
**IMPLEMENTATION IN THE UK OF
THE EUROPEAN WORKS COUNCIL DIRECTIVE**

A CONSULTATIVE DOCUMENT

JULY 1999

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**Consultation on the UK Implementation of the
European Works Council Directive**

Responses should be sent by 8 October 1999 to:

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INTRODUCTION

Purpose of the Consultation Document

1. This consultation document invites comments on how the Government intends to implement the extension to the UK of *“Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.”* It explains how companies* and their employees will be affected, what the new rights and obligations are and the enforcement mechanisms which are proposed to be put in place.

Background and broad outline of the directive

2. The directive was adopted in September 1994 under the Social Chapter of the Maastricht Treaty and did not, therefore, apply at that time to the UK. It was extended to cover the three other Member States of the European Economic Area (EEA) in June 1995. Following the agreement in June 1997 to end the UK’s opt-out from the Social Chapter, the Commission brought forward a directive extending the original one to include the UK and which we are required to implement in national law by 15 December 1999. The Government proposes to make Regulations under S.2(2) of the European Communities Act to come into force on that date.
3. The directive applies to undertakings and groups with at least 1,000 employees in the EEA as a whole and at least 150 in each of two or more Member States. Its purpose is to establish mechanisms for informing and consulting employees at the European level, where the undertaking is so requested by 100 employees or their representatives in two or more Member States, or on the management’s initiative. This will entail the setting up of either a European Works Council (EWC) or of some other transnational information and consultation procedure.
4. However, the obligations imposed by the directive will not apply to newly covered undertakings (i.e. those brought into the scope of the directive solely as a result of

* The directive applies to “undertakings”, which is not restricted to “companies” (see Chapter 2 Para 1). “Companies” is used in this document to aid readability, but should be taken to apply to all undertakings incorporated or otherwise.

the inclusion of their UK workforce after implementation here) which have concluded a voluntary agreement before 15 December 1999. Such an agreement must cover the entire workforce and provide for the transnational information and consultation of employees (an "Article 13 agreement"). This exemption applies for as long as the agreement remains valid. It does not apply in respect of those undertakings who were already subject to the 1994 directive (by virtue of EEA operations outside the UK) and who did not have an Article 13 agreement in place before 22 September 1996.

5. Where no Article 13 agreement exists at 15 December 1999 then the employees, their representatives or the company management may trigger negotiations for the establishment of an EWC or an information and consultation procedure (where no request is received, and where management does not initiate the process of its own accord, there is no obligation to start negotiations). The next step is the creation of a "special negotiating body" (SNB) consisting of employee representatives from each of the EEA states in which the undertaking operates. The SNB is charged with negotiating with central management on the establishment of an information and consultation mechanism. If the central management refuses to enter into negotiations, a "statutory" EWC must be established as set out in the annex to the directive (sometimes referred to as the "subsidiary requirements"). Where an SNB is established, one of the following outcomes will be reached :-
 - a) the SNB may agree not to open negotiations, or to terminate them (in which case no EWC or procedure need be established);
 - b) the SNB and central management may decide to establish an "information and consultation procedure" (subject to certain basic requirements in Article 6.3 of the directive);
 - c) the SNB and the central management may agree to set up an EWC of their own design, subject to certain minimum requirements set out in Article 6.2 of the directive;
 - d) the SNB and central management may decide to adopt the "statutory" EWC model as set out in the annex to the directive;
 - e) if the SNB and central management fail to agree within 3 years, a "statutory" EWC has to be established.

6. The directive also includes other provisions concerning the handling of confidential information, statutory protections for EWC and SNB members, and enforcement by Member States. These matters are explained in more detail in subsequent chapters of this document.

Scope

7. It has been estimated that some 1600 multinationals throughout Europe are currently subject to the requirements of the directive, and about 560 agreements, including Article 13 ones, are already in place. About 120 UK-based companies are already subject to the directive (because their non-UK employees took them over the threshold), and up to two thirds of those have established EWCs or voluntary agreements. Prior to the extension of the directive to the UK, UK employees did not have to be counted towards the employee thresholds above which the directive applies, and could also be excluded from the scope of an EWC. In most cases however UK employees have been included within the scope of existing agreements, by both foreign and UK-based companies
8. Upon the implementation of the directive in the UK, an additional 200 or so undertakings are expected to be brought within its scope for the first time, of which about 110 are UK-based. These newly-covered undertakings (both UK-owned and otherwise) have until 15 December 1999 to reach Article 13 type agreements, if they so wish.

The Government's Broad Policy Approach

9. The directive is intended to provide a structure to ensure that undertakings with operations across the EEA respect the need to inform and consult their employees on an EEA-wide basis. The Government considers that it is good practice to inform and consult employees and that the directive sets out sensible minimum standards for information and consultation at a European level. The Government believes it is best for employers and employees together to come to sensible arrangements appropriate to their particular situation. This is why the Government announced in March 1998 that the directive would not be implemented until 15 December 1999, so as to allow as much time as possible to employers and employees to negotiate an Article 13 agreement tailored to their needs.

10. In implementing the directive, the Government's priority is to promote labour market flexibility and employability, and to contribute to competitiveness, without placing undue burdens or costs on UK business. The Government does not wish to impose additional requirements to those contained in the directive.

The Consultation Exercise

11. The following chapters set out the Government's proposals for implementing the directive. The proposals are summarised in Chapter 2 and where necessary further detail is given in the subsequent chapters. A draft of the proposed implementing regulations is also attached. They are not necessarily complete in all respects and the drafting will be subject to further refinement and amendment, but it is hoped that they will give consultees an idea of the broad structure of the regulations. Also attached are the Regulatory Impact Assessment drawn up by the Department, and copies of the directive and of the one extending it to the UK.
12. Comments on the Government's proposals should be submitted to the address shown on the front page by **8 October 1999**. Submissions will not be treated as confidential unless specified as such by correspondents. It would be helpful if respondents could follow the structure in Chapter 2 when commenting on the Government's proposals.
13. The DTI is planning to hold an information session on the Government's proposals for the implementation of the directive, on the morning of 8 September 1999, in 1 Victoria Street, London SW1. This is intended as an opportunity for interested parties to ask questions and offer feedback, in an informal setting in advance of the deadline for written responses to the consultation document. Those who wish to attend should write to Ms Verona Bailey, ER1a, Room 2135, DTI, 1 Victoria Street, London SW1H 0ET (fax 0171 215 2642), by 6 August. Invitations will be issued by 20 August.

