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To: Coreper 1

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Joint EU employers' statement on the revision of the European Works Councils Directive ahead of the Coreper meeting on 5 June 2024

Following the conclusion of the work of the EPSCO Council's social questions working party, the proposed revision of the European works councils (EWCs) directive will be discussed by Coreper on 5 June. Unfortunately, the discussions in Council to date have not sufficiently taken into account some important concerns of the European employers community. In this light, at the present stage of the Council proceedings, we are calling on the Belgian Presidency of the EU Council and on the Member States to work further towards a general approach that adequately responds to the following employers key concerns:

1. **Transnational matters:** In our view, transnational matters can only qualify as transnational if they have direct, immediate and severe consequences affecting workers across national boundaries in full respect of national information and consultation procedures while avoiding any overlapping responsibilities. Vague wording such as "reasonably be expected to" should be deleted as it will inevitably lead to legal uncertainty and very likely legal disputes. To the very least, the Council must reinsert the word "substantially" in article 1.4 of the directive to ensure adequate legal certainty.

2. **Legal costs falling on management:** Article 11(3) bb has been somewhat improved by the Council compared to the Commission's original proposal. However, legal objections of fundamental importance remain and are likely to recur and influence future EU proposals in the field of labour law. In particular, the proposal that costs regarding court disputes in a civil case should only be borne by the employer's side regardless of the outcome of the case in itself introduces a new legal order in many Member States. This is not justified from the perspective of fundamental freedoms and rights and cannot be considered neither as within the scope of existing EU law. Further, it is unreasonable that the European Works Council and the Special Negotiating Body can initiate legal disputes without any risk at all. Apart from being unbalanced, this will not promote a healthy climate for information and consultation between management and employees. Legal costs should be left to member state competence.

3. **Role of mediation and conciliation for EWCs disputes:** In line with the political priority to support social dialogue development, a revised EWCs directive should require Member States to develop well-targeted alternative dispute resolution mechanisms for avoiding unnecessary increases of court cases, including through expert facilitation and based on the experience of the existing mediation and conciliation structures for social partners disputes that exist in the Member States. Bringing cases to a court is always possible, but this should be a last resort. The Council should also bring back into the directive that Member States are responsible for providing appropriate measures in the event of failure to comply with the Directive.

4. **Reinforced consultation procedure:** Companies are concerned that the proposed change for the consultation requirements, which would enable the European Works Council to express an opinion before the company adopts its decision, and that such an opinion should be the subject of a reasoned written response from management before the latter adopts its decision, could delay important decisions at a time when companies often need to react quickly given the fast changes in the economic environment. Information and consultation should take place as quickly as possible. Decision-making processes often require complex consultations with representatives or bodies at local, national and European level. The procedures should not be made more rigid through the introduction of a reasoned written response from the employer. This constitutes an unnecessary administrative burden and does not correspond to any legal requirement or usual practice.

5. **Confidentiality:** The ability of management to keep information confidential without delays to the decision-making process is essential and should be therefore protected. The EWCs directive includes a dedicated article on confidentiality. This revision process is the right time to remove the possibility for Member States to impose prior administrative or judicial authorisation from article 8 maintaining its title “confidential information’ and maintaining the exclusive attribute of the management of deciding which information is confidential regardless of the level of harm it could cause if it were disclosed.

6. **Article 14a on transitional provisions for existing agreements**: Well-established European works council bodies as well as voluntary agreements must be retained and protected in their current structure. Renegotiations should only take place if the company social partners or the majority of employees demand them. In this respect, article 14a should not follow the same logic as for the setting up of a new European Works Council through a Special Negotiating Body process, e.g. 100 employees in two different Member States as set out in article 5. Specific criteria are needed to ensure that the renegotiation is prompted with a sufficient representation of workers in all the Member States that are represented in the existing European Works Council. The company management and the existing European Works Council members should also be given the possibility to negotiate the adaptations needed in the existing European Works Council and the possibility to do this according to current arrangements in the European Works Council agreement, as proposed by the

Commission. The additional point 4 in the Council text indicating that agreements must comply with all the minimum requirements of the Directive in the meantime should be deleted, as this contradicts the rest of the article, where European Works Councils are given the time necessary to renegotiate their agreements.

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