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EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

Labour Law

Brussels, 16 June 2026

FINAL MINUTES

3rd meeting of EXPERT GROUP E03694 Implementation of Directive (EU) 2025/2450 – revision of Directive 2009/38/EC on European Work Councils

16 April 2026

09:30 – 16:30

Represented members (EU Member States):

AT, BE, BG, CZ, CY, DE, DK, EE, EL, FI, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK

Represented observers:

- *EEA/EFTA:* IS, NO
- *Employer organisations*: BusinessEurope, CEEMET, COFINDUSTRIA, ECEG, IBEC, SN
- *Trade union organisations:* EFFAT, ETF, EFBWW, ETUC, ETUI, IndustriAll

European Commission (DG EMPL): [redacted]

1. Welcome by [redacted] [redacted] Head of Unit C.1 'Labour Law', DG Employment, Social Affairs and Inclusion

The Chair welcomed the experts and observers to the third meeting of the expert group and made some brief remarks on organisational matters.

2. Approval of the draft agenda

The Chair introduced the draft agenda, which was subsequently adopted (see attachment).

3. Approval of draft minutes and draft working paper on the amendments covered in detail during the second meeting (circulated in advance for comments).

The minutes of the second meeting held on 23 and 24 March were approved.

As no comments were raised regarding the revised version of the working paper covering the topics of the first meeting, that version is considered approved by written procedure.

Regarding the draft working paper covering the topics discussed at the second meeting, **the Chair** has received a request for clarification concerning the following statement on p. 29: "*As stated in the Commission's impact assessment, Member States can indeed choose not to apply* [Article 8a] *and to instead use the duty of confidentiality to protect information the disclosure of which would seriously harm the undertaking. This alternative approach is considered a more favourable regulation and therefore admissible in the context of an instrument setting minimum requirements.*" **The Chair** was invited to clarify whether that statement means that a Member State may decide not to transpose Article 8a in a specific and detailed manner and simply provide for a general duty of confidentiality, without setting out the relevant criteria. It was also asked to clarify if that "alternative approach" could also be extended to revised Article 8 on confidentiality.

The Chair explained that the relevant statement in the draft working paper should be read in the sense that Member States are not required by Union law to provide for the possibility of withholding information on transnational matters. They may instead opt not to transpose Article 8a at all and to protect the functioning of undertakings only by means of confidentiality (Article 8). Such an approach is permissible because, as an instrument adopted pursuant to Article 153 TFEU, Directive 2009/38/EC leaves Member States discretion to go beyond the minimum information and consultation requirements. A solution whereby EWC members receive sensitive information on transnational matters subject to confidentiality is more favourable for them and more conducive to achieving the purpose of the Directive than a solution whereby such information is not disclosed to them at all. Several Member States followed this approach already before the revision. Moreover, **the Chair** stressed that the statement in the draft working paper does not allude to the possibility to transpose Article 8a or Article 8 in an unspecific general manner. When transposing those provisions, Member States are required to determine relevant objective criteria.

- **ETUI** noted that that it is important for EWCs to know which rules apply to them and asked whether Member States that choose not to transpose Article 8a will be required to notify the Commission of that fact.

  The Chair replied that Member States will indeed have to provide explanations regarding Article 8a in the explanatory document accompanying the notification of transposing measures. In legal systems that do not allow management to refuse providing information on transnational matters to the EWCs, confidentiality presents the only way to prevent the disclosure of such information to third parties. The national provisions transposing Article 8 will lay down the relevant criteria for assessing whether management was entitled to declare certain information confidential.

These additional explanations will be integrated into a revised version of the second draft working paper, to be circulated for approval by written procedure.

4. Presentation of amendments concerning the protection of employees' representatives, with subsequent discussion amongst members and observers

4.1. Regarding the requirement of "equivalent" protection of workers' representatives pursuant to revised Article 10(3), "*in particular protection against retaliatory measures or dismissal*", **the Chair** explained that the new wording derives from suggestions of the European Parliament and essentially seeks to increase clarity and accuracy, with a view to addressing linguistic divergencies between the recitals and the enacting terms in previous versions of the Directive.

The Chair recalled an issue raised by **ETUI** during the second meeting of the expert group, concerning a national legal system that protects works council members against dismissal by requiring prior agreement by the works council. If an EWC member is employed in an undertaking or establishment that does not have a works council, such a protection mechanism is ineffective for that EWC member. In reply, **the Chair** recalled that the Directive does not require Member States to align the level of protection of employees' representatives across national legal systems. As long as the protection afforded to transnational employees' representatives in a certain Member State is equivalent to the protection provided to national employees' representatives in the same Member State, it is compliant with the minimum requirements of the Directive even if the level of protection is lower than in other Member States. However, the issue described by **ETUI** seems to point to a situation where EWC members were excluded from a protective mechanism against dismissal available to national works council members and were therefore not provided an equivalent level of protection. The example illustrates that the protective mechanisms laid down for employees' representatives at local level may not always be transferable, without adaptations, to employees' representatives exercising their functions at transnational level. In order to ensure "equivalent" protection, in accordance with Article 10(3), it may therefore be necessary to introduce adapted provisions accounting for the specific situation of special negotiating body and EWC members. In transposing Article 10(3), Member States should bear in mind the principles of practical effectiveness (effet utile), and, with regard to procedural rules concerning the protection of employees' representatives, the principles of effectiveness and equivalence.

