

# European Works Council

Belgium

by  
Chris Engels  
and  
Lisa Salas

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## The Authors



Professor Dr. Chris Engels studied law at the Catholic University of Leuven in Belgium (1979–1984), where he also obtained his Ph.D. He received a Master's Degree (LL.M.) at the University of California, Los Angeles (USA).

At present, Prof. Engels lectures in European and Comparative Labour Law and in Procedural Social Law at the Faculty of Law of the Catholic University of Leuven, and in Industrial Relations as part of the MBA programme. He is also a member of the Brussels bar, where he is a partner to the law firm De Bandt, Van Hecke & Lagae, member of Linklaters' Alliance. He has written numerous books and articles in both English and Dutch in the field of Belgian and European labour law.



Ms. Lisa Salas received a Bachelor of Arts (BA) degree from the University of California, Irvine in Social Ecology in 1989, and a Juris Doctor (JD) degree from the University of California, Los Angeles School of Law in 1992. In 1993 she obtained a Master's (LL.M.) in European Law from the Catholic University of Leuven, Belgium, where she currently works as an assistant professor.

## The Authors

# List of Abbreviations

BEF	Belgian Francs
CBA	Collective Bargaining Agreement
CGSLB	
CSC	
EEA	European Economic Area
EU	European Union
EWC	European Works Council
FGTB	
OJ	Official Journal
SNB	Special Negotiating Body
VBO	



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# Part I. Implementation into National Law

## Chapter 1. Legal Sources

1. The provisions necessary for a Community-scale undertaking in order to be able to start up procedures for entering into an agreement to establish a European Works Council are certainly present. A national inter-industry wide collective bargaining agreement was concluded in 1996 which partly implemented the EWC Directive into Belgian law. The remaining issues are addressed by two Parliamentary acts that were passed on 23 April 1998.

2. The EWC Directive itself explicitly referred to implementation of the Directive by the social partners. Implementing European Directives by entering into collective bargaining agreements that are then rendered generally binding by the Government is not an unknown practice in Belgium. One can refer to the Transfer of Enterprises Directive<sup>1</sup> that was similarly implemented in Belgium by a national inter-industry wide collective bargaining agreement.<sup>2</sup>

### *List of Implementing Articles with Reference to the EWC Directive*

Directive	CBA No. 62
Art. 1	Art. 2
Art. 2, 1	Art. 3
Art. 2, 2	Art. 5
Art. 3	Art. 7
Art. 4	Art. 8
Art. 5, 1	Art. 9
Art. 5, 2	Art. 10, Art. 12, Art. 13, Art. 15
Art. 5, 3	Art. 11
Art. 5, 4	Art. 17, Art. 19
Art. 5, 5	Art. 20
Art. 5, 6	Art. 19, Art. 21
Art. 6, 1	Art. 23
Art. 6, 2	Art. 24
Art. 6, 3	Art. 23, 25
Art. 6, 4	Art. 26
Art. 6, 5	Art. 22
Art. 7	Art. 26

Directive	CBA No. 62
Art. 8	Art. 8, Act 23 April 1998 (Accompanying Measures; Royal Decree of 10 August 1998)
Art. 9	Art. 43
Art. 10	Art. 9, Act 23 April 1998 (Accompanying Measures)
Art. 11	Art. 45, and Arts. 10–12, Act 23 April 1998 (Accompanying Measures)
Art. 12	no active implementation required
Art. 13	Art. 4
Art. 14	Art. 49, and partly still to be implemented
Annex	
1(a)	Art. 27
1(b)	Art. 28, Art. 29, Art. 45
1(c)	Art. 33
1(d)	Art. 28
1(e)	Art. 31
1(f)	Art. 32
2	Art. 35, Art. 36
3	Art. 37, Art. 38, Art. 39
4	Art. 34
5	Art. 44
6	Art. 41
7	Art. 41, Art. 42, Art. 45

1. Directive 77/187/EEC relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, 14 February 1977, OJ, L 61, 5 March 1977.
2. Collective Bargaining Agreement No. 32 *bis*, 7 June 1985, concerning the safeguarding of the employees' rights in the event of the change of employer as the result of a contractual transfer of an undertaking and the rights of the employees who are re-employed where the assets are taken over after a bankruptcy or an arrangement with creditors in return for the relinquishing of assets, upon the transfer of assets upon a bankruptcy or a judicial, 7 June 1985, rendered generally binding by Royal Decree, 25 July 1985, *Official Gazette*, 9 August 1985, subsequently amended.

