



Supporting the Public Services Sector
for Establishing and Promoting EWCs

FINAL PUBLICATION

ESTABLISHING AND PROMOTING EUROPEAN WORKS
COUNCILS - EMPLOYEE PARTICIPATION IN THE
PUBLIC SERVICES SECTOR



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Table of contents

Nº Pág

I. INTRODUCTION - PROJECT OBJECTIVES	03
II. LEGISLATION ON EUROPEAN WORKS COUNCILS: Directive 2009/38	05
Validity of information and consultation at transnational level - revisions to Directive 2009/38/EC	11
III. RESEARCH PHASE OF THE PROJECT	14
I) DESKTOP ANALYSIS	15
II) REPORT ON THE ANALYSIS OF THE DATA OBTAINED	19
III) COMPARATIVE REPORT CONCLUSIONS	26
IV. DIFFICULTIES IN SETTING UP EWCS IN THE PUBLIC SERVICES SECTOR	28
An alternative: The creation of a Transnational Transnational Information System in the Public Services	31
Recommendations for Improvement and Best Practices	35
V. LAST MINUTE Second stage consultation of the social partners under Article 154 TFEU on a possible revision of the European Works Councils Directive (Directive 2009/38/EC)	38

I. INTRODUCTION - PROJECT OBJECTIVES

The project "*Supporting the Public Services Sector for Establishing and Promoting EWCs*", involves five organisations from four countries, i.e., "Antonio Bustamante" Foundation, FAB, and the Coalición Sindical Independiente de Trabajadores de Madrid, CSIT UNIÓN PROFESIONAL, both from Spain; the Independent Trade Union Federation of Transport Workers, FAST, from Italy; the Confederation of Free Trade Unions, KSS, from North Macedonia and the GSUPOIP NEZAVISNOST, from the Republic of Serbia.

The main objective of the project is *to improve procedures for employee participation in the public services sector to develop real participation, to set up European Works Councils and to improve the effectiveness of existing ones*. This objective will be achieved by analysing the reasons for the low number of EWCs in the utilities sector and identifying the shortcomings in their functioning.

In addition to the main objective, other specific goals have been defined, such as increasing employee participation, establishing transnational participation mechanisms, and raising awareness of the social partners in this field, among others.

The project has some *added value*. One of them is the participation of four countries with different backgrounds in the EU: two candidate countries, Serbia, and North Macedonia and two Member States, Italy and Spain (with a very long tradition in social dialogue, collective bargaining and the development of employee participation). This gives us a transnational dimension that has allowed us to analyse from different perspectives the possibility of setting up EWCs in the public services sector and to establish strategies and good practices that can be applied across Europe.

Another is the analysis of the implementation and shortcomings of the EWC Directive 2009/38 and its possible implementation in the public services sector. [Perhaps the weakness of our project is the absence of political representatives or managers from the public services sector, to have a more global view on the establishment of EWCs in this sector¹.

¹ The *Commission's Analytical Staff Working Document* on the revision of the European Works Council Directive (Brussels, 26.7.2023) states that, according to the data available to the Commission, in 2021, 3676 multinational companies operating in the EEA constituted an undertaking or group of undertakings within the scope of the directive, employing around 30 million workers in the EEA and constituting a total of 935 EWCs.

The headquarters of multinational companies, by country, are in: the United States (170), Germany (124), France (102), United Kingdom (92), Sweden (69), Netherlands (58), Switzerland (38), Italy (37), and Spain (14).

By sectors, the Metal sector (423), the Services sector (269), Chemical companies (201) or Food, agriculture and tourism (109) with a total of 17 EWCs established for the Public Services sector.

Thirdly, we must highlight that our project is being developed at a strategically important moment, due to the recent *Resolution of the European Parliament of 2 February 2023, with recommendations to the Commission on the revision of the Directive on European Works Councils (2019/2183(INL))*. It carries out a revised analysis of the current Directive 2009/38, highlighting, among other aspects, the low number of councils set up, their weak influence on decision-making or how the lack of application of the Directive leads to a fragmented implementation of information and consultation rights; proposing to the European Commission to draw up a new *framework Directive on information, consultation and participation of workers in European companies*, with a proposal for the revision of Directive 2009/38, no later than 31. 01.2024.



II. LEGISLATION ON EUROPEAN WORKS COUNCILS: Directive 2009/38

The European Union supports and complements the action of the Member States in the field of worker participation, through *the information and consultation of workers*. It aims to make progress on certain aspects of European social policy: improving of living and working conditions, adequate social protection, a high and sustainable level of employment or combating exclusion.

Thus, social dialogue (promoted in Article 151 TFEU), recognition of the role of the social partners (Article 152 TFEU) and information and consultation rights (Article 27 of the Charter of Fundamental Rights of the European Union) are an important part of the European social model, with almost 40 directives containing provisions on information and consultation of workers, notably *Directive 2002/14/EC* and, more recently, Article 8 of the *European Pillar of Social Rights: "Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and collective redundancies"*.

If we extend this right of workers' participation to the transnational sphere of action, there is also a series of directives² which regulate the right of workers to be informed and consulted in situations with a transnational component, for which a basic instrument is used in the application of this right to information and consultation of workers: the European Works Councils (EWCs). [The legislation providing for the possibility of setting up EWCs was first adopted in 1994 in order to improve the right of workers to information and consultation of Community-wide companies on decisions that affect them.].

² Together with Directive 2009/38, to which we now refer, there are five others, drawn up at different periods, but with the same transnational component, which also establish obligations regarding information and consultation on specific issues and which we cite here for complementary information:

- Directive 2004/25/EC of 21 April 2004 on takeover bids in companies, establishing the general rules on information and consultation on job offers;
- Directive 2011/35/EU of 5 April 2011 concerning mergers of public limited liability companies;
- Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company about the involvement of employees, not only through information and consultation but also providing for the participation of employees on boards of directors;
- Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society about the involvement of employees;
- and Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies and containing rules on employee participation in such mergers.

In 2009, a recast Directive (*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 to inform and consult employees*) was adopted, which sought to address many of the shortcomings identified in the original Directive, including the definition of some key concepts such as transnational matters, information and consultation, as well as clarifying provisions on the right to training and the link between information and consultation procedures at European and national level.

The basic aim of this Directive is to guarantee the right to information and consultation on transnational matters for employees of European-scale undertakings or groups of undertakings (with at least 1,000 employees), and it proposes to do so through two actions: **the establishment of a European Works Council or an alternative procedure for informing and consulting employees.**

However, the creation of an EWC is not automatic but must be the result of an initiative by management or workers' representatives from different countries and must meet a number of requirements, which are listed below.

Basic content of the Directive on the establishment of EWCs

Before looking at the procedure and criteria for setting up EWCs, it seems reasonable to try to define what a European Works Council is and what it serves.

Initially, EWCs were conceived as bodies designed to *"improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings"* (Article 1 of Directive 94/45/EC) on decisions taken by central management which affect them.

Thus, we can say that the EWC is set up to carry out information and consultation of employees. **Information** is understood as the "transmission of data by the employer to the employees' representatives to enable them to acquaint themselves with the subject matter and to examine it". **Consultation** is "dialogue between employees' representatives and central management to enable employees' representatives to express an opinion".

On the question of what an EWC serves, we can point out that its main task is to be informed and consulted on transnational projects, according to the definition we have just given.

Accordingly, we can point to a threefold "value" of the existence of EWCs: for the employer, it offers the opportunity to share the rationale and approach of its transnational projects and to gain employees' experience for their management. For employees, it is an opportunity to exchange information with workers and management in other countries, to learn about company strategy and working conditions in other countries; and thirdly, these processes can contribute to strengthening the climate of social dialogue at company level.

❑ Subjects entitled to form a European Works Council

There are two possibilities. On the one hand, Community-scale undertakings, which is:

means 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.

On the other hand, Community-scale groups of undertakings which, in turn:

- 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.