4.2. Following questions raised during the second meeting in relation to the provisions concerning seafarers, the Chair recalled that Directive (EU) 2015/1794 deleted the possibility for Member States to exclude seafarers from the scope of several labour law Directives, including Directive 2009/38/EC. The provisions introduced into the third to fifth subparagraphs of Article 10(3) aim to enable the participation of members of the crew of seagoing vessels in meetings of special negotiating bodies or of EWCs.

- **ETUI** pointed out that Article 10(3), first subparagraph, requires equivalent protection only for members of special negotiating bodies, members of EWCs, and employees' representatives exercising their functions under the procedure referred to in Article 6(3), the provisions on seafarers in the third to fifth subparagraphs mention such members' alternates, in addition to the members themselves. In light of that difference, ETUI asked whether the requirements for protection pursuant to the first and second subparagraph of Article 10(3) can nevertheless be taken to apply also to alternates.

  The Chair confirmed that, in its view, an interpretation excluding alternates from protection would run counter the purpose of Article 10(3), first and second subparagraph. The inconsistency between the formulation of the personal scope in those subparagraphs compared to the provisions introduced by Directive (EU) 2015/1794 should not give rise to an interpretation depriving alternates of protection.

- **IndustriAll** referred to practical examples of retaliatory measures or dismissals directed against EWC members, and called on Member States to ensure effective protection of EWC members, including, where necessary, by adopting protective mechanisms tailored to employees' representatives at national or local level.

  The Chair echoed this point.

5. Presentation of amendments concerning access to justice, with subsequent discussion amongst members and observers

5.1. The Chair provided explanations on the general requirement, pursuant to Article 11(2)(a), for adequate procedures to be available to enable the rights and obligations deriving from the Directive to be enforced in a timely and effective manner, mentioning in particular that the revised wording of the Directive should not be construed as introducing a general right to injunctive relief by means of the stay of management decisions.

- **ETUI** asked whether EWCs should be given standing for legal actions brought to assert their rights, mentioning that the legal status of EWCs varies according to the applicable national law. Moreover, **ETUI** asked the Chair to confirm that while the revised Directive may not impose an injunctive relief procedure, applying such a procedure remains a valid option for Member States.

The Chair explained that while Member States are not required to give legal personality to EWCs, they have to provide effective remedies regarding not only the individual rights of employees' representatives but also the collective rights of the bodies provided for in the Directive. Moreover, **the Chair** confirmed that the Directive does not prevent Member States from applying interim measures to safeguard the rights laid down in the Directive, in accordance with national procedural law. As such procedures are conducive to effective access to justice, national systems enabling rightsholders to obtain the stay of management decisions can in principle be considered more protective than the minimum standard required by the Directive.

- **ETUC** insisted on the fact that individuals bringing a legal action to enforce collective rights may face retaliatory measures, asking how that risk can be addressed.

  The Chair explained that the Commission will assess on a case-by-case basis the effectiveness of national systems that do not give standing to the special negotiating body or EWC but instead allow the members of those bodies to assert collective rights on their behalf. If those members have the right to bring legal actions to enforce collective rights, either individually or jointly, access to justice in principle exists regarding those rights. The risk of retaliatory measures against members who avail themselves of that right seems to be mostly a matter of ensuring equivalent protection pursuant to Article 10(3).

5.2. Referring to questions raised during the previous meetings, **the Chair** explained that, in principle, Member States' obligation to ensure compliance with the Directive is not limited to compliance by management / undertakings but extends also to compliance by employees' representatives with their obligations arising from the Directive, such as, in particular, the obligation pursuant to Article 8(1) not to disclose confidential information.

5.3. Concerning revised Article 11(3), **the Chair** mentioned that the amendments to the first subparagraph are essentially aimed at clarifying the previous wording without introducing substantive changes. With regard to the new third subparagraph, requiring that the duration of proceedings must allow for the effective exercise of information and consultation rights, **the Chair** referred to the relevant principles regarding the right to an effective remedy, including the need to adjudicate judicial cases within a reasonable time.

- **ETUI** pointed out that while Article 11(2)(a) refers simply to "adequate procedures", Article 11(3) mentions "*judicial proceedings and, where relevant, administrative proceedings*", asking whether any difference in meaning must be inferred from this.

  The Chair replied that in both cases, the intended meaning is that Member States are required, as a minimum standard in accordance with Article 47 of the EU Charter of

Fundamental Rights, to provide effective access to justice, whereas the availability of administrative redress procedures depends on each national system and is not generally required as a minimum standard. Amendments were made to several provisions of Article 11 to correct imprecise formulations that could have been construed as allowing for administrative procedures as an alternative to judicial redress.

