB.

22 Member States' laws would need to be amended to implement the clarification of Article 7(1), envisaged as an accompanying measure under policy options 2b and 2c.

Coverage of SNBs' necessary resources:

Legal costs and legal representation costs: Only in NL are costs of legal costs or legal representation costs (that qualify as 'reasonably necessary costs') explicitly mentioned in the transposing provisions. In ten Member States (AT, BG, CY, HR, DK, EL, HU, LT, LU, PT), the national provisions are formulated in a manner that makes coverage of legal costs unlikely. In these cases, national provisions point to 'establishment and operational' costs, specifying examples. In all others, the national implementation measures do not explicitly specify that legal costs would be covered and are formulated similarly to the wording of Article 5(6) of the Directive ('so as to enable the special negotiating body to carry out its tasks in an appropriate manner') which may be interpreted as including costs linked to legal disputes. No relevant case law on this question has been identified in the Member States.

All Member States, except for NL, would need to amend their laws to specify that reasonable legal costs and costs of legal representations of SNBs are to be covered by the management (policy options 2b and 2c).

Coverage of training expenses: As the same provision on the right to training applies to SNB and EWC members, see below Section 3 of this annex.

Gender-balanced composition of EWCs and their select committees

Most Member States have transposed the Directive's provision on the composition of EWCs, including the criterion of gender, almost verbatim (AT, BE, CZ, DK, EE, EL, FR, HR, IT, LT, LU, LV, MT, PT, RO, SE, SI), while eight (CY, DE, ES, FI, IE, NL, PL, SK) have not included a reference to gender balanced representation in the EWCs into their laws. Such measures are also not typically included in Member States laws[271] on the nomination of national employee representatives in most Member States.[272]

All Member States would have to amend their laws to lay down a quantitative objective for a balanced gender representation in EWCs and select committees (policy option 2c).

3. POLICY AREA 3

Concept of 'transnational matters'

Definitions of 'transnational matters' provided in laws of 19 Member States (BG, CY, HR, EE, DE, FR, EL, IE, IT, LV, LT, LU, MT, NL, PL, PT, SK, SI, SE) fully correspond to Article 1(4) of the Directive, without addition from recital 16. In AT, the transposition considers Article 1(4) and recital 16 together. In BE and ES, recital 16 is reflected in the non-binding legislative comments of each implementing measure. In five Member States (CZ, DK, FI, HU, RO), the legislative text integrates elements of recital 16 in the definition of 'transnational matters' such as 'scope of its potential effects' (e.g. CZ, DK). In FI, the definition includes elements of recital 16: 'transnational issues are also issues which, regardless of the number of Member States concerned, are of major consequence for the situation of employees or involve transfers of activities between Member States.'[273]

Clarification of the concept of transnational matters would entail the need for legislative amendments at least 21 Member States that transposed the provision without integrating additional criteria from recital 16 in the legal requirements (policy option 3b).

Broadening the concept of transnational matters and requiring central management to justify in writing the absence of transnational issues would entail amendments to all Member States' transposing laws (policy option 3c).

Consultation procedure

Timing of the consultation: Member States transposed the definition of 'consultation' in the Directive verbatim[274] (EL, IE, IT, MT, RO, SI, SE), or refer to a "reasonable time" (PT), "appropriate time" (HU), a "time when this information and consultation is still

[271] Provisions on gender balanced composition of national employee representatives have been found in national laws of AT, DE, FR, HR, PT.
[272] Mapping of Member States' laws done by European Centre of Expertise in the field of labour law, employment and labour market policies (ECE)(2023), unpublished.
[273] ICF(2023), Section 4.2.1.3.
[274] Article 2(1)(g). ("at such time … as enables employees' representatives to express an opinion on the basis of the information provide about the proposed measures")

meaningful" (BE), "timely manner" or "in time" (BG, CY, DE, HR), "as soon as possible" (AT). DK and NL refer to consultation on 'planned measures' and 'proposed decision' respectively.

CZ law stipulates that "the employer shall ensure that the consultation takes place sufficiently in advance and in an appropriate manner so that the employees can express their opinions on the basis of the data supplied to them and the employer can take these opinions into account before a certain measure is implemented". PL legislation specifies that the EWC has a deadline of 14 days to deliver an opinion on the report submitted by the central management, and that the management must examine the opinion prior to taking any decision on the matter. In ES, the consultation of EWCs must be held in sufficient time to enable the EWCs' opinion to be taken into account in the adoption or implementation of decisions.

*Response to EWC opinion*s: Two Member States (HU, LU) require that management provide a response to an EWC opinion as a part of the general definition of consultation that applies to EWCs functioning on basis of agreements, and specifically in exceptional circumstances.

A requirement to provide a reasoned response to EWC opinions prior to the adoption of a decision on transnational matters would entail legislative amendments in at least 25 Member States (policy option 3b and 3c).

EWC resources

Coverage of legal costs and costs of expertise: The national rules on financial means and the legal costs of proceedings are generally limited to the general provisions of Article 10(1) of the Directive. The right of all EWCs to receive assistance from an expert is expressly provided for in three Member States (AT, CZ, DE). A general right of EWCs to be supported by experts of their choice (policy option 3c), would entail amendments to the national laws of at least 24 Member States.

No legislation lays down a dedicated budget for court fees in cases of potential litigation between the EWCs and the businesses, although these costs could generally be part of the operating expenses of EWCs.[275] Some Member States have introduced statutory release from court fees for EWCs (AT, LT, ES, BG, FR, DE, RO, SE, NL)[276] and others have introduced a general regulation concerning the operating costs of EWCs. The latter is the case in most of the Member States.

For EWCs operating under subsidiary requirements, in EE, NL, EL the costs of the operation of the EWC covered should be 'reasonable' or considered 'necessary'. HU and NL implementing laws specify that funding of EWCs extends to assistance from legal experts and covers legal costs. Based on analysis of national transposing provisions of the subsidiary requirements, there is indication that currently legal costs would not be covered in at least four Member States (AT, IT, LU, SI).[277]

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[275] SWD(2018) 187 final, p. 34.
[276] Jagodziński R., Stoop S. (ETUC)(2022) Access to justice for European Works Councils, p. 31.
[277] ICF(2023), Section 4.2.1.3.

Access to training and coverage of costs of training: In the majority of Member States the right to training under Article 10(14) has been transposed verbatim. Four Member States (DE, FR, IE, PL) refer in general to 'costs' to be covered in addition to salary. HU law provides for information about the types of training that can be taken and that once a request is being made by EWC members explaining the reasons for the training, management cannot refuse this request. In IT, the provisions specify that the content of training is 'jointly agreed' with management.

Clarification that the existing right of SNB and EWC members to training requires that management must cover the costs of necessary training and related expense**s**, would require an adaptation of implementing legislation in the large majority of Member States.

Confidentiality and non-disclosure of information:

Obligation of confidentiality: The Directive leaves it to Member States to set conditions for the application of the confidentiality obligation (Article 8(1)). Some Member States limit the possibility of the confidentiality obligation to business and trade secrets (AT, DE, FI, HR, HU, LT), to information on the financial position of the group or the undertaking, which is publicly available (FI), information relating to the security and the corresponding security system (FI).[278]

In PT, management can only classify information as confidential or refuse to provide information under the terms of the agreement, or, in the absence of such terms, of the law. The classification of information as confidential, the non-provision of information or the failure to carry out a consultation shall be justified in writing, based on objective criteria. In EE, central management is obliged to justify the confidentiality of the information at the request of the employees' representatives.

Some Member States apply the criterion of protecting the legitimate interest of the undertaking for applying the confidentiality clause (BG, CZ, SE) or when the "interests of the company so demand" (DK).

Certain Member States have transposed Article 8(1) without setting additional conditions for a confidentiality obligation (CY, ES, IE, LU, LV, MT, NL, PL, RO, SI, SK).[279]

Introducing a condition that central management may declare information confidential only in the legitimate interest of the undertaking (policy option 3b and 3c) would require legislative amendments in about half of the Member States. Requirement the management to inform, upon request, of the grounds justifying confidentiality would need to be reflected in all national laws except in EE and PT (policy option 3b and 3c).

Non-disclosure of information: With regard to management's capacity not to disclose certain information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them (Article 8(2)), this provision was not transposed by AT, FR, HR, SE, SI. Indeed,

[278] Mapping of Member States' laws done by European Centre of Expertise in the field of labour law, employment and labour market policies (ECE)(2023), unpublished.
[279] Ibid.

Member States may choose not to apply this provision[280] and, instead to apply the duty of confidentiality to protect information, disclosure of which would seriously harm the undertaking. The lack of an exemption from the obligation to disclose information is to be considered as a more favourable regulation.

Around half of the Member States have transposed Article 8(2) referring to the conditions as set in the Directive ("information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them") (BG, CY, FI, HU, IE, LT, LU, LV, MT, NL, PL, RO, SK).

In EE and PT, central management is required to give, based on objective criteria, a justification as to why disclosure of the information would or may significantly harm the undertaking. Similarly, in RO, central management must provide written reasons for refusing to disclose information.

In six Member States, the employer is not obliged to disclose information classified as confidential or protected under the statutory provisions (BE, CY, CZ, EL, DE, ES)[281].

No Member State requires that central management obtains prior authorisation from a court or an administrative body before it withholds information under Article 8(2). A dispute resolution mechanism through courts or arbitration is provided by national laws on the basis of Article 11(3).[282]

A requirement on management to inform, upon request, of the grounds justifying non-disclosure would need to be reflected in the 19 Member States which have transposed Article 8(2) and do not yet provide for a similar obligation (policy option 3b and 3c). A requirement of prior administrative or judicial authorisation if central management refuses to disclose information which could seriously harm the undertaking would require amendments to national laws of the 22 Member States which have transposed Article 8(2).

4. POLICY AREA 4

Access to justice

In four Member States (AT, FR, RO, SE) EWCs have legal personality to initiate judicial proceedings and to represent the EWC in relations with third parties within the limits of their responsibilities. In CZ, FI, DE, LT, LV, NL, PL, SK, ES, HU, EWCs can be a party

[280] See in this respect Article 11(3): "Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article." [emphasis added]

[281] The Spanish legislation specifies that the non-disclosure clause can apply to industrial, financial and commercial secrets. It cannot apply to information relating to the level of employment in the undertaking. Similarly, the German legislation specifies that the duty of central management to inform exists insofar as trade or business secrets of the enterprise or group of enterprises are not jeopardised thereby.

[282] Mapping of Member States' laws done by European Centre of Expertise in the field of labour law, employment and labour market policies (ECE)(2023), unpublished.

in legal proceedings. In BE, IT, EE, LU, SI, SK, individual EWC members or trade unions have the capacity to bring legal actions on EWC matters. [283]

In several Member States, disputes for which judicial proceedings are available are limited only to certain EWC-related matters. In HR judicial proceedings cover only cases of employees' discrimination, whereas in MT, LT, PL only disputes regarding the confidentiality or disclosure of information. In PL, criminal proceedings may be initiated by the Labour Inspectorate (acting in a capacity of a public prosecutor) if central management makes it impossible to create or impedes the actions of an SNB, EWC, or employee representative as provided by the agreement; or discriminates against a member of an SNB, EWC, or an employee representative representing employees under the agreement, in connection to a function performed by such a person.

Problems of access to justice are known to arise in two Member States, namely IE, against which the Commission launched infringement proceedings in May 2022[284], and FI. In Ireland, certain EWCs based on agreements can enforce some of their rights through a private arbitration procedure, for which they bear their own costs. A potential remedy would depend on the outcome of that arbitration. The arbitrator's determination is binding on the parties.[285] Certain breaches of the EWC legislation could lead to a criminal prosecution. Courts however cannot be directly accessed by EWCs or SNBs (nor by trade unions on their behalf) in IE.

In FI an EWC related dispute cannot be brought by a party to the dispute before a court. The FI law designates a Cooperation Ombudsman[286] and criminal courts for ensuring compliance with the rights under national law transposing the EWC Directive. Access to a criminal court is dependent on whether the prosecutor institutes the legal proceedings, based on the violation of rights in question.[287]

Disputes over the establishment or functioning of EWCs can also be resolved in 15 Member States via alternative dispute mechanisms such as conciliation, mediation or arbitration. Those alternative mechanisms are not specially designed for EWCs (they are available for any private dispute), except in the case of IT, where a dedicated Conciliation Committee was established to provide proposals to solve EWC-related disputes within 20 days.

No Member State provides a comprehensive overview of the rules and procedures available to enforce rights under the Directive.[288] Under policy options 4b and 4c,

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[283] SWD (2018) 187 final, p. 34-36. See Annex 5 of the Staff Working document, providing overview of the EWCs' capacity to bring actions before the courts in the Member States.
[284] Section 10 of the press notice: https://ec.europa.eu/commission/presscorner/detail/en/inf_22_2548.
[285] An appeal could be made against an arbitrator's decision on a point of law. The court's role in such appeal is limited to considering whether the arbiter has reached a lawful decision, not to make its own finding of facts.
[286] The Cooperation Ombudsman has a right to carry out inspections, issue an improvement notice, take a matter to a criminal court on suspicion that an act specified as punishable under the Finnish Act has occurred, and to require that the court obliges the employer or enterprise to meet their obligations within a time limit and that it imposes a conditional fine in order to encourage compliance.
[287] A complaint against Finland on this matter was submitted to the Commission in November 2022.
[288] Mapping of Member States' laws done by European Centre of Expertise in the field of labour law, employment and labour market policies (ECE)(2019), unpublished.

Member States would have to review the procedures in place for employee representatives, SNB and EWC members to bring a legal action to enforce all rights accorded to them under the Directive, including in the pre-SNB or SNB phases before the EWC has been created. Member States would need to review their national procedures and ensure that out of court dispute resolution mechanisms cannot block access to courts.

Sanctions and penalties

In most Member States, sanctions consist of fines imposed on the employer, the amount of which is predetermined by law (e.g. 15.000 EUR for administrative sanctions in DE) except in case of DK where courts are given full discretion.

Most national laws define penalties for most or all of the central EWC-related obligations of the Union-scale undertaking in relation to its EWC. In NL and RO, judicial penalties or obligations may not be applied for actions other than the disclosure of information. In HU, the existing legislation implies that courts can only declare a breach of EWC-related obligations, with no possibility to impose a sanction, nor to oblige the undertaking in question to comply. In SE, HU and NL (apart from the above-mentioned situation), no administrative or criminal law penalties are provided for, but rather exclusively civil law sanctions in case of breach of related obligations.

Depending on the type of breach, a comparison between the upper thresholds for pecuniary sanctions shows that these range from EUR 290 in MT or EUR 850 in RO to EUR 190.000 in ES. In case of repeated violation, higher sanctions (usually up to twice the basic threshold) are envisaged in AT, BG, LT and LU. Stricter sanctions may be imposed in case of criminal rather than administrative proceedings (BE, DE, ES) or by the (tripartite) Labour Dispute Commission in LT. In this case, sanctions may be as high as EUR 800.000 (BE). The sanctions also vary according to the type and degree of violation of the law. Only BE calculates the level of administrative and criminal fines per number of employees concerned, the remaining countries' sanctions constitute of lump sums (per breach).

With regard to a right to injunctive relief allowing EWCs to request the suspension of management decisions taken in alleged violation of the information and consultation requirements under the Directive (policy option 4c), from information gathered by experts in 2019, it appears that at least in seven Member States (AT, DE, HR, FR, NL, ES, IE) it could be theoretically possible for a court to suspend a management decision taken in violation of the information and consultation obligation.[289] However, there is uncertainty as to whether it would be possible to actually apply it to the situation of EWCs in these Member States. In FR such a solution was applied in a case where a national works council and EWCs applied jointly in court[290]. In DE, the courts have recognised an *Unterlassungsanspruch* (claim to injunctive relief) for national works councils for severe cases of non-respect of codetermination rights. The injunctive relief has not been granted to national works councils in cases of non-respect of information

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Also in Jagodziński R., Stoop S. (ETUC)(2022) Access to justice for European Works Councils.

[289] For Ireland and Spain – see country fiches of the ETUC (2022) Report on access to justice for European Works Council, op.cit.: EWC Litigation Country fiches Ireland | ETUC (Ireland) and EWC Litigation Country fiches Spain | ETUC (Spain).

[290] Veolia-Engie v. SUEZ information and consultation bodies; RG n° 20/06549; 11/19/20; Court of Appeal Paris.

and consultation rights. The DE law provides for a fine in such cases (Section 121 BetrVG). There is no generally recognised *Unterlassungsanspruch* for information and consultation rights (this issue has been under legal debate since the 1990s[291]). So far, EWCs have not been granted injunctive relief by the DE courts (see Annex 9).[292] The possibility of interim measures and injunctions to enforce EWCs' rights is discussed in the AT legal commentary[293] in the context of planned restructurings, based on the general rules on enforcement of rights (§ 381 *Exekutionsordnung* in conjunction with §§ 108 and 109 *Arbeitsverfassungsgesetz*). To date, there is no record of a court ordering such measures in AT.

No Member State determines fines for EWC-related breaches in relation to the company's turnover. All national laws implementing the Directive would need to be amended to align with the requirement under policy option 4b.

Regarding policy option 4c, which determines maximum shares of undertakings' net annual turnover that could be imposed by way of pecuniary sanctions (up to 4% where a violation of rights and obligations under the Directive is found to be intentional, or else up to 2% of annual net turnover), pecuniary sanctions of such proportions are unprecedented in the field of information and consultation of employees, including at national level. All Member States would therefore have to amend their legislation to introduce such fines.

