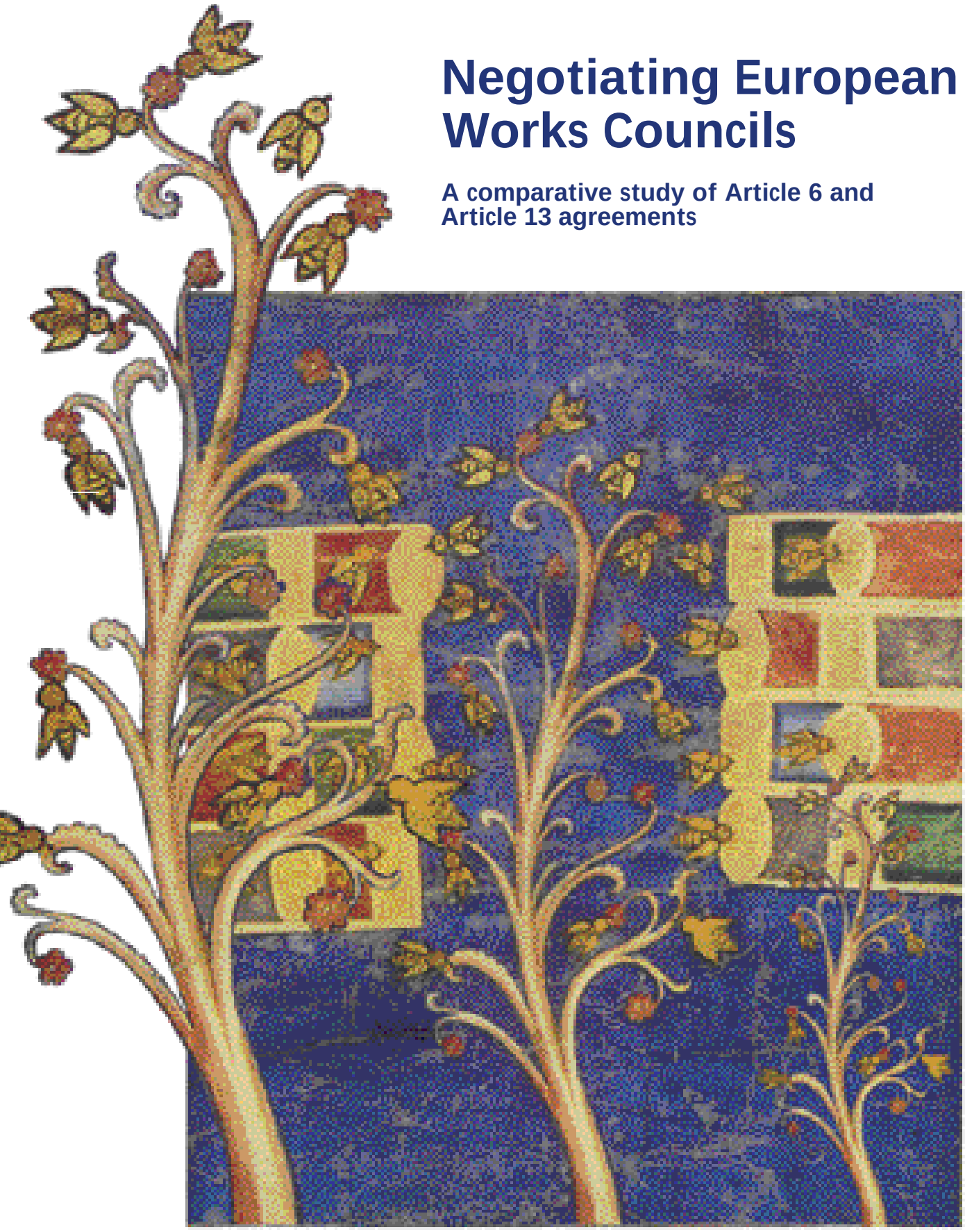
Negotiating European Works Councils

A comparative study of Article 6 and Article 13 agreements



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

EUROPEAN COMMISSION *Directorate-General for Employment and Social Affairs*

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

The European Foundation for the Improvement of Living and Working Conditions is an autonomous body of the European Union, created to assist the formulation of future policy on social and work-related matters. Further information can be found at the Foundation web site: http//www.eurofound.ie/

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Foreword

With this report the European Commission (Employment and Social Affairs DG) and the European Foundation for the Improvement of Living and Working Conditions present a third joint publication on the analysis and comparison of agreements on the setting up of European Works Councils.

The report examines the content of more recent Article 6 agreements concluded after September 1996, and compares them with voluntary agreements under Article 13, which were negotiated before 22 September 1996 (the date of the entry into force of the European Works Councils Directive). Altogether the analysis is based on a comparison of 386 Article 13 agreements with 71 Article 6 agreements.

In general terms, the study indicates that the social partners in Europe are showing significant 'joint learning' in their handling of EWCs. European Works Councils negotiated between central management and a special negotiating body have the right to meet more frequently, provide more training for employee representatives, and include a wide range of issues. This should strengthen the institution of EWCs.

Although the nature of EWC agreements is very diverse, the study finds strong conformity between Article 6 agreements and the minimum requirements given in the Directive. This is a result of the specific requirements laid down under the Directive.

We hope this report provides some practical help for the social partners in dealing with the issue of information and consultation in European multinational companies. We intend to continue the fruitful cooperation between the commission and the European Foundation on this important topic.

Raymond Pierre Bodin
Director
European Foundation for the
Improvement of Living and Working

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Director-General
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Chapter 1 Introduction

EU Council Directive 94/45/EC – the European Works Councils (EWCs) Directive – came into force across the countries of the European Economic Area (excluding the UK) on 22 September 1996. The Directive requires Community-scale groups and undertakings – i.e. those with at least 1,000 employees in the 17 EEA countries concerned, and at least 150 employees in each of two of the countries – to set up an EWC or procedure for the purpose of informing and consulting employees. Prior to the Directive's adoption in September 1994, some 40 multinationals had already set up an EWC-type structure on a voluntary basis. Following adoption, up to 400 further companies took advantage of the provisions of Article 13 of the Directive, which granted an exemption from the Directive's requirements for multinationals which concluded a voluntary agreement on an EWC or procedure by 22 September 1996, provided that this covered the entire relevant workforce.

An earlier report from the European Foundation for the Improvement of Living and Working Conditions (Paul Marginson, Mark Gilman, Otto Jacobi and Hubert Krieger, *Negotiating European Works Councils: An analysis of Agreements under Article 13,* Office of Official Publications of the European Communities, 1998) examined the contents of Article 13 agreements, on the basis of a database of 386 agreements (see below).

Since the Directive came into force, the creation of new EWCs or procedures is governed by the procedure set out in Article 5 of the Directive, as implemented in the national law of countries affected. This involves negotiations between central management and a special negotiating body (SNB) made up of employee representatives. The agreements themselves are governed by Article 6 of the Directive, as transposed into national law.

This report examines the contents of Article 6 agreements and compares them with the Article 13 agreements, on the basis of a database of 71 Article 6 agreements and the existing database of 386 Article 13 agreements (see below).

Under Article 6, EWC agreements should contain a number of compulsory elements, covering the following issues:

- the undertakings or establishments covered by the agreement;
- the composition of the EWC, the number of members, the allocation of seats and the term of office;
- the EWC's functions and the procedure for information and consultation;
- the venue, frequency and duration of EWC meetings;
- the financial and material resources to be allocated to the EWC; and
- the duration of the agreement and the procedure for its renegotiation.

In the case of agreements which establish information and consultation procedures rather than a standing EWC, it is specified that these must stipulate the method by which employee representatives have the right to meet to discuss the information provided to them, and that the information must relate in particular to transnational questions which significantly affect workers' interests.

The EEA Member States which have transposed the Directive have all mirrored these provisions in their national measures, and in some cases have made a number of additions (see 'National transposition measures', *European Works Councils Bulletin*, No. 5, September/October 1996 and 'National EWC provisions compared: the SNB procedure', *European Works Councils Bulletin*, No. 11, September/October 1997).

In December 1997, Directive 97/74/EC extended the EWCs Directive to the UK. The main effect was to bring the UK workforces of multinationals into the scope of the Directive. Thus UK employees are now, from December 1999, obligatorily represented on SNBs and statutory EWCs based on the subsidiary requirements, and included in the workforce-size calculations for determining whether or not a company is covered by the Directive. As a result, some 200 new multinationals (more than half of them UK-based) are thought to have been brought into the Directive's scope. These firms were given an Article 13-type dispensation to conclude voluntary agreements by 15 December 1999. Few such agreements have come to light as of November 1999, and they are not included in the scope of this report.

The environment of Article 6 agreements

The context for Article 6 agreements is clearly different in a number of respects to that which applied to Article 13 agreements.

First, there is now a legal framework (the details of which vary to some extent from country to country) governing:

- obligations on the management to negotiate over an agreement, if requested;
- the bargaining parties: under Article 13, the employee-side signatories of EWC agreements were a variety of national and international trade union and employee representatives, but now only legally constituted SNBs may conclude agreements;
- the right of employee-side negotiators to have access to external experts (with the expenses of at least one met by management);
- obligations on management to meet expenses relating to negotiations;
- the duration of the negotiations;
- a requirement that negotiations be conducted in a spirit of cooperation with a view to reaching an agreement; and
- the content of the agreements: these must now at least deal with a specified range of issues (see above).

Second, the possibility of the subsidiary requirements' statutory EWC being compulsorily applied is now one stage closer – failure to conclude an agreement will essentially result in the subsidiary requirements' application. Their provisions may now play a more explicit role in influencing the negotiations.

Third, there is now a larger body of established practice in terms of negotiating and drafting agreements. The conclusion of some 450 Article 13 agreements has arguably progressively established a set of standard provisions in many areas, which may influence the negotiators' approaches and expectations. The experience of other EWC negotiations may be imparted to negotiators through information from, for example, publications and social partner organisations, and through the experts and external consultants who play a part in many negotiations on both the management and employee sides.

Given these differences in the contexts, it might be expected that Article 6 agreements will differ from Article 13 agreements in some respects. The aim of this report is to examine what these differences might be.

The issue is of particular relevance at present, as under the provisions of Article 15 of the 1994 Directive, the European Commission – in consultation with the Member States and social partners – has during 1999 been conducting a review of the Directive's operation. The process has not been entirely transparent, but it appears that early 2000 may see the publication of a Commission report on the Directive's implementation and operation ('EU information and consultation initiatives: current state of play', *European Works Councils Bulletin*, No. 24, November/December 1999). The contents of Article 6 agreements are clearly an important factor in evaluating how the Directive has worked in practice.

In this report, we compare the provisions of 71 Article 6 agreements with those of 386 Article 13 agreements. As well as looking at the overall diffusion of agreements under the two regimes, we compare the two sets of agreement in eight key areas:

1. Conclusion of agreements;

2. Form and scope of agreements;

3. Role and competence of the EWC;

4. Composition of the EWC;

5. Meetings of the EWC;

6. The select committee;

7. Experts and facilities; and

8. Adaptation, application, renegotiation and termination.

Database of Article 13 and Article 6 agreements

As stated above, this report is based on a database of EWC agreements created and maintained by the Foundation. The database of EWC agreements codes the provisions of each available agreement according to a grid. The database comprises 386 Article 13 agreements and, as of late October 1999, 71 Article 6 agreements. The online database, which also includes the full text of a substantial number of agreements, can be accessed at the Foundation's website at the following URL: http://www.eurofound.ie/ewc/index.shtml.

Chapter 2 Diffusion of agreements

The analysis in all subsequent sections of this report is based on the 71 Article 6 agreements currently available on the Foundation's database. At the time of writing (early November 1999), however, a total of 121 agreements have been identified as potentially being concluded under Article 6. This total excludes renegotiations of existing Article 13 agreements, or agreements which follow on from the merger, demerger or restructuring of companies with existing EWCs, and also 'Article 3' voluntary agreements in multinationals which will be newly covered by the Directive once the UK comes within its scope in December 1999. As the Appendix table indicates, the status of a number of these has yet to be confirmed (in the list, such agreements are marked with an asterisk). In this section examining the overall diffusion of Article 6 agreements, we base our observations on this full list of 121 agreements.