SUMMARY OF THE GOVERNMENT'S PROPOSALS

Scope of the directive

1. The directive applies to Community-scale undertakings, and Community-scale groups of undertakings. A Community-scale undertaking is one which has 1000 employees or more throughout the EEA and at least 150 in each of two separate EEA Member States. A Community-scale group of undertakings is a group which has at least 1000 employees in the EEA, and at least two group undertakings in different EEA member states, and at least one group undertaking with at least 150 employees in one member state, and at least one other group undertaking with at least 150 employees in another member state. The EEA comprises the member states of the EU, plus Norway, Iceland and Liechtenstein.
2. A “group of undertakings” is a “controlling undertaking and its controlled undertakings”; “controlling” and “controlled” are defined in terms of the ability of the former to exercise “dominant influence” over the latter undertaking, as per the tests in Article 3 of the directive, which are followed in the UK Regulations.
3. The term “undertaking” is not defined in the directive. In European Court of Justice decisions it has been held to cover public or private entities carrying out an economic activity, whether or not operating for gain. In general, this will include companies and unincorporated entities such as partnerships. Potentially, other organisations such as charities or public sector bodies are also covered where they are carrying out an economic activity.
4. Several of the obligations in the directive have to be carried out by the “central management” of the undertaking, (its headquarters management), or in the case of a group of undertakings, of the controlling undertaking. The location of the central management generally determines which Member State’s legislation transposing the directive applies, except that certain matters - e.g. the calculation of numbers employed or the election of SNB members in a particular Member State - are governed by the legislation of the Member State in question. Where central management is based outside of a Member State a representative agent may be designated. In the absence of a nominated representative agent the central

management will be deemed to be the management in the Member State in which a single establishment or group undertaking has the greatest number of employees.

5. In general the UK Regulations will apply, for most purposes, to undertakings whose central management is here. However, where a UK-based company has an EWC agreement made prior to implementation here, using a representative agent in another Member State, the agreement will continue to apply, in accordance with the law of that Member State, and the UK Regulations will not apply for most purposes. In such cases the UK-based management will nonetheless take on the role of the central management from 15 December 1999, e.g. with respect to any functions to be carried out by central management as specified in the agreement, or any future re-negotiations of it. See also the section on transitional provisions below.
6. The UK regulations will also not apply where the undertaking has concluded an Article 13 agreement. The UK Regulations mirror the provisions of the directive concerning what constitutes a valid Article 13 agreement.

Employees' representatives

7. The "employees' representatives" are those representatives who exist prior to the formation of an SNB or EWC (as distinct from the SNB/EWC members, who will not necessarily be the same). The "employees' representatives" have the right to:
 - a) request information on the number and location of employees within an undertaking or group of undertakings
 - b) request negotiations for the creation of an information and consultation procedure or EWC by making a written request to management.
 - c) elect or appoint from their own number members of a Statutory EWC where they represent all the workforce
8. The definition of "employees' representatives" is left to national law and/or practice. In the Government's view they should comprise existing independent representatives who fulfil an established function in the company in relation to collective bargaining or information and consultation on general matters in the company, except for

representatives in specialist fields such as health and safety. Accordingly it is proposed to treat as “employees’ representatives”:-

- a) representatives of independent trade unions who are recognised for collective bargaining and who normally take part in the bargaining, and
- b) any other employees’ representatives elected or appointed by the employees who expect to receive information relevant to terms and conditions of employment or about the activities of the company which significantly affect the interests of the employees.

Definition of “employee”

9. The precise definition of “employee” is left to the Member States. In UK law, “employee” is defined in Section 230(1) of the Employment Rights Act 1996 as "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment ". The Government believes that this definition is adequate for the purpose of the directive. It will embrace those who have a regular, ongoing relationship with the employer and who are well placed to participate in the EWC process. This is a straightforward approach which will enable firms clearly to identify those employees who have to be counted towards the thresholds above which the directive applies.

Number of employees

10. The definitions of “Community-scale undertaking” and “Community-scale groups of undertakings” refer to employee thresholds, above which the directive applies. If there is doubt about whether the thresholds are exceeded, the company will need to calculate the total of its employee numbers in each EEA Member State where it has employees, on an average basis over a two-year period. The precise method of calculation for each Member State will be governed by the law of that Member State. In the UK the average will be calculated by dividing by 24 the total of the monthly employee numbers for the 24 months ending with the month prior to the one in which a request was made to establish an EWC. Companies may wish to use employee figures calculated in accordance with Section 56 of the Companies Act 1985, Schedule 4, Part III. For example, for a company with employees in the UK, France

and Germany, which received a request to establish an EWC in April 2000, the calculation would be as follows:-

For the UK employees:-

<u>Month</u>	<u>Employees</u>	<u>Month</u>	<u>Employees</u>	<u>Month</u>	<u>Employees</u>	<u>Month</u>	<u>Employees</u>
3/00	900	9/99	850	3/99	750	9/98	600
2/00	900	8/99	750	2/99	650	8/98	600
1/00	850	7/99	750	1/99	650	7/98	500
12/99	850	6/99	750	12/98	650	6/98	500
11/99	850	5/99	750	11/98	600	5/98	450
10/99	850	4/99	750	10/98	600	4/98	450
						Total	16800
				Calcn	16800/24	Ave	700

UK Average = 700

France Average = 200 (calculated according to French law)

Germany Average = 130 (calculated according to German law)

Total = 1030

11. The undertaking in this case exceeds the 1000 threshold limit and also meets the requirement of having more than 150 employees in each of two Member States (UK and France). It is therefore a Community-scale undertaking.
12. The employees and their representatives have the right to request information on employee numbers from the company to ascertain whether it is a Community-scale undertaking. The company must then provide the information as above. If it refuses to do so, a complaint may be made to the Central Arbitration Committee who can order that the information be provided and who may also declare that the company is a Community-scale undertaking, where that appears to be beyond doubt.
13. There may be circumstances where the employee numbers disclosed in response to a request for information were out of date by the time that any subsequent request to establish an EWC was received, e.g. where the company has expanded or contracted in the intervening period. It is therefore proposed that the relevant two-year period for the calculation for the purposes of the thresholds should be the one starting just prior to the request to establish an EWC, as described above.