While injunctive relief for suspending the management decision may theoretically be available to EWCs in some Member States through the practice of national courts, it is likely that all national laws would have to be amended to implement a clear right of EWCs to injunctive relief as referred to under policy option 4c.

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[291] Based on information collected Beck Community and DGB commentary, Blanke/Hayen/Kunz/Carlson, Europäische Betriebsräte-Gesetz 3. Auflage 2019; See also ICF(2023), Section 5.2.1..

[292] For example, decisions of first and second instance labour courts in Germany: Landesarbeitsgericht Köln of 1 August 2018, case no 6 TaBVGa 3/18; 12.10.2015, Landesarbeitsgericht Baden-Wuerttemberg of 12 October 2015, case no 9 TaBV 2/15; Arbeitsgericht Wiesbaden of 13 June 2018, case no 1 BVGa 5/18).

[293] Kodek, 'Einstweilige Verfügungen zur Sicherung des Informationsanspruchs nach §§ 108, 109 ArbVG bei beabsichtigten Betriebsänderungen', DRdA 6/2011, p. 517-526.

ANNEX 9: EXAMPLES OF NATIONAL CASE-LAW IN RELATION TO THE PROBLEM DRIVERS

No cases have been brought before the Court of Justice on the Directive so far. At national level, court cases concerning EWC are not frequent and are concentrated to jurisdictions with higher number of multinationals with EWCs. ETUI identified altogether 160 EWC-related national court cases since 1997 and until the beginning of 2023. Some of these national cases point to existence of legal uncertainties, which may compromise the correct implementation of the Directive.

1. PROBLEM DRIVER: 'NOT SUFFICIENTLY EFFICIENT & EFFECTIVE SETTING-UP OF EWCS AND GENDER IMBALANCE' (SEE SECTION 2.4.2.)

- In 2016, the Arbeitsgericht Berlin (First instance) ruled that an **EWC was established after the management has not convened a constituent meeting within 6 months of the request.** According to the national court: "[a] refusal can also exist if, due to delays on the part of the central management, the constituent meeting of the special negotiating body has not taken place within six months of the application being made or if the information required for the formation of a special negotiating body is persistently refused in accordance with § 5 EBRG."[294]

2. PROBLEM DRIVER 'OBSTACLES TO THE EFFECTIVE OPERATION OF EWCS' (SEE SECTION 2.4.3.)

<u>Legal uncertainty regarding the concept of transnational matters</u>

- In a decision of 27 November 2018 in interim proceedings[295], the District Court of Rotterdam ('Rechtbank Rotterdam') considered whether an EWC established in the Netherlands had to be informed and consulted on the possible closure of two establishments in Spain. Based on an interpretation of the concept of transnational matters in conformity with Directive 2009/38/EC, the Dutch court found that it was sufficiently plausible, for the purposes of the decision in the interim proceedings, that the issue was to be considered transnational. The Court took into account that the closures would make around 20% of the relevant undertaking's European workforce redundant, and might have knock-on effects on the activities of its establishments in other Member States.

- In a French case[296], an EWC established in France queried the central management's failure to inform and consult on its decision to claim repayment of a loan that had been granted to keep a loss-making French subsidiary afloat. Although the EWC argued that the decision had to be considered in the wider

[294] Germany, 15.07.2016, Groupon, Arbeitsgericht Berlin – 26 BV 4223/16 (First instance).
[295] Netherlands, Rechtbank Rotterdam, judgment in interim proceedings of 27 November 2018, Case no C/10/561635/KG ZA 18-1170.
[296] France, Tribunal de Grande Instance de Nanterre, judgment of 26 November 2014, N° 14/02861; confirmed on appeal by Cour d'appel de Versailles, judgment of 21 May 2015, N° 14/08628.

context of the undertaking's strategy involving the closure of various subsidiaries, the national court held that all the facts of the matter were confined to the French territory and thus did not trigger information and consultation requirements at transnational level.

- The definition of 'transnational matters' in Article 1(4) of the Directive was also interpreted, in light of recitals 15 and 16, in a recent judgment of the Court of Appeal of England and Wales[297]. The court was faced with the question whether redundancies proposed in two separate Member States could be considered as a transnational matter despite the fact that they had been separately formulated in light of **unrelated national circumstances**. It held that in order for a matter to be considered transnational, it was not sufficient that two matters / decisions occur within the company in two countries at about the same time, but there must be some objective factual nexus between them. Requiring an (extraordinary) EWC meeting absent such a nexus would render meaningless the requirement for a matter to be transnational, because no (potential) effects of any one matter on undertakings in each of two different countries would be required. The Appeal Court recalled the limitation of the the scope of the procedures guaranteeing information and consultation with EWCs, in accordance with Article 1(3) and (4) and recitals 15 and 16 of the Directive, which together ensure that information and consultation occur at the correct level of management and representation, according to the subject under discussion. To achieve this necessary demarcation, the **competence and scope of action of an EWC is different and distinct from that of national representative bodies**.

Insufficient resources of EWCs

- In a judgment concerning an EWC operating under subsidiary requirements in Austria, the Oberlandesgericht Wien (Higher Regional Court) confirmed that such **an EWC can choose an independent expert of its choice and it is not obliged to minimise the costs to be borne by central management by having recourse as a priority to experts provided by trade unions or by a statutory representative body**, as long as the expert's services and costs are legitimately linked to the functions of the EWC.[298] Moreover, the Higher Regional Court found that fees for expert legal advice to be covered by central management are not limited to the statutory scales of legal fees.

- In 2019, the UK Central Arbitration Committee (CAC) considered that the **employer should pay the legal fees incurred in relation to the proceedings**.[299] The decision was upheld by the Employment Appeals Tribunal, which stated that the central management's approach "inevitably had the effect of leaving either the individual members of the EWC who were taking the reasonable step of bringing CAC proceedings or their chosen experts at an unfair financial risk: that was not a reasonable approach, particularly coming from a very substantial organisation

[297] UK, Court of Appeal (civil division), judgment of 26 July 2023, *Adecco*, [2023] EWCA Civ 883.
[298] Austria, Higher Regional Court (Oberlandesgericht) Wien, judgment of 23 February 2022, No. 8 Ra 49/22t, subject to appeal.
[299] United Kingdom, 9 October 2019, Verizon, Central Arbitration Committee, EWC/22/2019. The CAC has also considered the question of payment of legal representation in cases EWC/21/2019, EWC/13/2015.

which no doubt had access to and would itself make use of legal assistance in connection with the CAC proceedings."[300]

Confidentiality imposed disproportionately may create obstacles to effective information and consultation

- In a decision of 12 February 2018[301], the UK's Central Arbitration Committee found that "the default position of the employer was (a) not to disclose and (b) to classify as confidential anything it feels it has to disclose in order to comply with the minimum legal obligations. This stands in contrast to the thrust and intent of the Directive and the (UK Transnational Information and Consultation of Employees Regulations 1999) which is that **relevant information should be given to EWC, with protections available where it is objectively reasonable for management to argue that it its disclosure would prejudice or seriously harm the undertaking**."

3. PROBLEM DRIVER 'SHORTCOMINGS IN ENFORCING OF THE DIRECTIVE' (SEE SECTION 2.4.4.)

Ineffective penalties / sanctions for non-compliance in some Member State

- In a 2020 judgment[302], the French *Cour de Cassation* **upheld the suspension of operations of undertakings on the grounds of a violation of EWCs' information and consultation rights**. Véolia Environnement and SA Engie motioned for the Court of Appeal of Paris to squash interim measures in the form of suspension of operations that had been imposed in previous proceedings until *the comité social et économique of multiple* SUEZ establishments had been informed and consulted about the acquisition of SUEZ company shares held by Engie. The EWC of a SUEZ establishment intervened voluntarily. The court rejected the appeal and declared the EWC's voluntary intervention to be admissible in order to establish the existence of a manifestly unlawful disturbance and to prevent imminent damage.

- In the first and second instance 2018 legal proceedings[303], **the German labour courts rejected an EWCs' request for injunction** on grounds of a failure of the management to comply with the consultation obligations. The courts reasoned that neither the national law nor the Directive provides for an injunction. [...] According to the predominant interpretation of the law, the rights of the European Works Council are instead guaranteed by the provisions on administrative sanctions of Paragraph 45 of the EBRG [...] and the possibility of enforcing the rights to information and consultation by means of judicial remedies before the Labour Court, including by way of an interim order. [...]. Moreover, according to the court the legislative history of the EBRG militates against the granting of an injunction, since a corresponding application for a prohibitory injunction was expressly rejected in the legislative procedure in the case of non-participatory

[300] Employment Appeals Tribunal, judgement of 1 October 2020, Appeal No. UKEAT/0053/20/DA.
[301] United Kingdom, Central Arbitration Committee (UK), Oracle, No EWC/17/2017, para 87.
[302] France, 19.11.2020, Veolia-Engie v. Suez, Cour de Cassation Paris, 20/06549 (Appeal)
[303] Germany, 01.08.2018, DT Group, Arbeitsgericht Köln - 1BVGa 7/18 (first instance). Germany, 13.12.2018, DT Group, Landesarbeitsgericht Köln - 6 TaBVGa 3/18 (Appeal).

[i.e., non-codetermination] measures. There is therefore no legal loophole, according to the court, which also noted that the parties to the proceedings have also refrained from agreeing such an injunction, having been aware of the legal situation at issue in national law and despite apparently several revisions of the EWC agreement. That possibility would have been readily available. "The court shares the prevailing view in rejecting a claim for an injunction in the event of a breach by the undertaking concerned of the rights of the European Works Council. Recognition of such a right would have the effect of conferring on the EWC, in the absence of any express provision, a right which would be much stronger than the rights expressly regulated. Moreover, he would be recognised as having a right whose existence is contested even with regard to the [national] works council under the BetrVG, which, by virtue of its participation rights, has a significantly stronger legal position than the European Works Council."

- In 2015 legal proceedings in Germany[304], a EWC asked for an injunctive relief to prevent redundancies until the EWC had been properly informed. The court of first instance dismissed the motion noting that such a right does not result from an interpretation of § 30 EBRG. Since the Directive does not provide for any specific sanctions in the event of a breach of the duty to inform, it is not objectionable that the national legislature decided to introduce an administrative offence subject to a fine as a sanction. The Court does not consider the European Works Council and the national Works Councils to be comparable as the rights of the former are weaker than the rights of the latter. The national Works Councils "can enforce its right to information and consultation in a formalised conciliation procedure and appeal to the conciliation board. In contrast, Directive 2009/38/EC, through the right to information and consultation, only pursues the exchange of views and the establishment of a dialogue between the central management and the European Works Council."
  The right to instruction can be enforced by way of interim legal protection, a violation can be punished with a fine. The small amount of the fine is acknowledged by the court but is not considered relevant for the assumption of injunctive relief. If the fine were to be regarded as inadequate and was not meeting the requirement of the Directive, the will of the legislature could nevertheless not be circumvented. The court substantiates the intention of the legislator with several legislative documents.

  In a 2011 case[305], the German court confirmed that interim judicial proceedings before the labour courts are available to EWCs. However, this does not mean that EWCs have a substantive right to injunctive relief. The court considered that violation of EWC's rights to information and consultation does not justify a claim for injunctive relief with regard to the implementation of the intended plant closure. The court makes it clear that even if the case law on injunctive relief for national works councils could in principle be applied to the European Works Council, the latter would not be entitled to any such relief in respect of its obligations to give notice and information and consultation rights, because also in

[304] Germany, 12.10.2015, Landesarbeitsgericht Baden-Wuerttemberg of 12 October 2015.
[305] Germany, 08.09.2011, Visteon, Landesarbeitsgericht Köln - 13 Ta 267/11 (Appeal).

respect of national works councils, the right to injunctive relief relates only to participation (=co-determination) rights.

ANNEX 10: EXTERNAL PROBLEM DRIVERS

Partially, the effectiveness of information and consultation of EWCs is influenced by drivers which, while having an impact on the problem the EU initiative aims at tackling, are 'external' to its scope and reach. The following external drivers to the problem have been identified.

1. DIVERSITY OF INDUSTRIAL RELATIONS SYSTEMS IN THE MEMBER STATES

In the Social Policy field, the Union may adopt minimum requirements for gradual implementation, having regard to the conditions and technical rules in each Member States.[306] The Union recognises the diversity of national industrial systems and practices, which may be based on trade unions or works councils (or employees' bodies), or combining both. While Union law provides for minimum rights to information and consultation of workers, the Member States determine the practical arrangements for exercising this right at the appropriate level. Depending on national laws, the employee representatives' competences may go beyond consultation and may include a right to co-determination. The available research has shown that in countries where there is a strong tradition of social dialogue and corporate culture, EWCs function more effectively than those in countries with a weak industrial relations culture.[307] A study points out that involvement in restructuring processes is in particular related to the quality of social dialogue[308].

2. ECONOMIC AND CORPORATE DEVELOPMENTS AND SOCIETAL CHANGES

The frequency of transnational restructuring events and the importance of these impacts on the work of EWCs. The world of work has been undergoing continuous changes driven by broader economic developments (recessions, inflation, internationalisation of companies), societal changes (demographic change, social inequalities), climate change (resources, modes of production, health crisis) as well as geo-political developments (war against terrorism, Syrian war, migrant flows, lately the Ukraine war and the UK exit from the EU) and the digitalisation of activities and interactions. These external factors and shocks may require quick reactions from companies, which may in turn affect the quality of processes of information and consultation of employee representatives at the various levels.

Consequences of certain events (e.g., the COVID-related restrictions in manufacturing countries like China and the sanctions imposed on Russia) may lead to partial relocation

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[306] Article 153(1) provides the legal basis for the EU "to support and complement the activities of the Member States" in a number of fields for people both inside and outside the labour market: workers, jobseekers and unemployed. The directives based on Article 153 can 'set minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States'. Such directives 'shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings'. The provisions adopted 'shall not prevent any Member State from maintaining or introducing more stringent protective measures'.

[307] Eurofound (2022) op.cit.

[308] Voss.E, Warneck F., Schulze Marmeling, S. (2022) Coordination and interaction in European works councils, a report for the ETUC, p. 26. Available online.

of supply chains, likely generating shifts within the EU industrial sector.[309] In addition, high inflation reduces employees' purchasing power, hence increasing the tensions between companies facing increasing costs and a workforce demanding pay raises. Both dynamics could generate issues and disputes with a 'transnational' scope, hence increasing the need of the involvement of EWCs on financial and restructuring matters.

However, there is no systematic empirical evidence of the extent to which broader economic and social changes have impacted the EWCs' involvement in restructuring decisions. A 2015 Eurofound study concluded that restructuring cases during the Great Recession were challenging for EWCs, but they also presented an opportunity to change and clarify information and consultation procedures.[310]

A 2020 Eurofound report found that "transnational restructurings account for a small share of overall large-scale restructurings (around 6% of cases involving job loss) but by virtue of their much larger size involve a much more significant share of associated job loss. They also take longer to enact." The report concludes that transnational restructuring incidence is particularly cyclically sensitive. It is also generally a deliberate and planned process of internal restructuring.[311]

Evidence on **the effects of digitalisation on the functioning of EWCs** is not conclusive. The limited literature on this topic indicates that online meetings had become more frequent post-pandemic. Employee organisations recognise the positive aspects of online meetings and trainings and their increased quality[312], but maintain the importance face-to-face meetings. Digitalisation of companies and industries is also increasingly a topic tackled by EWCs.[313]

Demographic changes may also shift the priorities addressed by EWCs.[314] For example, the increasing participation of women in some industries where the majority of workforce has traditionally been male (e.g., construction) would increase the incentives to adopt company-wide policies on gender equality.

c. Company structure and relationship between the employee representatives and the management

A 2016 KU Leuven study found that there is a wide range of managerial policy towards EWCs that is influenced, *inter alia*, by the country of origin of the company, the manager, the sector of operation, and the company size.[315] For instance, as regards the country of origin, the study concluded, based on interviews with managers responsible for EWCs in multinational companies, that those from "coordinated market

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[309] Korn, T., & Stemmler, H. (2022). Russia's war against Ukraine might persistently shift global supply chains. VoxEU. org, 31. Available online.
[310] Kerckhofs P. (Eurofound)(2015) European Works Council developments before, during and after the crisis. Available online.
[311] Eurofound (2020). ERM report 2020: Restructuring across borders, p. 26. Available online.
[312] Eurofound (2022) op.cit.
[313] The European Economic and Social Committee (2020). Study 'An EU legal framework on safeguarding and strengthening workers' information, consultation and participation'. Available online.
[314] EFBWW (2021). EWC guide on demographic change. Available online.
[315] Pulignano V. et al. (KU Leuven) (2016) European Works Councils on the Move: Management perspectives on the development of a transnational institution for social dialogue, p. 11. Available online.

economies"[316] are much less likely to report a problem-free good quality debate with their respective EWC than those from "liberal market economies"[317] (15% v. 33%).[318] Good managerial leadership was regarded by interviewees as enhancing the quality of dialogue within transnational companies.[319] Concerning the correlations between company size and operational patterns of EWCs, the study found that smaller companies have better employee engagement in the EWC.[320] These findings suggest that such factors have a relevant impact on the effectiveness of EWCs. However, as they cannot be directly influenced by possible EU policy measures on EWCs, they are considered external drivers for the purposes of this impact assessment.

[316] For the purposes of the study: Austria, Belgium, Denmark, Finland, Germany, Japan, Luxembourg, the Netherlands, Slovenia and Sweden.
[317] For the purposes of the KU Leuven Study: Australia, Bulgaria, Croatia, China, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, South Africa, United Kingdom and the United States.
[318] Pulignano V. et al. (2016), op.cit., p. 23.
[319] Ibid., p. 27.
[320] Ibid., p. 25.

