

A Review of

**Negotiating European Works Councils:  
A Comparative Study of Article 6  
and Article 13 Agreements**

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**EUROPEAN FOUNDATION**  
for the Improvement of Living and Working Conditions

## **Article 6 and Article 13 agreements compared**

*Recent research examines the differences between voluntary Article 73 EWC agreements signed before the Directive came into force in September 1996, and article 6 agreements signed since that date.*

It is now well over three years since the EWCs Directive came into force, on 22 September 1996. Since that date, the conclusion of new EWC agreements has been governed by the special negotiating body (SNB) procedure set out in Article 5 of the Directive, while the agreements themselves are governed by Article 6. Although progress has been quite slow, there is now a substantial body of more than 120 Article 6 agreements, enabling comparisons to be drawn with the 450 or so Article 13 agreements signed before the Directive came into force. The issue is of particular relevance at present, in the context of the European Commission's current review of the Directive's operation. The contents of Article 6 agreements are clearly an important factor in evaluating how the Directive has worked in practice. The different legal contexts of the Article 13 and Article 6 agreements, and the growing influence on negotiators of the ever-increasing body of EWCs experience, suggest that some differences may be found between the two types of agreement.

The European Foundation for the Improvement of Living and Working Conditions has published (September 2000) a report entitled *Negotiating EWCs under the Directive: A comparative analysis of Article 6 and Article 13 agreements* (Paul Marginson & Mark Carley, 2000, ISBN 92-828-9693-5) that aims to examine what these differences are. Its comparison is based on a database of 71 Article 6 EWC agreements and 386 Article 13 agreements created and maintained by the Foundation (which can be accessed at the Foundation's web site - [www.eurofound.ie](http://www.eurofound.ie)). The Article 13 agreements had been the subject of an earlier publication: *Negotiating European Works Councils. An analysis of agreements under Article 13*, (Paul Marginson, Mark Gilman, Otto Jacobi and Hubert Krieger, 1998, ISBN 92-828-4356-4).

### **Spread of Article 6 agreements**

Concerns have been expressed about the seemingly slow uptake of agreements establishing EWCs under Articles 5 and 6 of the Directive. Following the surge of Article 13 agreements concluded in the three months before the Directive's implementation in September 1996, activity appears to have been subdued over the following 15 months. However, the Foundation's report's analysis suggests that such concerns might now be assuaged: the rate at which new agreements were being concluded during 1998 was noticeably higher than it was during 1997. At the time the report was written (November 1999), 121 probable Article 6 agreements had been identified.

Agreements concluded by multinationals based in four countries - France, Germany, the UK and the USA - dominated the picture under Article 13 (accounting for 64% of all agreements). Under Article 6 this has changed, with agreements in multinationals based in two further countries - the Netherlands and Sweden - now also accounting for a significant proportion of the overall total (23% between them). In terms of the sectoral distribution of agreements, three sectors - metalworking, food/drink/tobacco and chemicals- account for almost two-thirds of both Article 6 and Article 13 agreements. Agreements in construction and the utilities are, however, relatively more common amongst Article 6 (10% of the total) as compared with Article 13 agreements (3%). With these exceptions, the broad picture appears

to be one of continuity of previous patterns of diffusion in terms of country of headquarters and sector of activity, rather than one of “catch-up”. There are still relatively few EWC agreements amongst companies based in some countries (including Austria, Denmark and Spain) and in some sectors (noticeably services - only 14% of Article 6 agreements).

### **EWCs coverage**

The geographical coverage of the EWCs established by Article 6 agreements extends to operations in countries beyond the European Economic Area (EEA) in nearly one-third of cases (30%). This is a slightly higher proportion than amongst Article 13 agreements (26%). The increase reflects a developing tendency, as yet not widespread, to extend coverage to operations in the Czech Republic, Hungary and Poland - the three largest of the first wave of EU accession countries.

### **Impact of the Directive**

The impact of the terms of the Directive on the provisions of EWC agreements is evident in more than one way. In general, says the report, this impact is leading to greater uniformity over a range of matters addressed by Article 6 agreements, as compared with the situation under Article 13, as follows:

- Reflecting the Directive’s stated objective, virtually all Article 6 and Article 13 agreements state that their basic purpose is the information and consultation of employees. Consultation in the great majority of both types of agreement is defined in terms similar to the Directive, as “dialogue” or an “exchange of views”. The minority of Article 6 agreements making provision for more extensive consultation or even negotiation is proportionately no more numerous than previously (at around one in 10).
- The Directive specifies a number of aspects that Article 6 agreements should cover. The degree to which the various requirements are expressly met is not, however, total. Most evidently, for 12 of the 71 Article 6 agreements analysed, it was not apparent from the employee-side signatories that the agreement had actually been concluded with an SNB. Agreements in companies based outside the 17 EEA countries covered by the Directive at the time the report was written (i.e. before the UK was covered in December 1999) do not all specify which national implementation law is applicable (around 20% fail to do so). In almost one in four cases, no reference is made to procedures for renegotiation of the agreement. On other aspects, compliance with specific requirements of the Directive seems to be virtually universal, including provisions on the duration of agreements (most commonly four years), the term of office of employee representatives (again most commonly four years) and specification of the financial and material resources available to the employee representatives.
- The influence of the subsidiary requirements of the Directive and of (the national legislation implementing) specific clauses dealing with access to experts (Article 8), confidentiality (also Article 8) and protection of employee representatives (Article 10) is even more evident amongst Article 6 agreements than it was amongst Article 13 agreements. Thus, the eight basic business - and employment - related issues specified in the subsidiary requirements as matters for information and consultation are cited with even greater frequency amongst Article 6 than Article 13 agreements. No agreements under Article 6 establish EWCs with more than 30 members, whereas a minority under Article 13 did. Select committees are even more common amongst Article 6 (83% of cases) as compared with Article 13 agreements (around 60%). Meetings in extraordinary circumstances are provided for in virtually all Article 6 agreements, as compared with four out of five Article 13 agreements. All but one Article 6 agreements make provision for the

employee side to have access to experts, compared with four out of every five Article 13 agreements. Confidentiality clauses have moved from being widespread to near universal (94% of Article 6 agreements), and the great majority of Article 6 agreements (79%) contain a Cause on employee protection.