### §1. TRANSPOSITION PROCEDURES AND ENTRY INTO FORCE

3. In Belgium, the competence to pass general labour laws lies at national level and not at the level of the regions. Labour laws are contained in Acts of Parliament. Furthermore, European labour legislation has been implemented into Belgian law via collective bargaining agreements concluded within the National Labour Council, which is a distinct and very important feature of Belgian labour law. The process of collective bargaining has, in effect, a law making function. Collective bargaining agreements which are extended by Royal Decree, rank just below Parliamentary legislation in the hierarchy of legal sources regulating labour relations.<sup>1</sup> Parties to collective bargaining agreements are the most representative trade unions on the employee's side and employers' associations on the employer's side. Generally speaking, it can be said that collective agreements that are rendered generally

binding by Royal Decree belong to the social and public order of Belgium and they apply equally to foreign workers in Belgium.<sup>2</sup>

1. Article 51 of the Act of 5 December 1968.

2. See generally, R. Blanpain and C. Engels, *IELL*, Belgium, Kluwer Law International, pp. 256–280.

4. The EWC Directive was partly implemented in Belgian law through an inter-industry wide collective bargaining agreement (No. 62), concluded in the National Labour Council and rendered generally binding by Royal Decree.<sup>1</sup> The collective bargaining agreement No. 62, however, did not contain a complete implementation of all the provisions of the European Works Council (EWC) Directive. A number of issues are dealt with in the two Parliamentary Acts and one Royal Decree.<sup>2</sup>

The CBA No. 62 was accompanied by a unanimous advice of the social partners present in the National Labour Council.<sup>3</sup>

1. Collective Bargaining Agreement No. 62, 6 February 1996, concluded in the National Labour Council, on the establishment of a European Works Council or a procedure in Community-scale undertaking and Community-scale groups of undertakings for the purposes of informing and consulting employees, rendered generally binding by Royal Decree, 22 March 1966, *Official Gazette*, 10 April 1996, hereinafter referred to as CBA.

2. Law Laying Down Accompanying Measures concerning the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees, *Official Gazette*, 21 May 1998.

Law Laying Down Various Provisions concerning 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, *Official Gazette*, 21 May 1998. Royal Decree in Furtherance of Article 8 of the Law Laying Down Accompanying Measures of 23 April 1998, 10 August 1998, *Official Gazette*, 17 October 1998.

3. National Labour Council, Advice No. 1,141, 6 February 1996.

5. Certain issues cannot be regulated by collective bargaining agreement, such as the competence of labour tribunals and courts dealing with EWC related matters. The competences of the labour courts are determined by the Belgian Code of Civil Procedure. This Code was established through an Act of Parliament. Such an Act of Parliament ranks higher in the hierarchy of legislative sources than collective bargaining agreements, so that the former cannot be modified by the latter.<sup>1</sup>

1. Art. 51, Act 5 December 1968, with respect to Collective Bargaining agreements and Joint Committees, *Official Gazette*, 15 January 1968, subsequently amended.

6. The CBA No. 62 entered into force on 22 September 1996. The CBA may be revised or denounced upon the request of the most diligent signatory party. A period of notice of six months is foreseen.<sup>1</sup> The organization that takes such an initiative shall indicate its reasons and file its proposed amendments. The other organizations will try to discuss these amendments within one month of the said filing.

1. CBA, No. 62, Article 49.

7. It should be mentioned in this aspect that nothing is foreseen for the situation in which one party gives notice of its intent to denounce the CBA No. 62. The Parliamentary Act of 5 December 1968 sets out the condition of validity for collective bargaining agreements and states in Article 15 that CBAs are concluded for a definite period of time, with or without an option to prolong it for an indefinite

period of time.<sup>1</sup> In the latter case, the CBA needs to specify how it can be denounced and what kind of notice period should be requested.<sup>2</sup> No provision of Belgian law addresses the issue of the obligations of Belgium as a Member State in case one of the parties denounces the agreement. While it is highly unlikely that the CBA No. 62 will be denounced and certainly that no new agreement is renegotiated within the notification period, from a theoretical point of view Belgium could be faced with charges of lack of sufficient implementation if such a situation should arise.

1. Act 5 December 1968, with respect to Collective Bargaining Agreements and Joint Committees, *Official Gazette*, 15 January 1968, subsequently amended.
2. Art. 16, Act of 5 December 1968.