ANNEX 11: REASONS FOR DISCARDING CERTAIN POLICY MEASURES WITHOUT DETAILED ASSESSMENT OF IMPACTS

A number of policy measures that have either been considered at the early preparatory stages of this initiative or were put forward by social partners during the consultation process have been discarded without a detailed assessment of their impacts. This Annex explains the reasons for discarding those measures, distinguishing between:

- measures designed to address a problem driver of which insufficient evidence could be established by the Commission services;
- measures discarded because they were either unsuitable to achieve the policy objectives, or clearly disproportionate or incoherent with the existing legal framework.

1. MEASURES DISCARDED FOR LACK OF SUFFICIENT EVIDENCE OF A RELEVANT PROBLEM DRIVER

1.1. Require transnational information and consultation for structurally independent undertakings linked by contract

In resolution 2019/2183(INL), the European Parliament called on the Commission to "explore the merits of including contracts which enable structurally independent undertakings to influence one another's operation and business decisions (such as franchising or management contracts) within the scope of Directive 2009/38/EC in order to prevent possible gaps". According to the Commission services' assessment, this issue is linked to the question whether an undertaking is considered to control another, so that they form a group for the purposes of the Directive and hence fall within its scope (provided they meet together the criteria for 'Union-scale'). The determination of whether an undertaking is a controlling undertaking is to be made on the basis of the applicable national law, that is to say the law of the Member State governing the (potentially) controlling undertaking.

The Directive currently neither requires nor excludes that influence exercised by means of contracts such as those mentioned by the Parliament be considered "dominant influence", and hence control. It merely lists the – non-exhaustive – examples of dominant influence exercised by virtue of "ownership, financial participation or the governing rules", and lays down a presumption of dominant influence in certain cases. Nevertheless, none of the Member States has thus far considered it necessary or appropriate to expressly consider structurally independent undertakings to form part of a group of Union-scale undertakings, for the purposes of applying the information and consultation requirements pursuant to Directive 2009/38. This choice of Member States in implementing Article 3 of Directive 2009/38 is consistent with the context in which Directive 2009/38 was adopted, namely the setting up of works councils in Union-scale undertakings and Union-scale groups of undertakings, to be informed and consulted in respect of a wide range of matters affecting the workforce generally.[321] It is also an expression of the fact that control, by means of contractual arrangements, over separate

[321] Cf. the final opinion of Advocate General Sharpston in C-61/17, *Bichat*, ECLI:EU:C:2018:482, par. 46.

companies is difficult to ascertain. While the European Parliament has described the concept of 'management contract' and referred also to 'franchising contracts', there are no clear criteria or categories of contracts giving rise to a degree of control that warrants the application of information and consultation processes vis-à-vis structurally independent undertakings.

The Commission's various evidence gathering activities remained inconclusive as regards the existence of "gaps" in the scope of Directive 2009/38, as asserted by the European Parliament. Trade unions and other employees' representatives tend to stress the need for a broad definition of "control", including influence exercised by means of contract management and franchise systems[322]. Trade unions consider that the use of such contracts deprives many employees of the right to information and consultation on transnational matters, referring in particular to the hospitality sector, e.g. the fast food and hotel industries.[323] In contrast, employer representatives question whether management can appropriately be required to consult representatives of employees of structurally independent companies[324] and point out that in certain sectors, such as the chemical industry, such contracts are not used at all.[325]

In the light of the evidence gathering, the Commission is not aware of cases where the Directive's definition of control has led to a lack of information and consultation of employees on transnational matters. Furthermore, the lack of any specific established regulatory concepts for determining types of contracts that may give rise to dominant influence between structurally independent companies makes it difficult to ascertain the relevance of the alleged issue and identify the stakeholders affected by it.[326]

Moreover, the fact that the Directive does not force Member States to qualify mere contractual links between undertakings as "control" or "dominant influence" could only be considered a "gap" if the Directive's procedural framework for the information and consultation of employees would in principle be suitable to structurally independent undertakings and could effectively and consistently apply where influence is exercised only by means of contractual arrangements. However, the practical feasibility of applying transnational information and consultation requirements in such a context is highly doubtful. Where contractually linked companies are not integrated into the corporate governance structure of a dominant undertaking, it is not clear how the latter could ensure a balanced representation of the employees in its EWC or the adherence of its various contractual partners with the internal procedural provisions for the information and consultation of employees on transnational matters.[327] For instance, it would be difficult to establish a framework for EWC members to disseminate information on transnational matters to employee representatives or the workforce in structurally independent undertakings, as no internal channels exist in that relationship. National authorities and legal experts have pointed out that applying the Directive's requirements

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[322] See e.g. ETUC reply to the first phase of the Social Partner Consultation on a possible revision of the European Works Council Directive (2009/38/EC), 22 May 2023, p. 5; results of the evidence gathering workshops held with employees' representatives for the study supporting this impact assessment in ICF(2023), Section 5.3.2.1.
[323] ICF(2023), Section 5.2.2.2.
[324] Ibid.
[325] Ibid.
[326] Ibid
[327] Ibid, Section 5.2.2.3.

to undertakings linked only by contract – rather than ownership of statutory control – would not be coherent with the company law-based approach established e.g. in the BE, DE, ES, FR, IE, PL, NL and SE laws, which do not provide for worker involvement mechanisms between structurally independent companies.[328] In addition, it stands to reason that requiring information and consultation of employee representatives external to the corporate structure of Union-scale undertakings would exacerbate management's confidentiality concerns and might prompt a more restrictive approach to informing EWCs.

Accordingly, in the targeted interviews carried out for the supporting study, EU and national employers' organisations considered it impractical to extend EWC rules to contractually linked businesses, such as franchises, as corporate structures vary considerably according to each company and sector. Legal experts concurred that such an extension of the scope would be very complex to legislate as it would need to take into account the complexity of different corporate structures. National authorities interviewed confirmed that this measure could cause legal problems, highlighting for instance the separation of franchisers and franchisees in staff management. Likewise, in the workshops held for the same study with EWC and management representatives, the participants in both stakeholder groups indicated that extending the scope of the EWC Directive to undertakings linked by contractual arrangements and franchising poses practical challenges.

In light of these considerations, the fact that the Directive's definition of control does not refer specifically to influence exercised by means of contracts between structurally independent companies, rather than being a "gap", is consistent with the rules and requirements laid down in that Directive.

1.2. Reduce the negotiation deadline

The recast Directive provides that where the central management and the SNB are unable to conclude a European Works Council agreement within 3 years of the request, an ad hoc European Works Council based on subsidiary requirements is created.[329] According to available data, there are currently 20 active EWCs based on subsidiary requirements, representing 2% of the overall population of EWCs.[330]

The European Parliament proposed to shorten the time limit for negotiating EWC agreements from three years to 18 months. However, stakeholder feedback gathered by the Commission has not borne out the underlying assumption that "the three-year delay following a request before the subsidiary requirements apply, in the event of a failure to conclude an agreement, is excessive, is often not used effectively and is to the disadvantage of workers". On the contrary, in reply to the first stage consultation of social partners, ETUC takes the view that the existing 3-year negotiation period is appropriate, arguing that proper coordination, training and agreement on common demands take time. CESI submitted a more nuanced view, suggesting that negotiations can be concluded in a shorter timeframe "if both sides are willing and engage constructively". The latter condition implies that the 3-year period may indeed be needed

[328] ICF(2023), Sections 5.2.2.3. and 5.2.2.4.
[329] Article 7(1).
[330] ETUI database, 2023.

if controversies arise during the negotiations. The employer organisations responding to the first stage consultation also consider that negotiations of an EWC agreement can legitimately take up the timespan available in accordance with the existing provisions of Directive 2009/38/EC. For instance, CEEMET recalls that according to the Commission's implementation report of 2018, it takes on average 2 to 3 years from the establishment of the special negotiating body to conclusion of the EWC agreement. HOTREC cautions that some topics require long discussions and subsidiary requirements should apply only when strictly necessary.

In the targeted interviews carried out for the supporting study, stakeholders ranging from employee representatives to employer organisations and national authorities stressed the importance of allowing sufficient time and flexibility for parties to negotiate agreements, although in a workshop with EWC representatives, participants stated that it is unlikely that a better agreement will be achieved after three years if the negotiations do not make progress within a timeframe of 18 months.

Given that the Directive sets out minimum requirements and creates no obstacle to negotiations concluding earlier than 3 years, and in view of the fact that negotiations have legitimately taken 3 years in the past, it is not in the view of the Commission services appropriate to reduce this timeframe.

1.3. Giving assistance of SNBs by trade union experts priority over other experts of choice

Pursuant to the third subparagraph, 1st sentence, of Article 5(4) of Directive 2009/38/EC, the SNB may request, for the purposes of the negotiations, assistance from experts of its choice which can include representatives of competent recognised Union-level trade union organisations. The European Parliament recommended to amend that provision to entitle the SNB to "assistance from representatives of competent recognised Union-level trade union organisations and, if needed, further experts of its choice". Such an amendment would effectively limit the SNB's choice of experts that it can consult in a first step. The current wording of the Directive does in no way prevent SNBs from involving trade union experts, but it does not require them to prioritise trade union representatives. The Commission's evidence gathering activities have not yielded strong indications that this existing solution leads to issues in practice. Indeed, the 2018 Commission evaluation reported that the use of experts in negotiations increased (to nearly 70 %) under the recast rules and was considered helpful in providing advice on the legislation also in sharing expertise encountered by other existing EWCs.[331] The study supporting this impact assessment reported evidence suggesting that at least in certain cases, employee representatives prefer to consult independent experts instead of trade union representatives for the purposes of negotiating EWC agreements.[332]

2. MEASURES DISCARDED FOR OTHER REASONS

2.1. Automatically treating Union-scale undertakings with 'voluntary agreements' as undertakings with an EWC

[331] SWD(2018) 187 final, p. 38.
[332] ICF(2023), Section 5.2.2.3.

Pursuant to Article 14(1)(a) of Directive 2009/38/EC, the obligations arising from the Directive currently do not apply to Union-scale undertakings or groups in which an agreement covering the entire workforce and providing for the transnational information and consultation of employees has been concluded, on a voluntary basis, "pursuant to Article 13(1) of Directive 94/45/EC", that is to say before the implementation deadline for that latter Directive (22 September 1996). The Commission proposes to remove this exemption of undertakings with 'voluntary agreements' (policy option 1a).

The European Parliament recommended that, following the removal of the exemption, all such voluntary agreements "*shall fall within the scope of [Directive 2009/38/EC] without any obligation to renegotiate*". However, this solution is not legally feasible. Information and consultation bodies based on voluntary agreements do not fall under the definition of 'European Works Council' in Article 2(1)(h) of the Directive, as they were not established in accordance with Article 1(2) or requested in the manner laid down in Article 5(1). The setting up of EWCs is not obligatory in Union-scale undertakings. If there is no request to that effect by the required number of employees or employee representatives, no negotiations take place. The Directive explicitly leaves the choice to initiate negotiations for the establishment of an EWC to employees (or their representatives) and central management. An automatic application of the requirements of the Directive with respect to voluntary agreements, which were concluded outside the scope of EU law, cannot be reconciled with the Directive's definition of 'European Works Council' and the parties' autonomy to decide on the establishment of an EWC or some other form of information and consultation procedure.

Following the removal of the exemption, the employees and management of undertakings previously exempted by virtue of Article 14(1)(a) can, however, request and initiate negotiations of an EWC agreement in accordance with Article 5(1), which would replace the transnational information and consultation body based on the previous voluntary agreement.

2.2. Requirement to consult EWCs before the end of the information and consultation procedure at national or local level

Pursuant to Directive 2009/38/EC, information and consultation of EWCs is to be linked to those of the national employee representation bodies, but not affect the responsibilities of national employee representatives and the information and consultation procedures applying to them.[333] Arrangements to that effect are to be defined by agreement, in such a way that they respect the competences and areas of action of the employee representation bodies, in particular with regard to anticipating and managing change. Failing that, consultations at both European and national levels have to be ensured in case of restructuring.[334]

The European Parliament recommended to amend the Directive to introduce a requirement for EWCs to be consulted before the end of the consultation procedure at national/local level with respect to national matters forming part of a transnational issue, "with the aim of delivering an opinion before the end of the consultation procedure at the relevant level". As confirmed by case law in the UK, the Directive is currently silent on

[333] Article 12(4).
[334] Articles 12 and 6(2)(c), recitals 29, 37-38.

the sequencing of information and consultation at different levels.[335] This is consistent with the recital 37 of Directive 2009/38/EC, which states that opinions expressed by the EWC should be without prejudice to the competence of central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and/or practice. Recital 38 stresses that Directive 2009/38/EC should be without prejudice to the information and consultation procedures referred to in Directives 2002/14/EC, 98/59/EC and 2001/23/EC. These recitals reflect the need for flexibility in the Directive, to avoid incompatibilities with information and consultation requirements at national/local level, which may arise by virtue of those directives. Indeed, a 2015 Eurofound study[336] has identified a variety of situations in the Member States as to how the process of information and consultation of the EWC is linked to local-level information and consultation. For example, the existence of co-determination rights, the possibility to apply for injunctions or sanctions to enforce local-level information and consultation rights may influence the way Member States and social partners at each level perceive the issue.[337]

Imposing a fixed sequencing of information and consultation at national and transnational level could lead to incoherences and frictions between the respective procedures. Where the consultation concerns an urgent matter, requiring that the EWC be consulted before the end of the consultation at national/local level could lead to delays and hamper the decision-making process.[338] Indeed, in the targeted interviews carried out for the supporting study[339], EU and national employers' associations considered that EWC consultations taking place simultaneously with national consultations could make the whole procedure lengthier and more complex and even pose legal risks.

2.3. Penalise non-compliance with the Directive by exclusion from public contracts and subsidies

Where an undertaking infringes Directive 2009/38/EC, the European Parliament recommends providing for the exclusion of undertakings from public benefits, aid or subsidies, including EU funds, and from participating in a public contract. While the Commission has considered and assessed a number of other policy measures with a view to strengthening the enforcement of the Directive, these specific penalties proposed by the European Parliament were discarded as disproportionate and intruding inappropriately on other fields of Union policy. Co-opting state aid and public procurement law as an enforcement tool for unrelated policy requirements raises serious issues of coherence. Conditionality requirements are always related to the purpose of the instrument to which they give access.

2.4. Decision-making bodies capable of delivering decision 24/7

In reply to the social partner consultation, the ETUC called for a right to a nullification of company decisions in the event of recurrent breaches of EWC rights. According to the

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[335] Central Arbitration Committee (UK), Oracle, No EWC/17/2017, para. 89 et seq.
[336] Dorssemont F., Kerckhofs P. (2015) Linking information and consultation procedures at local and European, p. 1.
[337] SWD(2018)187, p. 29.
[338] ICF(2023), Section 5.2.2.2.
[339] Ibid

ETUC, such a system requires that an administrative or judicial system is in place that is accessible 24/7 and allows for decisions on the matter within 48 hours. Accordingly, the ETUC called on the Commission to integrate such a system in its proposal.

Although the initiative pursues the objective of improving the enforcement of Directive 2009/38/EC through effective remedies and penalties, these proposed procedural requirements have been discarded without detailed assessment, because they involve a level of detail and prescriptiveness that would be hard to reconcile with the Union's mandate under Article 153(2)(b) TFEU to adopt "minimum requirements for gradual implementation". Moreover, imposing an emergency adjudication system especially for the nullification of company decisions taken in violation of Directive 2009/38/EC would be disproportionate as it clearly goes beyond what is required to ensure an effective enforcement of the Directive. Other, less intrusive, means of penalising infringements can be sufficient.

2.5. Specify in Directive 2009/38/EC that one or two working languages can be defined to reduce costs of translation and simultaneous interpretation)

In response to the social partner consultation, Ceemet urged the Commission to propose a reduction of administrative burden on companies. For example, by avoiding that the employer is responsible for arranging the interpretation facilities. Ceemet suggested to provide for the possibility to hold EWC meetings in a group's "official language".

The Commission aims minimise costs and burdens for companies and to strike an appropriate balance between their interests and those of employees' representations. Nevertheless, in accordance with the Directive's objective to ensure an effective information and consultation procedure, it is appropriate that the practical arrangements for the information and consultation of employees be determined by the parties to the EWC agreement in line with the specific needs and circumstances in each Union-scale undertaking or group. In some cases, using a single language in EWC meetings may be efficient and appropriate, while in others, it may make information and consultation inaccessible and ineffective for parts of the employee representatives and the workforce. Laying down a one-size-fits-all approach regarding language regimes would therefore not be coherent with the purpose of the Directive.

2.6. Recognising the legal personality of EWCs

The European Parliament called on Member States to grant legal personality to EWCs and SNBs and include such a measure in the Commission's impact assessment. This call was supported by the ETUC in response to the social partner consultation.

The Commission endorses the objective to ensure that rightsholders under the Directive have effective access to justice and remedies. However, to achieve that objective, it is not necessary to seek to amend Member States' basic provisions on legal personality. It is sufficient for employees' representatives, EWCs and SNBs, or their members on their behalf, to have the capacity to bring legal actions invoking the rights laid down in the Directive. Granting them full legal personality would go far beyond providing for such capacity, involving the ability to act in law in the same ways as natural persons, such as holding ownership, entering into various kinds of contracts, etc. Such a measure would therefore exceed the Union's mandate to adopt "minimum requirements for gradual implementation", under Article 153(2)(b) TFEU.