- In relation to the requirement pursuant to the new third subparagraph of Article 11(3), **EFBWW** referred to cases where the implementation of a management decision adopted in breach of information and consultation rights is imminent, asking whether Member States should establish urgent procedures for injunctive relief to safeguard the effective exercise of those rights in such cases.

  The Chair explained that while nothing in the Directive prevents national courts from adopting interim measures to preserve information and consultation rights, in accordance with national rules, the new provision in the third subparagraph should not be construed as requiring Member States to introduce a right to the stay of management decisions by way of injunctive relief. In particular, the provision refers to the duration and not the type of proceedings, leaving the question of how the effective exercise of rights is ensured to the procedural autonomy of Member States.

5.5. Regarding Article 11(4), **the Chair** explained that the provision refers specifically to special negotiating bodies and EWCs, because the legislator aimed to address the lack of access to justice in certain legal systems regarding the collective rights of those bodies, including the issue that such bodies may de facto be prevented from exercising remedies due to a lack of financial resources. In that regard, **the Chair** recalled the principle of reasonableness of costs and the related case-law concerning legal aid required to provide effective judicial redress. The Chair explained that the criteria set out in recital 10, which derive from that case-law, are also relevant in the context of Article 11(4).

- Following up on the Chair's explanations regarding the personal scope of Article 11(4), **ETUI** asked whether and how the Directive requires effective access to justice with respect to individual rights.

  The Chair confirmed that the requirements of Article 11(4) are without prejudice to the general requirement, pursuant to Article 11(2)(a), to ensure that adequate procedures are available to enable all rights and obligations deriving from the Directive to be enforced, including the individual rights of employees' representatives, for example in the framework of an information and consultation procedure.

- **ETUI** pointed out that while Article 11(2)(a) and Article 11(4) refer to access to justice with respect to the rights deriving from the Directive, Article 11(3) refers to Articles and 8 and 8a, which do not lay down rights of employees' representatives but require

Member States to lay down objective criteria justifying the confidentiality or non-transmission of information. ETUI asked whether this entails a difference as to the proceedings and conditions for access to justice that Member States are required to provide for, respectively.

The Chair stated that it is for Member States to determine the applicable proceedings and redress mechanisms in the exercise of their procedural autonomy, so they can provide for different types of proceedings, as long as the principles and minimum requirements set out in the directive are respected. **The Chair** also mentioned that confidentiality restrictions and non-transmission of information on transnational matters affect not only Article 8a but also the rights pursuant to Articles 9(2) and (3).

- Referring to the criteria set out in recital 10, **EFFAT** asked whether legal costs can be assumed to be reasonable if they are neither manifestly disproportionate nor without a justifiable link to the provision of relevant legal advice, or created by manifestly unfounded, frivolous or vexatious claims.

  The Chair recalled that there are two elements to reasonableness of legal costs: firstly, whether the relevant legal action is justifiable on its substance, and secondly, whether the level of costs incurred in relation to that action is proportionate. If both criteria can be assessed positively in a given case, the inability to cover such costs should not prevent special negotiating bodies or EWCs from enforcing their rights.

5.6. Concerning Article 11(5), **the Chair** described the purpose of ensuring that possible requirements for prior attempts at alternative dispute resolution ('ADR') cannot prejudice or limit the right to bring judicial proceedings, in accordance with the case law referenced in recital 22[1].

- **EFBWW** referred again to cases where the implementation of a management decision adopted in breach of information and consultation rights is imminent, asking how ADR mechanisms could be reconciled with the requirement of effective judicial protection of those rights in such cases.

  The **Chair** observed that, in principle, ADRs is meant to allow for a faster resolution of disputes. Nevertheless, it cannot be excluded that such procedures lead to delays in complex cases. Article 11(5) requires that mandatory ADR mechanisms do not interfere with the right to effective access to justice.

- **ETUI** asked whether the concept of 'ADR' mentioned in Article 11(5) is different from the concept of 'administrative proceedings' mentioned in Article 11(3) and (4).

[1] Judgment of the Court of Justice of 18 March 2010 in joined cases C-317/08, C-318/08, C-319/08 and C-320/08, *Alassini and Others*, ECLI:EU:C:2010:146.

The Chair confirmed that ADR is indeed different from an administrative procedure. While administrative proceedings are conducted by a national authority to investigate or address breaches of law, ADR is akin to arbitration initiated by the parties to resolve a dispute.

5.7. Regarding the notification obligations laid down in Article 2(2), second subparagraph of Directive (EU) 2025/2450:

- **LV** asked whether the Commission intends to provide guidance on the type and level of detail of the information to be submitted by Member States. In particular, **LV** enquired whether a common approach, such as guidelines or a template, would be developed, or whether Member States are free to provide a general description of their national systems. **LV** also highlighted the complexity of national frameworks, which may include administrative, civil and possibly criminal procedures, as well as alternative dispute resolution mechanisms, and asked how detailed the notification should be.