The list of 121 agreements is almost certainly a less than complete picture of the spread of Article 6 agreements, as deals can often take a long time to come to light. Furthermore, agreements from certain countries and sectors and in certain languages are likely to be easier to find. Gaps in the representation of various countries (especially in southern Europe) and sectors (especially services) may reflect data-gathering problems as well as an absence of agreements.

Country of origin

The 121 Article 6 agreements are found in companies based in a total of 19 countries, and include three cases where the company is based in more than one country. As indicated in Table 1, the great majority of these countries account for a small proportion of the total number of agreements, with only seven countries accounting for 5% or more of agreements each – France, Germany, the Netherlands, Sweden, Switzerland, the UK and the USA. Between them, these

countries account for 82% of all Article 6 EWCs. These same 'big seven' countries also dominated under Article 13, where they accounted for 80% of agreements. The 'biggest four' under Article 13 (France, Germany, the USA and UK) accounted for 64% of agreements, while they now account for 54% of Article 6 agreements. This is because the rankings of the top seven countries have changed quite notably.

Table 1 Country of origin of companies with Article 6 and Article 13 agreements

Country	Article 6 (%)	Article 13 (%)
Austria	2	2
Belgium	3	4
Denmark	2	2
Finland	3	4
France	10	11
Germany	11	23
Greece	–	–
Iceland	–	–
Ireland	1	1
Italy	2	4
Liechtenstein	–	–
Luxembourg	–	1
Netherlands	10	5
Norway	1	1
Portugal	–	–
Spain	1	1
Sweden	13	6
EEA 17	*59*	*63*
Switzerland	5	5
UK	15	15
Japan	2	4
USA	18	15
Rest of world	2	1

Base: All agreements, Article 6: N=121, Article 13: N=386.
Note: Percentages total more than 100% because of inclusion of companies based in more than one country.

Germany topped the list under Article 13, accounting for nearly a quarter of all EWCs, but has now slipped back to fourth place, halving its share of Article 6 EWCs. The USA is now in top spot (formerly equal second), up to 18% from 15%, while the UK remains in second place with 15%. The Netherlands and Sweden have both doubled their share of agreements, to 10% and 13% respectively, and Sweden has moved up from fifth to third place.

The proportion of EWCs in companies based in the 17 EEA countries covered by the Directive – prior to the UK joining up fully in December 1999 – has fallen somewhat from 63% to 59%. The

proportion made up by companies from elsewhere in Europe (in effect, Switzerland and the UK) has remained steady at 20%, while the continuing impact of the Directive beyond Europe is emphasised by the slight increase in the share of non-European countries from 20% to 25%.

Sector

The picture of the sectoral distribution of EWCs (placing the companies in their apparent main sector where they span more than one) is not enormously different under Article 6 to the position under Article 13 – as Table 2 reveals. The same three broad sectors – metalworking, chemicals/rubber/plastics and food/drink/tobacco dominate both lists. Metalworking remains the most represented sector at 32% (35% under Article 13), followed by chemicals at 17% (17%) and food at 13% (12%). Between them, these sectors account for 62% of Article 6 agreements and 64% of Article 13 agreements.

The main sectoral differences between Article 6 and Article 13 agreements are: the increasing share of construction/utilities – up from 3% to 10% – and pulp/paper – up from 4% to 7%; and the declining share of other manufacturing – down from 8% to 1% – and of mining and oil – down from 3% to nil.

Overall, manufacturing accounts for 74% of all Article 6 agreements, a fall from the 82% among Article 13 agreements. This is mainly due to the increase in the share of construction and utilities from 3% to 10%. Services (including transport and communications) account for a similar proportion of both types of agreement – 14% of Article 6 agreements and 13% of Article 13 agreements.

Table 2 Sector of activity of companies with Article 6 and Article 13 agreements

Sector	Article 6 (%)	Article 13 (%)
Mining and oil	–	3
Chemicals, rubber and plastics	17	17
Food, drink and tobacco	13	12
Metalworking	32	35
Pulp and paper	7	4
Textiles, clothing and leather	4	3
Other manufacturing	1	8
Construction and utilities	10	3
Commerce	3	1
Financial services	5	5
Transport and communications	3	2
Other services	3	5

Base: All agreements, Article 6: N=121, Article 13: N=386.
Note: Percentages total more than 100% because of inclusion of companies based in more than one country.

Catch-up or continuation?

The absolute numbers of Article 6 and Article 13 agreements by country or sector must be seen in the context of the numbers of multinational companies based in those countries or operating in those sectors which are covered by the Directive.

On the basis of European Trade Union Institute figures for the numbers of companies covered by the Directive at the time, under Article 13 the highest national 'strike rates' – the proportion of all relevant multinationals based in a particular country which have agreed an EWC – were found in Belgium (80%) and Ireland (60%), followed by Finland, Japan, Norway, Sweden and the UK (all over 40%). The lowest strike rates (20% or less) were found in Denmark, the Netherlands and Spain. The relationship between a high Article 13 strike rate and Article 6 progress – among major countries at least – is not entirely clear. While the USA, with an average Article 13 strike rate, accounts for the greatest proportion of Article 6 agreements, it is followed by the UK and Sweden, with relatively high Article 13 strike rates; Germany and France, with average Article 13 strike rates; and the Netherlands, with a low Article 13 strike rate. Apart from the Netherlands, there seems to be little sign of countries with low Article 13 strike rates 'catching up' under Article 6 – low scorers such as Austria, Denmark and Spain remain very poorly represented among the Article 6 agreements. It might be argued that the small number of Article 6 agreements in multinationals based in Belgium and Ireland reflects the fact that so many of them already had Article 13 agreements. Overall, however, the evidence suggests primarily a continued relatively high level of activity in countries which had average or high strike rates under Article 13.

Under Article 13, the highest sectoral strike rates (over 40%) were in food, chemicals and mining/oil, and the lowest in textiles, commerce and transport/communications. Once again, there is no clear relationship between Article 13 strike rates and Article 6 progress – metalworking has most Article 6 agreements and an average Article 13 strike rate, while both chemicals and food have large numbers of Article 6 agreements and above-average Article 13 strike rates. Mining/oil, with a high Article 13 strike rate, is not represented at all among the Article 6 agreements. Although there are signs of movement in construction/utilities and, to a lesser extent, in commerce, textiles and transport/communications, there is no clear pattern of sectors with low Article 13 strike rates catching up under Article 6. Again, it seems that many sectors with average or high Article 13 strike rates continue to be the most active in concluding Article 6 agreements.

Chapter 3 Conclusion of agreements

Date of agreement

Although only 71 agreements are analysed in the remainder of this section, for the purposes of examining the date of Article 6 agreements we refer to the full list of 121 probable agreements (see Chapter 1 above).

Of the 121 agreements, eight were signed in the final three months of 1996, immediately after implementation of the Directive on 22 September 1996. Thereafter, 37 of the agreements were concluded in 1997, rising to 56 in 1998, suggesting that the rate of diffusion of agreements under Article 6 is now increasing after a slow start. A further 17 of the 121 agreements were concluded in the first 10 months of 1999, the low number almost certainly reflecting the delays which arise in information about agreements coming to light. The date of three agreements is not clear.

Employee-side signatories

Agreements under Article 13 could be concluded with a range of parties representing employees, including, in varying combinations, national and international trade union organisations (45% of all agreements), works councils from one or more countries (34%) and unspecified employee representatives (45%). In contrast, agreements established under Article 6 of the Directive should be concluded with a special negotiating body (SNB) of employee representatives constituted according to the implementing legislation of the relevant EEA Member State. In 12 (17%) cases, however, it is not made clear that the Article 6 agreement has actually been concluded with an SNB. Of the 59 agreements which clearly were concluded with an SNB, 18 agreements (25% of all agreements) were also signed by another party representing employees.

Most commonly this is either an international trade union (14 cases), or one or more national trade union organisations (seven cases), but in one case it is a national works council.

In total, 19 agreements (27% of the total) have been signed by trade union organisations in addition to representatives on the SNB (14 with an international trade union and nine with national trade unions, including four instances with both). The practice is most common in the food/drink/tobacco sector (four agreements); chemicals, and the metalworking sector (five agreements each). Whilst the overall proportion is noticeably below the 45% of Article 13 agreements which had trade union signatories, it is significant that, despite having no formal role under the SNB process, the involvement of trade unions in the process of establishing EWCs is explicitly evident in over one-quarter of Article 6 agreements.

National law applicable

Article 6 agreements should comply with the national implementing legislation of one of the 17 EEA states which are currently (November 1999) covered by the Directive. For multinational organisations headquartered in one of the 17 EEA states, it is the implementing legislation of the country concerned which applies. This is the case for 38 (54%) of the agreements, and 25 of these make explicit reference to this in the text.

Multinationals headquartered outside of the EEA must select which national implementation legislation will apply to the negotiation and operation of their EWC. Of the 33 agreements concerned, 26 (79%) specify which national legislation applies. Twenty of these have opted for either the Belgian (seven cases), Irish (seven cases) or Dutch (six cases) legislation. Two agreements each are governed by German and Italian legislation, and one agreement each by French and Swedish legislation.

Although Article 13 agreements pre-dated implementation of the Directive, and hence there was no similar requirement on multinationals headquartered outside the 17 EEA countries, amongst the 155 agreements concerned the location of the European headquarters for the purposes of the Directive was identified in 32%. The three most cited locations were Belgium, France and Germany, accounting for, respectively, 13, 12 and 10 agreements each. A comparison suggests that in specifying the national legislation under which Article 6 agreements operate, there might have been some migration by multinationals headquartered outside the EEA 17 towards the legislation of some smaller countries. Although the extent of ‘regime shopping’ cannot be assessed, it is notable that of the nine multinationals for which the relevant employment data are available, five have selected the legislation of a country which is not host to their largest operation.

Resolution of disputes

Of the Article 6 agreements, 53 (75%) specify some means for the resolution of any disputes over the agreement or its interpretation. A comparable figure for Article 13 agreements is not

available, but it seems likely that the proportion making such provision in Article 6 agreements is higher. Thirty-three agreements (46%) identify the legal framework to be applied in case of any dispute, or the courts which have jurisdiction; 24 agreements (34%), including four identifying the legal framework, specify an internal procedure which applies before any recourse to the law. Three of the latter state that there is no recourse beyond the internal procedure.

Relatedly, two-thirds of the agreements stipulate which language version is the official version, for example, in cases of dispute over interpretation. Of the 47 agreements concerned, 24 (34% of all agreements) specify the English language version. Of these agreements, 20 are in UK or North American-owned companies, one is in a Japanese-owned multinational, with one each in a Belgian, a Dutch and a Swiss multinational. The Dutch, French, German and Swedish versions are specified in five cases each, and Danish, Finnish and Spanish in one case each.

Chapter 4

Form and scope of EWCs

Form

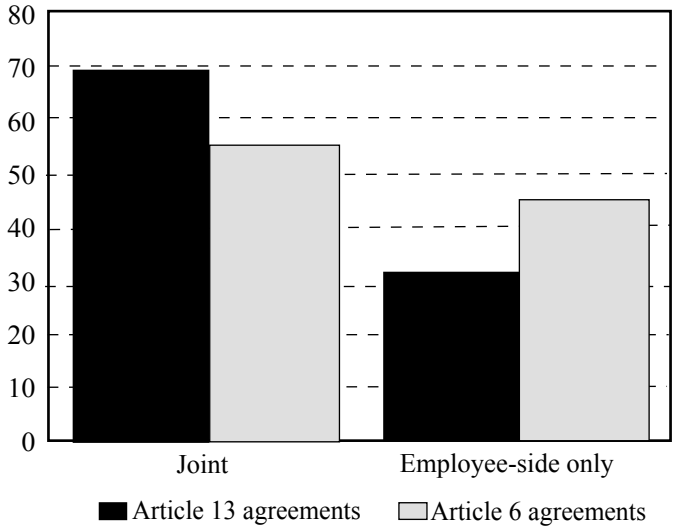
The subsidiary requirements of the Directive provide for an EWC constituted as a body comprising employee representatives only, which then meets bilaterally with management. This corresponds to practice in several EEA countries, including Austria, Germany, the Netherlands, some of the Nordic countries and Italy. The model is adopted as the statutory requirement by the national implementing legislation of all but one of the 14 EEA Member States which have so far transposed the Directive. The exception is the French legislation which, in line with national practice, provides for EWCs which are constituted as a joint management-employee representative structure.