ANNEX 12: IMPACTS OF THE POLICY OPTIONS

1. HORIZONTAL CLARIFICATIONS – FOR ALL POLICY AREAS – REGARDING CERTAIN IMPACT CATEGORIES

The following types of impacts are not discussed in the subsequent detailed overviews of impacts for each policy area (see Sections 2-5 of this Annex), either because the initiative would not have any relevant or foreseeable effects regarding the respective type of impact, or because the same considerations apply across all policy areas.

Type of impact and relevant stakeholder group	Baseline	Horizontal considerations for all policy areas
Impacts on consumers, in particular price effects	The cost of setting up and running EWCs represents a very small share of multinational companies' turnover. The average overall costs per negotiation were estimated at ca. EUR 148.000.[340]The estimated set-up costs represent approximately 0.0006 % of the average global turnover of Union-scale undertakings with an EWC.[341] The average overall costs linked to the operation of an EWC are estimated at EUR 300.000,[342] representing approximately 0.0012 % of the average global turnover of Union-scale undertakings with an EWC. Of these average costs, costs of one plenary meeting and an average annual training costs	***No expected impacts.*** None of the potential policy measures considered by the study is expected to generate a large increase in the costs of setting up or running EWCs. Likewise, possible increases in efficiency and/or cost savings would account only for small percentages of EWC-related costs in the baseline. Given that these baseline costs represent themselves only a very small share of turnover, and do not affect companies' competitiveness, it is highly unlikely that such costs would be passed on to consumers. Moreover, even if 100% would be passed on through consumer prices, *quod non*, changes in EWC-related costs would be too small to affect the financial balance of multinational companies, and to be reflected in a change of prices.

[340] ICF, 2016, estimates adjusted to today's prices. See Annex 4 'Analytical methods' (Section 4.3.).
[341] The estimated annual global turnover for undertakings with EWCs or voluntary agreement is € 24 billion (average) (ICF, 2023).
[342] ICF, 2016, estimate adjusted to today's prices. See Annex 4 'Analytical methods' (Section 4.4.).

Type of impact and relevant stakeholder group	Baseline	Horizontal considerations for all policy areas
	(per company with an EWC) are estimated to account for ca. EUR 60 000.[343] Therefore, it can be ruled out with a sufficient degree of certainty that these costs have noticeable effects on consumer prices.	NB. In the case of **policy option 4c**, which involves pecuniary sanctions up to 4% of global annual turnover and the possibility to suspend company decisions, plausible impacts on undertakings' competitiveness must be considered (see under heading 5 below). The theoretical possibility that such impacts entail also noticeable effects on consumer prices can therefore not be ruled out categorically for that policy option. However, such price effects appear unlikely even in the case of option 4c, because it is reasonable to assume that fines would in practice remain far below the maximum thresholds in most cases, and competitive pressures on sanctioned undertakings would disincentivise them from passing enforcement costs on to consumers.
Environmental impacts	Evidence shows that EWCs do not have any noticeable environmental impacts. EWC meetings usually require representatives from different Member States to gather in a central location, which can involve air travel or long-distance commuting. This results in greenhouse gas emissions contributes to climate change. Nevertheless, given the limited number of EWC plenary meetings per year, and the increased use of digital channels for some meetings (e.g. Select Committees meetings, ad hoc meetings), carbon emissions related to the operation of EWCs relevant to carbon emissions are negligible: the estimated average number of cross-border air passengers	***No expected impacts.*** Out of the policy measures considered for this initiative, only one implies theoretical environmental effects compared to the baseline: requiring 2 instead of 1 mandatory annual plenary meeting of EWCs operating under subsidiary requirements. This measure could potentially entail increased carbon emissions by EWC members and management traveling to in-person meetings. However, the additional business-related travel that this measure would generate is very low, given the small number of EWCs subject to subsidiary requirements and the possibility to hold such meetings remotely if parties agree to do so. Therefore, it is unlikely that this policy measure would influence in any noticeable way the number of plane rides within the EU, and thus have any relevant environmental effect on carbon emissions. The other policy measures considered clearly have no foreseeable effect on the environment.

[343] See Annex 4 'Analytical methods' for detailed explanations regarding these estimates. As the estimates of overall costs were based on a rather small sample, certain cost components were calculated based on a different methodology for this impact assessment, to ensure that the conclusions drawn are sufficiently robust. The results of the two separate sets of estimates are consistent, as the elements for which no new calculation was made (in particular, employees' time dedicated to EWC work) plausibly account for the difference.

Type of impact and relevant stakeholder group	Baseline	Horizontal considerations for all policy areas
	related to EWC plenary meetings is about 40 500, which corresponds approximately to 0.007% of the over 615 million air passengers carried at EU level in the first nine months of 2023. Moreover, as information and consultation bodies, EWCs do not have co-determination powers allowing them to decisively influence undertakings' environmental policy, there is no certain basis for assuming a causal link between their opinions and the content of company decisions. While it is plausible that EWCs' opinions may in certain cases reinforce or expedite measures to reduce undertakings' carbon footprint, it is not possible to make any specific assumptions about such effects.	
Impacts on SMEs (indirect economic impacts)	Given the thresholds set out in the definition of 'Community-scale undertakings' in the recast Directive, the requirements under the Directive do not apply to SMEs. The theoretical possibility cannot be ruled out that the consultation of EWCs may in some cases alter the outcome of company decisions on transnational matters, with indirect implications for SMEs in the supply chain. However, given that EWCs do not have co-determination powers and the recast Directive specifically preserves' management's autonomous decision-making prerogative, there is no sufficient basis for making specific or general assumptions about their impacts on SMEs.	***No expected impacts.*** For similar reasons as set out in the baseline, the policy options have no foreseeable impacts on SMEs. Certain measures under consideration, such as the requirement for a reasoned response by management prior to the adoption of a decision on transnational matters, would improve the conditions for a genuine dialogue with EWCs on transnational matters and may thereby increase the likelihood that EWCs' opinions have an influence on the content of management decisions. However, there is no sufficient basis for assessing this hypothetical possibility in terms of specific indirect economic impacts of the policy options.
Transposition costs	n/a	While the non-legislative policy **options 2a, 3a, 4a** would not require

Type of impact and relevant stakeholder group	Baseline	Horizontal considerations for all policy areas
for Member States		mandatory transposition measures, some Member States may choose to clarify their national legislation in light of the Commission's interpretative guidance or recommendations.[344] This would entail the usual costs of the respective national legislative procedure; there is no indication that the envisaged clarifications of existing rules would pose particular implementation challenges. However, there is no sufficient basis for making assumptions about the take-up rate of the non-legislative options. The other, **legislative policy options** all involve measures – considering also the relevant accompanying measures – that would require adaptations to the national legislation in all or most Member States. In the case of some individual policy measures, certain Member States have already enacted compliant provisions[345] and would thus not have to adopt additional provisions to implement those particular measures.[346] However, despite such differences regarding the need for legislative amendments in relation to certain measures, there are no grounds for assuming that transposition

[344] For example, interpretative guidance regarding Art. 7(1), second indent, of the recast Directive under option 2a (to the effect that management's failure to commence negotiations within six months is sufficient to trigger the application of the subsidiary requirements, even if there is no express refusal) might prompt at least some of the 22 Member States that transposed the ambiguous wording of the Directive verbatim into their national laws to amend their legislation.

[345] For example, certain Member States already limit the possibility of imposing confidentiality on EWCs to business and trade secrets (AT, DE, FI, HR, HU, LT), to information on the financial position of the group or the undertaking, which is not publicly available (FI), information relating to the security and the corresponding security system (FI) and some Member States already apply the criterion of a protecting the legitimate interest of the undertaking for applying the confidentiality clause (BG, CZ, SE) or when the "interests of the company so demand" (DK). For these Member States, introducing the requirement of confidentiality being required to safeguard the undertaking's legitimate interest (options 3b and 3c) would not entail the need to amend the national law. In contrast, other Member States have transposed Article 8(1) without setting additional conditions for a confidentiality obligation (CY, ES, IE, LU, LV, MT, NL, PL, RO, SI, SK). Accordingly, these Member States would have to amend their legislation to implement this element of options 3b and 3c.

[346] For example, under NL law, SNBs are already entitled to the coverage of reasonable legal costs, so the clarification of the recast Directive in this respect (options 2b and 2c) would likely not require an amendment of that national law. Such differences between national EWC legislations are linked to the fact that the recast Directive – in accordance with the relevant legal basis – only sets minimum requirements for gradual implementation.

Type of impact and relevant stakeholder group	Baseline	Horizontal considerations for all policy areas
		costs would vary significantly between Member States for reasons linked to the substantive content of the policy options. To the extent that, in accordance with the relevant national law, implementing measures in the social policy field require the consultation or even agreement of social partners at national level (and taking into account the opposing interests and views of social partners in this policy area), the most far-reaching policy options could entail greater transposition challenges. This would for example be the case for option 4c, introducing high maximum pecuniary sanctions and potentially disruptive remedies (injunctions against the implementation of management's decisions). The evidence gathering on transposition costs informing this impact assessment involved interviews with national authorities and experts as well as legal analyses of all national frameworks. It concluded that considering the complexity of discussions, the large number of stakeholders involved, and the need for consultations with social partners, the transposition could be protracted. Nevertheless, given the difficulty to quantify the time costs and the heterogeneity of legal frameworks, a sufficiently robust monetisation of transposition costs proved impossible. As the identified challenges are not extraordinary for legislative initiatives in the social policy field, it appears reasonable to assume that the transposition costs would consist in the usual costs of national legislative procedures in this field.

2. IMPACTS OF POLICY OPTIONS IN POLICY AREA 1

Type of impact and relevant stakeholder group	Baseline	Policy option 1a *(removal of exemptions)*
Economic impacts		
Compliance costs (one-off and recurrent) for undertakings with voluntary agreements	323 undertakings are concerned. Average annual costs (recurrent) for running an EWC have been estimated at ca. 300 000 EUR,[347] representing approximately 0.0012 % of the average global turnover of Union-scale undertakings with an EWC.[348] Of these costs, the costs of one plenary meeting, and annual costs training (per company with an EWC) are estimated to account for EUR 60.000 on average. The average annual costs (recurrent) of operation EWCs or bodies established before the recast were estimated in 2008 at €272.000 EUR (including management and employee time).[349] In today's prices, this amount would be €	**Negligible.** While the option does not require obligatory renegotiation of voluntary agreements, the removal of the exemptions can trigger requests for negotiations for an EWC under the Directive. Per undertaking (323 undertakings are concerned), potential incremental costs of new negotiation represent a negligible share of the average global turnover for undertakings with an EWC: ca. EUR 148 000 (=0.0006 % of turnover).[350] Furthermore, the re-negotiations could take place within the framework of the regular re-negotiation, entailing no or limited costs compared to the baseline. It is not possible to establish a reliable estimation of the number of requests for an EWC, as a result of removing the exemptions. Given the overall positive view of stakeholders on the functioning of voluntary agreements, new negotiations are not expected in all cases. It is also not expected that average costs of EWC's operation under the recast would amount to higher or substantially higher costs than those for voluntary agreements.

[347] ICF(2016) estimate adjusted to today's prices. See Annex 4 'Analytical methods' (Section 4.3).
[348] The estimated annual global turnover for undertakings with EWCs or voluntary agreement is € 24 billion (average) (ICF, 2023).
[349] Impact Assessment 2008 (SEC(2008)2166). The estimate was based on a small number of interviews. No distinction was made between the voluntary (pre-Directive) information and consultation bodies and EWCs based on the 1994 Directive. Given the considerable flexibility provided by the Directive, very large range of annual costs was reported by EWCs – from as little as €7 500 to €2.3 million/year.
[350] See above table 1. 'Horizontal clarifications – for all policy areas – regarding certain impact categories'.

Type of impact and relevant stakeholder group	Baseline	Policy option 1a *(removal of exemptions)*
	362.070.	
Compliance costs (one-off and recurrent) for undertakings with Article 14 agreements	28 undertakings are concerned. Average annual costs (recurrent) for EWCs and information and consultation bodies established before the recast Directive were estimated in 2008 €272.000 EUR including management and employee time. In today's prices, this amount would be € 362.070.	**Negligible**. Renegotiations would be required of undertakings with Article 14 agreements (28) if they do not already comply with the new requirements. Average costs of renegotiations as a result of policy option 1a could not be reliably estimated. First, renegotiation costs would depend on length and number of meetings needed. These incremental one-off costs are estimated to represent a negligible share of the average global turnover for undertakings with an EWC. 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 monetise certain costs linked to meetings (ca. EUR 18 400 per meeting[351]) 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. Second, the re-negotiation could take place within the framework of the regular re-negotiation taking place on average every 5 years, entailing no or limited costs compared to the baseline. Of the total of 28 undertakings with 14 Agreements, evidence suggests that most of them (16 out of 28) are already aligned with the requirements of the recast under the baseline scenario.
Impacts on the functioning of the internal market	No clear obstacles to the effective functioning of the internal market have been identified under the baseline. However, the exemptions of certain Union-scale undertakings from the common	**Negligible**. Ending the exemptions would lead to a simplified and less fragmented legal framework at EU level. However, policy option 1a does not alter the voluntary nature of EWCs. Therefore, take up of EWCs under the revised rules cannot be reliably estimated. It is not expected that parties to all 323 undertakings with

[351] See Annex 4 'Analytical methods' (Section 4.3.). The calculation of estimate includes time costs of management and employees, travel and accommodation costs and interpretation costs. It does not include do not include certain cost factors, such as the time invested for the preparation of the renegotiation meetings, the costs of possible preparatory meetings prior to the renegotiation, some possible overhead costs, and the use of expertise by the EWC and/or the management.

Type of impact and relevant stakeholder group	Baseline	Policy option 1a *(removal of exemptions)*
	minimum requirements on transnational information and consultation have created a complex and not entirely consistent legal framework in this area, which would be perpetuated in the baseline scenario.	voluntary agreements will opt for a new EWC. In any case, the available evidence does not suggest large differences in overall functioning and operational costs of the voluntary agreements and EWCs agreements.
Social impacts		
Impacts on social dialogue (affecting employees of exempted undertakings)	There is no conclusive evidence that the operation of voluntary agreement is ineffective. The voluntary agreements are considered by the management and EWC representatives as overall effective, as long as efforts are made to build a good working relationship between the parties.[352] Voluntary agreements are nevertheless less likely to define key terms for transnational information and consultation, such as transnational matters.[353]	**Positive**. While there is no conclusive evidence that the operation of voluntary agreements is less effective than of agreements under the recast Directive, ending the exemptions would ensure the equal application of minimum rights and obligations to Union scale undertakings and their EU employees. Contrary to voluntary agreements, rights of EWCs subject to the Directive are enforceable under EU law. Ca. 5.4 million employees[354] could benefit from this alignment of the minimum rights in case all undertakings with voluntary agreements (323) would instead establish EWCs operating under the recast Directive. In the online survey, employee/EWC representatives were overwhelmingly in favour of removing the exemptions (81.7%) compared to only 13.2% of respondents on behalf of management (see Annex 2).
Impacts on employment	There is no evidence that the existing exemptions have either positive or negative effects on the levels of employment.	**Inconclusive**. Despite the general evidence that well-functioning EWCs can deliver tangible economic benefits to undertakings, there is no sufficient basis for concluding that the removal of the exemptions will affect employment. Such effects depend on various uncertain factors external to this initiative, such as the dynamics and functioning of social dialogue in the respective undertaking, and whether parties choose to set up an EWC instead of a 'voluntary agreement' on transnational

[352] ICF(2023), Section 4.2.1.1.
[353] De Spiegelaere S. (ETUI) (2016) 'Too little, too late? Evaluating the European Works Councils Recast Directive', p. 58 and 64. Available online.
[354] Estimated average number of EU employees per undertakings with an EWC is 16.600. Cf. Annex 4.

Type of impact and relevant stakeholder group	Baseline	Policy option 1a *(removal of exemptions)*
		information and consultation.
Impacts on competitiveness		
Impacts on cost and price competitiveness (exempted undertakings) Impacts on international competitiveness (exempted undertakings) Impacts on the capacity to innovate (exempted undertakings)	No such impacts identified under the baseline The ratio between the average annual turnover of companies with an information and consultation body (EWC or voluntary agreement) and the costs of setting up and running the EWCs or information and consultation body is extremely low.	**Negligible**. The possible compliance costs for businesses represent a small share of the average turnover. The estimated average costs of setting up an EWC (one-off) accounts for ca. 0.0006% of the average global turnover of undertakings with an EWC, and the estimated average costs of operating an EWC (recurrent) account for ca. 0.0012% of that turnover. There is no indication that replacing voluntary agreements with EWC agreements would lead to substantial increases in the operating costs. The time spent in the re-negotiations should also be limited. There is no evidence that the procedure of establishment or an operation of an EWC under the recast Directive would negatively impact competitiveness of companies. On the other hand, studies have shown that a structured employee involvement is linked to better establishment performance.[355] Nevertheless, potential positive impacts of the policy option 1a on competitiveness of companies cannot be estimated with any degree of certainty.
Impacts on fundamental rights		
Impact on the right to information and consultation / right to access to justice and an effective remedy (employees in exempted undertakings)	See description of baseline social impacts. Potential challenges regarding access to justice and effective remedies, due to a lack of a binding minimum requirements	Potential better enforceability if agreements are renegotiated under Union rules.

[355] Eurofound (2019) European Company Survey 2019, Workplace practices unlocking employee potential.