  The Chair explained that this obligation goes beyond the standard notification of transposition measures, while remaining of a similar nature. The general criteria for explanatory documents presented during the first meeting of the expert group, in particular those deriving from the judgment in case C-543/17, *Commission v. Belgium*, can apply also in the context of Article 2(2), second subparagraph. Member States should not provide only a general overview but rather explain how breaches of the rights established by the directive can be pursued under national law. **The Chair** said that the Commission services will reflect further on this issue and provide a template or guidance, in the context of the third working paper and the final report, in order to facilitate the notification process and ensure consistency across Member States.

6. Presentation of amendments concerning penalties, with subsequent discussion amongst members and observers

The Chair provided explanations on the revised requirements regarding penalties, laid down in Article 11(2)(b) and Article 11(2), second and third subparagraphs, recalling that the lack of effective, dissuasive and proportionate penalties was one of the key issues identified already by the 2018 evaluation of Directive 2009/38/EC. **The Chair** elaborated on the meaning of the terms ‘effective’, ‘dissuasive’, and ‘proportionate’, explaining that

- effectiveness points towards the ability of a penalty to achieve the desired goal of enforcing the relevant rights and obligations;

- dissuasiveness requires that the penalties constitute a real and adequate deterrent on any subject of the relevant obligations (general prevention);
- proportionality means that the penalty must be adapted to the breach and potentially to the damage sustained.

These principles must be assessed in the light of the specific circumstances of each case.

In reply to a written question received ahead of the meeting, **the Chair** stated that there is no plan for publishing Commission guidance on the determination of penalties, beyond the explanations provided in the context of this expert group, which will be summarised and published in the final report. While guidelines have been published in the past to complement directly applicable EU Regulations (e.g., guidelines of the European Data Protection Board regarding penalties for breaches of the General Data Protection Regulation), a minimum requirements Directive such as Directive 2009/38/EC does not allow for a similar degree of detail.

- **LT** asked the Chair to confirm that Directive (EU) 2025/2450 does not aim at full harmonisation of sanctioning models and leaves discretion to Member States to choose the sanctioning mechanism, provided that it ensures the achievement of the objectives of the Directive.

  The Chair mentioned that in accordance with its legal basis, the Directive establishes only minimum requirements. It leaves Member States discretion as to how they achieve the results laid down in the Directive and to introduce more favourable provisions. In principle, Member States may therefore choose their preferred sanctioning mechanism, provided it complies with the criteria of effectiveness, dissuasiveness, and proportionality. However, with regard to breaches of the national provisions transposing the information and consultation requirements, the second subparagraph of Article 11(2) limits the discretion by requiring Member States to provide for dissuasive financial penalties, without prejudice to the possibility to provide for other types of penalties in addition.
- Moreover, **LT** asked whether sanctions laid down in national administrative offence legislation with fixed maximum pecuniary penalties (up to several thousand euros) may satisfy the requirement for effective, proportionate and dissuasive sanctions, or whether that national law should provide for sanctions that are more specifically adapted to large-scale multinational undertakings or groups of undertakings? In that respect, **LT** asked specifically whether the notion of “dissuasive sanctions” used in Article 11 of the Directive requires that sanctions be linked to the size of the undertaking or group of undertakings (for example, turnover), or whether it is sufficient for national law to set fixed sanction amounts while at the same time requiring the competent authorities, when imposing a sanction, to take into account the seriousness, duration and consequences of the infringement, as well as the factual circumstances of the case.

Finally, **LT** asked whether Article 9(2) and (3) should be understood as requiring national law to provide for stricter sanctions for breaches of information and consultation obligations, compared to other infringements related to the operation of European Works Councils.

The Chair stated that any fixed ceilings would have to be scrutinised in particular against the requirement of dissuasiveness. One of the key issues that the legislator wanted to address through the revision of the Directive is that existing fixed sums are very often negligible for multinational undertakings or groups. The requirement to take into account the annual turnover of the undertaking or group concerned (Article 11(2), third subparagraph, second sentence) was meant to address precisely the lack of dissuasiveness, given the large differences between the financial capacity of the penalised undertakings or groups. The alternative option for applicable penalties to have a similarly dissuasive nature gives some flexibility to Member States to combine financial penalties not based on turnover with other penalties to ensure dissuasiveness. However, by themselves, financial penalties that are set or capped at fixed amounts are unlikely to be similarly dissuasive and proportionate as penalties determined in proportion to turnover.

Finally, **the Chair** explained that pursuant to the second and third subparagraph of Article 11(2), the same criteria should be used to determine financial and other types of penalties. In relation to financial penalties, Article 11(2), third subparagraph, second sentence, provides for the additional criterion of turnover but allows Member States to ensure dissuasiveness by other means instead of applying the turnover criterion. The principles of effectiveness, dissuasiveness and proportionality of penalties apply equally with regard to all breaches. It follows that penalties for breaches of information and consultation obligations (Article 9(2) and (3)) do not necessarily need to be different in nature or be more severe than for other breaches. It is therefore possible to provide for the same types and criteria for penalties in relation to breaches of those obligations together with penalties for breaches of other obligations.