❑ Establishment of an EWC and its composition

First of all, it should be noted who are the actors in the EWC according to the Directive from 2009: the *employees' representatives*, which are those provided for in national laws and/or practices; and the *central management* of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, the controlling undertaking (i.e. the undertaking which can exercise a dominant influence over another undertaking - the controlled undertaking).

In any event, the central management shall be responsible for establishing the conditions and means necessary for the establishment of an EWC, **either on its own initiative or at the written request from at least 100 employees, or their representatives, belonging to at least two workplaces** of the undertaking or group of undertakings situated in different Member States.

On receipt of such a request, the central management shall refer the matter to its management in the Member States with a view to setting up the EWC negotiating body or, failing that, the procedure for informing and consulting employees on transnational issues likely to affect their interests.

As regards the **composition of EWCs**, these shall be members elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or group of undertakings, whereby each State shall have 1 member for every 10%, or fraction thereof, of the number of employees employed in all the Member States. If the EWC has more than 12 members, a select committee of 3 members shall be elected to receive information and attend meetings.

The way in which these representatives are elected or appointed is determined by each state for its territory, ensuring that there is a representative even if there is no representative in the company.

In addition, EWC members have a series of **guarantees for the development of their activity**, in particular:

- the means necessary to represent collectively the interests of the employees of the Community-scale undertaking or group of undertakings;
- to inform the representatives of the employees of the establishments or undertakings or, where there are no representatives, the employees as a whole, of the content and results of the information and consultation procedure;
- enjoy, in the exercise of their functions, protection and guarantees similar to those provided for employees' representatives by national law or practice in their country of employment (including payment of wages while carrying out their representative activities);
- and to receive appropriate training for the performance of their duties, without loss of pay.

Procedure for holding meetings and reaching agreements in the special negotiating body

A special negotiating body is a body set up to negotiate with central management on the establishment of a European Works Council or a procedure for informing and consulting employees.

The central and local management and the relevant European workers' and employers' organisations shall be informed of the composition of the special negotiating body and the opening of negotiations. It shall also be for the special negotiating body to determine, by written agreement with the central management, the scope, composition, powers, and duration of the terms of reference of the EWC or the arrangements for implementing an information and consultation procedure.

The costs of the negotiations shall be borne by the central management in order to enable the special negotiating body to carry out its tasks properly. In addition, at the request of the special negotiating body, the meetings may be attended by experts in an advisory capacity (advisers).

A number of principles are laid down for **reaching agreements in these negotiations** that must be complied with:

- negotiations shall be conducted in a spirit of cooperation;
- they may decide in writing to establish one or more information and consultation procedures instead of setting up an EWC;

- the agreement shall lay down the procedures by which meetings between the EWC and the central management shall take place;
- the special negotiating body may decide, by a majority of at least two-thirds of the votes, not to start negotiations or to cancel ongoing negotiations, thereby terminating the agreement.

Powers of the EWC

These are as follows:

- to be informed and consulted on matters affecting the whole undertaking or group of undertakings or at least two undertakings or groups of undertakings situated in different Member States;
- to hold at least one meeting a year with the central management to be informed about the development and prospects of the company's activities;
- be informed in good time so that their opinion can be taken into account when decisions are taken on exceptional circumstances which substantially affect employees' interests, in particular in the event of transfers of undertakings, closures of undertakings or establishments or collective redundancies.

Establishment of the information and consultation procedures

It is stipulated that the procedures for informing and consulting employees must be established and implemented in such a way as to guarantee their effectiveness and enable the undertaking or group of undertakings to take effective decisions.

To this end, information and consultation must take place at the appropriate level of management and representation, depending on the subject matter, and only on matters with a transnational dimension (affecting the whole undertaking or group of undertakings, or at least two of them, or two establishments situated in two different Member States). Moreover, the scope of the agreements concluded must cover all the establishments of a Community-scale undertaking or group of undertakings situated in the Member States.

Thus, the *central management* is therefore obliged to inform and consult the employees' representatives on developments in the company and on any relevant decisions which may affect them, and to provide the information necessary for negotiations within the EWC.

The matters to be informed and consulted cover a wide range of employees' working conditions and are divided into two different scenarios:

- in particular on the structure, economic and financial situation, the probable development of the activities, production and sales of the Community-scale undertaking or group of undertakings;
- and, in particular on the situation and probable development of employment, investments, substantial changes affecting the organisation, the introduction of new working methods or new production methods, relocation of production, mergers, reduction in size or closure of undertakings, establishments or significant parts thereof, and collective redundancies.

Directive 2009/38 provides that its application is without prejudice to the national information and consultation procedures provided for in *Directive 2002/14/EC* or the specific procedures provided for in *Directives 98/59/EC* and *2001/23/EC*.

In addition, two other elements of the information process are laid down in a subsidiary manner: **the timing**, which must be appropriate to allow for a debate on the issue, and **how the information** provided by the employer **must be**, which must allow workers' representatives to be aware of the situation and to develop a response (consultation phase) on the issue raised.

Finally, on the subject of information and consultation, it is important to point out that the *Directive* lays down an **obligation of confidentiality**. Therefore, the members of the special negotiating body, the EWC and the experts assisting them are not authorised to disclose to third parties the information that has been expressly communicated to them in confidence. Such an obligation will remain in force even after the expiry of their mandate. In this respect, the Directive states that each Member State shall provide for specific situations in which the central management is not obliged to communicate information which could create serious obstacles to the functioning of the undertakings.

Validity of information and consultation at transnational level - revisions to Directive 2009/38/EC

In the last five years, we have observed two reviews of *Directive 2009/38* by the European Institutions. On the one hand, the *Commission Report on the application by Member States of the Directive*, of 14 May 2018, and, on the other hand, the *Parliament Resolution on the Review of the EWC Directive* of 16 December 2021. The conclusions to be drawn from both reports can be summarised as follows:

- Directive 2009/38 has been transposed literally by most Member States;
- the Directive has brought more clarity to the legal framework, with little litigation at national level;
- although it was intended as a boost to the establishment of EWCs, the decline in the number of EWCs continues;
- there are national differences in the quality, timing and effectiveness of information and consultation before decisions are taken;
- half of the companies entitled to set up EWCs have not done so, leaving considerable room for improvement.

In addition, the Commission and the Parliament also drew conclusions on the reasons for the non-establishment of EWCs:

- lack of knowledge of the legislation;
- lack of an obligation to set up EWCs;
- undertakings located in countries with poor traditions of social dialogue;
- poor effectiveness of the consultation phase; EWCs do not issue reports because they have no influence on decision-making in their companies;
- and, lack of bargaining power; EWCs are not negotiating bodies; although they do play a role in negotiating transnational collective agreements.

Finally, in its 2018 report, the Commission makes a number of proposals to be taken into account by the Parliament. Among them, we highlight:

- ensuring full transposition of the recast directive in the Member States;
- ensuring that information and consultation is an integral part of company decision-making, in particular on employment, working conditions and technological and digital change;
- strengthening information and consultation rights in order to ensure the effectiveness of reports from EWCs in company decision-making; or ensuring

gender equality and equal opportunities in the participation of workers and the representation of disabled workers.

The analysis of Directive 2009/38 carried out by the *European Parliament Resolution of 2 February 2023, with recommendations to the Commission on the revision of the EWC Directive*

In the latest revision of the EWC Directive, the Parliament takes up several of the analyses already carried out (and which we have just mentioned), highlighting the low number of EWCs set up (992, of which 400 have been lost in recent years). The lack of implementation of Directive 2009/38, which leads to the fragmentation of councils, together with the impact of transformations and technological and digital developments, make it necessary to strengthen the EU's instruments. A revision of the Directive, strengthening workers' participation rights, with reference to *confidentiality* clauses which, according to the Parliament, can be abused and constitute an obstacle to effective rights to information and consultation.