Amongst Article 13 agreements it was the joint form which was more prevalent: 69% of EWCs were constituted as joint structures and 31% as employee-side only structures. Perhaps reflecting the influence of the approach taken by most Member States' implementing legislation, the picture with Article 6 agreements is somewhat different: whilst the joint forms remains in the majority accounting for 55%, a larger minority of 45% are constituted as employee-side only structures.

Many of the differences amongst Article 13 agreements according to the country of origin of the company concerned persist amongst Article 6 agreements, but there are two notable changes. Thus all Article 6 agreements in companies based in Belgium and France establish joint bodies, as do all agreements in UK-owned multinationals. The picture amongst companies based in the Nordic countries remains mixed, with the emphasis towards employee-side structures, as was the case with Article 13 agreements. And all three agreements in Italian-based companies establish

employee-side EWCs. But whereas two out of five Article 13 agreements in companies based in Austria, Germany and the Netherlands specified joint structures, that proportion has shrunk to one in five Article 6 agreements: employee-side structures are clearly predominant amongst Article 6 agreements concluded by companies based in these three countries. Perhaps surprising is that seven out of 17 (41%) Article 6 agreements amongst North American companies establish employee-side only structures.

Figure 1 *Joint and employee-side only EWCs (%)*



Base: Article 13 and 6 agreements with relevant information; N = 374 and N = 71.

Turning to sectoral differences, Article 6 agreements in food, drink and tobacco remain rather more likely to establish joint bodies, as was the case with earlier Article 13 agreements. Chemicals continues to exhibit a mixed pattern, with the emphasis towards joint structures. But in metalworking there is now a rough split between joint and employee-side only structures, whereas amongst Article 13 agreements the former were comfortably in the majority. In construction and the utilities, there has been a marked shift from a majority of joint structures amongst Article 13 agreements to a majority of employee-side only structures amongst those concluded under Article 6.

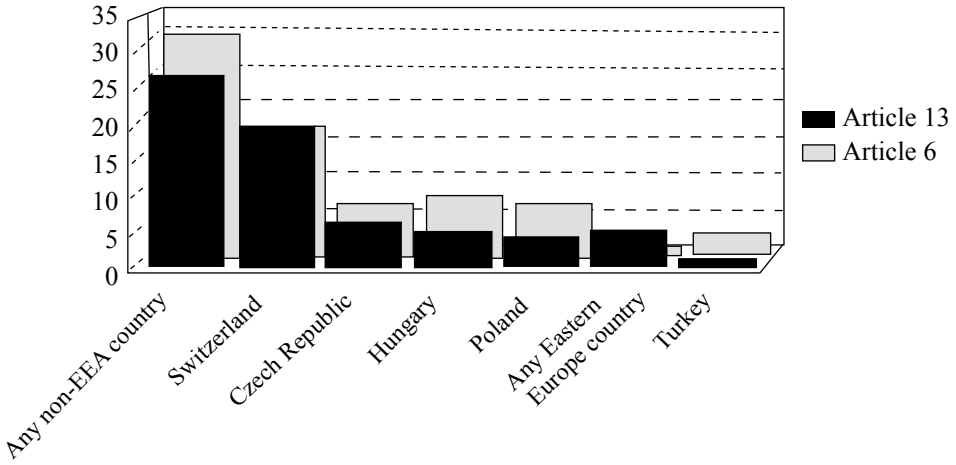
Geographical scope

Even though the UK's 'opt-out' from the Directive was firmly in force at the time Article 13 agreements were being concluded, UK operations were covered in 63% of all agreements. Only seven agreements were identified as explicitly excluding the UK. Following the change of government in the UK in May 1997, the ending of the UK's opt-out was quickly signalled. In practice, consideration of the inclusion or exclusion of UK operations no longer seems to be an issue. Attention here therefore focuses on coverage of countries outside of the EEA.

The scope of 26% of Article 13 agreements extended to include operations in one or more countries outside of the EEA (a total that was higher amongst the 26 agreements which pre-dated

the adoption of the Directive, in 1994, than the large majority concluded after the Directive's adoption – 42% as compared with 25%). By comparison, the proportion of Article 6 agreements whose scope extends to one or more non-EEA countries is slightly higher at 30% (21 agreements). Inclusion of non-EEA countries is rather more common amongst Article 6 agreements in the manufacturing sectors (35%) than amongst those in construction and the utilities (13%) or the service sectors (17%). Operations in Switzerland are covered by 19% of Article 13, and 17% of Article 6 agreements. Operations in the Czech Republic, Hungary and Poland are covered by, respectively, 6%, 5% and 4% of Article 13 agreements, and 7%, 8% and 7% of those concluded under Article 6. This suggests some, but no great, increase in EWC coverage of operations in applicant Member States in central Europe. Coverage of east European countries (those east and south-east of the Czech Republic, Hungary and Poland) remains rather rare, occurring in just one Article 6 agreement.

Figure 2 Coverage of non-EEA countries (%)



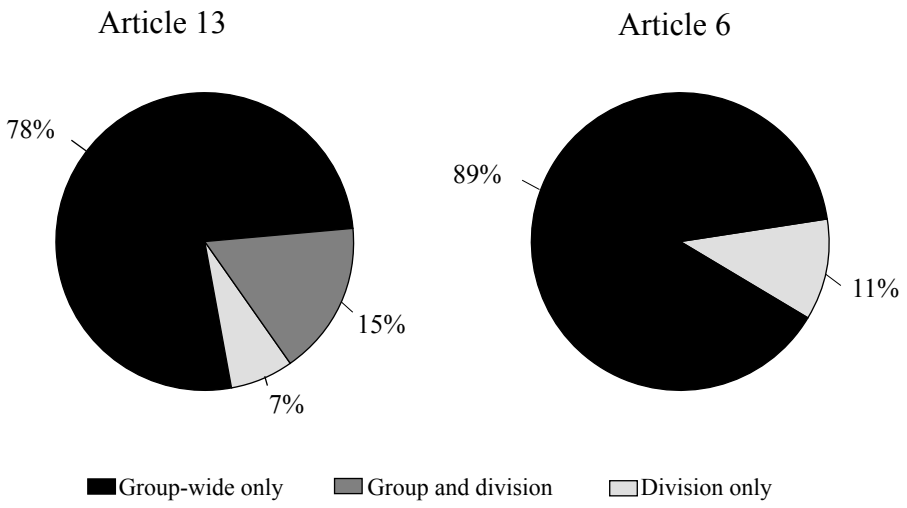
Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Business structure covered

The Directive's subsidiary requirements make provision for a single, group-wide EWC. Whilst this approach was followed by a majority (78%) of Article 13 agreements, a minority established EWC arrangements at the level of an international business division. This minority was divided between single-tier divisional EWCs (15%) and two-tier arrangements which established EWCs at group and divisional levels (7%). Single-tier divisional EWCs were particularly prevalent amongst North American multinationals.

The proportion of single-tier, divisional EWCs amongst Article 6 agreements is slightly lower at 11% (eight agreements) and there are no instances of two-tier arrangements. The remaining 63 agreements (89%) established a group-wide EWC. As with their Article 13 predecessors, single-tier divisional EWCs were most commonly established by Article 6 agreements in North American-based companies

Figure 3 Business structure coverage



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Chapter 5 The role and competence of EWCs

Role

With a single exception in either instance, all Article 6 and Article 13 agreements explicitly state that the purpose of the EWC is for transnational information and consultation of employees and their representatives. As with the Article 13 agreements, and reflecting the definition provided in the Directive, consultation in the Article 6 agreements is almost always defined in terms of 'dialogue' or 'an exchange of views'. More extensive provisions for consultation, and also negotiation, were found in 14% of Article 13 agreements, including: the right for employee representatives to comment formally and give opinions on management proposals; provision for formal consultation on some issues; scope for employee representatives to make recommendations; and negotiation of joint texts. The proportion of Article 6 agreements which make such more extensive provision is slightly lower, at 11%. In defining the role of EWCs, Article 6 agreements would appear to be following the terms of the Directive as closely as the earlier agreements under Article 13.

Table 3 More extensive provisions for consultation and negotiation

	Article 13 agreements (%)	Article 6 agreements (%)
Any more extensive provision	*14*	*11*
Giving comments/opinions	7	3
Formal consultation	1	4
Making recommendations	4	–
Negotiating joint texts	2	6

Base: All Article 13 and Article 6 agreements; N = 386 and N = 71, respectively.

Although few agreements specify that the EWC has any negotiating role, the proportion has risen slightly comparing the two types of agreement. Commentators have also speculated on whether they might develop such a role in the future. In this connection it is interesting to note that seven (10%) Article 6 agreements expressly preclude the EWC from any negotiating role. No comparable information for Article 13 agreements is available.

A growing issue of concern has been the timeliness of the information and consultation taking place in EWCs, particularly in relation to extraordinary circumstances involving transfers of production, mergers, cutbacks or closures. Of the Article 6 agreements, 20 (28%) make explicit reference to the provision of information and consultation in good time. No comparable figures are available for Article 13 agreements, but it seems likely that the proportion was rather lower. References to the timeliness of information and consultation are largely concentrated amongst Article 6 agreements concluded in companies based in Austria, Belgium, France, Germany, the Netherlands and North America (between one-third and one half in each instance). In contrast, none of the agreements concluded in multinationals based in the Nordic countries makes such reference and only one of the 10 agreements in UK-based companies.

Issues for information and consultation

Virtually all agreements, be they concluded under Article 13 or Article 6, specify a list of issues which are within the competence of the EWC to consider. There were six exceptions amongst the 386 Article 13 agreements and one exception amongst the 71 Article 6 agreements. In 56 (79%) Article 6 agreements, the list specified is illustrative or non-exhaustive, whilst in the remaining 15 (21%), agreements the specified list is exhaustive of the issues which the EWC can consider. Comparable information on this is not available for Article 13 agreements.

As with the Article 13 agreements, the eight broad issues identified in the Directive's subsidiary requirements are the most frequently cited in the Article 6 agreements. Six of them are even more frequently cited amongst the Article 6 agreements than they were amongst the earlier Article 13 ones, whilst the other two issues – namely, the economic and financial situation and employment and social issues – were already cited in around nine out of every 10 Article 13 agreements. Of particular note is that the potentially contentious issue of transfers of production, mergers, cutback and closures is mentioned in 76% of Article 6 agreements, as compared with the somewhat surprisingly low figure of 52% of Article 13 agreements.

Of four further issues specified in more than 5% of Article 13 agreements, the proportion of Article 6 agreements citing environmental and training issues has increased, whilst the proportion citing health and safety issues has remained broadly level. Most striking is the increased frequency with which equal opportunities is cited as an issue for consideration.

Although the overall frequency with which these four further issues are cited has increased somewhat comparing Article 6 with Article 13 agreements, the gap between these and the frequency with which the eight broad issues identified in the Directive are cited has actually

widened. Interestingly, a comparison of those Article 13 agreements concluded before the Directive's adoption in September 1994 with those concluded subsequently indicates that prior to the Directive's adoption, such a gap between the two groups of issues was much less clear cut. In other words, one impact of the Directive would appear to have been to increase progressively the focus on the matters specified in the subsidiary requirements. At the same time, consideration of some further issues is becoming more widespread – notably those concerning the environment and equal opportunities.