- Concerning the requirement, pursuant to Article 11(2), second subparagraph, to provide for dissuasive financial penalties for a failure to comply with national provisions transposing the information and consultation obligations laid down in Article 9(2) and (3), **NO** asked whether the notion of "*financial penalties*" allows Member States to choose freely between administrative and criminal sanctions, or whether it implies any obligation to provide for criminal penalties. In this context, **NO** noted that, in its national system, financial penalties may take either form, and stressed that this distinction is particularly relevant in the EEA framework, because criminal law falls outside the scope of the EEA Agreement.

The **Chair** recalled that the legal nature of financial penalties falls within the procedural autonomy of Member States. The Directive does not require any specific legal classification of penalties, provided that they are effective, proportionate and dissuasive. In principle, financial penalties may therefore be administrative or criminal in nature, depending on national systems. Consequently, the Directive does not impose, as a minimum requirement, to introduce any criminal sanctions.

- **NL** asked whether, in the context of the last sentence of Article 11(2), third subparagraph, the phrase *"or ensure that the applicable penalties have a similarly dissuasive nature"* could be understood as allowing Member States to provide for alternative measures, such as injunctions, instead of financial penalties, provided that such measures are equally dissuasive. In particular, the **NL** sought to confirm whether a system based primarily on injunctions, which may ultimately lead to financial penalties in case of non-compliance, would be considered in conformity with the Directive.

  As a preliminary observation, the **Chair** mentioned that, based on a literal reading of the provision, the relevant sentence applies to the determination of the level of financial penalties, rather than allowing for an alternative type of sanction. Regarding a system where injunctions are combined with financial penalties in case of non-compliance, there could be some room for interpretation. Compliance will have to be assessed in light of the specific national framework notified and the accompanying explanations provided. **The Chair** recalled that each system of penalties needs not only to ensure the dissuasive nature of penalties, but also, pursuant to the second subparagraph of Article 11(2), provide for financial penalties at least in relation to breaches of information and consultation obligations. Finally, **the Chair** observed that, as the Directive lays down minimum standards, the assessment may also depend on whether an injunction-based system can be considered at least as protective as a system based directly on financial penalties.

- Following up on the question of the NL, **ETUI** asked, firstly, whether a distinction can be drawn between (financial) penalties and other types of sanctions, noting that Dutch law provides for contempt-of-court fines if an undertaking fails to comply with a judicial injunction order. Next, **ETUI** enquired whether "*penalties having a similarly dissuasive nature*", in the sense of the third subparagraph, second sentence, of Article 11(2) could take the form of injunctive relief, and whether "similarly dissuasive" could be interpreted as requiring at least the same level of protection or deterrent effect as financial penalties based on turnover. Moreover, **ETUI** asked for confirmation that the gravity of breaches of information and consultation obligations, for instance due to their continuous or recurrent nature, should always be taken into consideration when determining the level of the penalty imposed for such breaches.

  Regarding the nature of sanctions, **the Chair** indicated that the Directive does not allow all financial penalties to be replaced by injunctive relief or similar measures. Such an interpretation would go beyond the flexibility permitted by the text of Article 11(2), second subparagraph. The conformity of possible combinations between injunctive measures and financial consequences linked to non-compliance with those measures will have to be assessed based on the specific provisions notified. The **Chair** noted that the term "similar" in the third subparagraph, second sentence, does not have clearly defined boundaries and requires a case-by-case assessment of dissuasiveness. Furthermore, the **Chair** clarified that although the requirement to provide for financial penalties relates only to breaches of information and consultation obligations, that requirement does not imply a hierarchy between different types of breaches. The gravity and duration of breaches must always be taken into account when determining the level of penalties, irrespective of the type of breach.

- Moreover, **ETUI** asked for clarification on the term "annual turnover" as used in Article 11(2), third subparagraph, noting that the provision does not specify whether this refers to EU or worldwide turnover.

  The **Chair** indicated that, since the Directive does not limit the reference to EU turnover, the provision should be understood as referring to turnover in general and not being restricted to EU turnover. It was also noted that limiting turnover to EU activities could lead to disproportionate effects depending on the scale of operations within the EU, penalising undertakings and groups that concentrate their activities in the EU.

- **EFFAT** asked whether the reference to Articles 9(2) and 9(3) should be understood as covering all national provisions transposing the obligations laid down in those Articles, including all obligations related to the timing, form and content of information and consultation procedures. **ETUC** also sought confirmation that any failure to comply with those obligations would fall within the scope of the requirement to provide for dissuasive financial penalties.

  The **Chair** confirmed that Article 11(2), second subparagraph, refers to any national provisions transposing the obligations laid down in Articles 9(2) and (3) in their entirety, and therefore all such obligations are covered by the requirement to provide for dissuasive financial penalties.