On the basis of this analysis, the Parliament made a series of **Recommendations** to the European Commission that summarise those already made in previous years and which we have just quoted and commented on:

- know **which undertakings can set up EWCs**, within the scope of Directive 2009/38; **set them up and strengthen their capacities**;
- **provide financial support for awareness-raising campaigns** for representative trade unions and Member States;
- **monitor the transposition of the Directive** and the difficulties of EWCs in asserting their rights vis-à-vis their central management and Member States;
- create a **platform for structured and regular exchange** between Member States and sectors on EWC best practices: Visibility, knowledge and experience;
- clarify the current **concept of transnationality** which is open to interpretation and leads to fragmentation in the implementation of the Directive;
- define **consultation** and establish when consultation should take place;
- establish a **precise definition of confidential information** that means restricting access to information;
- ensure timely **access to necessary, meaningful and up-to-date information** for EWC members;

- **increase the number of annual meetings to two** to improve the functioning and management of EWCs;
- incorporate **effective, dissuasive and proportionate penalties** for employer non-compliance and the possibility of precautionary measures;
- call on Member States to ensure **administrative and judicial procedures** to safeguard access to justice;
- **protect EWC representatives** in the exercise of their rights against any retaliatory practices;
- ensure a **balanced gender composition of EWCs** as a tool to achieve gender equality in the workplace.

Lastly, the Parliament proposes to the Commission, as we have already indicated in the introduction of this publication, **to elaborate a new framework Directive on information, consultation and participation of employees in European undertakings**, having a proposal for a revision of Directive 2009/38, no later than 31 December 2024.

III. RESEARCH PHASE OF THE PROJECT

As a conclusion of the research phase carried out during the first months of 2023 in the framework of the project, we have prepared a **Comparative Report** based on the National Reports prepared by the experts of each participating country:

- Ángel Lozano, Antonio Bustamante Foundation, FAB, and CSIT UNIÓN PROFESIONAL, from Spain;
- Giuseppe Catanzaro, Federazione Autonoma del Sindacato dei Trasporti, FAST, Italy;
- Lazar Jovevski, Confederation of Independent Trade Unions, KSS, from North Macedonia;
- Novica Jovanovic, GSUPOIP NEZAVISNOST, from the Republic of Serbia.

The aim of the research phase was to analyse the participation of public service employees at transnational level and to explore how the participation of public service representatives can contribute to the establishment of EWCs and benefit from their activities in the participating countries, with three final objectives:

- to improve procedures for the participation of public service employees in order to develop real participation and to establish and improve the effectiveness of EWCs;
- to analyse the reasons for the low number of EWCs in the public service sector by identifying the shortcomings in the functioning of existing EWCs;
- and to analyse the transnational participation tools available to the two candidate partners, Serbia and North Macedonia, and to provide them with the appropriate tools for their transnational participation.

The research and analysis was carried out through evidence-based data collection, research, interviews, reports and surveys at country level, including the implementation of:

- *an online survey* aimed at workers, trade union representatives and managers in the public service sector, in order to gain knowledge of the system of participation in the public service sector in each country, through the mechanisms of information, consultation and collective bargaining, and to verify the existence and/or the possibility of setting up *European Works Councils* in the field of public services sector;
- *individual or focus group interviews* aimed at obtaining greater interaction between participants, targeting public service sector managers and trade union representatives in the public service sector, as social partners in the public service sector;
- a *desktop analysis* focused on establishing the concept of public service in each country, the system of participation and the systems of social dialogue and

collective bargaining and their application in the public sector, and the possibility of creating transnational works councils;

- a *National Report*, the result of the research carried out by each country, containing the analysis of the above measures and each expert's personal assessment of the possibility and opportunity of setting up EWCs in the public sector.

After analysing the research data for this *Comparative Report*, we focused our activities on developing tools to enable us to familiarise partners and social actors in the public service sector with EU legislation and policy on employee participation and specific EWC regulations. The results of the research form the basis for the content of this *Final Publication* and the two *mini-manuals* that complement it.

I. DESKTOP ANALYSIS

We briefly describe the four aspects that characterised our desktop analysis phase.

A) The concept of *public sector and/or public service*

There is a large degree of agreement between the four countries when it comes to defining what is meant by public services.

In Spain, it would be the activities carried out by the State for the benefit of citizens and free of charge, such as health, education, social and emergency services, police, waste management, etc.

In Italy, it is the service aimed at satisfying the needs of the community in accordance with the tasks of public administration, although it also includes activities carried out by private subjects for the same purpose.

North Macedonia defines it as: "*any activity the performance of which must be regulated, ensured or controlled by those in power, because it is indispensable for the realisation or development of social interdependence and is of such a nature that it cannot be fully ensured without the intervention of the governing power*", free and equal.

Serbia states in *the Law on Public Services* that they are: "*the institutions, enterprises and other forms of organisation established by law, which carry out activities, i.e. work that ensures the realisation of citizens' rights, i.e. the satisfaction of the needs of citizens and organisations, as well as the realisation of other interests established by law in certain matters*".

All the countries show a high degree of decentralisation in the provision of these services, due to their different territorial structures: regions, municipalities, etc., which also coincide

in terms of the areas of action related to the public sector: health, education, assistance, emergencies, communications, social security, transport, etc., defined as "*essential services to the community*".

With regard to the **organisational forms** through which these public services are provided, the four countries refer to a *public administration*, whose employer is the government of each nation, which coexists with other institutions that here do have different names and configurations:

- public enterprises engaged in economic activities with a public service character, in North Macedonia;
- non-financial public enterprises engaged in commercial activities in Serbia;
- service providers (telecommunications, banking, transport, etc.) in Italy; and
- public entities with different legal forms (foundations, trading companies, or public business entities, in the case of Spain.

Finally, it should be noted that both Spain and Serbia refer to a specific group of workers who provide their services in the public sector, namely civil servants. In both countries, they have specific regulatory legislation, the *Law on the Public Sector Salary System*, in Serbia and the *Law on the Basic Statute of the Public Employee*, in Spain. The same occurs in Italy, which refers to the existence of Law, 241/1990, specific to public administration.

In addition, the four configurations of the public sector analysed coincide, in general terms, with what is established in the framework of the European Union, in what refers to the so-called **services of general interest** made up of:

- the activities that the public administrations of the EU Member States consider to be services of general interest;
- are provided for the benefit of citizens free of charge; and
- are subject to specific public service obligations;
- can be provided by both the State and the private sector;
- health, education, social services, emergency services, police forces, waste treatment, etc.

B) The industrial relations system: the right of participation

The second aspect analysed by the experts is each country's industrial relations system and its relationship with *information and consultation* as an expression of workers' right to participation.

In this regard, **Spanish** legislation establishes that *workers have the right to participate in the company through the representative bodies with their functions of consultation, guidance, proposal and issuing of reports.* The implementation of these rights is the responsibility of both the trade unions and the works councils (or the specific representative bodies for civil servants) that coexist in workplaces.

In addition to the general legislation and the *Workers' Statute*, in Spain there is a specific regulation for public sector employees, the *Basic Statute of the Public Employee* and regulations in the collective agreements and the Agreements on working conditions for civil servants. The Spanish regulation is in line with *Directive 2002/14/EC* on information and consultation rights.

Serbia defines information and consultation procedures in its labour law, sectoral laws, collective agreements and agreements on working conditions with trade unions in institutions where there are no collective agreements.

North Macedonia also has legislation in this area, *the Law on Public Sector Workers* and the *Law on Civil Servants*, along with other laws specific to the public sector, although "*the current regulations do not guarantee the participation of public sector workers*", although there are sectoral trade unions where public sector employees can join.

Italy, for its part, reports that its legal system "*does not provide for forms of worker participation in the public sector*".

C) The structure and scope of collective bargaining

Thirdly, we analyse the configuration of both social dialogue and collective bargaining in the public sector.

In all four countries, there is a system of *tripartite social dialogue* for all labour activities in the country, which is political and where public policies are determined.