Part-time employees

14. For the purpose of calculating the number of employees in the UK, it is proposed that UK employees who work less than 75 hours per month may be counted as half an employee (or as a full one if management so wishes). For all other purposes they shall count as full employees and must be included in any EWC arrangements on the same basis as other employees.

Companies with operations in the UK for less than two years

15. The two-year average period specified in the directive applies in all cases. Therefore it is proposed that where a company has had operations in the UK for less than two years, it should calculate the totals for the months it had employees, and divide by 24.

The Merchant Navy

16. It is open to Member States to decide whether to exclude merchant navy crews from the ambit of the regulations. Some Member States i.e. Greece, Italy, Norway, the Netherlands and Denmark have done so either wholly or, in the case of the latter two, in part. Others such as Germany, France and Spain have not. One of the reasons for this derogation in the directive was to take account of the fact that merchant navy crews are often working at great distances from their home and it may be difficult to involve them in consultative procedures. The Government believes that in principle merchant navy crews should have the same information and consultation rights as other employees. The Government recognises however that when crew members serving as representatives on an EWC or SNB are away at sea for long periods, it will often be impractical to repatriate them from their detached duty station to attend an EWC or SNB meeting which takes place while they are away. By contrast those who are usually away at sea for relatively short periods (e.g., ferry and coastal workers) are in a similar position to other mobile workers (e.g., airline crews or lorry drivers) who are not excluded from the scope of the directive. It should be possible for the company to alter staffing arrangements to allow these workers to attend EWC or SNB

meetings. It should also be practicable for merchant navy crews to participate in the other aspects of the EWC process, apart from acting as representatives.

17. It is therefore proposed to allow the employer to exclude from standing for election to the SNB/EWC (or as a representative in an information and consultation procedure agreement) merchant navy crew members, except (i) ferry workers and (ii) those whose voyages do not normally exceed 48 hours (including interim stop-overs). The exclusion applies only to sea-going employees and not to the shore-based employees of a company. It is restricted to barring those covered by it from standing for election to an SNB/EWC; they will otherwise be able to participate in the EWC process, e.g. with regard to voting in elections. The company would have to include merchant navy employees when calculating its employee numbers for the purposes of the thresholds in the directive.
18. The Department would welcome comments in particular on the technicalities of this proposal. Does the term "ferry worker" need to be specified further? The exception from the exclusion for those who spend less than 48 hours away is intended to encompass those who are operating in coastal waters and whose completed tours of detached duty do not normally exceed the said period. The term "normally" is intended to mean that they should not be excluded from standing for election if their tours of duty occasionally exceed 48 hours.

Disputes about the applicability of the Regulations

19. If the company believes it does not have to enter negotiations for the establishment of an EWC, it may refer the matter to the Central Arbitration Committee.

Establishment of the Special Negotiating Body (See Chapter 4)

20. The total number of seats on the SNB, and their allocation between the representatives of the Member States in which the company has operations, will be determined by a formula in the legislation of the Member State in which the central

management resides. The Government proposes the following for UK-based central management:-

- i) one employee representative from each EEA Member State in which the company operates; plus where applicable
- ii) one additional seat per Member State where at least 20% but less than 40% of the workforce (within the EEA) is employed;
- iii) two additional seats per Member State where at least 40% but less than 60% of the EEA workforce is employed;
- iv) three additional seats per Member State in which 60% or more of the EEA workforce is employed.

21. The principle behind this formula is similar to that used by many other countries, and reflects the Government's concern that due weighting be given to the representation from Member States where significant portions of the workforce are located. The proposed formula is discussed further in Chapter 4 of this document.

Election of the UK members of the SNB

22. The employees will select one or more SNB representatives in each Member State in which the company operates, according to the selection method prescribed in the national legislation in force. The Government proposes that the UK member(s) of an SNB should be chosen by election through a general ballot of the UK employees. This will ensure that the representatives have a clear mandate to represent the entire UK workforce. The ballot will be supervised by an independent person.

23. The normal approach would be to hold a single ballot. However, where more than one UK seat is available, it is proposed that the management may establish constituencies each electing their own representative(s), where it is considered that this would achieve a better balance of representation between the various establishments of the undertaking(s), e.g. to reflect existing regional or business-function groupings. The constituencies should be of approximately equal size.

24. All UK employees or employee representatives may stand for election (subject to the merchant navy exception).

25. Management must meet the reasonable expenses of the SNB, except that where experts are employed by the SNB, expenses may be limited to cover one expert only.

Content of the agreement

26. The content of any EWC agreement negotiated with the SNB should determine the matters specified in Article 6 of the directive, i.e.
- a) which undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking are covered by the agreement;
 - b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office;
 - c) the functions and the procedure for information and consultation of the European Works Council;
 - d) the venue, frequency and duration of meetings of the European Works Council;
 - e) the financial and material resources to be allocated to the European Works Council;
 - f) the duration of the agreement and the procedure for its renegotiation;
27. The procedures governing the appointment of the members of an EWC or information and consultation procedure agreed by the SNB process will be determined by the relevant provisions of the agreement as negotiated between the parties.
28. It is important to recognise that the establishment of an EWC is not the only way in which the regulations may be complied with. As an alternative the directive allows for the creation of some form of information and consultation procedure or procedures (see Article 6.3 of the directive). This is intended to be a more flexible model than an

EWC, the only condition being that the agreement is in writing and shall stipulate by what method the representatives have the right to meet to discuss the information conveyed to them. This information shall relate in particular to transnational questions which significantly affect workers' interests. The Government would encourage parties to consider whether this approach might be suitable.

29. It is proposed to allow extensions, where both sides agree, of up to 6 months to the 3 year negotiating period after which the subsidiary requirements take effect.

Definition of "consultation"

30. The regulations will follow the definition in the directive, i.e. an exchange of views and establishment of dialogue between management and the members of the EWC.

Statutory EWCs (See Chapter 5)

31. The regulations do not elaborate on the provisions in the annex to the directive except where it is necessary to do so, as follows:
- a) Selection of the UK members of a statutory EWC shall be by general ballot of the employees (as for the SNB) except where the existing employees' representatives represent all of the UK workforce. In this case the employees' representatives may choose to appoint the EWC members. The directive requires that members of a statutory EWC must be employees of the undertaking.
 - b) The number of seats for UK members is to be determined by the same formula as applied in the case of the SNB.
 - c) Unless otherwise agreed by the parties, the Chair of the meetings shall alternate between the employee and employer side.

Where there is no alternative agreement, central management's liability for funding employee side experts shall be restricted to the costs of one expert only.