3. IMPACTS OF POLICY OPTIONS IN POLICY AREA 2

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
Economic impacts				
Compliance costs for undertakings setting up an EWC (one-off)	The undertaking bears the costs of setting-up of the EWCs (setting up SNB, cost of meetings, expertise, training for employee representatives, and any other necessary costs related to the negotiations of the EWC agreement.) EWCs or transnational information and consultation bodies have been established in 1001 Union-scale undertakings (of those 644 are EWCs under the recast or previous 1994 Directive). It is	**Possible negligible costs.** Recourse to an interpretative guidance could lead to negligible additional costs, in particular legal costs, compared to the baseline. The option could at the same time lead to reduction of disputes. The lack of data does not allow for precise estimations.	**Possible negligible costs.** Policy option 2b could lead to higher negotiation costs for the setting-up of future EWCs compared to the baseline, as well as possible partial redistribution of certain costs previously borne by other stakeholders – in particular trade unions – to undertakings. Indeed, the legal clarification that central management have to bear reasonable costs of legal advice only exists in NL and it is therefore possible that such clarification at EU-level would lead to additional	**Possible negligible costs.** For access to legal expertise, the impact is the same as under option 2b. In addition under this option, improving the gender equality in the composition of the EWCs is not expected to generate any additional compliance costs. The option avoids creating a binding quota, as the latter could lead to implementation challenges.[360]

[360] A majority of EWC representatives and of management representatives is against setting binding gender quotas in the EU legal framework, as this could create implementation challenges in certain sectors. Even in companies where the share of the workforce is more balanced, there might not be enough employees of the underrepresented gender interested in being an EWC member. The composition of the EWC depends on the different systems for selecting EWC representatives at the national level.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
	estimated that, in 2023, 3.970 eligible companies with a total of 31.7 million employees operated in the EU/EEA. It is estimated that new EWCs will be created at a rate of ca. 20 per year over the baseline period.[356] Taking into account dissolution of EWCs, mainly due to restructuring (mergers), net annual growth rate is estimated 9 EWCs. The average overall costs per negotiation were estimated at ca. EUR 148.000[357] representing approximately 0.0006 % of the average global turnover of Union-scale undertakings with an EWC[358].		requests for legal advice from employees' representatives in the future. The evidence suggests that policy option 2b would ensure some reduction of frequency of issues associated with unclear resourcing of SNBs to cover reasonable legal costs[359]. Although the lack of data does not allow for a precise estimation of these costs, they should be limited given the small average share of the negotiation costs compared to the global annual turnover. The costs of setting up as a share of the average global turnover are estimated at 0.0006 % (one-off).	

[356] ICF(2023), Annex – Section 3 (Data mapping).
[357] ICF, 2016, estimates adjusted to today's prices. See Annex 4 (Section 4.3.).
[358] The estimated annual global turnover for undertakings with EWCs or voluntary agreement is € 24 billion (average) (ICF, 2023).
[359] ICF(2023), Section 4.2.1.2.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
	43.8% (102 out of 233) of survey respondents have reported issues during the set-up phase (majority of those were employee representatives; only 2 managers). Of employee representatives who reported issues, 76 % raised issue of lack of expertise. No data is available on coverage of legal costs specifically.			
Compliance cost (adjustment costs) for undertakings with an existing EWC (recurrent)	678 EWCs have been established under the Directive (including the recast Directive and 1994 Directive). They are renegotiated on average every 5 years.[361] Average costs of renegotiation could not be reliably quantified.[362] Evidence	**Negligible costs**. Although policy option 2a aims to apply to future procedures for setting up of an EWC, the guidance could potentially also bring benefits for EWCs (613)[364] renegotiating their agreements with the involvement of an SNB. According to the evidence gathered[365], the EWC agreements are	**Negligible costs**. Although policy option 2b would only apply to future procedures for setting up of an EWC, it will also apply to the renegotiations of EWC agreements (613), where such renegotiations involve a setting up of an SNB. In the absence of any data about the number of SNBs having	**Negligible costs**. Although policy option 2c would mainly apply to future procedures for setting up of an EWC, it will also apply to the renegotiations involving a SNB. For access to legal expertise, the impact is the same under option 2b.

[361] ICF(2023), Annex I – Section 3 (Data mapping).
[362] 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 4.3.).

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
	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. Undertakings bear operating expenses of EWCs. The EWC agreements determine the financial and material resources to be allocated to the EWC. (In absence of EWC agreement, subsidiary requirements provide minimum requirements with regard to coverage of costs by the management). There is no available evidence on potential lack of resources of employee representatives during renegotiations.	renegotiated every five years on average. However, it is likely that only a small share of these renegotiations involves an SNB. Furthermore, the non-binding status of this guidance could limit its effects. In the absence of relevant data (e.g. legal costs, share of renegotiations not provided with the necessary and required legal expertise), it is not possible to monetise the impact. However, it can be reasonably assumed that those incremental costs would only represent a limited share of the current re-negotiation costs, which are assumed to be very limited compared to the average global annual turnover of Union-scale undertakings and would concern a very limited number of undertakings due to the non-binding status of the	experienced issues due to a lack of access to legal expertise, it is not possible to monetise this impact. However, it can be reasonably assumed that those incremental costs would only represent a limited share of the current re-negotiation costs, which are assumed to be very limited compared to the average global annual turnover.	In addition, under this option, compliance with new requirements for gender balance will be part of the regular re-negotiation of agreements (i.e. no specific renegotiation would be required), implying no additional costs against the baseline.

[364] While the total number of EWCs based on agreements is estimated at ca. 678, the legal requirement on central management to bear reasonable costs of legal advice exists in NL and it is therefore expected that impacts would not occur in relation to undertakings with EWCs (ca. 65) established under the NL legislation.
[365] ICF(2023), Annex – Section 3 (Data mapping).

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
	Composition of EWCs is not gender-balanced in most EWCs. In the ICF survey,[363] 62 % of respondents indicated that men account for more than 60 % of their EWC members. A mere 2 % reported the same for women.	guidance.		
Improved market efficiency (direct benefit) for undertakings setting up an EWC	The costs of setting up EWCs are negligible in relation to the turnover of the companies.	**Negligible benefits**. During the setting up of a new EWC (20 undertakings/year) or renegotiations of existing EWCs agreements, the interpretative guidance could speed up the negotiation process to some extent and thereby reduce costs slightly, as the number of meetings or disputes could be marginally reduced. However, the non-binding nature of the guidance limits its potential effects. Given the overall negligible costs in comparison to turnover, the potential benefits are negligible.	**Negligible benefits**. During the setting up of a new EWC (20 undertakings/year) or renegotiations of existing EWCs agreements, the undertakings would benefit from the legal clarify provided by policy option 2a regarding the coverage of SNB's legal costs. Where SNBs experience legal problem during the negotiation, this legal clarity would allow for ensuring the required legal expertise and avoiding discussions about the scope of the SNB's costs that are covered, leading to a more efficient	**Negligible benefits**. Same impacts as under option 2b. No significant direct impacts on market efficiency are expected as a result of an objective of gender-balanced composition of EWCs. Overall, studies have found a positive relationship between female representation and business performance.[366] There can be a potential indirect link between a more gender-balanced composition of information and consultation bodies and the

[363] ICF(2023), section 5.1.2.1.
[366] European Parliament (2021). 'Women on Boards Policies in Member States and the Effects on Corporate Governance'.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
			negotiation. By its nature (uncertainty about need for legal assistance), the magnitude of this positive impact cannot be quantified. Given the overall negligible costs in comparison to turnover, the potential benefits are expected to be also negligible.	performance of companies.
Social impacts				
Establishment of social dialogue (impacts on workers and undertakings)	EWCs or transnational information and consultation bodies have been established in 1001 Union-scale undertakings (of those 644 are EWCs under the recast or previous 1994 Directive). It is estimated that, in 2023, 3.970 eligible companies with a total of 31.7 million employees operate in the EU/EEA. It is estimated that new EWCs will be created at a rate of ca.	**Limited benefits.** The interpretative guidance under policy option 2a is likely to reduce the time needed and contribute to a smoother process of setting up of EWCs, or of renegotiating existing agreements. A better informed, smoother negotiating process could also benefit companies / management. However, the positive effects could be hampered by the non-binding status of policy option 2a. In addition, given the overall low number of legal disputes in this policy area, the	**Moderate benefits**. Policy option 2b would allow a better access for workers' representatives to legal advice and expertise during the negotiation or renegotiation phase. Despite the binding nature of the measure, the overall expected impact is moderate (the scale of issues with regard to coverage of legal costs for SNBs is not known, but legal disputes across the policy area are not frequent[368]). A better informed, smoother negotiating process could also benefit	**Moderate benefits**. Same impacts as under option 2b as regards access to legal expertise. No substantial impacts on the establishment of EWCs are expected as a result of an objective of gender-balanced composition of EWCs. Where not possible to reach the objective of 40 % for under-represented gender (for example, due to the lack of candidates for an EWC function), the establishment of the

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
	20 per year over the baseline period.[367] Taking into account dissolution of EWCs, mainly due to restructuring (mergers), net annual growth rate is estimated 9 EWCs. 43.8% (102 out of 233) of survey respondents have reported issues during the set-up phase (majority of those were employee representatives; only 2 managers). Of employee representatives who reported issues, 76 % raised issue of lack of expertise. No data is available on coverage of legal costs specifically.	impacts under this option are expected to be limited.	companies / management (reduced risk of disputes, reduced opportunity costs).	EWC would not be prevented. In light of research showing the beneficial effects of gender balance[369], **option 2c** could have a positive effect on the quality of EWCs' non-binding opinions, and thus indirectly on management decisions on transnational matters, potentially fostering working conditions in some cases.
Quality of social dialogue (impacts on workers and	43.8% (102 out of 233) of survey respondents have reported issues during the set-	**Moderate benefits.** By its positive impact on the negotiation or renegotiation process, policy option	**Moderate benefits**. The better access to legal expertise should positively impact the quality of the	**Significant benefits.** Same impacts as under option 2b as

[368] National jurisprudence on EWC-related matters is limited (160 national cases since 1996) and fragmented per type of issue (some cases concern functioning of the agreement, some the set-up phase, some concern individual rights of employee representatives or trade union rights).
[367] ICF(2023), Annex I – Section 3 (Data mapping).
[369] See e.g. the findings of the European Institute for Gender Equality (EIGE) in a large scale 2017 study on 'Economic Benefits of Gender Equality in the European Union'.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
undertakings)	up phase (majority of those were employee representatives; only 2 managers). Of employee representatives who reported issues, 76 % raised issue of lack of expertise. No data is available on coverage of legal costs specifically. Most negotiations result in EWC agreements (only 20 EWCs operate on the basis of subsidiary requirements). Despite the existing rules requiring a balanced representation of EWCs, including with regard to gender, the gender composition of the EWCs is strongly skewed in favour of men.[370]	2a could indirectly improve the quality of the future or renegotiated EWC agreements. It could also lead a better gender-equality within these EWCs. However, the magnitude of these effects would depend on to what extend this guidance will be taken into account by the stakeholders.	future EWC agreements. Such impacts cannot be quantified due to the lack of data on coverage of legal costs of SNBs, but are expected to be moderate, as the policy measure would increase the balance of powers in the (re)negotiation.	regards access to legal expertise. Policy option 2c would also lead to a better gender balance in current[371] and future EWCs and their select committees, leading also to a better representation of workforce in terms of professions represented in EWCs (women and men may typically represent different professions in some sectors). Around 60 % of existing EWCs could benefit from this measure. Overall, it is estimated that a more balanced representation of EWCs would be beneficial for the workforce of the company as a whole and would lead to indirect wider social benefits.

[370] In the 2023 ICF survey, 62 % of respondents indicated that men account for than 60 % of their EWC members. A mere 2 % reported the same for women. 24 % of respondents said that each gender was equally represented in their EWC.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
Impacts on employment	Well-functioning EWCs can have positive impacts not only on workers' well-being, but also on labour productivity as well as on firms' profitability. It is however difficult to attribute specific outcomes in terms of employment to the rules governing the setting-up of EWCs.	**Inconclusive.** There is insufficient evidence to support any predictions regarding impacts of option 2a on employment.	**Inconclusive.** While increased legal certainty regarding the process for setting up EWCs could deliver certain cost savings, there is no indication that such economic benefits would be sufficient to translate into increased employment levels.	**Limited.** It can be expected, considering research demonstrating economic benefits of gender balance in relation to various aspects of the economy[372], that increased gender balance on EWCs will contribute, in conjunction with the general benefits of a more effective information and consultation process described above, to delivering benefits such as a higher level of employment and productivity. These benefits however cannot be quantified.
Impacts on competitiveness				
Impact on cost and price competitiveness / on international competitiveness / on the capacity to	No such impacts identified under the baseline. The ratio between the average annual turnover of companies with an information and	**Null.** Policy option 2a could entail only negligible costs for undertakings when setting up an EWC.	**Null.** Although policy option 2b could possibly entail limited additional negotiation costs in the future, the expected impact remains negligible in comparison to the	**Limited.** Given the evidence from studies showing a positive relationship between female representation and business performance, and the potential

[371] The evidence gathered indicates that EWC agreements are renegotiated every 5 years. Based on this, each EWC agreements will comply with the gender balance requirements within the reference period of 10 years.
[372] See e.g. the findings of the European Institute for Gender Equality (EIGE) in a large scale 2017 study on 'Economic Benefits of Gender Equality in the European Union'.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
innovate for undertakings setting up an EWC	consultation body (EWC or voluntary agreement) and the costs of setting up of EWCs is extremely low. The costs of setting up as a share of the average global turnover is estimated at 0.0006 % (one-off).		worldwide or EU turnover. These limited additional costs would not have any impacts on costs and price competitiveness.	contribution of more gender-balanced EWCs to the quality of management decisions, it is plausible that option 2c might somewhat contribute to fostering companies' competitiveness.
Impact on cost and price competitiveness / on international competitiveness / on the capacity to innovate for undertakings with an existing EWC	No such impacts identified under the baseline. The ratio between the average annual turnover of companies with an information and consultation body (EWC or voluntary agreement) and the costs of renegotiation of EWCs is extremely low (cf. above 'Compliance cost (adjustment costs) for undertakings with an existing EWC (recurrent)').	**Null.** Policy option 2a could entail only negligible costs for undertakings with an existing EWC during renegotiation.	**Null.** Policy option 2b would entail only negligible costs for undertakings with an existing EWC during renegotiations.	**Limited.** Given the evidence from studies showing a positive relationship between female representation and business performance, and the potential contribution of more gender-balanced EWCs to the quality of management decisions, it is plausible that option 2c might somewhat contribute to fostering companies' competitiveness.
Impacts on fundamental rights				
Impact on the principle of workers' right to information and consultation within the undertaking / right to	See description of baseline social impacts. Potential challenges regarding access to justice and effective remedies during the set up or	**Limited** benefits. Policy option 2a would further improve the quality of the future setting-up of EWC and their resulting agreements (including during the renegotiations), by	**Significant benefits**. Policy option 2b would further improve the quality of the future setting-up of EWC and their resulting agreements (including when they	**Significant benefits**. Same impacts as under option 2b.

Type of impact and relevant stakeholder group	Baseline	Policy option 2a *(Interpretative guidance, voluntary)*	Policy option 2b *(resourcing of SNBs, legal costs)*	Policy option 2c *(option 2b + objective of gender balance)*
access to justice and an effective remedy	renegotiation phase can also relate to a lack of resources to cover legal costs of employee representatives or SNBs.	facilitating SNBs' or employees representatives' access to legal advice. Given the non-binding nature of the measure, the positive impact on these is likely to be limited.	are renegotiated) by legally ensuring the coverage of reasonable legal costs incurred by the employee representatives in the set up or the renegotiation phases. Such measure would positively contribute to the quality of the dialogue and of the resulting agreements, and also to the capacity of employee representatives to access legal advice and justice.	
Impact on the principles of non-discrimination and of equality between men and women	See description of baseline social impacts. The existing lack of gender-balanced composition of most EWCs would persist.	**Negligible.** Although the interpretative guidance provides for clarifications about how to achieve a balanced gender composition of EWCs, it will not be binding and does not set a concrete objective.	**Null.** Policy option 2b does not provide for any measure related to achieving a balanced gender composition of EWCs.	**Moderate.** While there is no evidence of discrimination on grounds of sex as such in EWCs, the measure would recognise that women may not be in the same "starting position" as men, especially in certain sectors where EWCs mostly operate (manufacturing, chemical, construction). Setting gender balance objectives would entail positive impacts in favour of a more equitable environment in EWCs and contribute to better equality between men and women.

4. IMPACTS OF POLICY OPTIONS IN POLICY AREA 3

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
Economic impacts				
Adjustment costs (one-off) for undertakings with EWC: renegotiation costs	Under the baseline scenario, EWC agreements are estimated to be renegotiated on average ca. every five years[373]. Average costs of renegotiation could not be reliably quantified.[374] 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.	**Negligible**. It is unlikely that the non-binding interpretative guidance would prompt additional rounds of renegotiation in a significant number of undertakings. Even in cases where such renegotiations would take place, they would account only for a negligible share of undertakings' global turnover.	**Negligible.** Some of the measures under policy option 3b would require an adaptation of existing EWC agreements in order align them with the new requirements under the revised recast Directive. For instance, the requirement for these agreements to address the question of access to expertise, coverage of training costs (including expenses) and legal costs would necessitate renegotiations where those issues are not already covered. In the absence of detailed information about the content of all existing EWC agreements, it is however not possible	**Negligible to moderate.** Policy option 3c covers the same measures as policy option 3b, except for: - the concept of transnational matters where policy option 3c provides for an extension of the concept and a requirement for management to justify that a matter is not transnational if it disputes the need to inform and consult the EWC on that ground; - a more far-reaching right of EWCs to involve experts of their choice at the cost of the undertakings; - stricter limitations of undertakings' right to impose confidentiality of

[373] See Section 4.5. of Annex 4.

[374] 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 4.3.).

