

Brussels / May 24 2023

**A POSSIBLE REVISION OF THE EUROPEAN  
WORKS COUNCIL DIRECTIVE 2009/38/EC**

**ANSWER TO A FIRST-PHASE SOCIAL PARTNER  
CONSULTATION OF THE EUROPEAN COMMISSION**

*The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 40 national and European trade union organisations from over 20 European countries, with a total of more than 5 million individual members. Founded in 1990 and a European sectoral social partner, CESI advocates improved employment conditions for workers in Europe and a strong social dimension in the EU. Most of CESI's affiliates are employed in the different fields of the European, national, regional & local public services, and in privatised services of general interest. CESI also represents private sector unions.*

CESI broadly welcomes the European Commission's initiative to respond to the European Parliament's legislative initiative report of February 2 2023 to revise and strengthen the European Works Council Directive 2009/28/EC, as laid out in its first-phase social partner consultation document of April 11 2023 (C(2023) 2330 final).

In relation to the three questions posed in the document to the social partners, CESI notes:

1. The issues and possible areas for EU action are generally correctly identified. CESI supports/underlines in particular that:
  - In Article 1(4) of the directive, the definition of 'transnational matters' should be clearer so that companies can no longer circumvent a consultation of an EWC in a relevant matter because of a blurry interpretation of what constitutes a 'transnational matter'.
  - In Article 2(g) of the directive, the definition of 'consultation' should be clarified to rule out that consultations only take place as a formality after management has already made decisions. It should also be specified that consultations must necessarily be taken into account by management, and this in a meaningful way. In fact, in the longer-term, ways could be envisaged to turn EWCs more into negotiating bodies, where its opinions could have even more weight and are not only 'taken into consideration'. According to CESI, substantial involvement of workers always yields the most sustainable results – for the workers and for the business too.

- In Article 11(3) of the directive, the definition of ‘confidentiality restrictions’ should be strengthened to avoid companies using them in an abusive way as a pretext to circumvent a consultation of EWCs.
  - The directive is so far not always effective in ensuring in all Member States effective, deterring sanction and penalties for non-compliance.
  - Insufficient financial and material resources for EWCs to enable them to perform their duties in an appropriate manner appears as a practical and very concrete obstacle that obstructs the effective operation of many EWCs.
  - The scope of the directive which provides for possible EWCs in companies with at least 1000 employees in the EU and with at least 150 employees in each of two Member States could be widened in order to have more workers covered under EWCs.
  - The initiation process of EWCs could be simplified to facilitate the set-up of new EWCs. In particular, the maximum duration of negotiations of three years between workers’ representatives and management representatives could be shortened, as practical experience appears to suggest that negotiations can be concluded in a shorter timeframe if indeed both sides are willing and engage constructively.
2. CESI believes that EU action is needed to address these identified issues. EU action should target a revision of the directive in question. However, in relation to ineffective sanctions and non-compliance, the European Commission should first further assess why Member States have not been ensuring this even if sanctions are supposed to be “*dissuasive*”, according to the directive. Where Member States have not been transposing the directive correctly or ‘sufficiently’, this needs to be addressed with them.
  3. According to CESI, the European Commission should swiftly issue a proposal for a revision of the directive unless the recognised European cross-sector social partners can come to an understanding on an ambitious agreement to addresses the identified challenges in a meaningful way. Any new social partner agreement should be timely transposed into a Council directive upon proposal of the European Commission.