Confidential Information (See Chapter 6)

32. The management may withhold information from the SNB/EWC or require it to be held in confidence by the members and their experts, where according to objective criteria its disclosure would seriously harm or be prejudicial to the company. The Central Arbitration Committee (CAC) will hear appeals against the withholding of information on these grounds.
33. EWC and SNB members and their expert assistants may not disclose information which has been expressly provided to them in confidence. The Government is considering enforcing this requirement by making it a criminal offence for a member or their experts to disclose information in the UK which the management has provided in confidence.

Protection of EWC members and employees' representatives

34. The Government will amend the Employment Rights Act 1996 so as to bring SNB and EWC members, and information and consultation procedure representatives, within the scope of the protections in sections 47, 61, 62, and 103 of that Act (detriment, right to time off, right to remuneration and unfair dismissals). Employees and employee representatives who are SNB or EWC members will therefore inter alia have the right to paid time off to perform their duties. The protections in sections 47 and 103 will also apply to employee representatives (as defined in para. 8 above). It is also proposed that employees who assert their rights under the UK regulations will be protected under section 104 of the 1996 Act.

Enforcement (See Chapter 7)

35. The Government proposes that disputes about specified matters arising prior to the establishment of an EWC should be referred to the CAC (e.g. employee numbers, validity of a request for an EWC or of an Article 13 agreement, constituencies for ballots). Disputes about the operation of an EWC or an information and consultation

procedure once established, or about a failure to establish when so required, will be a matter for the Employment Appeal Tribunal. They may issue an order requiring that the omission be remedied. The Government is also considering the possibility of the imposition by the EAT of civil financial penalties up to a statutory maximum of £75,000.

Transitional issues

36. Some issues arise from the fact that the directive is being implemented in the UK later than in other Member States. As a general rule the Government does not wish to disturb agreements already in place or negotiations already underway. It is for the other Member States to revise their implementation legislation where necessary so as to include the UK as of 15 December 1999. Some agreements may contain a review clause which will address transitional issues, which could in any case arise through the organic growth of undertakings (e.g. when a French company starts or expands operations in the UK).
37. The following is the Government's understanding of the situations which could arise and the legal position:-

a company, whether UK-based or otherwise, has already negotiated an EWC agreement which is governed by the law of another Member State:-

- That agreement will continue in force, under the law of that Member State. If the central management of the company is UK-based and wishes to "repatriate" the agreement to the UK, to make it subject to UK law, it would have to follow whatever procedures were specified in the agreement to allow this to take place.
- If the company has not included its UK employees within the scope of the agreement, it must take the necessary steps to do so when so required by the law of the Member State in question (which should be amended to require this no later than 15 December 1999).
- If the company has not included UK representatives on the EWC, or less than the number to which the UK employees are entitled on 15 December 1999, the company should, when required by the law of the relevant Member State, take the necessary steps to appoint the appropriate number of UK

representatives, in accordance with the procedures set out in the EWC agreement for the appointment of representatives. In the case of statutory EWCs the appointment procedures will be those specified in Schedule 1 of the UK regulations.

a company, whether UK-based or otherwise, is in the process of negotiating an EWC agreement with an already established SNB :-

- Those negotiations should continue. Where the central-management is UK-based, any subsequent EWC agreement will be governed by the UK regulations.
- Where no UK representatives have been appointed to the SNB, or less than the number to which the UK employees are entitled as of 15 December 1999, the company should, when so required by the law of the Member State in question, take the necessary steps to appoint the appropriate number of representatives, in accordance with the procedures set out in the UK regulations (i.e., by ballot).
- Where UK representatives have been appointed before the UK regulations entered into force, they would not have to be re-appointed, regardless of how they were chosen.
- The accession of UK representatives to the SNB should not alter the timetable for the negotiations nor cause the re-selection of any of the representatives of employees from other Member States.

Application to Northern Ireland

38. The UK Regulations will apply to Northern Ireland. Some of the enforcement procedures envisaged in the Regulations will be adapted to reflect the different enforcement bodies in N Ireland (as will also be the case for Scotland).

ARTICLE 13 AGREEMENTS

1. Article 13 of the directive provides that the obligations otherwise imposed by the directive do not apply to undertakings which already have in place a voluntary agreement on information and consultation at a transnational level. To be valid, such agreements must cover the undertaking's entire workforce within the EEA, provide for the transnational information and consultation of employees, have been concluded by the date of implementation of the directive in the Member State concerned and must remain in force. Where they expire, the parties may jointly decide to renew them. If the agreement is no longer in force, the provisions of the directive will apply.
2. The existence of more than one agreement within the same undertaking/group is permissible provided that taken together they meet the conditions laid down in the national applicable legislation.
3. The regulations do not specify who the employee-side parties to such an agreement must be. The Government believes that in view of the variety of employee-side signatories to existing Article 13 agreements it would be undesirable to limit the flexibility of the parties on this matter. Clearly, both sides must be satisfied that it meets the criteria to be a valid Article 13 agreement, including that it covers the entire workforce.
4. Those undertakings newly brought within the scope of the directive as a result of its extension to the UK (i.e. by the inclusion of UK employees in the directive's workforce size thresholds) must conclude any Article 13 agreement by 15 December 1999. Undertakings which were already subject to the directive and which have an Article 13 agreement should ensure that it remains valid, e.g. by continuing to cover the entire workforce.
5. The Government encourages companies which still have the option to negotiate Article 13 agreements to consider doing so. Such agreements are in keeping with the voluntary traditions of British employment relations and offer flexibility in terms of both the content of the agreement and the procedure for its negotiation. For example,

Article 13 agreements are not subject to the SNB procedure or the provisions in the Regulations on confidentiality.

ARTICLE 6 AGREEMENTS VIA THE SPECIAL NEGOTIATING BODY PROCEDURE

1. All companies meeting the definition of Community-scale undertaking or group which do not have an Article 13 agreement are potentially subject to the 'special negotiating body' (SNB) procedure for the creation of a European Works Council or information and consultation procedure.