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
			to estimate with certainty the number of undertakings that would have to set up renegotiations.[375] Given that EWC agreements are revised on average every five years and that there would be a period of deferred application of the revised requirements, it is likely that the necessary adaptations of EWC agreements to align with the changes envisaged under policy option 3b could in some cases be agreed as part of the regular renegotiation process, entailing	information or withhold information from EWCs. According to the evidence gathered, it is possible that these additional measures would make renegotiations incrementally more expensive as social partners who seek to align their agreements with the revised requirements may require more time to agree on how to reflect them in their agreement. On the other hand, and as for policy

[375] Previous studies and available evidence provide some indications that a vast majority of agreements, including the voluntary (pre-Directive) agreements do include clauses on the coverage of at least some types of expenses. For instance, according to the 2016 KU Leuven study, 95 % of EWC agreements provide that the company will cover the basic expenses of EWC activity, such as travel and accommodation costs, administrative assistance and communication facilities linked to the operation of the EWC (see Pulignano V., Turk J. (KU Leuven) (2016), op. cit., p. 53). Similarly, a 2015 ETUI study revealed that 74% agreements provide a general statement of cost coverage – complemented by some specific mentions of various costs covered – while the remaining 26% have a limited list of expenses covered (see De Spiegelaere S., Jagodzinski R. (ETUI) (2015), op. cit., p. 40.). Provisions guaranteeing independent financial resources have been introduced in some EWC agreements, but this seems to be very rare. In contrast, the EWC database of ETUI shows that most agreements contain provisions on the EWC's right to solicit expert advice (almost 70% of EWC agreements, with over 80% of these agreements providing for the choice of an independent external expert, around 18% referring to an in-company and/or independent expert, and less than 2% allowing only for support by an in-company expert) and right to training (according to De Spiegelaere S. (ETUI)(2016) op.cit., p. 54, the right to training was included in 58 % of the agreements signed.).

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
			no or only very limited additional renegotiation costs compared to the baseline. In any case, despite the fact that renegotiations could be complex on certain issues such as the coverage of costs of expertise, the costs linked to possible additional rounds of renegotiations would in represent only a negligible share of undertakings' turnover, even if they should involve several meetings: even in cases involving several meetings (monetisation of certain costs linked to meetings resulted at ca. EUR 18 400 per meeting[376]), the costs of renegotiation costs are expected to be very limited in comparison to the global annual turnover.	option 3b, even with a high number of meetings, the renegotiation costs would represent a small share of the turnover for companies. Furthermore, it cannot be excluded that the renegotiation due to policy option 3c would take place as part of the regular renegotiation process, entailing no or more limited costs.

[376] See Annex 4 (Section 4.4.)

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
Adjustment costs (recurrent) for undertakings with EWC: costs of operating EWCs	According to the evidence gathered[377], 43% of employees' representatives indicated they have already had problems related to the definition of the concept of transnational matters. According to the 2016 ICF study, 9 out of 22 consulted companies sought legal advice on the concept of transnational matters, for average costs of €15,000. Similar issues and costs are expected to continue to arise over the baseline period. The average overall costs linked to the operation of an EWC are estimated at ca EUR 300.000,[378] representing approximately	**Negligible.** Policy option 3a would improve clarity around the concept of transnational matters and ensure a better common understanding between management and employees' representatives. As a result, the risks for disputes and the need to involve legal experts should decrease, although it is not possible to monetise or quantify this impact. Given that the overall baseline costs linked to legal uncertainty regarding the concept of transnational matters are negligible compared to	**Negligible to limited.** Policy option 3b would bring more clarity about the concept of transnational matters by amending the corresponding article in the operative part of the recast Directive. As a result, the risks for disputes and the need to involve legal experts should decrease, although it is not possible to monetise or quantify this impact. Providing for two annual plenary meetings instead of one in the subsidiary requirements is estimated to entail additional costs for companies with an EWC operating on basis of subsidiary requirements (20): the additional plenary meeting implies costs of € 42.000 per year per undertaking (i.e. €420.000 over the reference period of 10 years per	**Limited to moderate.** By substantially broadening the concept of transnational matters, policy option 3c could lead to more information and consultations procedures. As a result, longer or additional meetings could be required, which would entail additional costs for operation of EWCs. In the supporting study, EU and national employers' associations have expressed concerns over the lack of clarity of this option in defining transnational matters, highlighting potential excessive consultations and delays in time-sensitive projects. Furthermore, the obligation for management to justify that a matter is not transnational would entail adjustment costs for undertakings with

[377] ICF(2023), Section 4.2.1.3.
[378] Estimate in ICF(2016), in today's prices. See Annex 4 (Section 4.4.).

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	0.0012 % of the average global turnover of Union-scale undertakings with an EWC.[379] Of these average costs, costs of one plenary meeting and estimated annual average costs of training per EWC are estimated to account for EUR 60 000 on average.[380] For EWCs operating on the basis of the subsidiary requirements (20), central management is required to hold one annual plenary meeting. The estimated average costs of	undertakings turnover, the same is true for the possible marginal cost savings under option 3a. Furthermore, policy option 3a would also clarify the recast Directive's requirements regarding the resourcing of EWCs. This could lead to more resources dedicated to employees' representatives, in particular in those EWCs where the current	undertaking, without inflation). These costs are negligible in relation to the average turnover of Union-scale undertakings. Furthermore, as the subsidiary requirements sometimes serve as a benchmark for negotiated EWC agreements in practice, social partners in some undertakings may choose to add the requirement for a second plenary meeting in existing agreements that currently provide for only one plenary meeting (ca. 50% based on agreements[384]) during future renegotiations. The policy option itself however does not create such an obligation.	an EWC. While a general right of EWCs to involve experts of their choice at undertakings' cost could prompt a more frequent and generalised recourse to external experts, driving costs, these costs are not expected to amount to a significant share of undertakings' turnover. These costs might moreover vary significantly depending on the nature of assistance provided. The evidence gathered suggests that EWCs are progressively recurring to more and more expertise even under the baseline scenario.[388]

[379] The estimated annual global turnover for undertakings with EWCs or voluntary agreement is € 24 billion (average) (ICF, 2023, Section 5.1.2.1 and Section 3 of Annex).
[380] See Annex 4 (Section 4.4.). As the 2016 estimates were based on a rather small sample, certain cost components were calculated based on a different methodology for this impact assessment, to ensure that the conclusions drawn are sufficiently robust. The results of the two separate sets of estimates are consistent, as the elements for which no new calculation was made (in particular, employees' time dedicated to EWC work) plausibly account for the difference.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	one plenary meeting are ca. € 42.000.[381] The use of experts in support of EWCs work is heterogenous and therefore does not allow to establish reliable estimates. According to information recorded in the ETUI's EWC database, almost 70% of EWC agreements contain provisions on the EWC's right to solicit expert advice, with over 80% of these agreements providing for the choice of an independent	resources are limited. However, the magnitude of the impact is expected to be negligible due to the non-binding status of this interpretative guidance and the small share that it would represent compared to undertakings' turnover. Similar considerations apply with respect to other clarifications that could be provided by the interpretative guidance	The exact impact of clarifying resourcing of EWC as regards legal costs and costs of and access to expertise is not certain since it would be up to the management and employees' representatives to negotiate and agree on the details of the coverage for such costs. In this respect, it also needs to be considered that large shares of EWC agreements already contain provisions on the coverage of costs linked to training and involvement of experts, limiting the prospect that option 3b could lead to	

[384] ETUI 2018 survey, op.cit.
[388] According to 2022 Eurofound case-studies, three out of eleven case study companies (27.3%) provided the EWC an autonomous budget to cover EWC expenses, with reported amount ranging from €3,000 to €6,000 per year. Turlan, F., Teissier, C., Weber, T., Kerckhofs, P., & Rodriguez Contreras, R. (Eurofound) (2022) Challenges and solutions: Case studies on European Works Councils, op.cit.
[381] Ibid.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	external expert, around 18% referring to an in-company and/or independent expert, and less than 2% allowing only for support by an in-company expert. EWCs may have recourse to several experts on various occasions, depending on the provisions of their respective agreement. Evidence indicates that in the context of negotiations, SNBs require expert assistance at a costs of € 20 000 to € 25 000, which provides an indication of experts' fees incurred by EWCs as well.	under option 3b, such as on the issue of confidentiality: while increased legal clarity could lead to a more efficient operation of EWCs and fewer disputes, possible related cost-savings are expected to be negligible.	more far-reaching entitlements of EWCs.[385] Moreover, as the recast Directive already gives EWC members the right to training "without loss of wages", costs associated to training are, as a general rule, already covered by undertakings (cf. baseline). Likewise, while a better coverage of legal costs could facilitate legal actions in some cases[386], clear agreements regarding the EWCs' entitlement to the coverage of resources is likely to reduce the incidence of legal disputes related to EWC funding. There is no evidence suggesting that the requirements to provide a reasoned response to EWC opinions prior to the adoption of a decision on transnational matters and to specify, upon request,	

[385] In the targeted survey for ICF(2023), Section 5.1.2.4., amongst respondents whose agreements contained provisions on financial and human resources, 77.1% said that the agreements had provisions on trainings; 70.6% mentioned provisions on financial resources and budget and almost 60% of respondents referred to provisions on access to expertise.
[386] ICF(2023), Section 5.1.2.5. Financial constraints and limited resources were mentioned by 14% of the ICF targeted survey respondents as reasons for not undertaking legal action.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	It is estimated that around 25 % of EWCs rely on support of external experts, while other EWCs may cooperate with in-house (company), national or European -level trade unions experts, for which only expenses need to be reimbursed. The share of EWCs not requiring costs for external experts is uncertain[382]. As regards annual costs of training, they are estimated on average €17 870 per EWC (see section 4.5 of Annex 4). The evidence available suggests that in almost all the cases, these costs are not borne by employees, as companies cover travel, accommodation and cost		the grounds for declaring certain information confidential or withholding it would entail significant recurrent adjustment costs for undertakings. The former requirement already exists in relation to EWCs operating on basis of subsidiary requirements and management needs to already fulfil a similar obligation during the consultation procedure of national employee representatives, and no particular cost issues have become apparent in those contexts.[387] Moreover, during the two-stage consultation, employer organisations responded that an obligation to provide a reasoned response to an EWC opinion already exists in many agreements.	

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	of training. This is also supported by the evidence gathered for the 2016 ICF study.[383]			
Indirect costs (recurrent) for undertakings with EWC	There is no evidence that transnational information and consultation requirements entail any significant indirect costs for undertakings, such as delays in decision-making.	**Null.** Insofar as undertakings would expect that by following the non-binding interpretative guidance they would incur indirect costs, they are highly unlikely to agree adaptations to the relevant EWC agreements.	**Limited to moderate.** The obligation of providing a reasoned response prior to the adoption of a decision on transnational matters may in certain cases increase the length of the consultation process, hence risking delaying strategic company decisions. As part of the external survey, about 35% of management's representatives expressed various concerns about expanding the scope of information and consultation procedures to require	**Moderate to significant.** Policy option 3c provides for expanding substantially the scope of the concept of transnational matters. While a majority of employees' representatives expressed its support to this measure[392], management's representatives caution that broadening the existing definition would lead to higher inefficiency in the decision-making process of the company, with the risk to generate economic losses[393]. Such costs could for instance occur due

[387] Directive 2002/14/EC, Article 4(4).

[383] Cf. p. 85 of the 2016 ICF study: "There has been a significant improvement in the 'right' to training without loss of salary. The occurrence of this 'right' in the agreements has increased to 93% from less than a third of the original Article 13 agreements having such clause. Two-thirds of interviewed Recast EWCs employee representatives confirmed that employees had made use of their right to training without loss of wages."

[392] ICF(2023), Section 5.1.2.3., Targeted survey.

[393] ICF(2023), Sections 5.1.2.3., Targeted survey, and 5.3.3.3., evidence-gathering workshop with the management's representatives.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
			management's reasoned response prior to decisions as this could lead potential operational slowdowns. However, given that EWCs would remain information and consultation bodies without substantive powers over management decisions, the risk of such indirect costs seems rather limited. Moreover, as stated above, a requirement on management to provide a reasoned response already exists in relation to EWCs operating on basis of subsidiary requirements[389] and there is no strong evidence of problems of this existing requirement on decision-making of companies.[390] Indeed, the management needs to already fulfil a similar obligation during the	to overlaps, uncertainty and frictions between information and consultation processes at national and transnational level. Furthermore, the extension of the definition of transnational matters could increase the unclarity of the concept, which might lead to an increasing number of disputes. The requirement of a mandatory prior judicial authorisation if management wants to withhold information which could cause a serious harm to the undertaking is likely to lead to delays in decision-making in some cases, depending on the length of the relevant authorisation procedures.

[389] Annex I of the recast Directive, point 1(a).
[390] In the Targeted survey (ICF(2023), Section 5.1.2.3), the 3% employee representatives (4 out of 126) and 38 % of managers (5 out of 13) indicated the consultation requirements could slow down management decisions and/or hamper management's ability to take decisions effectively.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
			consultation procedure of national employee representatives.[391] Furthermore, during the two-stage consultation, employer organisations responded that an obligation to provide a reasoned response to an EWC opinion already exists in many agreements.	
Direct benefits for undertakings with an existing EWC	Benefits from EWCs operating under the recast Directive are essentially non-quantifiable. They relate to topics such as the reinforcement of mutual trust on both sides of the industrial relationship, better informed strategic decision-making, and better targeted measures accompanying structural changes.[394] It is expected that	**Negligible.** Clarifications provided in the guidance could save time and costs (required expertise, legal disputes, opportunity costs) for undertakings which have experienced problems with the application of the concept of transnational matters under the Directive (see	**Limited.** Option 3b would provide more legal clarity regarding the concept of transnational matters, the consultation procedure, obligations of the management and the content of EWC agreements. This could result in a reduction of disputes and time and cost savings and thus compensate for costs – at least partially – for the recurrent adjustment costs (see above) created under this policy option. In	**Null.** The measures common to options 3b and 3c are expected to contribute to the quality of social dialogue (see also social impacts below) and thus contribute to the benefits of EWCs for undertakings described under the baseline. However, these potential benefits are likely to be negated by negative impacts on undertakings: the broad definition of transnational matters under option 3c is not expected to

[391] Directive 2002/14/EC, Article 4(4).
[394] Pulignano V., Turk J. (KU Leuven) (2016). European Works Councils on the move: management perspectives on the development of a transnational institution for social dialogue, page 56-57.

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	these factors will become increasingly important over the baseline period, as undertakings face competitive pressure to adopt new automation technologies[395] However, due to the problem drivers identified in area 3, the potential of EWCs to generate these benefits is not fully realised in the baseline scenario. For instance, about 40% of respondents to the ICF 2023 report to have experienced problems related to the definition of the concept of transnational matters[396] (43,3 %	baseline). However, and as indicated above, the non-binding status of an interpretative guidance could undermine its expected results.	particular, the requirement of a reasoned response prior to the adoption of a decision on transnational matters is expected to promote the trustful relationship between social partners within undertakings, as it ensures a meaningful and genuine dialogue on transnational matters. The requirement for the parties to agree on the appropriate resourcing of the EWCs could also contribute to higher quality information and consultation processes and decision-making with potential benefits for central management (more involved workforce, creating quality jobs, improving openness and adaption to	generate cost savings but, to the contrary, could lead to disputes due to frictions and overlaps with information and consultation procedures at different levels of representation. Also, the requirement of a mandatory prior judicial authorisation if management wants to withhold information could cause serious harm to the undertaking in the form of indirect costs (delays, lost profit / investment opportunities).