8. The two Parliamentary acts that complement the implementation of the Directive foresee that they will have a retroactive effect, as of 22 September 1996 except for the provisions dealing with the sanctions to be imposed in case of violation. These provisions will come into force the day of the publication of the Parliamentary Act in the *Official Gazette (Belgisch Staatsblad/Moniteur Belge)*.

## §2. OBJECTIVE AND SCOPE

### I. Territorial

9. The *territorial* scope of the CBA is the same as the one determined by the Directive: the EU countries and the countries of the European Economic Area.<sup>1</sup>

1. Arts. 2 and 3, *in fine*, CBA No. 62.

### II. Personal

10. No explicit exclusions out of the material scope are mentioned. However, as a general rule, the application of an inter-industry wide collective bargaining agreement concluded in the National Labour Council is restricted to the *private sector*. This results from the limitation of the scope and effect of collective bargaining agreements in general, as regulated by a specific Parliamentary Act.<sup>1</sup> As such the CBA No. 62 is therefore not applicable to any public sector enterprise that would otherwise be covered by the principles of the Directive.

1. Art. 2, para. 3, Act 5 December 1968, with respect to Collective Bargaining Agreements and Joint Committees, *Official Gazette*, 15 January 1979, subsequently amended.

11. Since the Directive itself does not make any distinction between public and private enterprises, it is clear that Belgian law will require further amendments, so as to fully implement the provisions of the Directive. The proposed law does not contain provisions extending application to the public sector, thus this aspect remains unimplemented.

#### A. Numbers and Thresholds

12. In order to determine which *companies* are covered by the provisions of the CBA No. 62, the definitions of the Directive are taken over, namely the concept of Community-scale undertaking and Community-scale group of undertakings.

A Community-scale undertaking therefore requires the employment of at least 1,000 employees within the Member States and at least 150 employees in each of at least two different Member States.<sup>1</sup>

A Community-scale group of undertakings, is defined as a group of undertakings with the following characteristics:

- at least 1,000 employees within the Member States;
- at least two groups of undertakings in different Member States; and
- at least one group of undertaking with at least 150 employees in one Member State and at least one other group of undertaking with at least 150 employees in another Member State.<sup>2</sup>

The thresholds are exactly the same under the Directive and under the Belgian implementing legislation.

1. Art. 3, CBA No. 62.
2. Art. 3, CBA No. 62.

### 1. Methods of Calculating Number of Workers

13. The Belgian implementing measures only regulate the way the workforce within Belgium is to be calculated. In order to be able to count the number of workers to be taken into account within Belgian territory, the CBA largely refers to the way the workers are counted in the national social elections dealing with the establishment of (national) works council and/or health and safety committees. The CBA No. 62 therefore makes an explicit reference to the Act of 20 September 1948, regarding the organization of the economy.<sup>1</sup> However, for the latter kind of elections the reference period in order to evaluate the number of workers employed by a given undertaking is one year; for the EWC it is two years. What will be taken into account is the average number of workers employed in Belgium during a period of two years prior to the day of the request initiating the negotiations.<sup>2</sup>

1. Art. 15, CBA No. 62.
2. Art. 5, para. 1, CBA No. 62.

14. The Directive aims at taking *part-time workers* into account proportionally to their working time in the company. The CBA refers to the rules applicable for Belgian social elections. This implies that part-time workers are taken into account, but not exactly in proportion to their actual working time. The normally applicable Belgian rules, make a distinction between those workers who work more or less than three quarters of the normal working time, as compared to a full-time worker. The workers who work less than three quarters of a full-time job are only taken into account as half a unit. The worker who is working 70 per cent of a full-time job will thus only be taken into account as half a unit, while one who is working 80 per cent will count as a full unit. This does not fully correspond to the proportional counting at which the Directive seems to aim.<sup>1</sup>

1. Working Party, Conclusions, conclusion No. 11.

15. The concept of ‘employee’ is itself governed by Belgian law. It refers to workers who perform services in a relationship of subordination and in exchange for remuneration.<sup>1</sup> Persons working in furtherance of an apprenticeship contract are equivalent to employees.<sup>2</sup>

At the occasion of each social election held every four years, a Royal Decree is issued defining in detail the procedures to be followed for the elections, and clarifying a number of concepts. The Royal Decree furthermore normally includes a number of equivalencies and exclusions from the employee concept.<sup>3</sup>

1. See, C. Engels, *Het ondergeschikt verband naar Belgisch arbeidsrecht*, Brugge, Die Keure, 1989, 644 pp; C. Engels, ‘Belgium’ in C. Engels & B. Brooks (eds), ‘Employed or self-employed’, *Bulletin of Comparative Labour Relations*, No. 24, Kluwer Law & Taxation Publishers [the Netherlands] 1992, pp. 29–61.
2. Art. 5, *in fine*, CBA No. 62.
3. See, C. Engels, ‘Het begrip werknemer’ in *De sociale verkiezingen 1995*, Peeters, Leuven, 1994, p. 44.