The Special Negotiating Body

2. The role of the SNB is to negotiate a written agreement with central management determining the arrangements for establishing an EWC or implementing an information and consultation procedure. The SNB procedure may be initiated either by central management or at the written request of at least 100 employees or their representatives from at least two undertakings or establishments in at least two EEA Member States. In the UK context, the employees' representatives who are able to submit a request for negotiations to be initiated are those meeting the definition of 'employees' representatives' in the Regulations. Requests submitted to local management are to be treated as if made to central management.
3. Management may refer a request to the Central Arbitration Committee if it considers it does not have to establish an EWC because the directive does not apply to it, e.g. because it is below the employee thresholds or has an Article 13 agreement, or if it considers that the request was invalid, for instance because it was not supported by the requisite number of employees. The six-month time period referred to in para.6 below will be suspended while the CAC is considering a referral.
4. This referral procedure would also apply where the management considered that it was not an undertaking, e.g. because it was not engaged in an economic activity (see para.3 of chapter 2 above). As this is essentially a question of the interpretation of European case law, the Department is considering whether the CAC is the most appropriate forum and would welcome any views.

5. The Department believes that questions about the applicability of the regulations and validity of requests should be resolved as soon as possible in the process, to avoid the possibility that established SNBs or even EWCs could be overturned by a subsequent ruling that the company was not subject to the regulations, or that a request for an EWC had been improperly submitted. That would be a costly and confusing situation for all concerned. It is therefore proposed to introduce a time-limit within which referrals on these matters should be made to the CAC. It is proposed that for disputes about the validity of a request, this should be one month starting from the date of request for an EWC, and for other disputes about the applicability of the regulations, two months from the date of a valid request. Comments on this proposal are welcome.
6. Where central management refuses to begin negotiations within six months of a request from the employees, an EWC must be set up according to the 'subsidiary requirements' contained in the Annex to the directive. The EAT would enforce this requirement. The directive does not specify what constitutes a refusal to commence negotiations, and the Government also proposes to leave an element of flexibility on this issue. A failure to enter negotiations could for example be caused by circumstances beyond the management's control rather than a refusal.
7. Once the SNB process is triggered, central management has a responsibility to fund and facilitate the negotiations.

The Number of Seats

8. The regulations in force in the Member State where the central management is located determine the number and distribution of seats on an SNB. For UK-based companies, together with companies whose headquarters are outside the EEA and whose representative agent is located in the UK, the rules governing the number and distribution of seats on the SNB will be those established by the UK regulations. These provide that the membership of the SNB must comprise:
 - i) one employee representative from each EEA Member State in which the company operates; plus where applicable
 - ii) one additional seat per Member State where at least 20% but less than 40% of the workforce (within the EEA) is employed;

- iii) two additional seats per Member State where at least 40% but less than 60% of the EEA workforce is employed;
 - iv) three additional seats per Member State in which more than 60% of the EEA workforce is employed.
9. This formula enables the constitution of the SNB to give some additional weighting to representation from those countries in which there are significant concentrations of employees. The size of the SNB will depend on the number of countries in which a particular company operates and the national distribution of its workforce. The directive (Article 5) requires the SNB to have a minimum of 3 members, which will be achieved by the above formula.
10. The UK regulations could go beyond the above by, say, providing that a further seat on the SNB could be claimed by Member States for each additional 10% of the workforce employed above the 60% threshold. The Government would be interested in any views on this.

Selection of SNB Members

11. The directive says that members of the SNB are to be elected or appointed according to the national rules established by the country in which they are employed within the EEA. It also stipulates that employees in undertakings and/or establishments without employees' representatives "through no fault of their own" must not be excluded from the election or appointment process.
12. In considering what approach to take on the selection of the UK members of the SNB, the Government has taken a number of factors into account. The SNB exists to represent the employees in a negotiation with management, and the choice of their representatives is therefore a matter for the employees. The regulations will lay down the method by which that choice is to be exercised by the UK employees in respect of their representatives. Management will have to make the necessary arrangements for the establishment of the SNB through the prescribed method.
13. The SNB negotiations concern the creation of a structure whose purpose and form is new to UK industrial relations. Often the non-UK members will be drawn from the national works councils which exist in many Continental countries. It is important that

UK representatives can demonstrate that they too have a mandate to represent the UK workforce in relation to the matter in question, namely information and consultation.

14. There are two possible methods of selection, election by the employees or nomination by the existing employees' representatives. The Government proposes that selection of UK members of the SNB should be by election by workforce ballot. This reflects the procedure frequently adopted by those UK firms which have already set up voluntary agreements or EWCs. This option will ensure that all employees are consulted on the selection process and that representatives have a clear mandate for this new function of information and consultation on European-level matters.
15. The alternative of allowing the existing employees' representatives to nominate the SNB members would carry less democratic legitimacy because those representatives will usually have been chosen for different purposes. Besides giving new powers to the existing representatives, this procedure would bring practical problems where the existing representatives did not represent all the workforce (bearing in mind the directive's requirement that unrepresented parts of the workforce are given a say in the process) or where there was a multiplicity of existing representatives but only a few seats for the UK employees on the SNB. A ballot of all the employees would avoid these difficulties.

Conduct of the ballot

16. The Department does not wish to adopt an overly prescriptive approach in the Regulations concerning the rules for the conduct of the ballot. It is proposed to apply the following requirements:-
 - a) it is management's responsibility to fund the election process
 - b) a suitably qualified independent person shall be appointed by management to ensure the proper conduct of the ballot (the scrutineer)
 - c) management must provide the scrutineer with the information and resources needed to perform his duties

- d) the number of representatives to be elected will be determined according to the legislation of the relevant Member State
 - e) anyone who is a UK employee of the undertaking or employees' representative may stand as a candidate (subject to the merchant navy exception).
 - f) all UK employees of the group or undertaking on the day of the election are eligible to vote
 - g) the election will be conducted so that:
 - those voting do so in secret
 - the votes given are fairly and accurately counted
 - h) the result of the election shall be announced as soon as possible
 - i) inaccuracies in the counting of the votes should be disregarded if they are accidental and on a scale which does not affect the result.
17. A person may be appointed as an independent scrutineer if the UK management believes he is competent to perform his duties and that his independence will not be called into question. The duties of the scrutineer are to ensure that the ballot is conducted so that those entitled to vote are given the opportunity to do so, that voting takes place in secret as far as is practicable, and that the votes are properly counted. The UK management must ensure the scrutineer carries out his duties, and does so without interference by central and local management. Management must comply with all reasonable requests made by the scrutineer for the purpose of carrying out his functions.
18. Views would be welcome on whether it is necessary to provide for the resolution of disputes about the eligibility of a person to stand for election (including whether the merchant navy exception applies to him), and if so whether this should fall to the scrutineer or to the CAC.

