



EWC Article 13 Agreements: *Getting it Wrong*

Speaking about pre-existing agreements, so-called Article 13 Agreements, [an article](#) in the latest issue of *EWC News*, (published by the union-side consultancy, the EWC Academy) claims:

“...the parties to the “voluntary” EWC agreement are free to adapt the contract to the standards of the new directive without the SNB and to convert the status of the contract under private law into an EWC agreement. To avoid legal problems, this should be done before 1 January 2028.”

The author of this article contends that this comment is based on the minutes of the third meeting of the expert group set up by the European Commission to assist governments in transposing the Directive into national law. [Link to redacted minutes of 3rd meeting](#)

To put it bluntly, this statement both is wrong and misleading. It is simply incorrect to claim that management and an Article 13 “EWC” can agree between themselves to transition to an Article 6 EWC agreement without the need for an SNB.

Since September 22nd, 1996 an EWC within the framework of the Directive can only be set up through a Special Negotiating Body (SNB). The 2025 Directive does not change this... in any way.

When the 2025 Directive comes into force at national level on January 1, 2028, undertakings with Article 13 agreements, private agreements between the parties outside the scope of EWC law, will no longer be able to claim an exemption from the Directive as transposed into national law on the grounds of having an Article 13 agreement.

As and from January 1, 2028, the 350 or so undertakings with A13 agreements will be open to valid SNB requests submitted by at least 100 employees, or their representatives, from at least two EU/EEA member states.

Certainly, pre-existing Article 13 Agreements can bring themselves into line with the terms of the Directive, **but they remain pre-existing agreements**. There is no route for pre-existing agreements to convert themselves into Article 6 agreements other than through an SNB. After 1/1/2028 even if pre-existing agreements have updated their terms in line with the 2025 Directive, **they remain open to a valid SNB request**.

There is nothing in the text of the Directive which allows the parties to an Article 13 agreement to convert it into an Article 6 agreement within the framework of EU law other than through the mechanism of an SNB. Nor is there anything in the minutes of the third meeting of the expert group which suggests otherwise. Even if there was some loose language in the minutes, which there isn't, what is said at an expert group cannot override or alter the clear and concise meaning of the Directive.

Article 14b is clear:

Where negotiations pursuant to Article 5 of this Directive are initiated in order to conclude an agreement pursuant to this Directive in a Community-scale undertaking or Community-scale group of undertakings in which an agreement covering the entire workforce providing for the transnational information and consultation of employees was concluded prior to the date of application of Directive 94/45/EC and is still in force, the period referred to in Article 7(1), third indent, of this Directive shall be reduced to two years. The initiation of negotiations does not affect the terms of the existing agreements in force.

While management and the members of an Article 13 “EWC” may be happy with the way things are working, there would be nothing to stop two employee representatives from outside the EWC from two countries, submitting an SNB request. There would not necessarily be any guarantee that the existing EWC members would be selected/elected to the SNB.

The fact is that during the legislative process which resulted in the 2025 Directive the possibility of Article 13 EWCs negotiating their way to Article 6 status was raised.

We ourselves raised this with the Commission. It was ruled out for simple and logical legal reasons.

An SNB has a range of options available to it:

- *It can decide by a two-thirds majority to cancel negotiations for an EWC.*
- *It can negotiate an EWC agreement with management*
- *It can negotiate an information and consultation procedure with management*
- *It can agree with management to apply the Subsidiary Requirements*
- *If can fail to reach an agreement and have the Subsidiary Requirements imposed*

An Article 13 EWC would only have had one of these options available to it – move to an Article 6 EWC agreement. This would have denied employees in an undertaking that took this step rights afforded to them under EU law. So, the option was ruled out. It cannot now be brought in again through the back door.

To summarise, undertakings with Article 13 agreements can only move to an Article 6 agreement through the Special Negotiating Body procedure. **There is no other way.**

After January 1, 2028, undertakings with Article 13 agreements will no longer be exempt from SNB requests.

There is, of course, nothing to stop management setting up an SNB now and running it in parallel with the existing EWC and signing off on a new agreement when the transposition law of the country in which it based its EWC is known, preferably after January 1, 2028. **But it cannot negotiate an Article 6 agreement with its Article 13 EWC.**

Likewise, a company may end its Article 13 agreement now and establish a EWC under the terms of the 2009 Directive, through an SNB. However, this could then be subject to renegotiation to bring it into line with the new Directive after January 1, 2028, in the same way as any other Article 6 EWC.

These matters are not straightforward. Every undertaking needs to look at its own situation before deciding how to proceed.

One final point.

What happens to an Article 13 EWC if an undertaking gets an SNB request will depend on:

- *What the Article 13 agreement has to say about how it can be terminated*
- *What the law of the country in which the undertaking bases itself for EWC purposes has to say about the enforceability of voluntary, collective agreements.*
- *The nature of the relationship between management and the EWC.*

No matter what, undertakings with Article 13 agreements that are headquartered outside the EU/EEA should make a decision now on what EU/EEA member state in which to locate their representative agent for EWC purposes. When you have a choice of laws, pick the one that works best for you.

There is no shortcut from Article 13 to Article 6. All roads pass through a Special Negotiating Body.

Should anyone quote the EWC Academy to you, you can tell them with 100% certainty that the EWC Academy is wrong in the advice it is offering.

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