16. The CBA No. 62 provides that Central Management – upon the request of the employee representatives – needs to provide information on the number of employees of the Community-scale undertaking or group of undertakings.<sup>1</sup> The CBA No. 62 only deals with employees and apprentices. It does not mention at all that there are equivalencies and/or exclusions, as is the case for the Belgian social elections. The CBA No. 62 does not foresee any procedure to define the equivalencies and/or exclusions e.g., by Royal Decree.

1. Art. 6, CBA No. 62.

17. The Royal Decree determining the exclusion and/or equivalencies for the Belgian social elections cannot modify the clear text of the collective bargaining agreement itself given the fact that the CBA ranks higher in the overall hierarchy of sources in Belgian labour law.<sup>1</sup>

Similar problems may arise regarding the calculation of interim workers, since the Act of 24 July 1987 on interim work explicitly foresees that interim workers should be taken into account in order to determine the numeric strength of the company. Special powers were granted to the King in order to determine the way this kind of worker should be taken into account in respect of social elections for works councils and health and safety committees.<sup>2</sup> No such powers have yet been granted to the Crown with respect to the European Works Council.

1. Art. 51, Act 5 December 1968, with respect to Collective Bargaining Agreements and Joint Committees, *Official Gazette*, 15 January 1968, subsequently often amended. See, C. Engels, ‘De informatie en consultatie van werknemers in ondernemingen of concerns met een communautaire dimensie’ in *De Europese ondernemingsraad in België*, Leuven, Peeters, 1996, p. 28.
2. Art. 25, Act of July 24, 1987, concerning temporary work, interim work and putting workers at the disposal, *Official Gazette*, 20 August 1987, subsequently often amended.

## 2. Community-scale Undertaking

19. The concept of Community-scale undertakings consists itself of two concepts: (1) undertaking, and (2) the Community scale.

20. The European Works Council Directive refrains from defining the concept of undertaking. The Belgian implementing measure does not define this (core) concept either.

This central concept of ‘undertaking’ therefore remains undefined also at the Belgian level. However, comparing the concept ‘*undertaking*’ to the concept of ‘*establishment*’, equally used in the Directive, it seems that the former concept refers to a legal unit, while the latter would refer to a unit without legal personality.<sup>1</sup>

1. Engels, *op. cit.*, p. 22.

21. The Community-scale quality that is added to the concept of ‘undertaking’ refers both to the numerical size and the territorial scope covered by the undertaking concerned.

22. The undertaking has to employ at least 1,000 workers in all the Member States together. Companies employing less than 1,000 workers are not covered by CBA No. 62 or the Directive, not even when they employ workers in all or almost all Member States. Regardless of their Community or European nature, such companies are not covered.

23. Only those companies of a certain size are targeted, and even then they must have a significant presence in at least two Member States.<sup>1</sup> Very large companies that are predominantly established in one country and with a few or only a handful of employees in another country will most likely not satisfy the territorial criterion.

1. Art. 3, CBA No. 62.

### 3. Group of Undertakings

24. The Belgian implementing measure uses exactly the same definition as the Directive for defining a ‘group of undertakings’. This means that the Community-scale group of undertakings is defined as a group of undertakings with the following characteristics:

- At least 1,000 employees within the Member States
- At least two group undertakings in different Member States and
- At least one group undertaking with at least 150 employees in one Member State and at least one of the group undertakings with at least 150 employees in another Member State.<sup>1</sup>

The same numeric and geographical criteria come into play as for the Community-scale undertakings.

1. Art. 3, CBA No. 62.

25. Taking into account that the Belgian CBA No. 62 uses the same definition to define the Community-scale group of undertakings as the Directive, the incentive for companies to try to avoid establishing an EWC by turning branches into legally independently operating subsidiaries remains.