Constituencies

19. Often the number of seats on the SNB available for the UK employees will be less than the various establishments of the undertaking in the UK (e.g., where a company had operations on six sites and there were three UK seats). It will not, therefore, always be possible to ensure that each establishment has its own representative (or that each undertaking has its own representative where there is more than one undertaking in the UK). However, where the UK has more than one seat, it might be desirable to bring about a spread of representatives throughout the UK workforce, even where a precise match on an establishment basis is not possible. This might be desirable for example where an undertaking was split into regional groupings, or where there was a group or conglomerate structure. The Government therefore proposes that where more than one seat is available, the management may split the undertaking into constituencies of roughly equal size. This should be done wherever possible to reflect existing establishments/undertakings or groupings thereof. For example if there were 4 SNB seats for the UK and the company had 4 establishments in the UK of approximately equal size, they could each form a constituency electing 1 member each. Or, if there were 4 seats and 2 establishments of broadly equal size, they might elect 2 members each. If there were 4 seats and 20 establishments in the UK, they might be grouped into 4 or less constituencies on existing regional or business-related lines. Establishments should not be sub-divided to form constituencies, though undertakings might be split, down to the level of the establishment. The groupings should not be made so as to reserve a seat for a small, unrepresentative part of the workforce.
20. There is no obligation to form constituencies: a single ballot of the whole workforce might be considered the most straightforward way to proceed.
21. If the company is proposing to establish constituencies, it should make its proposals known to the employees as soon as reasonably practicable. The employees or their representatives will have 20 days from this announcement in which to make representations to management about the arrangements for the constituencies, if they believe them to be inappropriate. If management and employees cannot reach an agreement within those 20 days, they would have a further 10 days to refer the matter to the CAC.

The Negotiating Process

22. The parties must negotiate “in a spirit of co-operation with a view to reaching an agreement” on the detailed arrangements for the information and consultation of employees. It is not proposed to impose any additional requirements governing the negotiating process to the broad ones in Article 5 of the directive. The parties will therefore have a high degree of discretion about the negotiating procedures they adopt.
23. For the purpose of the negotiations, the SNB may be assisted by experts of its choice. Reasonable expenses relating to the negotiations, including the use of experts by the SNB, are to be met by the undertaking, subject to the restriction that, unless otherwise agreed, the management’s financial responsibility for the use of experts is limited to the cost of one expert only.
24. The SNB may decide by a two-thirds majority (i.e. two-thirds of the total votes cast) not to open negotiations with central management, or to terminate negotiations already underway. In this case, a new request to convene the SNB may not be made for a further two years unless the parties agree a shorter period.
25. For the purposes of concluding agreements with central management, the SNB shall act ‘by a majority of its members’.
26. In the event that agreement is not reached within three years of the original request by the employees to establish an EWC, the subsidiary requirements in the Annex to the directive come into effect. However, where negotiations are underway but have not been completed within three months of the end of the three year period, and there is a prospect that they may be concluded soon, and the parties are content to continue, the regulations provide for an extension period of up to six months from the date of the expiry of the three year period, before the subsidiary requirements take effect. This is intended to provide a measure of flexibility where both sides wish to continue to work for a negotiated agreement.

Article 6 Agreements

27. Central management and the SNB may conclude a written agreement establishing:

a European Works Council; or

an information and consultation procedure.

28. These agreements are referred to here as “Article 6” agreements.

29. The parties may agree before the end of the three year period to use the statutory EWC model in the annex to the directive.

30. Article 6 agreements must specify:-

a) the undertakings or establishments covered;

b) the composition of the European Works Council, the number of members, the allocation of seats and the term of office;

c) its functions and the procedure for information and consultation;

d) the venue, frequency and duration of meetings;

e) the financial and material resources to be allocated to the EWC;

f) the duration of the agreement and the procedure for its renegotiation

31. The Department has made proposals (see chapter on enforcement) which envisage that the Employment Appeal Tribunal would rule on disputes about the operation of, or failure to establish, an EWC or information and consultation procedure. This should not preclude the parties from including in an agreement procedures for settling disputes by internal mechanisms before formal legal proceedings before the EAT are invoked.

32. If the parties decide to establish an information and consultation procedure as per article 6.3 of the directive instead of an EWC, the agreement must stipulate the way in which the representatives for that procedure can meet to discuss the information

conveyed to them, and the information must relate in particular to transnational questions which significantly affect workers' interests.

STATUTORY EWCS

Establishment

1. The directive (in Article 7) makes provision for “statutory” European Works Councils to be established in certain circumstances. These EWCs are to be constituted on the basis of a set of ‘subsidiary requirements’, set out in the annex to the directive. These are transposed in Schedule 1 of the draft UK regulations.
2. Schedule 1 of the regulations will only apply where:-
 - a) central management and the SNB so decide;
 - b) central management refuses to begin negotiations within six months of a request from employees; or
 - c) agreement is not reached within three years of the employees’ request which initiated the negotiating procedure.
3. The UK regulations provide for the imposition of the statutory EWC in circumstances (b) and (c) above. However as set out in the previous chapter they build in a measure of flexibility, by prescribing that the three year period may be extended by mutual agreement by up to six months.
4. Schedule 1 of the draft regulations provides a set of standard rules for the constitution of a EWC set up under the subsidiary requirements, governing its competence, composition and procedures.

Competence

5. The competence of the statutory EWC is limited to those matters which concern the undertaking or group as a whole or those which concern its operations in at least two EEA countries. This requirement ensures that the EWC is concerned only with

transnational questions, as opposed to national or local ones dealt with through whatever other mechanisms the company may have in place.