Table 4 Issues for information and consultation

Issue	Article 6 agreements %	Post-Directive Article 13 agreements %	Pre-Directive Article 13 agreements %
Economic and financial situation	89	91	91
Employment and social issues	86	87	89
Business, production and sales	82	80	46
Structure	82	61	46
Transfers of production, closures. etc.	76	54	39
Investment	75	70	39
New working methods	68	63	50
Organisation	68	61	35
Environment	41	26	15
Health and safety	39	33	35
Training	31	27	31
Equal opportunities	20	5	8

Base: Article 13 agreements with relevant information and all Article 6 agreements; N = 362 and N = 71, respectively.

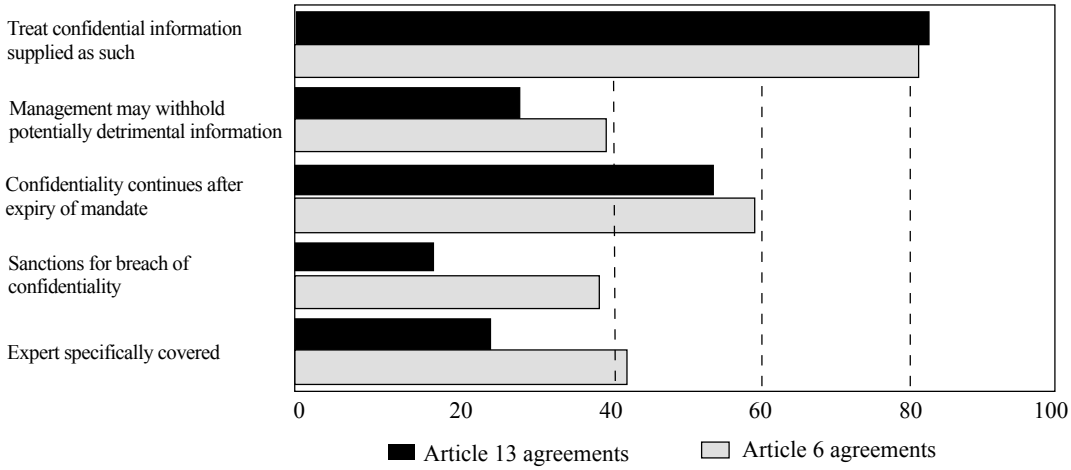
Specifically excluded issues

Approaching one-half (48%) of Article 13 agreements specifically excluded the EWC from considering certain issues (a feature found amongst only 12% of the agreements concluded before September 1994). This was the case with 32 of the Article 6 agreements, representing a broadly similar proportion (45%). However, the 'subsidiarity principle' excluding the EWC from consideration of issues already dealt with by information and consultation arrangements at national and local levels, which was found in nine out of every 10 relevant instances amongst Article 13 agreements, appears to be less prevalent amongst Article 6 agreements, where it accounts for two out of every three such instances. Issues of pay and remuneration were also less likely to be specifically excluded under Article 6 as compared with Article 13 agreements (13% as compared with 19% of all agreements). Smaller proportions of both type of agreement specifically exclude consideration of, respectively, industrial disputes, personal matters and political matters.

Confidentiality provisions

Reflecting Article 8 of the Directive, which requires Member States' implementing legislation to place employee representatives and experts under an obligation of confidentiality for any information deemed by management as such, 88% of Article 13 agreements contained a confidentiality provision. The impact of the Directive can be seen in the contrast between agreements concluded before its adoption, where such a provision is found in only 46% of agreements, and those signed after September 1994, where the incidence of such provision is 91%. At 94%, the proportion is even higher amongst Article 6 agreements, amongst which all but six contain a confidentiality provision.

Figure 4 Confidentiality provisions (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Beyond the general obligation on employee representatives to treat as confidential information supplied by management as such - which is found in nearly all Article 6 and Article 13 agreements with a confidentiality clause - specific aspects of confidentiality are more frequently the subject of clauses amongst the Article 6 as compared with the Article 13 agreements.

The increase in the frequency of clauses allowing management to withhold potentially detrimental information may reflect the Directive's provision that Member States must provide, 'in specific cases and under the conditions and limits laid down by national legislation', that central management situated in their territory is not obliged to transmit information which, according to objective criteria, would seriously harm or prejudice the undertakings concerned (Article 8.2). A majority of Member States have included this provision in their implementing legislation. Such a clause is most common amongst Article 6 agreements in multinationals based in the Netherlands, Switzerland and above all the UK, as too are clauses specifying that sanctions may be invoked should confidentiality be breached.

In sum, Article 6 agreements tend to embody more extensive confidentiality provisions than did the earlier Article 13 agreements.

Chapter 6 Composition of the EWC

The composition of the EWC, the number of members, the allocation of seats and the term of office are all compulsory aspects of Article 6 agreements.

Number and geographical distribution of representatives

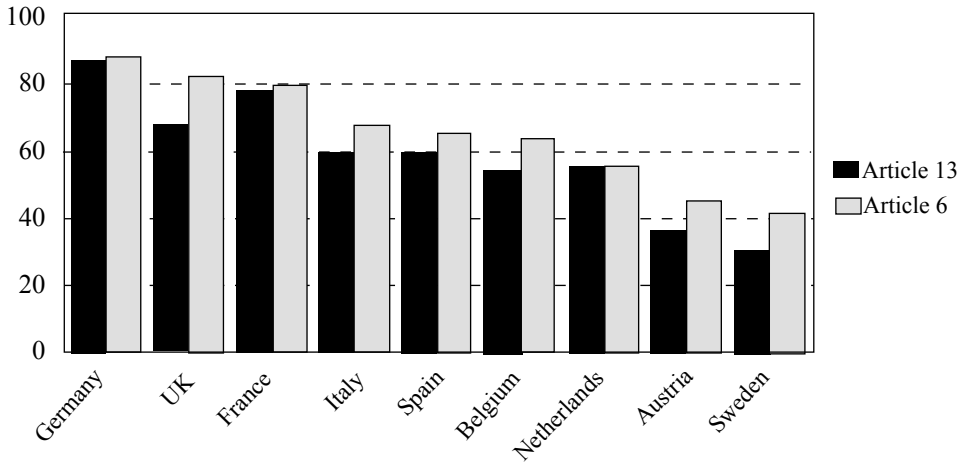
It is possible to calculate the number of employee representatives in around three-quarters of cases (76%) - compared with 69% of Article 13 agreements. The remainder tend only to provide the formula for calculating the number and distribution of seats. The mean number of representatives (including those cases where agreements provide only maximum figures) stands at around 17, compared with around 18 for Article 13 agreements. As well as being slightly smaller, Article 6 EWCs tend to be of a more standardised size than Article 13 EWCs – the range is between six and 30 members, compared with between three and 70. Nearly 6% of Article 13 agreements had over 30 members, but no Article 6 agreements do so. All the Article 6 agreements are in line with the subsidiary requirements' specification that a statutory EWC should have between three and 30 members, while this was true of 94% of Article 13 agreements.

As for the geographical coverage of EWC membership, where agreements provide such information (50 cases), the picture under Article 6 is quite similar to that under Article 13, though the relatively small number of Article 6 agreements examined, and the fact that certain countries may be over-represented among them, means that any conclusions must be treated with caution. As Figure 5 indicates, the same nine countries are the most likely to be represented on EWCs of both types, with Germany the most frequently represented country in the two cases.

The only real change on the Article 13 situation is that the UK has overtaken France to stand in second place, while Italy has moved ahead of Spain (having been equal under Article 13). The

dominance of the EU's 'big five' economies is perhaps unsurprising, but the relatively high rankings of countries such as Belgium and Austria (where only three of the companies with Article 6 agreements examined are based) suggest that they may be disproportionately favoured as an investment location by multinationals, or, in the case of Austria, that there may be a significant number of German-based multinationals which also operate in that country.

Figure 5 Countries most frequently represented on EWCs (%)



Base: Article 13 and 6 agreements providing information on geographical coverage of EWC membership; N = 248 and N = 50, respectively.

While the overall rankings have changed relatively little, there have been notable changes in the frequencies. Overall, out of 22 countries, the vast majority (18) are now represented on a higher proportion of EWCs (where agreements provide relevant information) than before. Some of these increases are notable – over five percentage points in nine cases (Austria, Belgium, the Czech Republic, Denmark, Hungary, Italy, Poland, Spain, and Switzerland), and over 10 points in three cases (Finland, Sweden and the UK). The only losers (and by little) are a few smaller countries – Greece, Luxembourg, Portugal and Slovakia. These changes suggest that the 'flatter' structure of Article 6 EWCs (see the section which follows, below), and the obligation to include all relevant countries in SNBs, means that more countries are generally represented on EWCs than before. It is notable that some central and eastern European countries are considerably more likely to be represented on EWCs than before – first-wave accession countries, the Czech Republic, Hungary and Poland, are each now represented on around one in 10 EWCs (where agreements provide relevant information), doubling or more their scores under Article 13.

Multi-country constituencies, grouping countries from a region – most commonly Nordic countries, central Europe, and the Iberian peninsula – for the purposes of EWC representation, feature in a small proportion of Article 6 agreements (8%), as they did under Article 13.

Allocation of seats

Under Article 13, employee representation on EWCs was in virtually all cases based on a variant

of two methods:

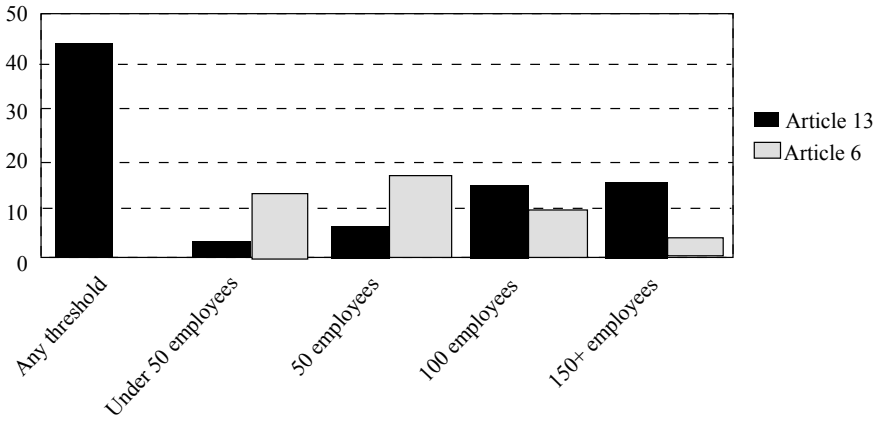
(1) a flat-rate allocation of seats for each country/operation; or

(2) an allocation based on the size of the workforce in each country/operation.

Method (1) was used in 35% of relevant cases (agreements where the basis for seat allocation is specified), four out of 10 of which deployed a 'straight' flat-rate approach, with the remainder additionally providing extra or guaranteed representation for one or more countries/operations. Method (2) was used in 62% of cases, six out of 10 of which deployed a 'straight' workforce-size approach, with the remainder additionally providing extra or guaranteed representation for one or more countries/operations.

The basis on which the employee representatives' seats are allocated is specified in 82% of the Article 6 agreements (compared with 84% of Article 13 agreements): both methods (1) and (2) still feature but it seems that a major change has occurred. This has arguably been brought about by the provisions of the Directive and its national implementing legislation relating to SNBs and statutory EWCs based on the subsidiary requirements. These provide for all countries in which a multinational operates to be represented by one representative, with additional representatives allocated in line with workforce size. This method has been taken up by 57% of the Article 6 agreements which identify the basis for allocation of seats (though sometimes smaller operations are excluded – see below), and is the most common single allocation method. A 'straight' workforce-related approach is used in 33% of cases – around half the level found under Article 13 – with a variation on the flat-rate method (with extra representation for one country) used in 3% of cases, while 7% cases do not fall into these categories.

Figure 6 Workforce-size thresholds for EWC representation (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

As mentioned above, all countries in which a multinational operates are represented in SNBs, regardless of workforce size. However, this has not resulted in Article 6 EWCs necessarily including direct representatives of the smaller operations. As under Article 13 (44%), 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.