Reflecting the subsidiary requirements, but also the method for electing representatives to SNBs specified in the Directive, the study finds a marked change between Article 13 and Article 6 agreements in the basis by which employee representation on the EWC is determined. Nearly six out of 10 Article 6 agreements provide for all countries in which a multinational operates to have one representative, with additional representatives allocated in line with workforce size. This has taken over from “purer” workforce-size related methods as the most common way of allocating seats. Furthermore, while, as under Article 13, a little under half (45%) of Article 6 agreements lay down a minimum workforce-size threshold for a country to be directly represented on the EWC, the average level of the threshold is much lower under Article 6. This results in EWCs that are flatter and wider in composition, giving more weight to geographical scope and less to relative workforce size in different countries. There is some evidence that larger national workforces may now have less weight within EWCs.

### **Diffusion of “good practice”**

Movement towards uniformity of provision is also found to be evident in areas that are not directly addressed by the Directive (or by each and every member state’s implementing legislation). This suggests to the report’s authors that processes of learning are also at work amongst negotiators, in which aspects of “good practice” are diffused from one agreement to another. An innovative feature under a minority of Article 13 agreements was provision for the employee side to have a follow-up, as well as preparatory, meeting. This has spread considerably amongst Article 6 agreements (up to 51% from 22%); so too has reference to training for employee representatives (up to 63% from 35%), although in many cases this would appear to be confined to languages. In terms of detailed procedures, Article 6 agreements are even more likely than Article 13 agreements to spell out arrangements for the setting of the agenda (up to 93% from 86%) and the drawing up of minutes (up to 86% from 65%). A minority of Article 13 agreements (34%) specified a single company language in which EWC business would be conducted. Amongst Article 6 agreements this has become a majority practice (65%) - although it should be noted that provision is made for some interpreting and translation in virtually all such instances. Accompanying this trend is another: the lingua franca of EWCs is increasingly becoming English.

Overall, the report states, as a result both of following the terms of the Directive more closely, and of processes of “good practice” diffusion across negotiators, agreements under Article 6 are more comprehensive in the range of issues they address than were the earlier Article 13 agreements. A count of provisions on 10 matters - concerned with scope for extraordinary meetings, employee-side preparatory and follow-up meetings, chairing, agenda-setting, minutes and access to experts - shows that the average number for which there is provision in Article 6 agreements is eight, as compared with seven in Article 13 agreements concluded after the Directive was adopted and five amongst those agreements concluded before September 1994.

### **Diversity and innovation**

Notwithstanding this greater uniformity, diversity and innovation are also found to be evident amongst Article 6 agreements, and this embraces some further important matters. Diversity is seen, for example, in:

- the acknowledgement of an explicit trade union role in a sizeable minority of agreements. International or national trade union organisations signed over a quarter of Article 6 agreements. Although this is lower than the 45% of Article 13 agreements, it indicates that trade unions have a recognised involvement in a minority of negotiations despite the fact that the Directive's SNB process accords them no formal role. In a similar minority of Article 6 agreements, explicit provision is made for the participation of a trade union official at EWC meetings. The picture here is very similar to that amongst Article 13 agreements. Moreover, under both types of agreement, it is probable that the experts who can be invited to EWC meetings in a larger proportion of cases will frequently be trade union officials; and
- the basic composition of EWCs, where, although joint management-employee structures remain more numerous than employee-side-only bodies amongst Article 6 agreements (55% of the total, compared with 69% under Article 13), the proportion of employee-side-only bodies has increased (45%, compared with 31%).

Turning to innovation, the study notes, in the light of the controversy surrounding the 1997 restructuring at Renault (EWCB 9 p.10), that just over one-quarter of Article 6 agreements make reference to the need for the provision of information and consultation to be timely. There are signs, too, that the agenda for EWCs may be widening where, dominance of the eight matters listed in the subsidiary requirements notwithstanding, environmental issues and equal opportunities are cited amongst noticeably larger minorities of Article 6 than Article 13 agreements.

### **Active transnational structures?**

The 1998 Foundation report analysing the provisions of Article 13 agreements drew a distinction between agreements establishing EWCs whose potential appears to be confined to a largely formal or symbolic existence, based on an annual meeting, and those agreements establishing EWCs with the potential to develop an active role. Amongst the latter there is ongoing activity on the employee side and liaison with management.

Two sets of findings suggest to the new report's authors that the emphasis amongst Article 6 agreements is oriented more towards the development of active structures, and less towards the setting up of largely symbolic bodies, than was the case with Article 13 agreements:

- the fact that there is little evidence of the management unilateralism over EWC procedures governing agenda setting, the drawing-up of minutes and the convening of extraordinary meetings that was found in a minority of Article 13 agreements; and
- the higher incidence of select committees found amongst Article 6 agreements, and in particular the noticeably higher proportion of these that are accorded a continuing role in receiving information and consultation.

The report concludes that how far the strengthened potential for EWCs established under Article 6 to develop an active role is actually being realised requires a shift in focus - from examining the provisions of agreements to investigating practical experience.

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