26. One could think in this respect of the following factual situation of a group that is present in 10 Member States. In the country in which the Central Management is located, the group employs 2,000 workers within one legal entity. In all of the other 9 Member States, the group has three different and separate legal entities, each employing 140 employees and without one exercising a dominant influence over the other. The group as such will not be obliged to establish an EWC, since the group will not satisfy the criteria for recognition as a group with a ‘Community scale’. Community-scale undertakings, the Directive and the CBA No. 62 determine, need at least two undertakings (or group undertakings) employing at least 150 workers in at least two Member States. If the company were structured differently and if it were not established independently operating legal entities in the different Member States, or only one per Member State, it would have satisfied the criteria for the establishment of an EWC. Now it does not, even though it employs almost 6,000 workers:

$$9 \times (3 \times 140) = 3,780 + 2,000 = 5,780 \text{ workers in total.}$$

It is on this basis that a number of *franchising* networks in which more than the required number of workers are employed will probably be able to escape the obligation to establish an EWC.

27. For purely national works council matters, Belgian law tries to neutralize as much as possible the effects of artificially modifying the legal structure of companies, so as to affect their obligation to establish worker consultative organs, such as the Health and Safety Committee or the Works Council. What will be taken into account for the establishment of the Belgian works council will not be the mere legal structure of companies. The decisive criterion is the ‘technical unit of production’. Such a unit can be composed of different legal entities if they seem to form a coherent unit based on a number of economic and social criteria. A relationship of dominance need *not* be established.

In contrast, the Belgian CBA implementing the EWC Directive, respects and does not reach beyond the formal corporate structures.

#### a. Definition of controlling undertaking

28. With regard to the concept of *controlling undertaking* (within the group of undertakings), the CBA establishes, as did the Directive, a presumption of dominance. The ability to exercise a dominant influence shall be presumed when a company, in a relationship with another company, directly or indirectly:

- (a) appoints more than half of the members of that undertaking’s administrative, management or supervisory body; or
- (b) controls a majority of the votes attached to that undertaking’s issued share capital; or
- (c) holds a majority of that undertaking’s subscribed capital.<sup>1</sup>

1. Art. 7, para. 1, CBA No. 62.

29. Where several companies satisfy one of the above-mentioned conditions, the CBA establishes a prevalence of condition (a) over the other conditions. In case no company satisfies criterion (a), the one that satisfies criterion (b) shall be presumed dominant.

30. The series of presumptions established by the CBA is thus clearer than the one foreseen in the Directive, which only states the predominance of criterion (a) over the other criteria. The Belgian provision establishes a clearer hierarchical order. The presumptions that are established are rebuttable. Furthermore, dominance could still be established and proven *in any other way*.

The CBA excludes from the scope of the presumptions, a number of situations, that the Directive also excluded. The excluded situations deal with bankruptcies and insolvencies on the one hand, and merely financial, short term participation, on the other.

#### b. Changes in structure or dimension of the community-scale undertaking or group

31. The only change in structure or level of employment the CBA No. 62 explicitly deals with is the drop of the overall employment below the threshold levels. The Belgian CBA No. 62 regulates the situation in which the number of employees in a Community-scale undertaking or Community-scale group of undertakings declines, thus falling below the threshold levels mentioned above. If the thresholds are no longer reached, the European Works Council (established under Article 6 of the Directive and Article 23 of the CBA No. 62) will be maintained for an interim period of six months.<sup>1</sup>

1. Art. 47, CBA No. 62.

32. If the numeric levels of employment drop below the thresholds – for whatever reason, since no reasons are specified in the CBA No. 62 – while an EWC agreement is still being negotiated the SNB will remain in existence for a transitional period of six months.<sup>1</sup> A Protocol of collaboration between the EWC and Central Management should address the issue of modifications in the structure or dimension of the Community-scale undertaking.<sup>2</sup> The CBA No. 62 does not address the issue itself any further.

1. Art. 47, CBA No. 62.

2. Art. 48, CBA No. 62.

#### 4. Central Management

33. Central Management is defined as the management of the Community-scale undertaking or the management of the controlling undertaking within a Community-scale group of undertakings.<sup>1</sup> The same definition was part of the Directive.<sup>2</sup>

For the purposes of the Directive and the CBA, the actual Central Management located outside the territorial scope of the Directive and CBA, will not be able to act as Central Management.

The actual Central Management will be represented for EWC purposes by either a chosen representative or the management of the undertaking that is employing the greatest number of employees.<sup>3</sup>

1. Art. 3, CBA No. 62.
2. Art. 2, 1, c, EWC Directive.
3. Art. 8, CBA No. 62.

## 5. Merchant Navy Crews

Merchant navy crews are not excluded from the scope of the implementing legislation.