As far as collective bargaining is concerned, the representative of **Italy** states that there are no tools within collective bargaining to involve workers in public administrations.

North Macedonia does not have a well-organised public sector, which makes collective bargaining difficult and leaves very little room for negotiation due to the specificities of the public sector. The specific nature of the public sector and the role of the state as an employer limits this possibility, especially on wage issues. [Despite this, the representative organisation KSS, a partner in this project, signed a collective agreement for the public sector in Macedonia in 2008, which is currently being revised].

Serbia also points to the difficulties of bargaining in the public sector because of the role of the state as employer and the limitations of the subjects of such bargaining (such as wages),

coupled with the lack of defined obligations in such dialogue, which often boils down to expressing points of view. Nevertheless, collective bargaining is said to be more developed in the public sector than in the private sector, with collective agreements covering professional sectors such as education, health, culture, transport, media, police, and telecommunications.

On the other hand, collective bargaining in **Spain** is a right established in the Constitution and developed in the *Workers' Statute* and the *Basic Statute of the Public Employee*, in the case of staff with statutory legal ties and with employment contracts in the public sector.

Collective bargaining is the responsibility of trade unions (and, in some cases, works councils), which meet certain conditions of legitimacy, obtained through trade union elections held every four years in all workplaces and/or companies, and takes place in specific forums (negotiating committees or commissions) with a parity of trade union and public administration representatives, set up at national, regional, local and public enterprise level. Their outcome is the *Collective Agreements or Agreements on working conditions*. In addition, since 2007, there have been joint bargaining forums for all public sector workers and the negotiation of common issues.

In Spain, the issues negotiated cover all working conditions affecting employees, such as pay, human resources planning, recruitment, career development, training, performance appraisal, social benefits, prevention of occupational risks, and all aspects of working time and timetables, leave, holidays, flexible working hours and shifts, and measures to reconcile work and family life.

D) The development of EWCs in the public services sector

Finally, the experts from each country made some progress on the possibility of developing EWCs in the public services sector.

Italy reports the existence of 67 EWCs out of a total of 80 multinational enterprises, some of which are public service providers along the lines described in section A) of this introduction: Alitalia, ENEL, Generali, Pirelli, Mediaset, Unicredit, RCS, General Electrics, among others.

North Macedonia does not register the existence of EWCs in any of the professional activities in the public service. This is even though there is a *Law on European Works Councils* from 2012, which will only come into force when the country becomes a member of the European Union.

In the report, the Macedonian expert emphasises the *need to organise workers in order to increase their participation, information and consultation in decision-making, as well as the exchange of good practices and the collection of experiences, which can be organised in transnational committees.*

The **Spanish** expert understands that it is neither legally nor technically possible to establish European Works Councils in the public services sector, recalling that *Directive 2009/38/EC, on the establishment of a European Works Council or a procedure for informing and consulting employees*, is designed for undertakings and groups of undertakings with a Community-scale. Such a condition is not met by the public services of each country.

According to the definitions set out, the public sector is excluded from the scope of *Directive 2009/38*. A Community-scale undertaking is defined as *a company that employs a thousand or more workers in more than one EU country and 150 workers in at least two of them*. On the other hand, a group of undertakings with a Community-scale is defined as *a group that employs a thousand or more workers together, has two companies in different EU countries and has 150 workers in at least two of them*.

Finally, the **Serbian** expert has some concerns about the existence of *works councils* that could take over some of the tasks of trade unions. Although the expert supports *"the formation of a body at the national level that would include representatives of the State and several public sector unions and if some framework for possible negotiations were defined, perhaps these differences would be reduced and a single system would be established for all factors employed by the State"*.

This possibility of a transnational connection in the context of the European integration of the Republic of Serbia would, according to the expert, probably lead to the establishment of uniform criteria and the improvement of the situation of various subjects in the country.

II. ANALYSIS OF THE RESULTS OF THE STUDY CARRIED OUT THROUGH ONLINE SURVEYS AND INTERVIEWS HELD

Surveys and interviews collected and the respondents' profile

Firstly, the sample of the research phase carried out in each country is outlined. The results obtained are then analysed in three blocks: knowledge and application of the Directive and national legislation on participation, the structure of these participation systems in the public services sector and the development of EWCs in the public sector.

- ❑ **Spain:** the research sample consists of **105 participants**. **23 interviews** were carried out in two focus groups with a total of 12 worker/trade union representatives and 11 public administration representatives, **82 surveys**, with the following profile of participants:

a female between 45 and 54 years old, working in the public services sector, with a university degree and belonging to the professional health sector, 56% (including health and care services) and to the Regional Administration, 21% of people. 73% are workers; 38% are trade union representatives.

- ❑ **Italy:** a total of **25 surveys** and **12 interviews** (8 public employees and 4 representatives of the public administration) were collected. The profile of the respondents is as follows:

male, aged between 30 and 44. All workers and trade union representatives in the professional sectors of transport and administration, working in centres with more than 1000 employee.

- ❑ **North Macedonia:** a total of **355 surveys** were collected, but no interviews were conducted. The profile of the respondents is as follows:

Female, aged 45-54 years; female workers in the public services sector with mainly university education (61%), working in the teaching and research sector (64%), followed by the state administration (18%). In addition, 21% of the respondents are representatives of trade unions and/or public sector workers.

- ❑ **Serbia:** the report does not provide data on the number of online surveys conducted, but reports that **11 interviews** were conducted with six trade union representatives and five public administration representatives. We do not know the profile of these participants as no information is provided in the national report.

In summary

- The comparative analysis is carried out (according to the data provided by the national experts) on a total of **462 online surveys** [77% in North Macedonia; 18% in Spain and 5% in Italy; Serbia refers to having carried out these surveys, but does not provide the figure for them] and **46 individual or focus group interviews** [50% in Spain, 26% in Italy and 24% in Serbia].
- The general profile of the people who participated in the research phase is:

Female, aged between 45 and 54, working in the public sector, with a university degree and belonging to the health or education professions. Around 30% are trade union or employee representatives.

REPORT ON THE ANALYSIS OF THE DATA OBTAINED

As we have already said, in order to prepare this part of our research phase, we have grouped the results of the data collection from the surveys and focus group interviews into three blocks for better visualisation.

- A. Knowledge and application of European and national regulations on procedures for employee participation in the public sector

In this first block we look at the knowledge of the European Directives on employee participation, the specific national regulations in the public service sector and the validity of these regulations to guarantee employee participation in the public sector.

The survey questions analysed in this block are 1; 2; 3 and 4, with the following results:

1. In three countries (Spain, Italy and Serbia), **around 50% of the people surveyed and interviewed are aware of the existence of European directives** on employee participation, with the lowest percentage in Spain being only 46%.

This result contrasts with the **lack of knowledge of 75% of respondents from North Macedonia.**

Of those who were aware of these directives:

- **Only 27% believe that these regulations are applied in the public sector** in their country (with a percentage of over 40% in Spain and only 16% in Italy). In addition, the high level of ignorance of this national implementation is striking (39% of Spaniards and 50% of Macedonians).

Interviewees in Italy pointed out that the recent publication of a law on transparency has extended the employer's obligations in terms of the matters on which he must inform employees.

- As for **effectiveness of the application of this law in guaranteeing workers' right of participation**, only **15% of respondents answered in the affirmative** (25% of Spaniards and 10% of Italians and Macedonians).

Once again, lack of knowledge is the main reason for these answers: 52% replied in the affirmative (40% in Spain and Macedonia and 76% in Italy).

- Finally, **more than 40% of respondents say that there are specific regulations on employee participation in the public sector in their country** (on this issue we only have data from Spain and North Macedonia); and, again, a high percentage of ignorance in these two countries of almost 50% (45% in Spain and 58% in Macedonia).

2. Regarding the structure through which **the systems of workers' participation are realised**, almost **70% answered that trade unions** (80% in Macedonia and Italy, compared to 40% in Spain; Serbia reports that "trade unions are recognised as a relevant subject" in this process).