However, while the most common threshold in Article 13 agreements was 100-150 employees, accounting for about two-thirds of all relevant cases, under a third of relevant Article 6 agreements set thresholds at this level. Two-thirds of the Article 6 agreements with thresholds set them at 50 employees or lower, compared with only a quarter of relevant Article 13 agreements. The highest threshold found in Article 6 agreements is 150 employees (10% of valid cases), while thresholds in Article 13 agreements ranged as high as 500, and over a third of relevant agreements set thresholds at 150 employees and higher. The mean threshold laid down in relevant Article 13 agreements (112) was nearly double that in Article 6 agreements (65). In a small number of agreements under both Articles 13 and 6, countries which fall below the threshold are grouped together for representation purposes (see the opening sub-section of this chapter above).

Thus, with lower thresholds for representation, and the spread of the Directive-based seat allocation method ('flat rate plus'), Article 6 EWCs in general seem be somewhat wider and flatter in scope, with more focus on geographical considerations than on workforce size (this is lent some support by the fact that there is a higher frequency of representation for many countries on Article 6 EWCs – again, see above). The extent of this is hard to gauge, but those agreements which provide both workforce-size figures, and make clear the allocation of seats, indicate the extent to which countries' weight within the EWC is proportional to their workforce size. Of the 71 Article 6 agreements, 17 provide this information.

In Article 13 agreements, there was arguably some tendency for larger national workforces (often those of the home country) to dominate EWCs (though this point was not covered in the earlier database of Article 13 agreements). However in the nine cases (out of the 17 agreements providing relevant information) where a single national workforce exceeds half the total relevant workforce covered by the EWC, this workforce has a majority of EWC seats in only two cases and is in a minority in the other seven cases – indeed in two extreme cases the majority workforce has under a quarter of the seats.

Another measure of the extent to which EWC representation reflects workforce size is the proportion of the total relevant workforce whose representatives can form a simple majority of EWC members. In other words, can representatives of a minority of the multinational's workforce make up a majority on the EWC and, if so, how small a minority of employees can obtain an EWC majority? Among the 15 agreements for which the relevant figures are available, a minority of the workforce can obtain an EWC majority in 13 cases. A simple EWC majority can apparently be put together by representatives of:

- 41%-50% of the workforce in two cases;
- 31%-40% of the workforce in two cases;
- 21%-30% of the workforce in five cases; and
- 20% of the workforce or lower in four cases.

This would tend to confirm the proposition that flatter EWC structures, with less weight given to larger national workforces, are now the norm. This raises questions about the nature of

democracy within EWCs, and the balance between giving all countries a say and a concern that the majority of a multinational's workforce can be overwhelmingly outvoted in some cases.

Aside from workforce size and geographical factors, a small number of Article 6 agreements also take some other considerations into account in allocating seats on the EWC:

- 15% provide for a divisional or sectoral dimension to the allocation of seats, ensuring representation for a multinational's different business divisions or sectors of operation – an increase on the 11% found among Article 13 agreements;
- 6% make some distinction between types of operation (e.g. production or sales/distribution) – a little higher than among Article 13 agreements (4%);
- 7% provide for an occupational dimension to seat allocation (for example, ensuring representation for blue and white-collar workers) – more than double the frequency among Article 13 agreements (3%); and
- 6% make reference to the gender composition or balance of the employee representative group (this issue was not covered in the database of Article 13 agreements).

In a small number of Member States, it is obligatory for national employee representatives on Article 6 EWCs to reflect the composition of the workforce in terms of occupational category (as in Italy) or gender (as in Germany).

Selection methods

All EWCs include employees of the company concerned acting as "lay" employee representatives. In Article 13 agreements, they were selected (elected or appointed) by two basic methods (combined in some cases):

(1) reliance on national legislation or practice in their country of origin; or
(2) the use of some specific method, such as nomination by trade unions, appointment by works-council type bodies or direct workforce elections.

Nearly two-thirds of Article 13 agreements took the first approach, though over a fifth of these mixed this approach with the specification of particular methods in some countries. Around four out of 10 of agreements laid down specific means for selection, but over a third of these combined this approach with another method in some countries. The tendency to rely on national provisions was markedly greater in Article 13 agreements signed *after* the Directive was adopted (specified as the selection method for all or some countries in nearly 70% of cases) than in earlier agreements (nearly 40%).

Under Article 6, method (1) is now more dominant than before, reflecting the fact that the implementing legislation in the countries which have transposed the Directive lays down selection rules for representatives on SNBs and statutory EWCs (and in some cases Article 6 EWCs). Over 80% of Article 6 agreements provide that employee representatives should be

selected in accordance with national law and practice in all or some countries. Around six out of 10 agreements lay down a national law/practice approach for all countries, while two out of 10 combine primary use of this method with the identification of some specific selection method for particular countries. Over a third of agreements use method (2), identifying the specific selection method for all (16%) or some (22%) countries.

Table 5 Selection methods for employee representatives on EWCs

Method	Article 6 (%)	Article 13 (%)
Any, according to national law/practice	82	63
According to national law/practice in all countries	*62*	*50*
According to national law/practice in some countries and by some specific means in others	*20*	*13*
Any, by specific means	38	40
By some specific means in all countries	*16*	*25*
By some specific means in some countries and by another method in other countries	*22*	*16*
Other	1	5
No means specified	3	5

Base: All agreements, Article 6: N=71, Article 13: N=386.

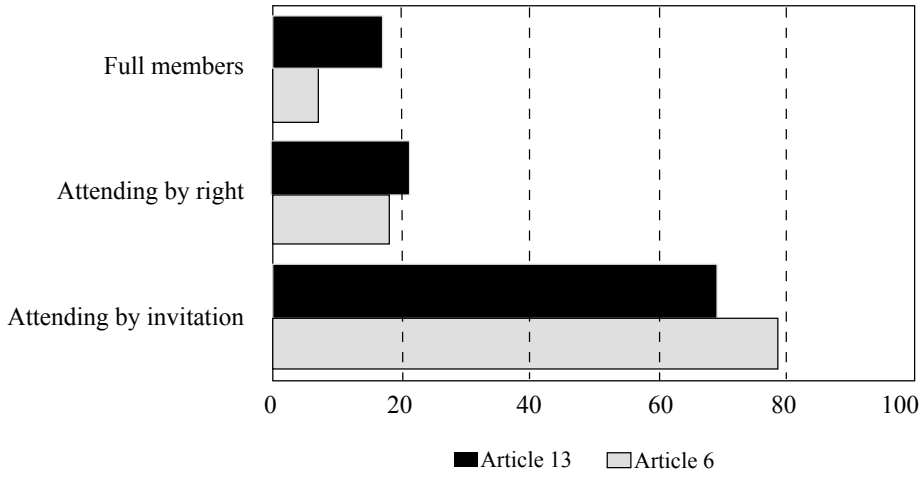
Of the agreements where specific methods are mentioned, direct elections feature in 14 cases, works council appointment in 12 cases and trade union nomination also in 12 cases. In Article 13 agreements, the most common specific method was works council appointment, followed by union nomination and elections. As under Article 13, in Article 6 agreements trade union nomination and works council appointment are most commonly identified as the primary method in all or some countries, while direct elections are more likely to be a subsidiary, fall-back selection mechanism than the other two methods.

External participants

In addition to lay employee representatives, some external participants who can be seen as being connected in some way to the employee side are able – at least potentially – to attend meetings of 92% of the Article 6 EWCs. This represents an increase on the 82% level among Article 13 agreements. However, the nature of external participation has changed somewhat.

- In 7% of cases, external participants on Article 6 EWCs are full members of the EWC. They are all officials of trade union organisations, either international (4%) or national (3%). This represents a substantial decline on Article 13 agreements, where some 17% of EWCs included employee-side members other than lay representatives (with international union officials in the majority).

Figure 7 External participants in EWCs (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Table 6 External participants in EWCs

Identity of participants	Article 6 (%)	Article 13 (%)
Full members	7	17
Trade union officials	*7*	*14*
Others	*–*	*2*
Attending EWC meetings by right	18	21
Trade union officials	*15*	*10*
Experts	*3*	*7*
Observers	*1*	*2*
Others	*–*	*1*
Attending EWC meetings by invitation	79	69
Trade union officials	*15*	*22*
Experts	*62*	*51*
Observers	*1*	*7*
Others	*4*	*16*

Base: All agreements, Article 6: N=71, Article 13: N=386.

- In 18% of cases, some external participants may attend EWC meetings by right, though without actually being members. In the great majority of cases, these are again union officials (17%), mainly international (14%), though in a small number of cases they are experts (3%) or observers (1%). These figures constitute a slight drop on Article 13, where external participants could attend 21% of EWCs by right. The composition of these participants has also changed – whereas experts made up a third of such participants under Article 13, they now make only a sixth. Trade union officials, especially international ones, may now attend by right in a higher proportion of cases (14% of Article 6 agreements against 7% of Article 13 agreements).

- In 79% of cases, external participants may attend EWC meetings by invitation of either the employee side alone (about half of the cases) or the employee side and management jointly (about half). In eight out of 10 relevant cases, these invitees are 'experts', with trade union representatives of some kind making up most of the remainder (14%). External invitees featured in 70% of Article 13 agreements, and in only six out of 10 cases were these experts, with trade union representatives mentioned in a quarter of cases.

External participation has thus expanded overall. Furthermore, there has been a shift towards invitation and away from any form of participation by right. Although the representation of trade union officials remains strong where there are external members or external participation of non-employees by right, experts dominate among invited external participants. This arguably reflects the provisions of the Directive and its national implementing measures – SNBs and statutory EWCs may call upon experts of their choice to assist them.

Term of office

The term of office of employee representatives – one of the issues compulsorily covered by Article 6 agreements under the terms of the Directive – is clearly specified in 90% of the agreements analysed (this issue was not covered by the database of Article 13 agreements).

A term of office of four years is by far the most common, being specified in around seven out of 10 of the relevant agreements – and fitting in with the four-year duration for many fixed-term EWC agreements (see the section under the heading *Duration* in Chapter 10 below). This is followed by three years (about a quarter of cases) and two years (6%).

Chapter 7 Meetings of the EWC

Provisions on the frequency of EWC meetings, and on the procedure for information and consultation, are compulsory elements in Article 6 agreements.

Ordinary meetings

A single ordinary meeting of the EWC each year is the norm under Article 6 as it was under Article 13, though this frequency of meetings is now slightly less common – 83% against 86%. Two meetings a year are specified in 17% of Article 6 agreements – a slight increase on the 12% under Article 13. Any expectation that annual meetings might have become even more standard than before have thus not been fulfilled.

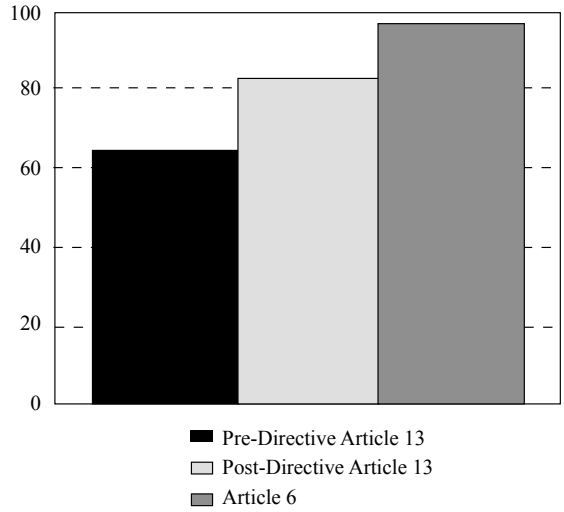
Extraordinary meetings

The possibility of extraordinary EWC meetings of some kind to be called, usually in 'exceptional circumstances', is laid down in virtually all Article 6 agreements (97%). This represents a significant increase on the 81% found among Article 13 agreements, and possibly reflects the influence of the Directive's subsidiary requirements on this point, making a relatively standard practice into a well-nigh universal one. Even under Article 13, the incidence of provisions on extraordinary meetings increased markedly after the Directive was adopted, rising from 65% to 83%.