[395] See, e.g., European Parliament (2021) Report on democracy at work: a European framework for employees' participation rights and the revision of the European Works Council Directive. (2021/2005(INI)). According to a report by the European Economic and Social Committee of 2020 ('An EU legal framework on safeguarding and strengthening workers' information, consultation and participation'), digitalisation is already a topic increasingly tackled by EWCs.
[396] ICF(2023), Section 4.2.1.3.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	of employees and 28,3 % of managers). See the description of the problem definition (Section 2.4.3. of the impact assessment) with detailed information on the problem drivers for further analysis.		change).[397] Indeed, employees' representatives highlighted that research shows that an investment in employees' participation leads to better decisions and employee's engagement, with positive consequences on businesses profitability. Such cost benefits are however not possible to estimate as EWCs may be consulted on any type of transnational matter.	
Social impacts				
Impacts on the quality of social dialogue between employees and undertakings at	About 40% of respondents to the ICF 2023 report to have experienced problems related to the definition of the concept of transnational matters[398] (43,3 %	**Limited positive**. The interpretative guidance could allow for a reduction of the frequency of problems associated	**Significant positive.** Policy option 3b would introduce clarifications regarding the concept of transnational matters in the enacting terms of the recast Directive. Such clarification	**Moderate positive**. Policy option 3c would allow for a higher number of issues to be discussed as part of the information and consultation at EU level. This should therefore have a

[397] Cf. the European Added Value Assessment (EAVA) prepared by the European Parliament's Research Service in 2021, which concluded that more systematic information and consultation of workers at transnational level could lead to even greater economic benefits – by fostering job quality, reducing the rate at which people leave their jobs ('quit rate'), reducing the number of redundancies, limiting the costs of structural adjustment, helping to eliminate distortions of competition within the single market and inequalities in treatment of workers, and/or easing the burden on social welfare systems.
[398] ICF(2023), Section 4.2.1.3.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
EU level	of employees and 28,3 % of managers). The majority of the respondents (59.7% - 139 out of 233) also experienced problems with the consultation procedure, against 37.3% (87 out of 233) who replied that they did not have issues in this regard. Per stakeholder category, whereas 70% of employee representatives (126 out of 180) said that there were problems regarding the consultation procedure, 73.6% of management representatives (39 out of 53) answered the	with an unclear definition of transnational matters. Such clarification would contribute to better application of information and consultation rights of EWCs. EWCs' members which have already experienced problems with this concept (see baseline) would therefore have more time to dedicate to information and consultation instead of trying to settle disputes. However, and as indicated	would contribute to better application of information and consultation rights of EWCs. This would also allow EWCs members to avoid disputes on this concept in the future and focus on information and consultation. Since about 40% of stakeholders are experiencing problems with this concept, this would have a positive impact for a high number of employees and their representatives. The measures under this policy option required from management to provide a reasoned response to EWC opinions prior to the adoption of a decision and a requirement to apply confidentiality only when justified[404] would also	positive impact on social dialogue at this level. However, this could also lead to additional legal uncertainty compared to the baseline, depending on the new elements included in the concept[405]. Although these impacts cannot be quantified, it cannot be excluded that the overall impact of this extension of the definition of transnational matters would be overall negative. The obligation for management to justify that a matter is not transnational could improve the social dialogue with EWCs' members benefiting from more information. However, it is rather an indirect impact, and its magnitude is therefore lower than the measure related to the concept as

[404] This measure would entail changes to the legal situation for EWCs and management subject to the national laws of Member States, which have taken over the wording of Article 8 of the Directive into their national laws without requiring further justification of the imposition of confidentiality (CY, ES, IE, LU, LV, MT, NL, PL, RO, SI, SK). In the other Member States, the possibility of imposing confidentiality is already limited to cases where a legitimate justification exists, so a requirement to that effect would likely not change the situation of undertakings and EWCs to which the respective national laws apply. Specifically, some Member States allow the imposition of confidentiality only with respect to business and trade secrets (AT, DE, FI, HR, HU, LT), to information on the financial position of the group or the undertaking, which is not publicly available (FI), to information relating to the security

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	opposite. Per type of problems experienced, the most frequently mentioned by the employees was the lack of timeliness of the consultation, the fact that information provided by management does not enable the EWC to provide an informed opinion and the fact that no real dialogue is established.[399] Regarding the timing of the consultation, 44% of the employees' representatives	above, the non-binding status of an interpretative guidance could undermine its expected results.	positively impact the quality of the dialogue at EU level. It would namely allow for a timely information exercise and a possibility for the employees to share their views and contribute to the decisions of management, which is not always the case in the baseline scenario, as explained there. The introduction in the subsidiary requirements of at least 2 plenary meetings per year would also allow the employees from those 20 undertakings with a EWC based on subsidiary requirements to have more regular information and consultation, which would positively impact the quality of	such. Overall, the impact of transnational matter-related measures can be seen as very limited. The broad right to assistance from an expert can optimise the information and consultation process, with efficiency gains. This is corroborated by the 2018 ETUI survey, which indicates that, in case of restructuring, the support of trade union coordinator or expert contributed to better decision making. Option 3c would exempt from confidentiality obligation EWC members when sharing information protected by confidentiality with

and the corresponding security system (FI), based on terms and conditions specified in the agreement or legislation (PT), or in cases in which confidentiality is necessary to safeguard the legitimate interest of the undertaking (BG, CZ, SE, DK).

[405] ICF(2023), Section 5.1.2.3.. While a great majority of employees' representatives are in favour of including such elements as "matters that affect directly or indirectly more than one Member State", "decisions taken by the headquarters affecting employees in another Member State than the one where the headquarters is located", employers' views have mostly neutral to negative views on the first and mostly negative on the latter.

[399] ICF(2023), Section 5.1.2.3.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	indicate that the information happens one the decision is finalised, but before its implementation; during implementation. Close to 10% of EWC representatives report that they were informed and/or consulted only after the implementation of the relevant decision.[400] Regarding the use of the confidentiality obligation, 49% of employee representatives (and 4% of managers) said that the use of confidentiality effectively limits or prevents meaningful consultation, and 15% of managers (and 3% of employee representatives) believe that consultation involves the risk of disclosure of		the social dialogue. Furthermore, it cannot be excluded that this measure would also lead to more regular meetings of EWCs based on an agreement, which may refer to the subsidiary requirements as a benchmark. The requirement for the parties to agree on appropriate resourcing, including on coverage of legal costs, of the EWCs could also lead to higher quality information and consultation processes and decision-making, with potential benefits for central management (see above) as well in terms of a more involved workforce, leading to better working conditions across the Union-scale undertaking and proposing alternative solutions or mitigating measure to prevent job	national or local representatives. This would contribute to coordination between employees representatives at different levels with potential benefits for the effective presentation of employees' interests in the consultation procedure. However, the facilitation of cross-border exchange of confidential information could lead to difficulties in practice (including legal risks for the employee representatives) due to the differences of national legal regimes on protection of confidential information.

[400] ETUI survey of EWC and SEWC representatives (2018). Overview published online.

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	confidential company information.[401] The large majority of EWCs has access to external support on a continuous basis.[402] Legal uncertainty nevertheless exists regarding the coverage of legal costs (court fees or costs of a legal representation in case of a dispute), no national legislation lays down a dedicated budget for such costs, although these costs are in principle part of the operating expenses of EWCs.[403] In the 2018 ETUI survey, out of		losses).	

[401] ICF(2023), Section 4.2.1.3.
[402] According to information recorded in the ETUI's EWC database, almost 70% of EWC agreements contain provisions on the EWC's right to solicit expert advice, with over 80% of these agreements providing for the choice of an independent external expert, around 18% referring to an in-company and/or independent expert, and less than 2% allowing only for support by an in-company expert.
[403] SWD(2018) 187 final, p. 34. Some Member States have introduced statutory release from court fees for EWCs and others have introduced a general regulation concerning the operating costs of EWCs. The latter is the case in the vast majority of the Member States.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	the EWC representatives who said that they had not started legal proceedings despite having experienced a serious dispute, around 17% said that this was due to a lack of resources (e.g. finance, expertise).			
Impacts on employment	Well-functioning EWCs can have positive impacts not only on workers' well-being, but also on labour productivity as well as on firms' profitability. It is therefore plausible that the identified shortcomings regarding the effectiveness of the existing transnational information and consultation represent untapped potential in terms of potential benefits also in terms of employment. However, given that EWCs complement mandatory employee involvement at national or local level, it is difficult to attribute such	**Inconclusive.** Given the limited economic benefits described above, there is no sufficient basis for drawing any conclusions regarding impacts of option 3a on the level of employment.	**Inconclusive.** It is not excluded that an improved functioning of the transnational information and consultation process could contribute to benefits in terms of employment. However, such an effect cannot be attributed to policy option 3b with any degree of certainty, given the interplay between employee involvement at national and transnational level and the non-binding nature of EWCs' opinions.	**Inconclusive.** With respect to option 3c, possible benefits in terms of employment levels seem highly unlikely, due to the possible frictions with employee involvement at national / local level and possible delays in decision-making. There is no indication that option 3c might contribute to lower levels of employment either, as the possible negative economic impacts of this option are very limited in scope.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
	possible effects specifically to the transnational information and consultation framework.			
Environmental impacts				
Null. See Section 1 of this Annex for general clarifications, in particular regarding the requirement of an additional annual plenary meeting in the subsidiary requirements, envisaged under options 3b and 3c.				
Impacts on competitiveness				

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
Impacts on cost and price competitiveness, international competitiveness and capacity to innovate of undertakings with an EWC	No such impacts identified under the baseline. The costs of operating an EWC are very low compared to the average annual turnover of the relevant undertakings, see the baseline for recurrent costs above.	**Null.** Option 3a would at most entail negligible costs for undertakings and is therefore not expected to affect their competitiveness.	**Null.** Although policy option 3b could possibly entail limited to moderate adjustment costs linked to the renegotiation of EWC agreements and the resourcing of EWCs, the scope of these impacts remains very small in comparison to undertakings turnover (see analysis of economic impacts above). These limited additional costs would not have any impacts on costs and price competitiveness, or the capacity to innovate.	**Negligible to moderate.** While the one-off and recurrent adjustment costs are likely to remain moderate under option 3c (despite EWCs' broad right to consult external experts of choice), some negative effects on undertakings' competitiveness cannot be ruled out, because of the indirect costs linked to possible delays in decision-making (due to the requirement of a mandatory prior authorisation when withholding potentially harmful information), frictions with information and consultation procedures at national level (due to the broadened concept of transnational matters). Moreover, exempting information-sharing between EWCs and employee representatives at national or local level from confidentiality restrictions would lower the protection of undertakings subject to national laws which ensure broad protection under the baseline scenario.

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
Impacts on fundamental rights				
Impact on the principle of workers' right to information and consultation within the undertaking / right to access to justice and an effective remedy	See description of baseline social impacts. The problem drivers identified in area 3 hamper EWCs' ability to avail themselves effectively of the right to information and consultation on transnational matters. In some cases, potential challenges regarding access of EWCs to justice and effective remedies can also relate to a lack of resources to cover legal costs of employee representatives or EWCs (in case of EWC agreements, due to the lack of provisions agreed to cover such expenses).	**Limited benefits.** Option 3a would promote the quality of social dialogue and thus the practical implementation of the fundamental right to information and consultation within undertakings (Article 27 CFR) and the right to an effective remedy (Article 47 CFR) to a limited extent, see explanations under social impacts above.	**Significant benefits.** Option 3a would improve the conditions for a genuine dialogue on transnational matters significantly, as described in detail in the section on 'social impacts' above. Overall, EWCs' entitlement to a reasoned response from management, the increased legal clarity regarding the concept of transnational matters, resourcing and confidentiality restrictions, and the strengthened requirement for two annual meetings under the subsidiary requirements are expected to have a significant positive impact on the effectiveness of the fundamental right set out in Article 27 CFR. The legal requirement for the parties to define modalities for covering EWCs' legal costs (and in case of EWCs operating on the basis of subsidiary requirements to cover such expenses as far as they are reasonable) would	**Moderate benefits.** Option 3c would significantly strengthen EWCs' right to involve external experts (including legal experts) and improve EWCs' access to relevant information by limiting the possibility of management to impose confidentiality or withhold information. These measures are expected to put EWCs in a significantly better position to avail themselves effectively of their rights under the recast Directive, including as regards access to justice. On the other hand, a broader concept of transnational matters risks creating new issues of delineation between information and consultation requirements at different levels of representation, possibly legal uncertainty and disputes, and frictions with procedures at national/local level. Due to these caveats, it is likely that option 3c would overall have only a moderate positive effect on the effective

Impact	Baseline	Policy option 3a *(Interpretative guidance, voluntary)*	Policy option 3b *(binding clarifications regarding transnationality, consultation process, resourcing of EWCs, confidentiality restrictions, subsidiary requirements)*	Policy option 3c *(broad concept of transnationality, reduced possibility to impose confidentiality / withhold information, broad right to consult experts at undertakings' cost)*
			positively contribute to the quality of the dialogue and also to the capacity of employee representatives to access legal advice and justice.	application of the fundamental right to information and consultation within undertakings.

5. IMPACTS OF POLICY OPTIONS IN POLICY AREA 4

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
Economic impacts				
Enforcement costs for sanctioned undertakings with an EWC	The current sanctions regimes in Member States are diverse.[406] Overall, the maximum levels of pecuniary sanctions are considered low and not dissuasive in comparison to the turnover of the Union-scale undertakings. The evidence gathered[407] indicates that current sanctions, although varying greatly between Member States, would not exceed 190.000 EUR, representing 0.0008% of the	**Negligible.** The effects of policy option 4a on the enforcement costs to be borne by sanctioned undertakings are unclear. The evidence gathered does not allow for robust assumptions about the take-up rate of Commission recommendations regarding the enforcement of rights under the recast Directive. However, there is a plausible risk that those Member States which have thus far not	**Significant**. The notification obligation for Member States is not expected to entail costs for undertakings. The requirement for Member States to provide for pecuniary sanctions determined in proportion to the annual turnover of the sanctioned undertaking could lead to a substantial increase in the level of pecuniary sanctions, in particular in Member States which do not ensure dissuasive and proportionate sanctions under the	**Very significant**. As under option notification obligation for Member Stat expected to entail costs for undertakings. Policy option 4c provides for pecuniary sanctions up to 4% of the global annual turnover where a violation of rights and obligations is intentional, or else up to 2%. Although those percentages represent the upper limit of sanctions, the maximum limit under this option is, based on average turnover of undertakings with an EWC, be about 4000 times higher than the current maximum administrative sanction in the

[406] Generally, sanctions for administrative infractions are being applied to the EWC-related breaches. In most cases, the sanctions under the national laws remain low, the average range being around € **5.000-10.000** or even lower in some countries. Upper limits to sanctions are quite common (the maximum scale ranging from a couple hundred EUR to € 187.500 (ES) for very serious offences. In DE, the country with highest number of EWCs, a maximum possible administrative fine for EWC-related breaches is € **15.000**, although more severe criminal sanctions (pecuniary or custodial) are theoretically also available. Likewise, in some other countries, stricter sanctions (e.g. up to € 800.000 in BE) or prison sentences may theoretically be imposed in criminal law proceedings. Application of such sanctions to EWC-related offences has not occurred in practice.

[407] ICF(2023), Sections 4.2.1.4. and 5.2.2.4.

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
	average undertaking with an EWC's average global turnover.[408] Taking as example the maximum administrative fine applied in Germany (15.000 EUR), the ratio to the global average turnover is 0.00006 %. Sanctions are seldom applied in practice (also due to a low occurrence of legal disputes). Where applied, they create only negligible costs for companies. More significant costs can be created where a court's decision precludes implementation of the management's decision until the information and consultation obligations have been fulfilled. Most conflicts within European	ensured effective sanctions and remedies will be least inclined to follow such recommendations. If such a pattern materialises, the changes introduced at national level to implement option 4a would remain very limited, and so would sanctioned undertakings' enforcement costs compared to the baseline.	baseline. Although policy option 4b does not provide for a specific percentage that could serve as a benchmark, it specifies that the sanctions should be determined in proportion to the worldwide turnover of the sanctioned undertaking or group of undertakings. In a concrete situation, this would require that not only the turnover of the undertaking in question is considered, but also the principles of effectiveness, dissuasiveness and proportionality, for example considering factors such as the gravity, duration and impacts of the relevant infringement. Accordingly, the expected impact on sanctioned undertakings is significant.	EU (ES) and around 50.000 times higher than maximum fine available in DE (a Member States with highest number of EWCs). The upper limits would define the spectrum on which national administrative and judicial authorities would determine the level of penalties. Even if these authorities would consider the upper echelons of this spectrum only for the most extreme infringements, option 4c thus sets a high benchmark also for less severe cases. Therefore, the impact on the enforcement costs for sanctioned undertakings with an EWC would be very significant. Finally, policy option 4c also provides for a suspension of management decisions in case of a violation of the information and consultation obligation. Depending on the length of the relevant proceedings, this measure could significantly reduce the efficiency and effectiveness of the decision-making in

[408] Average worldwide turnover of undertakings with EWCs has been estimated at 24 billion (ICF(2023), Annex – Section 3 (Data mapping).

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
	Works Councils (EWCs) are typically resolved without resorting to legal action. Legal action was taken in 16% of these serious conflict cases.[409] National jurisprudence on EWC-related matters is limited[410] and does not allow for a proper monetisation of sanctions and their frequencies but provides rather an anecdotical view.			companies, possibly leading to substantial economic losses. In combination, the sanctions under option 4c are likely to lead to very significant impacts on the enforcement costs for sanctioned companies, with possible indirect consequences for their competitiveness and business operations.
Compliance (administrative) costs for Member States	The recast Directive does not entail any administrative costs for Member States.	**Null.** Policy option 4a does not include any measures that would entail administrative costs for Member States	**Negligible.** The notification obligation provided in policy option 4b would entail limited administrative costs for Member States which would need to collect and send to the Commission information on the means by which EWCs, SNBs and employees' representatives can bring judicial	**Negligible.** See option 4b for explanations regarding the notification obligation. The other measures under this option do not entail administrative costs for Member States.

[409] In a ETUI 2018 survey of EWC representatives, only 15.7% reported experiencing serious conflicts with management between 2015 and 2018.
[410] 160 national cases have been identified since 1996 on EWC-related matter. The subject of cases is diverse (concerning functioning of the agreement, the set-up phase, individual rights of employee representatives or trade union rights, consultation procedure).

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
			proceedings in respect of all their rights under the recast Directive. Although the evidence gathered does not allow for a monetisation of this incremental cost per Member States, this task – which would form a part of the standard process of notifying transposition measures via the available IT systems – should not require an additional high number of working days and the impact should be negligible.	
Adjudication and litigation costs for Member States	Around 16% of EWCs experienced a serious dispute in a timeframe of three years[411] and less than 20 % of these disputes have been taken to court. Court cases identified in all Member States together were less than 6 per year on average (in all EU).[412] It is assumed that this would not	**Limited.** By supporting a more effective access to courts, policy option 4a could entail additional costs for Member States linked to an increasing number of administrative or judicial procedures. In contrast, policy option 4a	**Inconclusive.** Policy option 4b would allow the Commission to effectively monitor and ensure the requirement of effective access to justice. Depending on the outcome of this monitoring and the follow up actions, the access to justice could be further improved in some Member States (around 13,7 % of stakeholders reported a lack of access to courts for EWC-related	**Neutral to significantly lower.** Policy option 4c provides for a broad range of sanctions which could lead to significant or even very significant economic losses for those sanctioned undertakings. On the one hand, these new measures are therefore likely to have a strong deterrent effect and thus improve compliance with the rights and obligations laid down in the Directive,

[411] Between 2015 – 2018 (cf. ETUI 2018 survey of EWC representatives).
[412] 160 national cases have been identified since 1996 on EWC-related matter.