In the case of Spain, the works council option received 45% support, slightly more than the trade union option. This is a logical situation, given that in Spain there is a dual representation system, with this representative body in all companies sharing information and consultation responsibilities with the trade union.

Italy highlights in its interviews the establishment of a periodicity (quarterly or biannual) of information meetings between employers and trade unions.

Serbia indicates that the information and consultation system is mostly defined in collective agreements, although trade unions point out that these systems of participation are insufficiently developed and that they need more independence and autonomy from the managers who develop them. On the other hand, employers believe that the budgetary constraints imposed by central government make consultation systems more difficult. In this respect, employers believe that it would be appropriate to bring the information and consultation process into line with European standards and practices.

3. **70% of respondents report receiving information or participating** in decision-making in their workplaces, with the same percentages in Spain, Italy and Macedonia. In Serbia, almost half of the respondents have doubts about the information received in the negotiation process.

Those who answered positively reported that, regarding the information they received:

- **it is sufficient** to be able to give an opinion on labour issues (around 60% in Macedonia and Spain - we do not have this data for Italy);
 - **About 80% consider it useful or adequate** (79% in Macedonia, 80% in Italy and 84% in Spain). Serbia does not provide specific data, but points out that most of the respondents think that the information they receive from the trade unions is not relevant; however, they do state that the information received from the employer is useful for the trade unions and adequate.
4. Finally, we collect the information **on who workers rely on to solve their labour problems** (we only have responses from Spain and Northern Macedonia):
 - 60% of respondents say that they rely on the trade unions;
 - 8% of respondents rely on the works council (13.6% in Spain and 4% in Macedonia);
 - 25% of respondents would solve it directly with their employer (39% in Macedonia, by 12% in Spain);

- 4.5% of respondents would go to the Labour Inspectorate (6% in Spain and 3% in Macedonia); and,
- a further 4.5% of respondents would not go to anyone for fear of reprisals (a higher percentage in Macedonia, 8%, compared with 1% in Spain).

B. Existence of social dialogue and/or collective bargaining systems and how they are implemented in the public services sector

In this second block of our analysis, we monitor the structure of social dialogue and collective bargaining, as well as the difficulties that may exist in implementing collective bargaining in the public sector. The survey questions analysed in this block are 5; 6; 7 and 8, with the following results.

1. More than 90% of the respondents and interviewees, in Spain and Italy, recognise that **there is social dialogue and/or collective bargaining** in their professional field of public services, and 62% in the case of North Macedonia.

In contrast, in Serbia half of the employees believe that there is no active and adequate social dialogue, especially in the state administration. Respondents in this country say that there is more development in the national tripartite social dialogue, where budget laws or the minimum wage are discussed.

Of the respondents who confirmed the existence of social dialogue and/or collective bargaining, we obtained the following data on this issue:

- 70% state that **bargaining between public managers and trade unions is the most effective instrument for establishing working conditions** (85% in Spain, 70% in Macedonia, the "majority" in Serbia and, "only" 50% in Italy).

Interviewees in Italy suggest that collective bargaining is not "sufficiently protective" and that wage and other legal aspects need to be improved.

In Serbia, problems are identified with the representativeness of the bargaining partners and with making agreements more effective in terms of implementation.

- Respondents refer to **the peculiarities of the public sector as an obstacle to collective bargaining** (we only have the percentage figure for Spain, 73%).

The positions of the interviewees and respondents in Spain were more divided on this issue, with workers' representatives/trade union representatives unanimously agreeing on the existence of these difficulties, while public managers agreed on the existence or not of these obstacles in 50% of cases.

In both North Macedonia and Serbia, limited autonomy of the social partners and budgetary constraints were identified as the main obstacles.

- 70% of respondents (in Spain and Italy, and "the majority" in Macedonia and Serbia) say that **collective bargaining helps to increase workers' participation in their workplace.**

It should be noted that in the two focus group interviews in Spain, the scope and actual application of collective bargaining and the need to improve some collective bargaining practices were intensively discussed. In particular, the difficulties encountered by managers in granting paid leave or shift changes to workers due to the existing staff shortages and absenteeism (sick leave) in many centres, all of which provide direct care to vulnerable people (elderly or disabled) or in the health sector.

2. When asked **how working and professional conditions are determined in the public services sector**, more than 80% say through collective agreements or working conditions agreements; with 100% of responses in Italy and 85% in Spain, compared to 65% in North Macedonia and the "majority" in Serbia, which also point to unilateral decisions by the employer).
3. Regarding the **working and professional conditions** that workers enjoy in the public sector, 60% say they are **acceptable** (with the highest percentage in Spain, 75%, compared to 50% in Italy and Macedonia); while 34% say they are not adequate: the majority of respondents in Serbia and 50% in Italy, 30% in Macedonia and 21% in Spain.)
4. The last question in this block aimed to obtain from the employees a prioritisation of seven aspects which, from their point of view, should be improved with regard to their working conditions, obtaining the following results, ordered from the highest to the lowest in terms of the importance of these changes, according to the answers obtained in each country (Spain, Italy and North Macedonia):
 1. remuneration, the majority option in the four countries, with 100% in Italy and 43% in Spain;
 2. shorter working hours, in second place in Spain (39% of responses) and in Italy; not reflected in the Macedonian report; and in seventh place in the Serbian report, with 30% of responses received;
 3. greater attention to health and safety at work is the third option for Spaniards, Serbs and Italians, but appears in fifth place in the case of Northern Macedonia;
 4. to be consulted by the public manager on professional issues appears in fourth place in all four countries;

5. to be more valued by one's boss in one's job is ranked fifth in Italy, Spain and Serbia; in North Macedonia this option is the second most prioritised;
6. to receive more training for professional qualifications, also ranked sixth in all four countries;
7. to receive more attention from the trade unions, ranked seventh among the needs of workers in Italy and Spain, although in Macedonia it is ranked third among the workers surveyed and in Serbia it is ranked second with 48% support

C. Development of EWCs in the public services sector

Finally, in this last block (in which we analysed questions 9 and 10 of the survey), the aim was to monitor the respondents' knowledge of the existence of European Works Councils in their professional field and their opinion on the creation of these committees in the public services sector, with the following results.

1. **Knowledge about the existence of EWCs varies considerably from one country to another:** 86% of respondents in Spain are aware of the existence of EWCs, but only 50% in Serbia and 30% in Italy. [We do not have this data for North Macedonia].

The interviews carried out in Serbia provide further information on the possibility of EWCs: the regulations in Serbia do not currently allow for such committees; moreover, the question arises as to which sectors of public administration could have access to this possibility, given that public services are under direct political control at national, regional or local level.

2. Around **77% of those surveyed think that it would be interesting to establish an information and consultation system at the EU level for the public services sector**, as this instrument does not exist at present. By country, 82% of Spaniards, 78% of Macedonians, 75% of Italians and the majority of Serbs.

In Spain, this overwhelming majority opinion in the surveys contrasts with the lack of acceptance of this possibility by the people interviewed, where neither trade union representatives nor public managers believed that this possibility would bring anything positive to collective bargaining in the public sector. Moreover, the interviewees believed that it was technically and legally impossible to set up EWCs in the public sector because of the different rules in each country, including the definition of the public sector itself, and because of the dynamics of the structure of collective bargaining in each EU Member State.

Similarly, public sector managers in Italy stated during the interview phase that the current legal framework was cumbersome, very procedural and difficult to implement, especially in the public service sector, because of its links with governments and its changing management and decision-making structure.

3. When asked what they thought **the existence of information and consultation systems could contribute to them**, the conclusions obtained were as follows:
- about 47% (more than half in Serbia, 50% in Italy and Macedonia, 42% in Spain) think that information on improvements in other countries could be used to implement them in national collective bargaining. 24% think that such an exchange of information and consultation **could be useful for national collective bargaining**;
 - 24% of respondents believe that such an exchange of information **would facilitate the establishment of homogeneous employment conditions in the EU public services** (35% in Italy and Spain and 11% in Macedonia);
 - the rest of the responses are distributed between those who believe that knowledge of such situations **could be used as a lobbying mechanism in national collective bargaining** (around 10%; except in Serbia where this percentage would be "more than half"); and those who think that **coordination between public sectors in the Member States would be achieved** (around 8%).