### §3. DEFINITIONS AND NOTIONS

#### I. Information and Consultation

34. The CBA No. 62 does not define the concept of ‘information’. It only defines what should be understood under the notion of consultation. Also in this respect the CBA No. 62 borrows heavily from the Directive. Consultation is defined as the exchange of views and establishment of a dialogue between employees’ representatives and Central Management or any more appropriate level of management.<sup>1</sup> The CBA does not deviate from the provisions of the Directive.

1. Art. 3, CBA No. 62.

#### II. Employee Representatives

35. The EWC Directive leaves the concept of employee representatives undefined and refers to ‘national law and practice’.<sup>1</sup> The section of the CBA No. 62 dealing with definitions does not provide a definition of the term ‘employee representative’ either.

In the Directive, the concept of employee representative is first used with respect to the process leading to the establishment of the SNB and its composition.<sup>2</sup> The CBA also uses the concept in the same context.<sup>3</sup> The CBA does not define who the representatives are from the different countries that could ask Central Management to start negotiations.

As far employee representatives in the SNB is concerned, the CBA No. 62 specifies only how the Belgian employee representatives are to be selected.

1. Art. 2, d, EWC Directive
2. Art. 5, EWC Directive.
3. Art. 9, CBA No. 62.

36. The concept of employee representatives surfaces again when the CBA deals with the composition of the EWC under the subsidiary requirements.<sup>1</sup> It only determines how the Belgian employee representative of the EWC have to be designated.<sup>2</sup>

1. Art. 28, CBA No. 62.
2. Art. 29, CBA No. 62.

37. The CBA does not contain any reference to the concept of employee representative under the law or practice of the other Member States involved with the EWC.

#### §4. ESTABLISHMENT OF AN EWC OR A PROCEDURE

##### I. The Obligation to Negotiate in a Spirit of Co-operation

38. As in the Directive itself, the CBA No. 62 mentions the obligation when dealing with the bargaining between the SNB and Central Management. They should negotiate in a spirit of co-operation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees.<sup>1</sup>

Once established, the EWC and Central Management situated in Belgium shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.<sup>2</sup> The same applies within the framework of a procedure for information and consultation.<sup>3</sup>

1. Art. 16, CBA No. 62.

2. Art. 43, para. 1, CBA No. 62.

3. Art. 43, para. 2, CBA No. 62.

##### II. Responsibility and Initiation of Negotiations

###### A. Responsibility of Central Management

39. The CBA lays the responsibility for establishing an EWC with Central Management established in Belgium:

- (a) if Central Management has itself initiated the procedures; or
- (b) when it was requested to start up the procedures by the workers.<sup>1</sup>

The initiative of 100 workers or their representatives who address a written request to Central Management is required. The workers referred to must be employed in at least two undertakings or establishments in at least two different Member States.<sup>2</sup>

1. Art. 9, CBA No. 62.

2. *Idem*.

40. Central Management needs to start up the procedure within a period of six months following the request, thereafter, the subsidiary requirements (*see infra*) will apply.<sup>1</sup> The employee representatives may require local management to inform them about the identity and location of the Central Management.<sup>2</sup> This may be necessary when Central Management is located outside Belgium or the Member States. If Central Management is not located in a Member State, a representative agent which is located in a Member State will be appointed. In the absence of an appointed agent, then Central Management will be presumed to be the management

of the establishment or undertaking employing the greatest number of employees in a Member State.<sup>3</sup>

1. Art. 9, CBA No. 62.
2. Art. 26, 2, e, CBA No. 62.
3. Art. 8, CBA No. 62.

### *B. One or More EWCs – Procedures*

The agreement between the SNB and Central Management can foresee in the establishment of one or more European Works Councils or information and consultation procedures. The text of the CBA No. 62 foresees this explicitly.<sup>1</sup>

1. Art. 23, para. 1, CBA No. 62.

## **III. The Negotiation of the Agreement**

### *A. Parties to the Agreement and the SNB*

#### 1. Composition of the SNB

41. Each Member State in which the undertaking has an establishment, shall be represented by at least one representative in the SNB.<sup>1</sup> Employing one person in a Member State could suffice for this purpose. The CBA No. 62 does not address the issue of how these non-Belgian representatives to the SNB should be appointed or elected. This is left to the law and custom prevailing in the country concerned.

1. Art. 12, CBA No. 62.

42. Supplementary seats in the SNB are accorded in function of the percentage of employees which the undertaking or group employs in a given country:

- one extra seat, if at least 25 per cent of the workers are employed in the Member State;
- two extra seats, if at least 50 per cent of the workers are employed in the Member State;
- three extra seats, if at least 75 per cent of the workers are employed in the Member State.