7. Presentation of amendments concerning the deletion of exemptions, transitional provisions and deferred application, with subsequent discussion amongst members and observers

7.1. **The Chair** recalled the scope of the exemptions previously laid down in Article 14 of Directive 2009/38/EC and the consequences of deleting those exemptions for the undertakings, bodies, and workforce concerned. In reply to written questions received ahead of the meeting, **the Chair** confirmed that if a certain national legal system does not contain any measures corresponding to the deleted provisions, the deletion of Article 14 also cannot be transposed. On the contrary, Article 14b must be transposed even if there is no evidence that undertakings with pre-Directive voluntary agreements exist in a certain Member State, because, firstly, neither the fact that a Member State may have joined the EU only after the entry into effect of the 1994 EWC Directive nor the fact that Article 14 has not been transposed in that Member State excludes the existence of pre-Directive voluntary agreements and undertakings with such agreements, outside the scope of EU law. It is therefore not clear on what basis the existence of pre-Directive voluntary agreements could be excluded with certainty. Secondly, even if there are no voluntary agreements subject to the law of a certain Member State, it is possible that the establishment of an EWC is requested in that Member State for undertakings or groups with voluntary agreements subject to the law of another Member States.

- **ETUI** raised concerns about the legal protections and enforcement mechanisms available to members of bodies established by voluntary pre-directive agreements outside the scope of EU law. Referring to the hypothetical example of a Latvian member of such a body established based on a voluntary collective agreement under French or German law, **ETUI** asked whether that worker retains enforceable rights under national law and, if so, how these rights can be effectively upheld or protected in their home jurisdictions, especially in cases where disputes arise. **ETUI** and **IndustriAll** stressed that these questions are of great practical relevance in particular in the industrial sector, where pre-Directive voluntary agreements are still operating in an estimated 150 undertakings. **IndustriAll** urged Member States to avoid a situation of legal limbo for the bodies established by such agreements and their members, noting that many of these long-standing agreements incorporate definitions, rights, or obligations from the 1994 Directive, such as standards for information, consultation, or confidentiality.

  The **Chair** clarified the legal nature of pre-directive voluntary agreements, emphasising that bodies established by such agreements are not EWCs as defined in the Directive. Consequently, the rights and obligations of the parties to such agreements and of the members of such bodies are not a matter of EU law but derive from the terms of the agreements themselves or the applicable national labour law or private contract law etc, as the case may be. The applicable national law is not identified by the Directive but must be determined based on relevant conflict-of-law rules (private international law) or choice-of-law rules in the voluntary agreement. In cross-border situations, the competent national courts may need to apply the applicable national law of another Member State. The deletion of the exemptions has not changed the legal situation in that regard.

  Regarding possible references in pre-directive agreements to the definitions or provisions set out in the Directive, **the Chair** mentioned that the deletion of the exemptions should not have any impact on the legal validity of the rights that the parties chose to incorporate into their agreement in that way. If parties agreed to comply with standards established by the Directive, those standards apply by virtue of the agreement and not of the Directive, and that agreement can remain legally binding. As the respective rights and obligations never derived from the Directive but always from the will of the parties, their legal basis is not affected by the deletion of the exemptions. The deletion of the exemptions cannot entail a retroactive amendment or revocation of the terms of pre-Directive voluntary agreements.

- **ETUI** also enquired whether pre-directive agreements could continue to operate alongside a newly negotiated EWC established under Articles 5 and 6 of the revised Directive. The question arose as to whether these agreements would be automatically terminated upon the establishment of a new EWC or if they could persist indefinitely, potentially leading to a duplication of structures and conflicting obligations for both employers and workers.

  The Chair explained that the fate of pre-Directive voluntary agreements is not governed by the revised Directive, since those agreements were concluded and remain outside the scope of EU law. Any possible consequences, with regard to such agreements, of the establishment of a new EWC in the same undertaking can derive only from the agreements themselves or the applicable national law. It is therefore not excluded that a body established by a pre-Directive voluntary agreement may continue to operate in parallel with a newly established EWC under Articles 5 and 6, if the parties to the voluntary agreement do not terminate it in accordance with terms of that agreement.

  The Chair concurred that a duplication of structures could lead to practical challenges for both employers and employees' representatives. It is primarily up to the employees' representatives or bodies nominated under pre-Directive voluntary agreements, in collaboration with management, to enable a smooth transition in case the establishment of an EWC is requested, for instance by adding arrangements for the termination of such agreements.

- Finally, **ETUI** sought confirmation on whether there is any time limit for initiating negotiations in undertakings that were previously exempt pursuant to Article 13(1) of the 1994 Directive.

  The Chair confirmed that there is no time limit for initiating negotiations in these undertakings, which are now treated in the same as any other company without an EWC. The revised Directive does not provide for any transitional arrangements in their regard. As stated in Article 14b of the revised Directive, pre-existing voluntary agreements remain in force during negotiations unless terminated under their own terms. This means that companies and workers can initiate negotiations at any time, but pre-existing agreements will continue to apply unless and until they are terminated or replaced.