III. CONCLUSIONS OF THE COMPARATIVE REPORT

In this last section, we try to reflect the general conclusions of the joint *research phase* of the four partner countries and participants in the project, and we can draw the following general conclusions:

- 1) **there is a high level of ignorance among workers about the existence of European and national regulations on employee involvement**;
- 2) **the majority believe that regulations on participation are not applied in the public sector and that, when they are, they are not very effective and do not guarantee the right of workers to participate in decision-making in their workplaces**;
- 3) **the majority of employees turn to their trade union to solve their problems and obtain information**, except in the case of Spain, where the trade union and the works council share this function;
- 4) **the information received by workers and their satisfaction with it is very high and considered useful or adequate by 80% of the people participating in the research**;
- 5) **there is an overwhelming majority (except Serbia) in the opinion that collective bargaining takes place and that it is the most effective instrument to establish working conditions**, which are generally considered acceptable with the **collective agreement being the appropriate instrument to determine those working and professional conditions** of workers in the public services sector.

While in Spain (the only data available from the four countries) it is stated that the public sector has regulatory peculiarities and budgetary constraints that make collective bargaining difficult, the public sector is not the only sector where collective bargaining is difficult;

- 6) a high percentage of respondents say that **collective bargaining helps to increase employee participation;**
- 7) aspects such as **remuneration, shorter working hours, greater attention to occupational health and safety or having a greater presence in the professional affairs** of their workplace **are** identified by respondents as **the greatest needs for improvement** in terms of working conditions by the people surveyed. This general agreement remains a peculiarity in Serbia and North Macedonia, where the need for more attention from trade unions is particularly valued;
- 8) **a high percentage of respondents are aware of the existence of European Works Councils** (except in the case of Italy, where only 30% of respondents are aware of the existence of European Works Councils);
- 9) a large majority of respondents (around 77%) believe that it **would be necessary to set up some kind of transnational information and consultation system in the public service sector** in EU countries;
- 10) **the existence of EWCs or an alternative information and consultation system would provide elements of support for national negotiations, more homogeneous employment conditions in the EU framework; and coordination or lobbying mechanisms in collective bargaining.**

IV. DIFFICULTIES IN SETTING UP EWCs IN THE PUBLIC SERVICES SECTOR

a) The first difficulty: public service and transnationality

In Chapter II of this publication we have already referred to the conditions that a company or group of companies must meet in order to set up an EWC. If we examine the configuration of the public sector (*public services*) with the existing EU legislation on EWCs (*Directive 2009/38/EC*), we can see the difficulties (or rather impossibilities) of setting up these EWCs in the public services sector. [Which, as we have just pointed out, cannot be considered as either an undertaking or a Community-scale group of undertakings].

There are several factors, often interconnected, which can be grouped under the heading of *economic factors*³ that can influence the effectiveness of EWCs. These include the sector of activity, the degree of internationalisation of the group, the structure of the company, the ownership structure and the degree of exposure to the pressures of globalisation or even economic or health crises.

In our case, the sector of activity (public services) influences the current non-existence and difficulty of setting up EWCs⁴, and with it, the structure of the undertaking (public administration, where neither a *head office* nor a *controlling company* can be defined, for example) concerning the homogeneity of its activities, as well as the ownership structure, may also have an impact on the functioning of the EWC.

To these two elements must be added the impact (or lack of impact) of the degree of internationalisation of the utilities sector on the likelihood of setting up an EWC, on the one hand, and on the actual functioning of the body, on the other. With regard to the latter, *"it has been argued that EWCs in groups with low levels of internationalisation (...) play a more limited role and information and consultation at this level remain secondary to national structures for information and consultation of workers"*⁵.

The very scope of action of public services (exclusively national) directly opposes the definition of *transnationality* in *Directive 2009/38*.

The role of EWCs is to deal with transnational issues without interfering with or replacing national structures for informing and consulting employees. In this sense, the 2009 Directive

³ Cf. the Eurofound Report (2022), *Challenges and solutions: Case studies on European Works Councils*, Publications Office of the European Union, Luxembourg, pages 47 et seq.

⁴ in general, according to the Eurofound Report (2022), cited above, the existence of EWCs is less common in some companies in the services sector, partly because *"the establishment of multinational companies is more recent in subsets of the sector (e.g. health and care)"* (page 48).

⁵ Whittall, 2000; Timming, 2010, cited by Eurofound Report (2022), page 47.

sought to define the scope of EWCs' powers, ultimately limiting them to issues affecting at least two countries or the whole group. Although the Directive states in recital 16 that:

"The transnational character of a matter should be determined by taking account of both the scope of its potential effects and the level of management and representation that it involves. 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".

This recital has given rise to interpretative discrepancies among some theorists (e.g. Laulom, 2018, ETUI, 2015, cf. *Eurofound*, 2022, p. 13) who claim that it is possible that an issue affecting only one country could fall within the competence of EWCs, while the Directive itself seems to exclude this; leaving it open to interpretation whether an issue should be considered transnational or not⁶.

In their national reports and personal assessments, the experts from the countries participating in the project have come to the following conclusions. These are statements that we must take into account when making a final proposal on the viability of EWCs in the public services sector, with reference to the scope and transnationality of EWCs.

Spain considers that it is **neither legally nor technically possible to establish European Works Councils in the field of public services** since *Directive 2009/38/EC* excludes the public sector of each country since it is designed for the scope of undertakings and Community-scale groups of undertakings: *"Any undertaking employing a thousand or more workers in more than one EU country and 150 workers in at least two of them; and by Community-scale group of undertakings: A group employing a thousand or more workers together, having two undertakings in different EU countries and having 150 workers in at least two of them"*, a condition that is not met by public services.

Secondly, due to the very definition and configuration of the public sector in each of the Member States and/or candidate countries, as well as the dynamics of the structure of collective bargaining in each country.

North Macedonia has a law on *aEuropean Works Councils* from 2012, but this will not come into force until the country becomes a member of the European Union. They argue that the public sector cannot be compared to the private sector, where there is a degree of freedom to regulate certain issues, while in the public sector most workers' rights are

⁶ It is worth recalling that the European Parliament Resolution of 2 February 2023, with recommendations to the Commission on the revision of the EWC Directive, proposes among its recommendations the need to clarify the current concept of transnationality, which is open to interpretation and leads to fragmentation in the application of the Directive.

regulated by law. They conclude that the possibility of establishing transnational workers' organisations in the public sector is unlikely to be realised.

Serbia believes that the possibility of establishing EWCs in any sector of public administration is a big unknown and that there is a high level of fear about the possibility of taking over some of the trade union functions in companies, so the reluctance of some trade unions on this issue is also logical.

Italy considers that the introduction and spread of EWCs within the public services sector can be an appropriate means of meeting workers' needs, provided that these committees are functional and effective in accordance with the characteristics of the companies and services they provide. However, it maintains that more precise regulation of collective bargaining are needed to enable EWCs to adapt to the company context and to develop their potential to the full.

b) The second difficulty, the exclusion of non-member States

This second difficulty (impossibility) is purely legislative as far as the scope of application of the *Directive* is concerned since it concerns only the Member States (as stated in Article 19: "*This Directive is addressed to the Member States*"), which excludes the candidate countries (as North Macedonia also states in its report).

c) The third difficulty, industrial relations systems

The different industrial relations systems that exist in Europe (which we mentioned to in the *desk research* of our study) are also an element that can influence the establishment of EWCs.