Composition

6. The number and allocation of seats per Member State on a statutory EWC are to be governed by the same principles as apply to the establishment of an SNB, i.e.
 - i) one employee representative from each EEA Member State in which the company has operations; plus where applicable
 - ii) one additional seat per Member State where at least 20% but less than 40% of the workforce (within the EEA) is employed;
 - iii) two additional seats per Member State where at least 40% but less than 60% of the EEA workforce is employed;
 - iv) three additional seats per Member State where 60% or more of the EEA workforce is employed.
7. This formula gives additional weighting to representation from those countries in which there are significant concentrations of employees. It would be possible to go further in this direction to provide for more members from countries which have a significant workforce presence and the Government would welcome views on this.
8. The directive itself requires that a statutory EWC shall have at least 3 members but not more than 30. A number in this range will always be achieved by the application of the proposed formula. The regulations do not therefore place a ceiling on the number of seats on a statutory EWC. Its size will depend on the number of countries in which a particular company operates and the national distribution of its workforce.
9. Concerning the selection of the UK members of a statutory EWC, the wording of the directive is different from that which governs the selection of SNB members. It states that the statutory EWC shall be composed of employees of the undertaking elected or appointed from their number by the (existing) employees' representatives or, in the absence thereof, by the entire body of employees. It is proposed that, as for the SNB, the UK members of the statutory EWC shall be elected by workforce ballot; but where the employees' representatives represent all the employees, they may instead opt to nominate the EWC members. Where the employees' representatives represent less than all the workforce, it would not be right for them to make nominations as they lack the necessary mandate to act. The employee representatives will be deemed to represent all the workforce where each of the

employees is an employee in respect of which an independent trade union is recognised for collective bargaining, or who has elected or appointed a representative for the purpose of receiving information on his behalf about his terms and conditions of employment or the activities of the undertaking which significantly affect his interests.

10. If the employee representatives are to appoint the UK members of the statutory EWC, they shall decide how to do so.
11. The directive provides that “where its size so warrants” the EWC must elect a select committee from among its members, comprising at most three members. The parties concerned should agree on whether a select committee is appropriate.

Information and consultation rights

12. The regulations follow the directive on these points, as follows:
 - a) A statutory EWC has the right to meet central management annually to be informed and consulted, on the basis of a report drawn up by central management, about the undertaking or group’s progress and prospects. The annual meeting shall relate in particular to:
 - i) its structure and economic and financial situation;
 - ii) the probable development of the business and of production and sales;
 - iii) the employment situation and probable trend;
 - iv) investments; and
 - v) substantial changes concerning organisation, new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, or collective redundancies.
 - b) In exceptional circumstances the select committee (or, where none exists, the EWC itself) has the right to be informed, and to trigger a meeting with management to be informed and consulted on ‘measures significantly affecting employees’ interests’. Members of the EWC representing establishments or undertakings directly concerned by the measures in question also have the right to participate in such meetings alongside the select committee. Such meetings should take place as soon as possible on the basis of a report drawn up by management on which the EWC may put forward an opinion. However these requirements shall not affect the prerogatives of the central management.

Operational matters

13. A statutory EWC shall adopt its own rules of procedure.
14. The Annex to the directive gives Member States the option of laying down rules on the chairing of information and consultation meetings between the EWC or select committee and management. The Government believes that this issue should be determined by agreement between management and EWC but that if agreement is not possible the chairing of meetings should alternate between the parties.
15. Before any meeting with central management, the EWC or its select committee is entitled to meet without management being present.
16. Subject to any confidentiality restrictions required by management, members of the statutory EWC are obliged to inform local employees' representatives in the undertaking or group's operations (or, in the absence of such representatives, the workforce as a whole) of the content and outcome of the information and consultation procedures carried out.
17. The operating expenses of a statutory EWC and its select committee are to be met by central management. Central management must provide the members of the EWC with the financial and material resources to enable them to perform their duties in an appropriate manner. In particular, the cost of organising meetings and interpretation and the accommodation and travelling expenses of members of the EWC and its select committee are to be met by management unless otherwise agreed.
18. The EWC or the select committee may be assisted by experts of its choice, insofar as this is necessary for it to carry out its tasks but, unless otherwise agreed, but management is obliged to pay for one expert only.

Duration

19. Four years after its establishment a statutory EWC must consider whether to open negotiations with management for an Article 6 agreement. If it wishes to negotiate, the special negotiating body procedure will apply, except that the statutory EWC carries out the role of the SNB. Where a statutory EWC decides not to open negotiations it shall continue to operate on the basis of the subsidiary requirements.

CONFIDENTIAL INFORMATION

1. The directive requires that members of an SNB or EWC and experts who assist them are not authorised to disclose information which has been expressly provided to them in confidence. Furthermore management may choose in certain circumstances to withhold information from the EWC/SNB. The obligation upon EWC and SNB members or their experts not to disclose confidential information continues wherever they may be, including after the expiry of their terms of office.
2. The management may only withhold information, or require the EWC/SNB to hold it in confidence, where “according to objective criteria it would seriously harm the functioning of the undertaking or be prejudicial to it” if it were revealed. This is the wording in Article 8 of the directive which is repeated in the UK regulations. The Government does not intend to spell out in the UK regulations what might constitute “objective criteria” or “serious harm or prejudice” as these are matters best left to be decided on a case by case basis, depending on the situation of the company.
3. Article 11 of the directive requires the establishment of a mechanism through which representatives on an SNB/EWC can appeal against the withholding of information by management or a requirement that it be held in confidence. It is proposed that SNB/EWC members may refer such matters to the Central Arbitration Committee. The CAC will judge the matter against the criterion that its release would seriously harm the company, or be prejudicial to it, according to objective criteria. The management will have to explain what serious harm or prejudice to the company would be caused by the release of the information. In the Government’s view, this harm or prejudice could arise in a range of areas, provided they are capable of objective assessment. They might for example include, but not be limited to, damage to the company’s financial or commercial position, or its reputation and general prospects, or on a more specific level, its employment prospects or compliance with regulatory or statutory rules. While the directive offers some scope for withholding information, it is clear that management may not withhold information on arbitrary grounds, or where disclosure would have trivial consequences.
4. These provisions do not apply to Article 13 agreements which, provided they are valid are not within the scope of the UK regulations.

Offence for unauthorised disclosure

5. The Government hopes that both management and the employee side will adopt a reasonable and common sense approach to the disclosure and handling of sensitive information, as this is a key element in the effective functioning of the EWC. Member States must nonetheless enforce the requirement that EWC/SNB members are not authorised to reveal information which has been expressly provided to them in confidence, and the Government is considering doing so by making it a criminal offence for EWC/SNB members, or their expert assistants, to reveal to non-members information supplied to them on a confidential basis. Several other Member States have adopted this approach. There is a question as to how best to link the offence to the UK. It is proposed that the offence should relate to unauthorised disclosures made in the UK; those made in another EEA member state would be subject to the enforcement provisions of that country. The offence would not apply where the CAC had declared that it was not reasonable for management to require that the information be held in confidence.