It could be speculated that external events might also have had an impact on making provisions on extraordinary meetings in exceptional circumstances almost universal. The high-profile closure of the Renault plant at Vilvoorde, Belgium in 1997 played a major part in highlighting

the role of EWCs in such circumstances, with controversy over the fact that the EWC was not informed or consulted prior to the announcement of the closure (see 'The Renault Vilvoorde affair', *European Works Councils Bulletin*, No. 8, May/June 1997). The Renault EWC agreement at that time contained no explicit provision for any form of extraordinary meeting in exceptional circumstances (though this has since been rectified).

Figure 8 Existence of a facility for extraordinary meetings (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

These extraordinary meetings may take a variety of formats, usually one or more of the following (the meetings are with management, in the cases of employee-side-only EWCs or select committees):

- a meeting of the full EWC – provided for in 64% of the 66 Article 6 agreements with clear provisions in this area, compared with 65% of Article 13 agreements;
- a meeting involving the select committee, plus the EWC members representing the companies/countries affected by the exceptional circumstance in question – specified in 52% of relevant Article 6 agreements, compared with 20% for Article 13 agreements; or
- a meeting of the select committee – listed in 36% of Article 6 agreements, compared with 20% of Article 13 agreements.

Some other type of meeting is specified in 9% of cases.

Thus the Directive's subsidiary requirements arguably seem to have had a marked impact. The requirements give the select committee the primary role in extraordinary meetings (with full EWCs having a role only where there is no committee), with EWC members representing the companies/countries affected by the exceptional circumstance in question also entitled to participate. Meetings involving just the select committee now feature in over one-third of agreements, compared with one-fifth of Article 13 agreements. Meetings of the select committee plus representatives of the affected employees have become even more common, applying to over half of the agreements, compared with one in five under Article 13. This increased role for

the select committee, and especially the expanded select committee, had already become more common in Article 13 agreements signed after the Directive was adopted. Meetings involving the select committee plus additional representatives featured in 22% of post-September 1994 Article 13 agreements, but in none of those signed before that date.

In many cases, more than one meeting format is specified. This is the case in 40% of Article 6 agreements, compared with around a quarter of Article 13 agreements. In these cases, there may be a straight choice between options (e.g. between a meeting of the full EWC or of the select committee) or a form of staged procedure, typically starting with information provision to the select committee, and then potentially proceeding, usually by agreement, to a wider meeting of either the full EWC, or the select committee plus representatives of the companies/countries affected.

Some 13% of agreements do not specify who may call the extraordinary meeting or meetings – where such meetings are provided for. In the agreements where this is stated, a joint management-employee side approach to decisions on this issue is laid down in half of these agreements – a fall from the 62% recorded in Article 13 agreements. Management has the right to call meetings in 34% of cases – virtually the same as under Article 13 (36%) – while employees have the right in 40% of cases – a substantial increase on the 27% found in Article 13 agreements. A choice between processes for calling meetings, or a combination of different processes, is found in 21% of agreements, compared with a quarter of Article 13 agreements. Once again, the differences between Article 6 and Article 13 agreements in this area may possibly be interpreted in the light of the Directive's subsidiary requirements. The subsidiary requirements put the onus on management to inform the select committee (or the EWC, where there is no committee), but leaves it to the select committee (or EWC) to request a meeting – perhaps contributing to the more widespread right of employee representatives to call meetings under Article 6. Again it might also be speculated that high-profile cases of non-consultation of EWCs in the event of major occurrences such as restructuring, may have influenced negotiators to seek to guarantee employee representatives the right to call meetings in such circumstances.

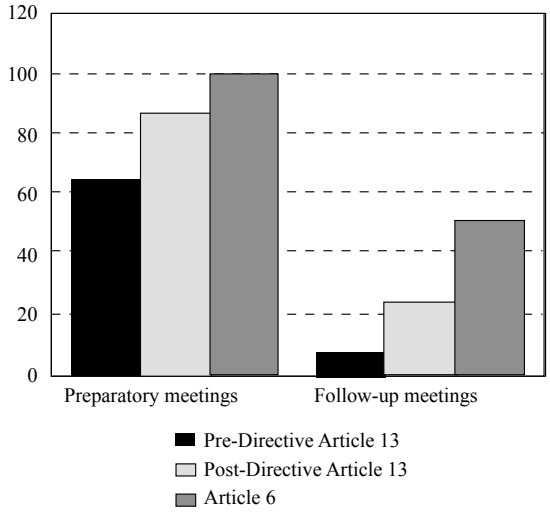
Preparatory and follow-up meetings

Having been very common in Article 13 agreements (85%), the right of employee representatives on the EWC to hold a meeting on their own without management prior to EWC plenary meetings has now become universal, being laid down in all the Article 6 agreements examined. Such meetings are a right for EWCs based on the Directive's subsidiary requirements. This trend towards greater provision for preparatory meetings was already developing under Article 13, with 87% of agreements signed after the Directive was adopted specifying such meetings, compared with 65% of earlier agreements.

Follow-up or debriefing meetings for employee representatives after plenary EWC meetings are less common, but are very much on the increase. They featured in only 22% of Article 13 agreements but in just over half (51%) of Article 6 agreements. Among Article 13 agreements,

the frequency of provisions on this point jumped from 8% before the Directive was adopted to 24% afterwards. The spread of this type of meeting cannot be ascribed to the Directive, which does not mention them, but is possibly a result of the diffusion of 'best practice'.

Figure 9 Facilities for employee-side-only preparatory and follow-up meetings



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Chairing meetings

The chairing of EWC meetings, or of EWC meetings with management in the case of employee-side-only EWCs, is – perhaps surprisingly – not dealt with in 38% of Article 6 EWCs. This compares with 21% of Article 13 agreements. The reasons for this apparent lacuna are not apparent.

A management representative chairs EWC meetings in the great majority of cases where this is specified – 47% of all Article 6 EWCs, compared with 54% of all Article 13 EWCs. Management and employee representatives sharing or rotating the chair is the option chosen by 14% of Article 6 agreements, almost double the 8% found under Article 13. However, the employee-side chairs found in 17% of Article 13 agreements have virtually disappeared under Article 6, with only one agreement providing for this arrangement.

In over 90% of cases where management chairs EWC meetings, employee representatives have the right to elect one of their number to an official position such as secretary or employee-side chair. This is considerably higher than the 60% recorded in relevant Article 13 agreements.

Agenda and minutes

Some 93% of Article 6 agreements specify how the agenda for EWC meetings is set – up from 86% under Article 13. This occurs by some joint management/employee-side process in over nine out of 10 cases – 87% of all Article 6 agreements, compared with 73% of all Article 13

agreements. This increase in joint agenda-setting has been accompanied by the complete disappearance of the practice of management alone setting the agenda, which featured in 8% of Article 13 agreements. However, the proportion of agreements providing that the employee side alone sets the agenda remains virtually unchanged at 4% (5% of Article 13 agreements).

As with agenda-setting, more Article 6 agreements than Article 13 agreements include provisions on how the minutes of EWC meetings are drawn up – 86% compared with 65%. Under Article 13, it was most common for minutes to be drawn up through some joint process, this being specified in three-quarters of relevant agreements. This method is now even more widespread under Article 6, featuring in 83% of relevant agreements. The employee side has sole responsibility for drawing up the minutes in 12% of relevant Article 6 agreements, doubling the proportion found in Article 13 agreements. However, while management alone draws up the minutes in a substantial minority of relevant Article 13 agreements (20%), this practice has declined under Article 6, applying in only 5% of relevant cases.

The main changes between Article 13 and Article 6 in these areas are thus: a greater tendency for agreements to include provisions on agendas and minutes (this trend was already evident under Article 13, with provisions substantially commoner in post-September 1994 agreements); the spread of the joint approach to drawing up these documents; and the virtual disappearance of unilateral management prerogative in these matters.

Feedback

The issue of wider dissemination of information about the content and outcomes of EWC meetings throughout the company has been widely identified as a key factor in making EWCs relevant and granting them greater legitimacy. Perhaps surprisingly, given the evidence of the spread of ‘best practice’ among EWCs, and the fact that the subsidiary requirements state that EWC members should inform employee representatives/employees about the content and outcomes of meetings, a third of agreements remain silent on this matter. In fact, provisions on such feedback appear in the same proportion of Article 6 agreements as of Article 13 agreements – around two-thirds.

Five main forms of communication of information from the EWC to the wider company are identified in EWC agreements. These forms, which may co-exist in some cases, can be grouped into three basic processes:

(A) distribution of a joint communiqué/report/minutes/information:
  (A1) directly to the entire workforce
  (A2) to employee and/or union representatives;

(B) feedback of information by employee EWC members alone:
  (B1) directly to the entire workforce
  (B2) to employee and/or union representatives;

(C5) distribution of a joint communiqué/report/minutes/information to managers.

Table 7 Distribution of information, Article 6 agreements (compared to Article 13)

Mode of information	**Receiver**		
	Workforce %	**Employee bodies %**	**Managers %**
A:	**A1**	**A2**	**C5**
Joint channels			
Minutes	11 (9)	4 (23)	9 (25)
Communiqué	30 (25)	4 (6)	9 (7)
Report	– (4)	– (2)	
Information dissemination	19 (17)	2 (8)	
Any	*83 (51)*	*36 (37)*	*17 (31)*
B:	**B3**	**B4**	
Employee representatives	23 (21)	26 (18)	

Base: Agreements specifying feedback provisions; N=47 (Article 13 N=254).

Pattern A1, whereby joint information of some sort is distributed to the entire workforce, now applies in 83% of the Article 6 agreements with provisions on feedback – up considerably from 51% under Article 13. The distribution of information to employee representatives and union representatives (pattern A2) has remained broadly the same (36% of relevant Article 6 and 37% of relevant Article 13 agreements), while distribution to managers (C5) has declined from 31% to 17%. There are thus clear signs of a wider distribution of jointly drafted information among the workforce as a whole. However, at the same time, the influence of the Directive's subsidiary requirements might be detected in the fact that employee representatives on the EWC have strengthened their role in providing independent feedback on EWC meetings. Representatives provide feedback to other employee or union representatives in just over a quarter (26%) of relevant Article 6 agreements (compared with 18% under Article 13), and to the workforce as a whole in almost as many cases (23%, compared with 21% under Article 13).

Chapter 8

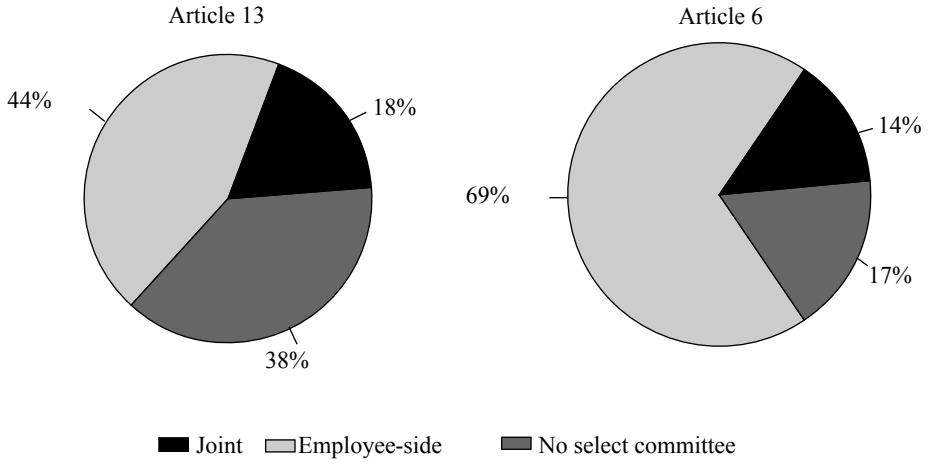
Select committees

More than eight out of 10 of the Article 6 agreements examined (83%) establish a select committee or 'bureau', compared with around six out of 10 Article 13 agreements. This spread of select committees had already started after the Directive was adopted in September 1994 – 65% of Article 13 agreements signed after this date provided for select committees, compared with 39% of earlier agreements. This may constitute further evidence of the growing influence of the Directive's subsidiary requirements, which state that statutory EWCs should have such a committee, 'where its size so warrants'. Interestingly, while the presence of select committees has increased substantially to 85% or more in most country groups, it remains at relatively low levels in agreements in companies based in Italy and Spain (50%) and in Austria, Germany and the Netherlands (67%)

Select committees can be either joint management/employee-side bodies or can be composed solely of employee representatives (as suggested by the subsidiary requirements). The predominance of the latter in Article 13 agreements (71% of all select committees) is even more marked among Article 6 agreements, with 81% of the select committees being composed only of employee representatives.