The different industrial relations cultures, the existence or non-existence of workers' representatives in the public service sector, the way they are elected, their skills, their capacity to act or the possibility of intervening in the regulation of the working conditions of these workers through collective bargaining are, among other things, indicators of the difficulty of setting up EWCs in this sector. [As we will see later, this element that we now see as negative, as a difficulty in setting up EWCs, can be turned into a positive one if we consider the influence that advanced industrial relations systems can have on social dialogue and on the systems of countries with less tradition in this area].

An alternative to EWCs: the creation of a transnational information system in the public services sector

The effectiveness of any organisation depends to a large extent on its ability to satisfactorily manage the processes of generating and transmitting information, both within the organisation and to the outside world, making it a strategic factor that enhances its activity and which must be integrated into a global approach.

It is therefore important to seek the participation of employees, because the decisions that an organisation can take have an impact on its future and on its members. Involving employees in the company's decision-making process contributes to the success of the organisation and increases the motivation and commitment of employees to achieve the company's commitments.

Research carried out by Eurofound (2022 Report cited above) has shown that employees in organisations with high levels of involvement report higher levels of commitment to their work, which is linked to, among other things, higher levels of well-being, improved productivity, greater understanding and acceptance and, as a result, a better and more peaceful industrial relations climate, as well as contributing to effective decision-making and social peace.

In this sense, *information and consultation* systems become the necessary tools to carry out this process of worker participation in their company (or public administration). Information, consultation and participation must be carried out both at national and transnational levels.

Thus, we can consider that EWCs bring *added value*⁷ to these processes. The European Commission in its 2000 *Report to the European Parliament and the Council on the application of the Directive 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 and groups of undertakings* stated that for multinational companies EWCs:

"allow for improved communication between employees and central management. The benefit for employers can lie in the increased trust and commitment of employees, who bring their knowledge and experience to the table. A shared understanding of the transnational challenges facing the company and the involvement of workers in decision-making can also be beneficial for employers. A shared understanding of the transnational challenges faced by the company and the

⁷ The Eurofound Report (2022), *Challenges and solutions: Case studies on European Works Councils*, Publications Office of the European Union, Luxembourg (see pages 65 and 66), points out the added value of EWCs, both from the perspective of management and employees, (see what we say, in this respect, on page 7 of this publication).

involvement of workers in decision-making on possible solutions can also facilitate the introduction and increase the impact of strategic decisions taken by central management within a multinational company".

As far as employees are concerned, the same *report* states that EWCs *"make it possible to prevent or mitigate the negative effects of restructuring on employment and working conditions"*.

As a result of these assessments and what has been pointed out in this publication, **the alternative that remains is to study the possibility of creating an alternative *information and consultation* system for EWCs in the public services sector and at the transnational level in the Member States and candidate countries.**

The national experts participating in the project have also taken a position in this sense.

Thus, **Spain**, in a first assessment, **believes that a system of exchange of information** can be established between trade union representatives and public managers in the different Member States and/or candidate countries, **but under no circumstances could we establish a system of consultation**, given the differences concept and structure of what is understood by the public sector and the way in which collective bargaining is understood and approached in each partner country.

Italy defends the existence of EWCs in the public sector and therefore does not propose any alternative option, although it recognises the role that trade union organisation should play as the quickest way to get to know the dynamics of the employment relationship and the management of the company, although the trade union is not considered sufficient to ensure consultation and an effective and exhaustive information system. Workers therefore express the need for more effective participation instruments in legislation and collective bargaining.

North Macedonia refers *to the exchange of good practices and the collection of experiences that it will be possible to organise within the transnational committees*. In the absence of EWCs, *it raises the possibility of establishing certain bodies/organisations that will be composed of public sector workers, regardless of whether they would be organised at the level of a specific category of workers or the level of institutions/bodies*.

Finally, **Serbia** considers the possibility that if a body would be formed at the national level including representatives of the state and various public sector trade unions and if some **framework for possible negotiations** would be defined, the existing differences between countries could perhaps be reduced and a single system established for all those employed by the state. He believes that a transnational link in the context of Serbia's European integration would lead to the establishment of uniform criteria and improve the situation in the country.

Considerations on information and consultation in the *transnational system in the public services sector*.

The European Commission acknowledges, in its report on *Directive 2009/38* of 2018, that:

"The recast Directive improved information to workers in terms of quality and scope, but as regards consultation, it has been less effective. Despite having the right to express their opinion, EWC members seem to have little influence on the decision-making process in their companies, especially in cases of restructuring".

Notwithstanding these considerations of the European Commission, and taking into account what we have anticipated in this document (and, in particular, the definition of information and consultation), **we believe that it is possible to establish system of exchange of information** between trade union representatives and public managers in the different Member States and/or candidate countries can be established, **but under no circumstances could we establish a system of consultation**, given the differences in the conception and structuring of what is understood by the public sector, as well as how collective bargaining is understood and approached in each country.

Consequently, **we are in favour of creating a *transnational information system in the public services sector***, without incorporating the consultation phase for the reasons mentioned above. We believe that the creation of this *transnational information system* can bring a series of benefits to all the countries, members or candidates, that could be integrated into it, which we will attempt to address below, as a brief justification for the very existence of the system.

A) The *transnational information system* can improve the industrial relations systems of countries with less tradition in this area

As we have seen, the transnational information exchange system in the public service sector can play an important role in countries with a weaker industrial relations system culture. The influence of the industrial relations system in a given country may affect the way management perceives the role of this *information system*.

We can assume that **in countries where there is a strong tradition of social dialogue with mutual respect between the social partners, the *transnational information system* of public services will function more effectively than in those whose home country has a weak industrial relations culture, and serve as a cohesive tool and "mirror" in which they can look at each other.**

The existence of employee representation structures in all countries can feed into such a transnational information system, so that this in turn can feed into social dialogue in the countries. The existence of a transnational structure can also support the development of

employee representation at national level, or provide a forum for representation where it did not exist before (this possibility is also raised by the Serbian expert in his analysis).

Thus, although the aim of EWCs, and our *transnational information system* is to deal with transnational issues, beyond these information and consultation processes, **this structure can improve social dialogue at the local level and resolve some conflicts at that level.**

B) The transnational information system can improve the fight against the impact of new situations such as new pandemics

During the COVID-19 pandemic, all countries, without exception, showed our weaknesses in fighting it and minimising its effects, and we all had to develop very similar strategies, sometimes supported by proposals from the European Commission.

There seems to be no doubt that COVID-19 has had a major impact on, among other things, the organisation of work. The extent and nature of this impact varied according to the sector of activity, the nature of the national measures to support businesses and other measures to protect employment and workers' health and safety (reduction in working hours, compulsory teleworking, etc.).

In this scenario, it was the public services that bore the brunt of the burden in the fight against the pandemic (and even today, once the WHO has declared that the pandemic has been overcome, situations of physical and emotional overload continue to occur, among others, in sectors such as health and social services, fundamentally).

It is obvious, in our opinion, that greater cohesion between the various national public services and the exchange of information and strategies could provide added value in resolving these situations.

C) The *transnational information system* can bring cohesion to the implementation of similar labour actions in countries

Recovering the last paragraph of the previous point we have to consider that both the economic impact of the pandemic and its impact on restructuring and employment are not yet over in most countries and our public service sector. In addition, the change in the way we work, especially in the public sector, accelerated by the pandemic has contributed to the debate on future forms of work such as remote working.

Thus, we believe that there are several issues common to the different Member States and candidate countries on which we are negotiating at the national level with our governments, which can be assimilated in terms of their implementation in each part of Europe.

All countries, to a greater or lesser extent and with very similar considerations, are dealing with a number of issues in the context of collective bargaining, social dialogue or national information and consultation systems which, with a transnational information system such as the one we are proposing, could facilitate their more homogeneous implementation across Europe. For example:

- the digitalisation of public services;
- the regulation of teleworking;
- the implementation of new technologies;
- the creation of new forms of employment or service provision;
- the implementation of work-life balance measures;
- health and safety measures in the workplace given the creation of new green jobs, decarbonisation, workplace conditions or the fight against pandemics;
- training in the face of the emergence of new jobs and new forms of employment that require workers to learn new professional skills.