43. The CBA No. 62 does not mention a maximum number of seats available in the SNB. The CBA No. 62 does not specify in any way that the SNB should have such a composition as to reflect the different categories of workers (i.e., blue and white-collar-workers) within the Community-scale undertaking or group of undertakings.

#### 2. Third Country Representation with the SNB

44. The CBA No. 62 does not foresee any rules with regard to the representation of third countries (i.e., non EU – UK excluded – or EEA) in its functioning. It

refers to the possibility of such participation in the European Works Council that is established in case the SNB successfully concludes an agreement.<sup>1</sup>

1. Art. 2, *in fine*, CBA No. 62.

### 3. Workers' Representation

45. As far as the election of the Belgian members to the SNB is concerned, the CBA foresees a number of ways in which the Belgian members to the SNB have to be elected:

1. election by the members of the respective Belgian works councils;
2. or in the absence of any works council, by the workers representatives to the health and safety committees; decision-making is by consensus. However if lacking, majority decision-making will take place;
3. In the absence of a works council and a health and safety committee, the joint committee of the industry to which the company belongs, may allow the members of the trade union delegation to choose the Belgian representative to the SNB;
4. in the absence of any such permission, the members of the SNB will be elected directly by the workers.<sup>1</sup>

1. Art. 13, CBA No. 62.

46. Some discussion is ongoing as to the possibility of having persons who do not belong to the work force function as Belgian representatives on the SNB. An unconvincing argument is made that in exceptional circumstances it should be possible to include non-employees.

The advice No. 1, 141 that accompanied the conclusion of the CBA No. 62 stated that 'full-time trade union representatives could thus in exceptional circumstances become members of the SNB'.<sup>1</sup>

The advice of the National Labour Council did not explain how it came to that conclusion. However the reasoning seems to be based on the fact that Article 13 of the CBA No. 62 refers to the concept of the 'employee-members' of the SNB. This concept is then used against the concept of 'employer-members' that is often used in context of Belgian labour law. Joint Committees of undertaking are composed on the one hand of 'employer-members' and on the other hand of 'employee-members'. In the latter context the term 'employee-members' is only used to distinguish the worker representatives from the employer representatives, without any reference to belonging to a given workforce. It makes no sense, however, to refer to the terminology used in relation to Joint Committees, in the context of an SNB for the purpose of negotiating an EWC agreement. In the framework of SNB, no distinction can be made between workers and employer representatives, since the SNB is solely made up of worker representatives.

Article 13 of the CBA No. 62 refers to employee-members of the SNB. It seems to be indicating that the members of the SNB need to be employees of the Belgian workforce of the Community scale undertaking or group. There is furthermore no

contrast to be made with a concept of employer-members since the SNB is solely made up of worker representatives.<sup>2</sup>

The EWC of the subsidiary requirement is solely made up of workers of the Community-scale undertaking or group. It will be called upon to serve the function of the SNB when negotiations are started in order to arrive at an (Article 6 Directive) EWC agreement. In that case all members of the SNB will certainly be employers of the Company.<sup>3</sup>

1. National Labour Council Advice No. 1, 141, 6 February 1996, p. 10.

2. Engels, C., 'De informatie en consultatie van werknemers in ondernemingen of concerns met een communautaire dimensie' in *Oriëntatie*, 1996, 121, 130.

3. Art. 32, CBA No. 62.

47. A meeting with the SNB has to be held as soon as the names of the members of the SNB are transferred to Central Management.

48. Belgian law allows the members of the SNB to hold *pre-meetings* amongst themselves. These pre-meetings should be held prior to the meetings with Central Management.<sup>1</sup>

1. Art. 18, CBA No. 62.

49. The worker representatives can be assisted by *experts*. Belgian law allows Central Management to restrict the coverage of the costs related to experts to one expert only.<sup>1</sup> The way the experts participate in the meeting has to be agreed upon between Central Management and the SNB. Central Management has to bear the costs of the negotiations.