As indicated by Table 8, the responsibilities of select committees in Article 13 and Article 6 agreements are relatively similar, with involvement in agenda-setting topping the list in both cases and roughly similar scores recorded in seven of the other 11 specific areas of responsibility. Article 6 select committees are more likely than Article 13 counterparts to be involved in drawing up the minutes/communiqué of EWC meetings. Article 6 EWCs also much more commonly have other responsibilities outside the 12 specific areas listed in the table, suggesting a general expansion and diversification of their role.

Figure 10 Presence and nature of select committee (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Table 8 Responsibilities of the select committee

Responsibility	Article 6 (%)	Article 13 (%)
Agenda setting	73	74
Drawing up the minutes/communiqué	51	44
Preparing/organising EWC meetings	49	58
Receiving information and consultation in specific circumstances	49	28
Communication/liaison/coordination	46	52
Calling extraordinary EWC meetings	36	35
Time and place of EWC meetings	27	26
Selection of experts/advisers	20	22
Receiving ongoing information and consultation	12	11
Wider information dissemination	10	11
Managing budget	3	6
EWC seat allocation	2	3
Other	41	13

Base: Agreements with select committee; Article 6: N=59, Article 13: N=238.

However, the most notable change from Article 13 to Article 6 in this area is the great increase in the proportion of select committees which receive information and consultation in specific circumstances, which has risen from 28% to nearly half. This reflects very clearly the growing role of select committees in information and consultation when exceptional circumstances arise (see Chapter 7, *Extraordinary meetings*, above).

It was suggested in the earlier Article 13 research that four of the listed select committee responsibilities might provide a gauge of the 'real' decision-making power and continuous

influence of employee representatives: calling extraordinary EWC meetings; receiving information and consultation in specific circumstances; receiving ongoing information and consultation; and managing the EWC budget. Article 6 select committees are more likely than Article 13 committees to have responsibilities in all these areas (except managing the budget), suggesting an increase in their power and influence. The select committee is responsible for at least one of these areas in 56% of all Article 6 agreements, compared with only 33% of Article 13 agreements.

Chapter 9 Experts and facilities

Experts

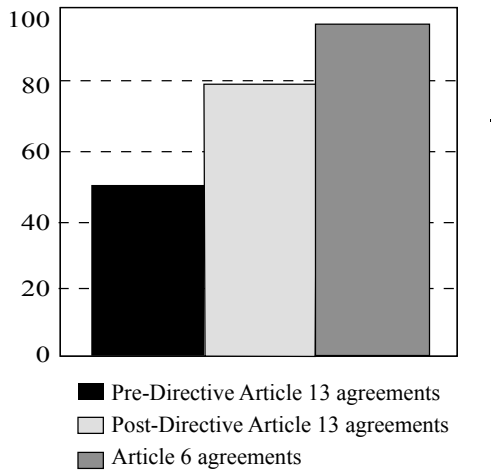
The subsidiary requirements of the Directive specify that EWCs (i.e. employee representatives) shall be assisted by experts of their choice to enable them to fulfil their duties (see also the section in Chapter 6 above on 'external participants' in EWC meetings). All but one of the Article 6 agreements makes provision for employee representatives to be assisted by experts as necessary. This compares with four out of every five Article 13 agreements (78%). Comparing Article 13 agreements concluded before September 1994 (50% with provision for experts) with those concluded after (81%), the impact of the Directive's provisions becomes progressively evident.

Comparing Article 6 with Article 13 agreements, the proportion of agreements specifying that access is limited to one expert has increased from 17% to 28% of agreements, but so also has that specifying access to two or more experts, from 32% to 41% of agreements. (The proportion of cases in which the number of experts to which employee representatives have access is unspecified has remained steady at around 30%.) Access to two or more experts is specified in at least one-half of Article 6 agreements in companies based in the Nordic countries, and also amongst those in food, drink and tobacco; metalworking, and the construction and utility sectors. Access limited to one expert is most common amongst Article 6 agreements in companies headquartered in France, and in the chemicals sector. Overall, Article 6 agreements show a greater tendency than do Article 13 ones to confine access to one expert (one in three of relevant cases under Article 6 as compared with one in five of the relevant Article 13 agreements).

Where access to experts is specified, around three-quarters of both Article 6 and Article 13 agreements specify that they may attend full EWC meetings. Management agreement was

required in two out of every five relevant Article 6 agreements, rather less than the comparable proportion of three out of every four amongst the Article 13 agreements. The proportion of relevant agreements specifying that experts may attend employee-side preparatory meetings has risen from five out of every 10 amongst Article 13 agreements to six out of every 10 amongst Article 6 agreements. (Of course, in either case this may understate the extent to which experts are actually present at preparatory meetings.) The doubling in the number of relevant instances in which agreements state that experts may attend select committee meetings – from 14% amongst Article 13 agreements to 27% amongst Article 6 agreements – reflects in large part the higher incidence of select committees amongst the later type of agreement (see Chapter 8 above).

Figure 11 Access to experts (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Operating expenses and facilities

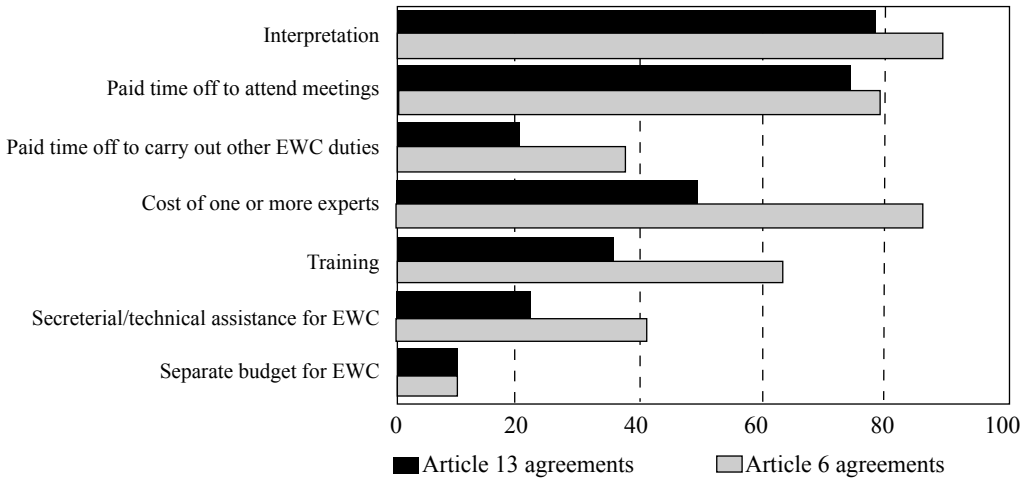
Article 6 of the Directive provides that agreements must determine the financial and material resources to be allocated to EWCs. Accordingly, all 71 Article 6 agreements make clear that management will meet the operating expenses of the EWC; amongst Article 13 agreements this was almost universal (97%). The costs of accommodation and travel for employee representatives; paid time off for representatives to attend EWC meetings, and the costs of interpreting and translation, are specified as being met by at least three-quarters of both Article 6 and Article 13 agreements. For interpreting and translation, the proportion specifying that costs will be met has increased from eight out of every 10 Article 13 agreements to nine out of every 10 Article 6 agreements.

Further comparing the facilities provided in Article 6 with those of Article 13 agreements, there have been noticeable increases in the proportion of agreements specifying that management will meet the costs of: paid time off to carry out EWC duties other than attending meetings; one or more experts (almost wholly accounted for by an increase in the frequency with which Article 6

agreements will meet the costs of one expert – see the opening section of this chapter above); training for employee representatives, and secretarial and/or technical assistance for the EWC. Against this, the proportion of agreements which state that the cost of preparatory meetings will be met has fallen. Overall, however, the provision of financial and material resources under Article 6 agreements would appear to be more extensive than under Article 13 ones.

Where management meets the cost of training employee representatives, this is most likely to be for language training under both types of agreement. Perhaps reflecting the increase in the proportion of agreements specifying a single company language under Article 6 (see below), the overall incidence of language training amongst Article 6 agreements, at 39%, is markedly higher than for Article 13 agreements (22%). An increase is also evident in the proportion of Article 6 agreements making provision for training in financial and economic matters (14%), as compared with 5% of Article 13 agreements. In addition, 25% of Article 6 agreements make provision for training of employee representatives as required to fulfil their duties – something which was not evident amongst Article 13 agreements.

Figure 12 Selected operating expenses and facilities (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Language facilities

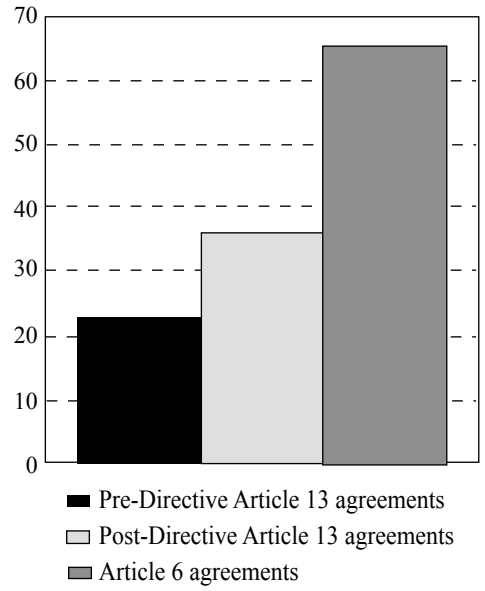
It was noted above that facilities for language interpretation and translation are made available in the great majority of agreements, even more so amongst those concluded under Article 6 as compared with Article 13. But the extent to which members can fully participate in the formal and informal proceedings of EWCs will depend also on the extent of the language facilities made available. Of Article 6 agreements, 45% make interpreting facilities available in all relevant languages. In a further 44% of cases, interpreting facilities are either confined to a restricted range of languages or only made available 'as necessary'. The proportions for translation of documents amongst Article 6 agreements are: 25% into all relevant languages, 11% into a restricted range of languages and 20% as necessary (the remaining 30% of Article 6 agreements

with language provision did not specify whether documents are translated). The information on Article 13 agreements did not differentiate between interpreting at meetings and translation of documents. Overall, 53% of Article 13 agreements provided interpreting and/or translation facilities in all relevant languages, and 19% in a restricted range of languages (the remaining 6% with language provision did not specify its nature). Overall, it appears that whilst the provision of language facilities has become more widespread amongst Article 6 as compared with Article 13 agreements, Article 6 agreements show a greater tendency to restrict the range of languages for which provision is made.

Confirmation of this comes from the rise in the proportion of agreements which specify a single (company) language for the conduct of EWC business, almost doubling from 34% amongst Article 13 to 65% amongst Article 6 agreements. Translation facilities are, however, provided in 44 out of the 46 Article 6 agreements and 103 of the 104 Article 13 agreements concerned. Of the 46 Article 6 agreements, 26 specify that translation will be into a restricted range of languages or available 'as necessary', with the remaining 20 providing translation into all relevant languages.

In around three-quarters of cases amongst both Article 6 and Article 13 agreements, the single language specified is English. This is the case in all Article 6 agreements concluded in UK-owned companies, but also in all three Finnish-based multinationals, and in four out of every five Article 6 agreements in North American-based companies. But whereas just over one-quarter of all Article 13 agreements specified that English was the single language of the EWC, this proportion has risen to one-half of Article 6 agreements.

Figure 13 Agreements specifying a single company language (%)



Base: All Article 13 and 6 agreements; N = 386 and N = 71, respectively.