- **Industry All** asked as of when transnational information and consultation bodies established in formerly exempted undertakings can trigger negotiations to establish an EWC.

  The Chair pointed out that in accordance with Article 2 of Directive (EU) 2025/2450, the deletion of the exemptions must be transposed into national law by 1 January 2028, so requests pursuant to Article 5 can be made in previously exempted undertakings from 2 January 2028.

- With regard to the 2-year period, pursuant to Article 14b of the revised Directive, to negotiate an EWC agreement following an Article 5 request in undertakings with pre-existing voluntary agreements, **ETUI** mentioned that such agreements are sometimes terminated strategically in advance of the application of the transposing provisions, in order to avoid falling under the shortened negotiation period.

  The **Chair** stated that the possibility for either party to terminate a voluntary pre-Directive agreement depends on the relevant terms of that agreement and is not governed by EU law. The incentive for strategic “pre-emptive” terminations is a consequence of the legislator’s choice to shorten the negotiation period for undertakings with voluntary pre-Directive agreements.

7.2. Regarding period of deferred application pursuant to Article 2(1), second subparagraph of Directive (EU) 2025/2450 and the transitional provisions pursuant to Article 14a of revised Directive 2009/38/EC, the Chair explained that those provisions aim to give an opportunity to employees’ representatives and management in undertakings with pre-existing EWC agreements to ensure a smooth transition to the revised requirements. With respect to paragraph 4 of Article 14a, the Chair mentioned that it is declaratory in nature and recalled that, in accordance with general principles of EU law and case law, the Directive does not have horizontal direct effect between non-State parties, so neither EWCs nor management can derive claims against one another directly from the Directive. Even insofar as national transposing measures contain directly applicable requirements, it would be advisable for parties to align pre-existing EWC agreements with the revised requirements, to avoid legal uncertainty and disputes and reduce the potential need for litigation.

- **ETUI** asked to confirm (i) that there is no obligation to renegotiate, (ii) whether there is any time limit for initiating the procedure pursuant to Article 14a, and (iii) whether either party has the right to initiate formal negotiations following by default the procedure set out in Article 5 in conjunction with Article 13, second and third paragraphs. Referring to the non-regression principle, **ETUI** also asked whether the intention of the adaptation procedure pursuant to Article 14a is to address the elements introduced or amended in Article 6, whereas other rights set out in pre-existing agreements should be shielded from adaptations, in accordance with the non-regression principle.

The Chair confirmed that there is no obligation to renegotiate, as the process for adapting pre-existing EWC agreement can only be initiated by either management or employees' representatives / the EWC. Management, the pre-existing EWC, and 100 employees or their representatives from two different Member State each have the right to initiate adaptations pursuant to Article 14a. There is no deadline for initiating this process, although parties may choose to use the period of deferred application to align their pre-existing agreements with the revised requirements before the latter become binding in national law.

The Chair explained that if neither side initiates renegotiations although their pre-existing EWC agreement falls short of the revised requirements, the agreement nevertheless remains in force. While this situation could entail the risk of disputes and litigation from 2 January 2029, the Directive does not contain any particular sanctions for the failure to adapt non-compliant agreements.

Regarding the suggestion that the content of pre-existing EWC agreement should be shielded from adaptations in accordance with the non-regression principle, **the Chair** recalled that, as stated in the last sentence of Article 14a(1), the scope of the negotiations <u>may</u> be limited to addressing the elements and requirements of Article 6 affected by the revision. However, **the Chair** explained that the Directive does not prevent parties from negotiating or adapting other aspects of pre-existing agreements. The non-regression principle laid down in Article 12(6) of Directive 2009/38/EC applies to the directive and national law itself, not to the content of EWC agreements and negotiations between management and employees' representatives.

- **ETUI** sought clarity on what would happen if the EWC and management disagree on the scope of adaptation, particularly if one party wants a limited update and the other seeks broader changes.

  The Chair stressed that the revised Directive respects the principle of party autonomy when it comes to the determination of the content of agreements. It neither obliges nor prevents parties from renegotiating parts or even the entirety of their agreement, within the framework of the minimum requirements to be implemented by Member States.

While the scope of the transitional provisions is limited to the revised elements of Article 6, the Directive therefore does not preclude these negotiations from being extended to other aspects. The Chair re-iterated that it would generally seem advisable for parties to avoid inconsistencies between their agreement and the revised legislative requirements. The question whether and under what conditions a party to pre-existing agreement may extend negotiations to aspects falling outside the scope of Article 14a must be answered based on the terms of the relevant agreement.

- **IndustriAll** asked whether, in the case of late transposition of Article 14a, pre-existing EWCs were nevertheless entitled, based on the Directive, to trigger renegotiations from 2 January 2028. In that regard, **ETUI** stressed that delays in adapting pre-existing agreements could lead to unfair differences between undertakings and argued that Article 14a is sufficiently clear and precise to be applied. **ETUI** asked whether a staged transposition, prioritising the transitional provisions in Article 14a, could be a solution to mitigate the risk of delays linked to late transposition.