Recommendations for improvement and good practice

We do not want to end this final publication of the project without making a series of recommendations for improvements and good practices in the procedures for worker participation in the public service sector: information, consultation and collective bargaining, both at national level, where we have seen during the research phase of the project that there is still much to be done, and at transnational level. These recommendations are divided into two blocks which refer to the two territorial spheres of action: national and transnational.

I. Improvements in the procedures for worker participation: information, consultation and collective bargaining that the European States can introduce in the public services sector

- **Promote a real and effective culture of participation (information, consultation and collective bargaining)** among workers, trade unions and public managers, promoting awareness-raising actions to guide this participation in any professional and work-related aspect of public service personnel in their workplace.
- **Extend the fundamental rights to information and consultation** set out, in particular, in *Directive 2002/14/EC* and *Framework Directive 89/391 on Health and Safety at Work*, as well as in the *European Pillar of Social Rights*, to all workers in the public services sector, ensuring their application in the Member States and the candidate countries.
- **Strengthen information and consultation procedures**, reviewing existing shortcomings in their implementation in the different EU Member States and candidate countries, ensuring compliance with European regulations and

encouraging greater involvement of workers in decision-making processes related to their employment conditions.

- **To improve working conditions in the public services sector**, ensuring greater worker participation in health and safety and the prevention of occupational hazards in the sector, reinforced by training actions in this area.
- **Strengthen the role of trade unions and workers' representatives in the public services sector**, ensuring that they receive the necessary and complete information from public managers to enable them to reach agreements during the consultation procedure.
- **Call on Member States to ensure administrative and judicial procedures for the protection of access to justice in matters related to employee participation.**
- **Establish a framework of effective sanctions** for employers in the public services sector for serious violations of the right to information and consultation of workers and their representatives, as indicated in the *European Parliament Resolution of 2 February 2023 with recommendations on European Works Councils*.
- **Promote a European Union framework on collective bargaining in the public services sector**, which would remove the current limitations on collective bargaining in the public services sector and extend the scope of collective bargaining to include issues such as Remuneration, professional development, employment, training and occupational risk prevention, among others.

II. Good practice *in transnational information* in the public services sector

- **Proposing to the European Commission an amendment to Directive 2009/38/EC to allow the establishment of EWCs** (or the establishment of an alternative information system) **in public services** in the different Member and candidate countries.
- **Define which public sector companies or institutions can set up EWCs** within the scope of Directive 2009/38, promote their establishment and strengthen their capacity to act.
- **Carry out awareness-raising campaigns** for representative of trade unions and EU Member States and candidate countries, through institutional financial support, to strengthen the establishment of EWCs or a *transnational information system* in the public services sector.

- **Establish a system of structured and regular exchange** between Member States and candidate countries and public service sectors on best practice in transnational information and consultation: Visibility, knowledge and experience.
- **Define**, jointly between trade unions and public managers, **the matters that should be the subject of information at the transnational level** and in the framework of the public services sector.
- **Ensure that the trade unions** represented in *the transnational information system* **have timely access** to the necessary, relevant and up-to-date information on the public services sector.
- **Establish measures to protect the representatives** of the *transnational information system* in the public services sector in the exercise of their rights **against any retaliatory practices**.
- **Ensure a balanced gender composition** in the transnational information system in the utilities sector as a tool to achieve gender equality in the workplace.
- Considering the significant physical and emotional overload endured by public service workers in their day-to-day work (a situation that increases during crises such as health and economic ones) and in line with the *Strategic Framework on Health and Safety 2021-2027*, **promote the elaboration of *Directive on the protection of psychosocial risks in the public services sector***, to be extended to Member States and candidate countries, including specific aspects such as, among others: Burnout as an occupational stress disease, as already defined by the WHO; explicit references on the treatment of the effects of COVID-19 on professionals; or the establishment of transnational actions developing a support programme for workers suffering from psychosocial risks (including stress, depression, professional burnout) with effective guidelines and recommendations to combat these risks.

V. LAST MINUTE

Second stage consultation of the social partners under Article 154 TFEU on a possible revision of the European Works Councils Directive (Directive 2009/38/EC)

On 26 July 2023, the European Commission published the "*Commission Staff Working Document*" {SWD (2023) 662 final} consisting of an *Analytical Document* and a *Consultation Document* on the subject in question, by which it launches the *second-stage consultation of the European social partners on a possible revision of the European Works Council Directive*, which will be open until **4 October 2023**⁸ and in which it consults on the possible content of this action.

In its *Consultation Paper*, the Commission recalls that Principle 8 of the *European Pillar of Social Rights* underlines the importance of social dialogue and worker participation. The Commission underlines that EWCs are a key instrument for the involvement of employees in transnational decisions of multinational companies which affect them and that, under the current Directive, EWCs are set up at the request of employees and can issue non-binding opinions to management on relevant transnational issues.

The Commission underlines that the consultation of the social partners follows a call by the European Parliament for a review of the Directive in the political guidelines of President von der Leyen on the resolutions adopted by the European Parliament under Article 225 of the Treaty on the Functioning of the European Union (TFEU). In this respect, **the Commission is committed to following them up with a legislative proposal, in full respect of proportionality, subsidiarity and better regulation**, while continuing to gather evidence on the challenges described by the Parliament and the Commission itself.

⁸ The first phase of consultation took place between 11 April and 25 May 2023 and the Commission received responses from 11 social partners (3 trade unions and 8 employers' organisations). Having analysed these responses, the Commission has concluded that "*there is scope for further EU action to improve the EWC Directive*".

It should be noted that in these replies there is a clear dissonance between the views of trade unions and employers. Thus, trade unions point to shortcomings in the current Directive and recognise that the first-stage consultation document does not address all relevant issues, pointing to the need to ensure more efficient coordination between the local, national and European levels, among others, as a shortcoming of the first-stage consultation.

For their part, employers' organisations show discrepancies among themselves. While SGI Europe recognises that a revision of the Directive may be justified to "bring more clarity to the rules and organise regular and genuine consultation of workers' representatives in EWCs on transnational issues", the other employers' organisations oppose a revision of the Directive on the grounds of adaptability to circumstances, heterogeneity of EWCs or flexibility in its application, among others.

European Works Councils (EWCs) promote a common understanding of the transnational challenges facing large multinational companies and the involvement of employees in the decision-making process. The current Directive sets out a procedure for the establishment of information and consultation bodies between management and employee representatives in companies with more than 1,000 employees operating in at least two Member States.

The Commission's 2018 evaluation of the Directive concluded that EWCs remain relevant for ensuring and organising transnational social dialogue in multinational companies while providing Member States with the flexibility to adapt it to their national systems.

However, **the evaluation also found shortcomings**, such as the consultation process of EWCs and the means for representatives to assert their rights, prompting the European Parliament to call on the Commission to review the Directive with a view to strengthening EWCs and their operational capacity and increasing their number, taking into account the different industrial relations systems in the Member States.

Thus, *the second-stage consultation* document **sets out possible objectives and avenues for EU action to make information and consultation of employees more effective at transnational level.**

In particular, an update of the Directive could ensure that:

- **there are no unjustified differences in employee information and consultation rights at the transnational level**, which would mean having one set of rules for all EWCs to overcome the existing exemptions of certain companies from the common minimum requirements;
- **the process of setting up EWCs to become more efficient and effective**, for example by further streamlining the process following an employee request to set up an EWC and removing the risk of unnecessary delays or lack of resources for employee representatives.
- **All EWCs can be provided with an effective information and consultation procedure and adequate resources**, for example by clarifying the concept of transnational issues.
- **Member States should implement the Directive more effectively**, for example, by **providing for effective, dissuasive and proportionate sanctions**, and access to justice for employees' representatives and European Works Councils.

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