Protection for employee representatives

Provisions protecting employee representatives against detriment or dismissal as a result of performing their EWC duties are found in 79% of the Article 6 agreements. This represents a progressive increase from the 27% of pre-Directive Article 13 agreements which contained such provision, and the 61% amongst Article 13 agreements concluded after the Directive was adopted. Under both Article 6 and Article 13 agreements, the most common formulation follows Article 10 of the Directive in providing that employee members of EWCs shall have the same protection as in national law or practice (63% of Article 6 and 49% of Article 13 agreements). A smaller proportion of either type of agreement specify that employee representatives shall be at no disadvantage or advantage through their membership of EWCs (31% of Article 6 and 19% of Article 13 agreements). As with several other matters, the impact of the terms of the Directive is even more evident amongst Article 6 than amongst Article 13 agreements.

Chapter 10

Adaptation, duration, renegotiation and termination

Article 6 agreements must obligatorily include provisions on the duration of the agreement and the procedure for its renegotiation.

Adapting to change

Multinationals are unlikely to remain the same size and shape for very long. It is rare for them not to be expanding or contracting, acquiring or divesting and therefore adding or shedding staff. Furthermore, the countries covered by the EWCs Directive will not remain static, with new countries due to join the EU/EEA in the years to come. All these events will have an impact on the size and composition of an EWC, with workforce numbers and location subject to change. It is thus unsurprising that 85% of Article 6 agreements contain some provision on adapting the EWC to take account of change (this point was not covered by the database of Article 13 agreements). These provisions typically lay down procedures to be followed – in terms of changing the number and/or distribution of seats, or redefining constituencies – where there is a change in the geographical scope, size, organisation, or nature of employment in the multinational, or where new countries join the EU in future. A further reason for the widespread inclusion of clauses on adaptation in Article 6 agreements is that although this is not specified in the Directive, the implementing legislation in the majority of Member States makes such provisions obligatory.

Duration

As mentioned above, provisions on their duration are compulsory in Article 6 agreements under the terms of the Directive. Agreements take one of two basic approaches to this issue – a fixed or

indefinite/open-ended term. The former is the more common among Article 6 agreements (this point was not covered by the database of Article 13 agreements), applying in two-thirds of cases. Of the agreements which lay down a fixed duration, four years is the most popular choice (often fitting in with a four-year term of office for representatives – see the concluding paragraph of Chapter 6 above), occurring in six out of 10 relevant cases. Two years is specified in 13% of relevant agreements, three years in 11%, five years in 11% and a longer term in 6%. Around 30% of all agreements state that they are of indefinite duration (though many specify a fixed initial term, during which they may not be amended) – this is most common in companies based in Nordic countries (54%). Only a tiny minority (4%) of Article 6 agreements make no provision on their duration.

Renegotiation and termination

Procedures for renegotiation are another compulsory element in Article 6 agreements, under the terms of the Directive. Despite this, nearly a quarter of the agreements examined (23%) contain no provisions on this point. The closely related issue of termination is not covered by one-fifth of agreements. These issues were not examined in the earlier database of Article 13 agreements.

Provisions in this area include clauses specifying that:

- agreements may be amended by mutual agreement at any time;
- renewal (in the case of fixed-term agreements) is essentially automatic or by mutual consent, with a review process prior to expiry in some instances;
- if the parties are satisfied with the agreement at the end of the initial term of a fixed-term agreement, the agreement then becomes indefinite;
- notice periods (such as six months) must be respected if one side wishes to terminate or renegotiate the agreement.

Where renegotiation occurs, many agreements (about 80% of relevant cases) lay down what happens if no new agreement is concluded. In the great majority of cases (75% of relevant agreements), the procedure is that the old agreement remains in force for a certain period of time or until a new agreement is concluded – raising the possibility in the latter case of an agreement remaining in force indefinitely despite one side being unhappy with it. In one case, it is specified that the Directive's subsidiary requirements apply where no new agreement is reached.

Chapter 11 Conclusions

This concluding section comments on: the diffusion of Article 6 agreements; the growing impact of the Directive on the provisions of agreements; the evidence for processes of 'good practice' underpinning developments in provision; continuing diversity but also innovation in the provisions of Article 6 agreements, and the extent to which agreements under Article 6 are more or less likely to create active transnational structures than those under Article 13. Concerns have been expressed about the slow uptake of agreements establishing European Works Councils 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 on 22 September 1996, activity appears to have been subdued over the next 15 months. The analysis presented here suggests that such concerns might now be assuaged: although still well below the rate prevailing in the 12 months prior to implementation of the Directive, the rate at which new agreements were being concluded during 1998 was noticeably higher than that which prevailed during 1997. At the time of writing (November 1999), 121 agreements have been identified which potentially have been concluded under Articles 5 and 6 of the Directive.

Agreements concluded by multinational companies based in four countries – France, Germany, the UK and the USA – dominated the picture under Article 13. 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. 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 as compared with Article 13 agreements. With these exceptions, the broad picture appears to be one of *continuity* of previous patterns of diffusion – in terms of location of company headquarters

(country) and sector of activity – rather than one of 'catch-up'. There are still relatively few EWC agreements amongst companies headquartered in some countries, including Austria, Denmark and Spain, and in some sectors, noticeably services.

The geographical coverage of the EWCs established by agreements under Article 6 extends to operations in countries beyond the EEA in approaching one in three cases. This is a slightly higher proportion than amongst Article 13 agreements. 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 accession countries.

The impact of the terms of the Directive on the provisions of EWC agreements is evident in more than one way. In general, 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. First, 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 similar terms 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.

Second, the Directive specifies a number of aspects which 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 a special negotiating body. Agreements in companies headquartered outside of the 17 EEA countries currently (at the time of writing) covered by the Directive, do not all specify which national implementation law is applicable. 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 the duration of agreements, the term of office of employee representatives and specification of the financial and material resources available to the employee representatives.

Third, 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 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 as compared with Article 13 agreements. Meetings in extraordinary circumstances are provided for in virtually all Article 6 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 13s; confidentiality clauses have moved from being widespread to near universal; and the great majority of Article 6 agreements contain a clause on employee protection.

Reflecting the subsidiary requirements, but also the method for electing representatives to SNBs specified in the Directive, is the marked change between Article 13 and Article 6 agreements in the basis by which employee representation on the EWC is determined. The result is EWCs which are flatter and wider in their composition, giving more weight to geographical scope and less to relative workforce size in different countries than their Article 13 predecessors.

Movement towards uniformity of provision is also evident in areas which are not directly addressed by the Directive (or by each and every Member State's implementing legislation). This suggests that processes of learning are also at work amongst negotiators, in which aspects of 'good practice' are spread 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 a preparatory meeting. This has spread considerably amongst Article 6 agreements. So too has reference to training for employee representatives, 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 13s to spell out arrangements for the setting of the agenda and the drawing up of minutes. A minority of Article 13 agreements specified a single company language in which EWC business would be conducted. Amongst Article 6 agreements this has become a majority practice (although it should be noted that provision is made for some language translation in virtually all such instances). Accompanying this trend is another: the lingua franca of EWCs is increasingly becoming English.

Overall, as a result both of following the terms of the Directive more closely, and of spreading processes of 'good practice' 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.

Yet diversity and innovation are also evident amongst Article 6 agreements, and this embraces some further important matters. In terms of diversity, a first feature is the acknowledgement of an explicit trade union role in a sizeable minority of agreements. International or national trade union organisations are signatories to over one-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. A second feature is the basic composition of EWCs, where, although joint management/employee structures remain more numerous amongst Article 6 agreements, the proportion of employee-side only bodies has increased. Turning to innovation, noticeable in the light of the controversy surrounding the 1997 restructuring at Renault is the fact 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.

The earlier Foundation report analysing the provisions of Article 13 agreements, *Negotiating European Works Councils*, 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 that the emphasis amongst Article 6 agreements is more oriented 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 first is 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. The second is 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. Understanding how far the strengthened potential for EWCs established under Article 6 to develop an active role is actually being realised, however, requires a shift in focus from examining the provisions of agreements to investigating practical experience.

Annex

121 companies with Article 6 EWC agreements (as at November 1999)

The 71 agreements included in the Foundation database (http://www.eurofound.ie/ewc/index.shtml) are listed in bold.

1. ABN Amro
2. Adecco*
3. Air France
4. Akzo Nobel
5. Alfa Laval Agri
6. AlliedSignal
7. Amcor*
8. American Express
9. Amoco
10. Assicurazioni Generali
11. ATB Antriebstechnik*
12. Autobar*
13. Barry-Callebaut
14. Berry
15. Bilia
16. Bombardier
17. Bosal*
18. Robert Bosch
19. BT Industries*
20. BTR
21. Burda
22. Burmah Castrol
23. Cadbury Schweppes Confectionery Stream
24. Caradon
25. Carlsberg
26. Caterpillar
27. Clarks International
28. Coca-Cola Company
29. Coca-Cola Enterprises
30. Compagnie Laitière Européenne
31. CRH*
32. CSM
33. Dalgety
34. Dayco
35. Delta
36. Devro Teepak
37. Dexia*

38. DSM*
39. Duni
40. Dyckerhoff & Widmann
41. Eiffage
42. ETEX
43. Flender (Deutsche Babcock)*
44. Fresenius*
45. Fundia*
46. Gambro
47. GEA
48. General Electric Plastics Europe
49. General Electric Power Systems
50. Glamox
51. Glaxo Wellcome
52. Global One
53. Goodyear*
54. Guardian Royal Exchange*
55. Hartmann/Sun Chemical (Dainippon Ink and Chemicals)*
56. HBG
57. Heineken
58. Heinz
59. Hennes & Mauritz
60. Honeywell*
61. Impress Metal Packaging
62. Ingersoll-Rand
63. IVO
64. Johnson & Johnson
65. Kapp-Ahl*
66. KCI Konecranes
67. KNP BT Packaging
68. Korsnäs
69. Lagardère
70. Lear Corporation
71. Levi Strauss*
72. Lexel
74. Lindex*
75. Lindt & Springli
75. Lucas Varity
76. Matra Bae*
77. Meritor
78. Metro*
79. Metsä Tissue*
80. Michelin*
81. Modine*
82. Monsanto
83. Moulinex*
84. Munksjö*
85. National Australia Group
86. NCC
87. Nissan
88. NKF*
89. Nobia*
90. Nortel
91. Ontex
92. Pernod Ricard
93. Philips Electronics
94. Pirelli
95. Radex Heraklith*
96. Repsol
97. Rexam*
98. Rieter*
99. Royal Ten Cate*
100. RPC*
101. Same Deutz Fahr
102. Santasalo-JOT
103. Sappi*
104. Sara Lee Douwe Egberts
105. Scania
106. Schur*
107. Smithkline Beecham
108. Sodexho
109. Stagecoach
110. STMicroelectronics*
111. Strabag
112. Strukton*
113. Swedish Match
114. Tarkett
115. TRW
116. UCI
117. Varta
118. Vattenfall*
119. Vogel & Noot
120. Von Roll*
121. Züblin

** Agreement reported by reliable source*

European Foundation for the Improvement of Living and Working Conditions

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Negotiating European Works Councils

A comparative study of Article 6 and Article 13 agreements

The European Works Councils Directive came into force on 22 September 1996. The Directive requires Community-scale groups and undertakings – those with at least 1,000 employees in the 17 EEA countries concerned, and at least 150 employees in each of two of the countries – to set up a EWC or procedure for the purpose of informing and consulting employees.

This report examines the content of Article 6 agreements concluded following the adoption of the Directive and compares them with the voluntary agreements under Article 13, which were negotiated prior to September 1996. Altogether the analysis is based on a comparison of 386 Article 13 agreements with 71 Article 6 agreements.

In general terms, the study indicates that the social partners in Europe are showing significant 'joint learning' in their handling of EWCs. European Works Councils negotiated between central management and a special negotiating body have the right to meet more frequently, provide more training for employee representatives, and include a wide range of elements.

This is the third collaborative report on EWCs produced by the European Commission and the European Foundation for the Improvement of Living and Working Conditions. It is intended to serve as a useful tool for the social partners in their negotiation of EWC agreements.

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