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
	change under the baseline due to the identified issues of access to courts in some Member States, coverage of legal costs and other dispute-resolution. It should also be noted that court proceedings are by most employee representatives viewed as the last resort for resolution of a conflict with their management and only a small fraction of conflicts is taken to a court due to a lack of access or resources (ca 17 %) or due to low sanctions (ca 11 %).[413] The national authorities may obtain an economic benefit from the sanctions collected, assuming that they accrue to	also aims at ensuring sanctions that are effective, dissuasive and proportionate, which could lead to a higher compliance level and a decrease of the number of administrative or judicial procedures in the future. The twofold objective pursued by policy option 4a makes it difficult to assess its overall effect on the adjudication and litigation costs for Member States compared to the baseline. Furthermore, the non-binding status of a Commission recommendation does not allow for a clear assessment of its expected effects, which would nevertheless likely remain limited. As	matters), which could lead to an increasing number of administrative or judicial procedures. However, it is not possible to estimate these incremental costs. It should also be recalled, as mentioned under the baseline, that court proceedings are by most employee representatives viewed as the last resort for resolution of a conflict with their management and only a small fraction of conflicts is taken to a court.[414] Policy option 4b also requires that pecuniary sanctions be determined in proportion to the annual turnover of the sanctioned undertaking. The evidence gathered does not allow for estimating the level of sanctions that would be applied under this option, but it can be assumed that a requirement to take into account the company's turnover when deciding the level of	which could in turn lead to a decreasing number of legal and administrative procedures. On the other hand, policy option 4c could also improve access to justice, which could lead to an increasing number of administrative or judicial procedures. It is therefore difficult to estimate if overall, policy option 4c would have an influence on the number of administrative or judicial procedures. As for option 4b, also here it should be noted that that court proceedings are by most employee representatives viewed as the last resort to resolve conflict with their management. Policy option 4c provides for high ceilings for pecuniary sanctions. Although the effective fines applied in concrete cases would likely be lower, the maximum percentage laid down in policy option 4c would lead to very

[413] ETUI 2018 survey data.
[414] ETUI 2018 survey data.

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	the state budget. However, considering the low likelihood of tribunal cases involving EWCs, and even lower likelihood of sanctions (which remain overall very low – see baseline under economic impacts above) – the expected benefits for Member States are low.	highlighted above, there is a plausible risk that those Member States which have thus far not ensured effective sanctions and remedies will be least inclined to follow such recommendations. The changes introduced at national level to implement option 4a would therefore likely remain very limited.	sanction would, together with the need to apply principles of effectiveness, proportionality and dissuasiveness, lead to significantly higher sanctions than under the baseline. In addition to the turnover of the company, Member States or national courts could apply discretion to determine the appropriate percentage on the basis of certain criteria (such as the gravity, duration and impact of the respective infringement or a possible record of prior non-compliances of the relevant undertaking).	significantly higher fines compared to the baseline. It is assumed that pecuniary sanctions would accrue to Member States' budgets. Therefore, depending on the amount applied in concrete cases these fines could cover or even exceed the incremental adjudication and litigation costs of Member States.
Social impacts				
Improved social dialogue	National laws do not fully guarantee access of rightsholders to justice. In the evidence gathering, 13,7 % of stakeholders have reported not to have access to court in their	**Limited.** Policy option 4a aims to ensure a better access to justice for employees, which is currently insufficient in some Member States as described in detail	**Significant.** With policy option 4b, Member States will have to notify to the Commission how access to justice and effective remedies are ensured. This will help the Commission to effectively monitor and ensure the	**Significant to very significant.** Regarding the notification obligation on Member States, see explanations under option 4b. Policy option 4c would also allow for a greater compliance with the rights and

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
	Member States for EWC related matters.[415] As mentioned above (cf. analysis of economic impacts), the current sanctions regimes in Member States are diverse. Overall, the maximum levels of pecuniary sanctions are considered low and not dissuasive in comparison to the turnover of the Union-scale undertakings. As enforceability is a crucial condition for the effective implementation of EWCs' rights, the described issues are likely to have a negative effect on compliance with information and consultation requirements, and thus on the social dialogue in Union-scale	in Annex 8. However, and although the evidence gathered does not allow for a clear quantification, the non-binding nature of the Commission recommendation will not create any new legal requirements, which could undermine the expected results. This option would therefore contribute only marginally to improving enforcement of EWCs' rights and thereby the social dialogue on transnational matters.	requirement of effective access to justice. Based on evidence gathered, the measure would guarantee better access to justice for population of ca. 4.3 million EU employees of undertakings that fall within the scope of the Directive.[416] Policy option 4b would thus foster greater compliance with the rights and obligations laid down in the Directive. By providing pecuniary sanctions based on the annual turnover, companies will indeed be given more incentives to follow all the legal requirements. The combination of the measures will therefore positively impact a high number of employees and their representatives by ensuring a better access to justice and a better compliance with the rules of the	obligations laid down in the Directive. By providing pecuniary sanctions up to 4% of the global annual turnover, companies will indeed have very strong incentives to strictly follow all the legal requirements. Similarly, the prospect of the suspension of management decisions is likely to be an effective deterrent of non-compliance. The combination of the measures will therefore positively impact a high number of employees and their representatives by ensuring a better access to justice and a better compliance with the rules of the Directive. However, in interviews for the supporting study, some EWC representatives pointed out that very harsh sanctions could be counterproductive for on employees. In particular, sanctioning methods that lead

[415] This also corresponds to the estimated share of EWCs based in IE and FI (ca. 14 %), where systemic limitations in access to courts have been identified.
[416] 14 % of 31 million EU employees of Union-scale undertakings.

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
	undertakings.		Directive. The positive impact on the quality of the information and consultation at the EU level should therefore be significant and benefits a high number of employees and their representatives.	to job losses would defeat their purpose.
Impacts on employment		**Null to negligible.** As explained under economic impacts policy option 4a could entail additional enforcement costs to companies. These would however be negligible. Therefore, the impact should be limited and not affect business operations nor employment in the undertakings.	**Null to negligible.** As described under economic impacts, policy option 4b could lead to moderate or even significant enforcement costs for sanctioned businesses. The evidence indicates that managers believe that heavy sanctions would put EU-based companies at a competitive disadvantage. In theory, heavy sanctions could negatively affect business operations and entail job losses. However, the impact on employment is very uncertain and cannot be quantified. It would in any case apply only to the – likely small – fraction of sanctioned undertakings amongst the overall population of undertakings with an EWC. Furthermore, the measures provided under policy option 4b could also	**Negligible to moderate.** As described under economic impacts, policy option 4c could lead to significant or even very significant enforcement costs for businesses. Owing to the high level of maximum level of sanctions, impacts of option 4c on employment in undertakings would likely be higher than under option 4b. However, such impact cannot be quantified. The evidence gathered indicates that managers believe that heavily sanctioned obligations could put EU-based companies at a competitive disadvantage. In theory, this could negatively affect business operations and entail job losses in the undertakings / EU. However, same as for option 4b, the impact on employment is very

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
			indirectly lead to a better rate of compliance with the obligations laid down in the Directive. This would reduce the incidence of pecuniary sanctions, and thereby mitigate possible negative impacts on companies' financial stability and related redundancy risks.	uncertain and cannot be quantified. Due to their deterrent effect, the measures under option 4c could also indirectly contribute to a better rate of compliance with the rights and obligations laid down in the Directive, which should mitigate those risks.
Impacts on competitiveness				
Impact on cost and price competitiveness for EU businesses	No such impacts identified under the baseline. See baseline under economic impacts.	**Null to negligible.** The impact of a Commission recommendation on the effectiveness of sanctions and on an increasing access to courts is uncertain. Its non-binding status would lead to limited changes compared to the baseline. Accordingly, expected impacts on price competitiveness are null to negligible.	**Null to limited.** Policy option 4b could entail moderate to significant costs to those undertakings that would get a pecuniary sanction (see above assessment of economic impacts). The rare occurrence of legal disputes and application of sanctions is unlikely to change with the increase of ceiling of sanctions. Moreover, sanctions would have to be determined in accordance with the principle of proportionality, and national courts are expected to take into account criteria such as the severity, duration and consequences of the infringement. Therefore, it is likely that penalties amounting to a significant share of companies'	**Moderate to significant.** As described above, policy option 4c provides for pecuniary sanctions based on the annual turnover with a maximum level of 4 % of the global annual turnover, and suspension of management's decision. These sanctions, in particular where combined, could lead to very significant direct (fines) and indirect costs (economic losses) (see above assessment of economic impacts). Though it is not expected that the rare occurrence of legal disputes and application of sanctions would change with the definition of a high ceiling for pecuniary sanctions, expected impacts

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
			turnover would be imposed only in very rare cases. Accordingly, the impact of option 4b on cost competitiveness would range from null to limited and no noticeable impact on consumer prices is expected.	on competitiveness would range from moderate to significant due to the risk that companies could be prevented from implementing decisions, which could lead to significant economic losses, and to the potentially very high impact of the sanctions. Noticeable consumer price effects are considered unlikely even under this most far-reaching option. Firstly, sanctions and remedies apply only in a likely small number of individual cases and are thus unlikely to feed into the pricing considerations of Union-scale undertakings. Secondly, it is expected that competitive pressures on sanctioned undertakings will disincentivise them from passing enforcement costs on to consumers.
Impact on international competitiveness for EU businesses and their capacity to	No such impacts identified under the baseline. See baseline under economic impacts	**Null to negligible.** The impact of a Commission recommendation on the effectiveness of sanctions and on an increasing access to courts is uncertain. Its non-binding status would	**Null to limited.** As described above, policy option 4b could lead to moderate or even significant direct (fines) for those sanctioned undertakings (see above assessment of economic impacts). The higher the sanctions to be imposed in practice, the	**Moderate to significant.** As described above, policy option 4c could lead to significant or even very significant direct (fines) and indirect costs (economic losses) for those sanctioned undertakings (see above assessment of economic impacts). The more often

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
innovate		lead to limited changes compared to the baseline. In any case, expected impacts on international competitiveness of EU business and their capacity to innovate are null to negligible.	more the impact on international competitiveness for those sanctioned undertaking. As part of the survey[417], more than 80% of management representatives indicated that imposing pecuniary sanctions linked to company turnover would be negative or even very negative for the competitivity of EU businesses. Any such impact would however be limited to the sanctioned undertakings only. Considering the rare occurrence of legal disputes and sanctions in this policy area, which is not expected to increase with the higher ceiling of sanctions, the expected impacts on competitiveness of EU businesses and their capacity to innovate is null to limited.	national administrative or judicial authorities would use the upper echelons of the spectrum of penalties defined by the 2% resp. 4% ceilings, the more the impact on international competitiveness for those sanctioned undertaking. As part of the survey[418], a strong majority of the management's representatives indicated that the envisaged sanctions under policy option 4c would have a negative or very negative impact on the competitiveness of EU-based companies vs non-EU-based companies. The impact on international competitiveness would be limited to the sanctioned undertakings only. Though it is not expected that the rare occurrence of legal disputes and application of sanctions would change with the increase with the definition of a high ceiling for pecuniary sanctions, expected impacts on competitiveness

[417] ICF(2023), Section 5.1.2.7.
[418] Ibid.

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
				would range from moderate to significant due to the risk that companies could be prevented from implementing decisions, which could lead to significant economic losses, and to the potentially very high impact of the sanctions. It is also likely that the undertakings sanctioned would have to reduce some of their expenditures, which could negatively impact their capacity to innovate.
Impacts on fundamental rights				
Impact on the fundamental right to an effective remedy and to a fair trial	See baseline under social impacts	**Limited.** As explained above, there is a plausible risk that Member States which have far not ensured effective sanctions and remedies will be least inclined to follow the recommendations of the Commission. Therefore, it is likely that policy option 4a would have only a limited positive impact on the right to an affective remedy and to a fair trial compared to the	**Moderate to significant.** Policy option 4b would ensure a more effective monitoring by the Commission of how access to justice and effective remedies are ensured in the different Member States. Depending on the outcome of this monitoring, the impact on the right to an effective remedy and to a fair trial would be moderate to significant. Based on evidence gathered, the measure would guarantee better access	**Moderate to significant.** The positive impacts discussed under policy option 4b are valid for policy option 4c.

Impact / affected stakeholders	Baseline	Policy option 4a *(Commission recommendation)*	Policy option 4b *(Facilitating supervision by COM, clarifying MSs' obligation to ensure effective sanctions & remedies)*	Policy option 4c *(Suspension of management decisions; pecuniary sanctions up to 2% resp. 4% of undertakings global turnover)*
		baseline.	to justice for population of ca. 4.3 million EU employees of undertakings that fall within the scope of the Directive.[419]	
Impact on workers' fundamental right to information and consultation within the undertaking	See baseline under social impacts	**Limited.** More dissuasive sanctions and effective remedies should presumably improve the level of compliance with the existing requirements under the recast Directive. However, and as explained above, policy measure 4a is not expected to entail great changes compared to the baseline. Therefore, the impact on workers' right to information and consultation within the undertaking would be negligible.	**Moderate to significant.** Policy option 4b also provides for more effective pecuniary sanctions, which are currently too limited compared to the annual turnover of undertakings with an EWC. Such reinforced sanctions could contribute to more effective transnational information and consultation rights by ensuring a better compliance with the requirements laid down in the recast Directive.	**Moderate to significant.** The measures under policy option 4c provide for reinforced sanctions and remedies that could entail significant or even very significant costs to companies that would be sanctioned. This is likely to encourage all undertakings to strictly comply with the existing requirements under the EWC Directive.

[419] 14 % of 31 million of EU employees of Union-scale undertakings.

ANNEX 13: MONITORING AND EVALUATION

Specific objective	Operational objectives	Indicators / results / success criteria v. baseline	Sources of data
1. Avoid unjustified differences in workers' minimum information and consultation rights at transnational level	*Simplified and coherent legislative framework: applicability of the recast Directive to all Union-scale undertakings*	- Deletion out of exemptions / legacy legal regimes under national law *(= success criterion)* - Number of EWCs newly established in previously exempted undertakings (*Success: smooth transition to EWC regime; absence of disputes*)	- Transposition checks/implementation report - Information notified by Member States in accordance with option 4a - ETUI database of EWCs Potential survey / study
	Facilitate enforcement of information and consultation rights in currently exempted undertakings	See indicators for area 4.	
2. Ensure an efficient and effective setting-up of EWCs	*Prevent delays in the setting up of SNBs*	- Clear deadlines and obligations set out in national law (= *success criterion)* - % of cases where negotiations start >6 months after the request to set up an EWC *(Success: decrease of cases exceeding 6 months)* - Number of new EWCs with subsidiary requirements (*Success: lower portion than under baseline)*	- Potential ad hoc survey/study - Transposition checks/implementation report - ETUI database of EWCs and national case-law - Desk research - Complaints to the Commission
	Avoid legal uncertainty and disputes regarding the coverage of legal costs and expenses related to training of SNB members	- Number of disputes on the setting up of SNB (*Success: decrease)* - Number of disputes on the coverage of SNBs' resources (*Success: decrease)*	
	Improve gender balance on EWCs and select committees	Percentage of women in EWCs and select committees under new or re-negotiated agreements (*Success: increase compared to baseline EWCs)*	
3. Ensure the	*Increase legal certainty and avoid disputes regarding the concept of transnational matters*	- Clear criteria for transnationality laid down in national laws *(= success criterion)* - Number of disputes about whether a certain matter falls	

appropriate resourcing of EWCs and an effective process for their information and consultation		under transnational information and consultation requirements (*Success: decrease*)	- Potential ad hoc survey/study - Transposition checks/implementation report - ETUI database of EWCs and national case-law - Desk research - Complaints to the Commission
	Ensure a timely and genuine dialogue with EWCs on transnational matters	- Number of disputes on timing of consultation (*Success: decrease*) - Number of disputes on the lack of a reasoned response by management (*Success: decrease*) - Clear requirement for reasoned response laid down in national laws *(= success criterion)*	
	Reduce the risk of excessive imposition of confidentiality or withholding of information by central management	Number of disputes on confidentiality or withholding of information (*Success: decrease*)	
	Increase legal certainty and prevent disputes regarding the coverage of legal costs, expertise and expenses related to training of EWC members	- % of EWC agreements with clauses on the access to / financing of experts (*Success: increase)* - % of EWC agreements with clauses on the coverage of legal and training costs / expenses (*Success: increase)* - Number of disputes on the resourcing of EWCs (*Success: decrease)*	
4. Promote a more effective enforcement of the recast Directive	*Facilitate and effective enforcement monitoring by the Commission*	- % of Member States that notified comprehensive information about measures ensuring access to justice and effective remedies with respect to all the rights set out in the recast Directive (*Success: all Member States*) - Number of EU-Pilot / infringement procedures launched against Member States (after transpositions checks completed) to ensure effective enforcement regime (*Success: zero/decrease)*	- Information notified by Member States in accordance with option 4a - Transposition checks - Complaints to the Commission - Potential ad hoc survey / study covering

	Ensure effective remedies and sanctions for infringements of rights under the recast Directive	- % of Member States whose notified measures are assessed as sufficiently effective to ensure proper access to justice, effective remedies and deterrent sanctions (*Success: all Member States*) - Number of cases where access to justice is denied to EWCs / SNBs (*Success: zero unjustified cases*) - Number of judicial actions in Member States to enforce rights under the Directive (*Success: to be determined based on qualitative assessment of each case*)	enforcement - Desk research - ETUI database of national case-law