  The Chair confirmed that the right pursuant to Article 14a to trigger renegotiations must be laid down in national law to take effect. While Article 14a may indeed be sufficiently precise, EU Directives have direct effect only in vertical legal relationships vis-à-vis the State, not in horizontal relationships between non-State entities. The application of legal rights between EWCs and management / undertakings therefore depends on the transposition of the revised Directive into national law. Consequently, if the relevant pre-existing agreement itself does not allow the EWC to request renegotiations and management refuses to renegotiate in the absence of a legal obligation to that effect, late transposition of Directive (EU) 2025/2450 may delay the alignment of the agreement with the revised requirements.

  On the contrary, given that all national legal systems already contain applicable provisions on the nomination of members to the special negotiating body, late transposition of Directive (EU) 2025/2450 in Member States from which employees' representatives must be nominated to the special negotiating body for the purposes of negotiating adaptations to that agreement should not delay the start of those negotiations, provided Article 14a has been transposed into the national law applicable to the relevant EWC agreement. Likewise, employees and their representatives from two different Member States can request negotiations pursuant to the provisions transposing Article 14a(1) into the national law applicable to the relevant EWC agreement, even if the Member State of employment of those employees (representatives) misses the transposition deadline on 1 January 2028.

Regarding staged transposition, the **Chair** noted that the directive does not provide for such an approach, even if it could help to avoid delays in the adaptation of pre-existing EWC agreements. If Member States choose to transpose certain provisions after the deadline, this would constitute a partial failure to transpose, subject to possible infringement proceedings.

In light of the concerns raised by trade union organisations, **the Chair** emphasised the importance of timely transposition and reaffirmed the Commission's commitment to supporting stakeholders through guidance and dialogue.

- Regarding the procedure for adapting pre-existing EWC agreements, **IndustriAll** asked whether the procedural arrangements set out in the relevant agreement can apply even if the request is made by 100 employees or their representatives from two different countries, or whether the procedure set out in Article 5 in conjunction with Article 13, involving the setting-up of a special negotiating body, applies in such cases.

  The Chair explained that pursuant to Article 14a(2), the adaptation of a pre-existing EWC agreement may be negotiated pursuant to the procedural arrangements contained in that agreement. This possibility does not depend on how the adaptation process was triggered. The procedure pursuant to Article 5 in conjunction with Article 13, requiring the establishment of a special negotiating body, applies only by default, i.e., in the absence of relevant procedural arrangements in the agreement.

- Concerning Article 14a(3), **IndustriAll** asked whether, in the case of a failure to agree on certain elements pursuant to revised Article 6, the subsidiary requirements apply only with respect to the specific elements that parties did not agree on, arguing that it could be disproportionate to replace the entire pre-existing EWC agreement in such a case.

  The Chair clarified that the subsidiary requirements replace the pre-existing EWC agreement as a whole if negotiations triggered pursuant to Article 14a do not lead to any agreement. There is no indication that in the absence of an agreement, the legislator intended to allow for a partial application of the subsidiary requirements, limited to filling gaps regarding the aspects that parties could not agree on. Such an application of the subsidiary requirements would need a specific provision to that effect in the Directive. However, Article 14a(3) provides for the application of the subsidiary requirements only if parties do not reach any form of agreement. If parties wish to retain the pre-existing agreement, they may achieve this by agreeing not to make any changes to that agreement. It would in practice seem advisable for parties to clearly document their intentions to avoid unintended consequences.

- Finally, **ETUI** enquired whether the revised version of the subsidiary requirements in Annex I to Directive 2009/38/EC would automatically apply to EWCs operating without an agreement under the current subsidiary requirements.

  The **Chair** confirmed that once the revised subsidiary requirements take effect in national law, they will automatically replace the old ones. The deferred date of application of the national provisions transposing the amendments to Annex I is 2 January 2029. If a Member State has not yet enacted the relevant provisions by that date, the current subsidiary requirements would continue to apply until the revised version takes effect.

4. AOB

N/A

5. Conclusions and next steps

As a next step, **the Chair** will circulate a revised version of the second draft working paper for adoption by written procedure. The draft minutes on the third meeting and the draft third working paper would also be adopted by written procedure, unless a substantial need for further oral discussions at this stage emerges in light of written comments. If needed, an additional meeting can be organised, possibly online.

Once all the minutes and draft working papers are approved, **the Chair** will prepare a draft report on the work of the expert group, which will be circulated for comments by written procedure in due time, likely before the summer break. With a view to supporting a smooth transposition and the preparatory work of social partner organisations, **the Chair** suggested to aim together at finalising and publishing the final report swiftly.

The CIRCABC group will remain available during the transposition process and **the Chair** plans to make available, in an anonymised form, questions and answers that appear to be of wider relevance.

Attachments:

- Agenda of the third meeting (adopted)
- Final minutes of the second meeting (adopted)
- PowerPoint presentation of 16 April 2026