ENFORCEMENT

1. Member States must provide for appropriate enforcement measures to ensure that the obligations imposed by the directive are met. The directive leaves it to Member States to determine exactly what enforcement arrangements are to apply, provided they are effective, proportionate and dissuasive, as required by European law.
2. Enforcement measures will be required in respect of three broad areas: disputes concerning whether an undertaking is subject to the directive and, where it is, about the procedures leading to the establishment of an EWC; disputes about the operation of an EWC or information and consultation procedure once it is established or required to be established; and disputes about the confidentiality provisions. Given the relatively small number of UK undertakings affected by the directive, the Government does not believe it is necessary to create a new regulatory/enforcement body specifically for these purposes. The Government's preference is that disputes should be resolved as quickly and flexibly as possible, and that generally sanctions should be kept to the minimum possible to ensure proper compliance with the directive.
3. It is proposed that the first category of disputes concerning matters leading up to the establishment of an EWC, which will be partly procedural in nature, would be considered by the Central Arbitration Committee, which it is hoped will provide a rapid and flexible forum for the resolution of such disputes. The CAC would issue a declaration, where appropriate, requiring the undertaking to move to the next stage in the process of establishing the EWC. The enforced progression towards the imposition of a statutory EWC will in itself be sufficient sanction at this stage. The regulations would produce the result that failure to comply with a CAC declaration would be punishable as if it were a contempt of court.
4. "Second-stage" disputes about the operation of an existing EWC agreement (e.g., an alleged failure to consult over a particular matter) or the non-establishment of an EWC where an Article 6 agreement has been concluded or a statutory EWC has to be set up, are likely to involve substantive questions requiring legal interpretation and the imposition of sanctions. The more formal setting of the courts is therefore appropriate at this stage. The Department sees advantage in requiring such disputes to be heard by the Employment Appeal Tribunal (EAT), which is well placed because of its experience of employment matters, and its relative accessibility and flexibility. The EAT may make an order requiring the management to remedy a

failure to fulfil its obligations under the terms of an EWC agreement or under the regulations. However such an order may not have the effect of suspending or overturning company transactions which management has already entered into.

5. The Government is also considering prescribing in the regulations civil financial penalties which the EAT may require to be imposed, in addition to, or instead of, an order to remedy an omission where sanction was appropriate. Sanctions will be appropriate in most cases where a company has failed to establish an EWC where it was required or had agreed to do so, except for reasons beyond its control. In the case of a dispute about the operation of an existing EWC agreement, penalties would be appropriate where the failure was intentional, except where the company has a reasonable excuse for its behaviour. The regulations might prescribe the maximum amount of such a penalty, say at £75,000 (bearing in mind that the average cost of holding an EWC meeting has been estimated at around £60,000), and the EAT would have discretion to impose a penalty up to this level, having regard to factors such as the seriousness of the omission, the period of time over which it took place, the reason for the failure, the likelihood of re-occurrence, the number of employees affected, and the size of the company (judged by the number of employees in the EEA). The penalty would be payable to the Secretary of State. Further daily penalties would be imposed in the event of non-compliance with an EAT order (without prejudice to any contempt of court proceedings], at a proposed rate of £1000 per day. Views are particularly welcome on this proposal.
6. As explained in the previous chapter the CAC would hear disputes about information withheld from the EWC or disclosed to them but required to be held in confidence. The CAC would as appropriate order its disclosure. Failure to comply with a declaration would be treated as a contempt of court. Where an undertaking has disclosed information to the EWC in confidence and that information has been improperly disclosed in the UK by an EWC member, the member would be guilty of a criminal offence.
7. Disputes concerning the statutory protections against detriment, unfair dismissal, and right to paid time off afforded to EWC members would be handled by the employment tribunals, who already enforce similar rights in UK employment legislation.
8. In all of the disputes referred to above, the CAC/EAT may before considering the matter refer it to ACAS for conciliation, if that appears likely to be fruitful. It is proposed to leave it to the CAC to develop its own rules of procedure (subject to the principle of natural justice). As the EWC will have no financial resources of its own, it

is proposed that costs should be borne by the undertaking (excluding frivolous applications). There will be no appeal from decisions by the CAC, other than judicial review.

9. The Government recognises that this is a complicated area and would welcome comments on its proposals.

Summary

10. The following table provides a summary of the proposed enforcement procedures and sanctions.

TABLE 1.**TYPES OF DISPUTE AND PROPOSED REMEDIES AND ENFORCEMENT BODIES**

	<u>Dispute</u>	<u>Enforcement Body</u>	<u>Remedies</u>
1	Employee numbers not supplied by management (so as to be able to ascertain whether undertaking is subject to the directive).	CAC	Order that numbers be disclosed. Or, where it has sufficient evidence, CAC may immediately declare that undertaking is/is not covered.
2	Company disputes applicability of UK Regs e.g. not an undertaking or less than 1,000 employees, or has a valid Article 13 agreement.	CAC	Declaration as to whether undertaking is subject to the regulations.
3	Dispute about validity of EWC request (e.g. insufficient numbers requesting)	CAC	Declaration as to whether request meets requirements.
4	SNB selection process commenced but prior to the ballot the employee side disputes the make up of the constituencies.	CAC	Declaration as to whether proposed constituencies are appropriate.
5	Irregularities in the conduct of the ballot	The scrutineer	Request by the scrutineer
6	Management refuses to commence negotiations with the SNB within 6 months of a valid request for an EWC. SNB and management do not conclude an agreement within 3 years of a valid request for an EWC.	Regulations will provide that a statutory EWC must be established, subject to some flexibility to allow for extension of 3yr period by up to 6 months where both sides agree.	EAT to make order and/or impose financial penalties as in 7 below
7	Disputes about operation of an EWC agreement or I&C procedure, or statutory EWC, including failure to establish a statutory EWC where so required by the regulations	EAT	Order to take action necessary to apply the agreement, and, if appropriate, imposition of civil financial penalties as prescribed in the regulations. No order shall require the central management to

			suspend/ overturn a transaction entered into.
8	Member of SNB or EWC breaches confidentiality requirement	Court	Criminal offence. Fines or imprisonment.
9	SNB or EWC challenge withholding of information on grounds that it is confidential, or requirement on EWC to hold it in confidence.	CAC	Declaration, ordering release of information or not, as appropriate
10	Infringement of statutory protection of SNB/EWC member	Employment Tribunal (ET)	ET ruling and award if appropriate.

Appendices

Draft Regulations

Regulatory Impact Assessment

Extension Directive (97/74/EC)

EWC Directive (94/45/EC)

Conlast