1. Art. 19, CBA No. 62.

50. The CBA No. 62 literally adopts the text of the Directive when it deals with the end result of the bargaining process between the SNB and Central Management:

1. either the SNB decides by a two-thirds majority to stop negotiations, in which case a new demand for negotiations can be lodged only after two years – unless the parties foresee a shorter period of time;<sup>1</sup>
2. or negotiations are unsuccessful during a three year period, so that the subsidiary requirements come into play;<sup>2</sup>
3. or the SNB and Central Management reach an agreement establishing an EWC or a procedure for the information and consultation of employees.<sup>3</sup> The SNB makes decisions by a simple majority vote.<sup>4</sup>

1. Art. 22, CBA No. 62.

2. Art. 26, 3, CBA No. 62.

3. Art. 23, CBA No. 62.

4. Art. 22, CBA No. 62.

51. The CBA foresees the election of *alternates* to the workers who are members of the SNB. They can act when the original (full) member of the SNB is not able to participate in a number of limited circumstances of prolonged absence from

work. One alternate has to be chosen for each country. In case at least 75 per cent of the work force is located in a given Member State a second alternate needs to be chosen.<sup>1</sup> Central Management has to be informed of the names of the members of the SNB. It will in turn inform local management.<sup>2</sup>

1. Art. 14, CBA No. 62.
2. Art. 15, CBA No. 62.

52. When the CBA No. 62 was agreed upon, the social partners expressed the desire that the the Belgian ‘part’ of the SNB, reflect as much as possible the employment within the different establishments or undertakings in Belgium.<sup>1</sup> The CBA No. 62 itself does not specify anything explicitly in this respect.

1. Advice No. 1,141, 10.

#### 4. Legal personality of the SNB

53. The SNB is a body specifically created to negotiate an EWC agreement or procedure.<sup>1</sup> The SNB is meant to come to a written agreement in this respect.<sup>2</sup> In order to be able to properly negotiate, the SNB can hold preparatory meetings.<sup>3</sup>

1. Art. 15, CBA No. 62.
2. Art. 11, CBA No. 62.
3. Art. 18, CBA No. 62.

54. The SNB has the ability to negotiate an agreement with Central Management. However, it may also decide, either to terminate ongoing negotiations or not to open them at all. These decisions need to be taken by a two-thirds majority vote.<sup>1</sup> If negotiations are terminated, the SNB will be dissolved unless it foresees differently in agreement with the Central Management.<sup>2</sup>

1. Art. 20, CBA No. 62.
2. *Idem*.

55. Where the SNB and the Central Management reach an agreement establishing an EWC or procedure, it needs to specify the procedure for its renegotiations.<sup>1</sup> It seems to imply that the SNB will dissolve also in case an agreement is reached.<sup>2</sup>

1. Art. 24, 1, CBA No. 62.
2. Art. 32, CBA No. 62.

56. Furthermore, where an EWC is established under the subsidiary requirements, the CBA No. 62 specifies that after four years of being in existence, an SNB needs to be established in order to negotiate an EWC agreement. It is specifically provided for that the existing EWC will then take the place of the SNB.<sup>1</sup> This implies that also in case of an application of the subsidiary requirements, the SNB does not remain in existence.

1. *See*, S. Kohnenbergen, *De Europese ondernemingsraad in België* (European Works Council in Belgium), VBO, Brussels, 1996, 22.

### *B. Refusal and Cancellation of the Negotiation*

57. If Central Management located in Belgium refuses to call together the SNB within a period of six months after being collectively requested to start negotiations, the subsidiary requirements come into play.<sup>1</sup> The same is true where the SNB could by a two-thirds majority vote decide to stop negotiations or not to start them at all.<sup>2</sup> Such a refusal or cancellation of negotiations by the SNB would result in the inability to request Central Management to compose an SNB for a two year period thereafter.<sup>3</sup> The subsidiary requirements do not come into force in this two year period. The parties, i.e., Central Management and the SNB, could of course foresee differently.

1. Art. 26, CBA No. 62.
2. Art. 20, CBA No. 62.
3. Art. 20, CBA No. 62.

### *C. Expenses and Costs*

58. The CBA No. 62 determines that all expenses related to the negotiations will be carried by the Central Management that is located in Belgium, so that the SNB can perform its duties adequately.<sup>1</sup> This seems to include the right of the SNB to hold, with the approval of the Central Management, pre-meetings.<sup>2</sup> The SNB can be assisted by experts of its choice. Central Management can decide only to pay the costs related to one such expert.<sup>3</sup>

1. Art. 21, CBA No. 62.
2. Art. 18, CBA No. 62.
3. Art. 19, CBA No. 62.

59. If an agreement is reached between the SNB and Central Management, it should specify the financial and material resources to be attributed to the EWC.<sup>1</sup> The protocol of collaboration between Central Management and with the EWC or the Select Committee, should among other things, address the budgetary rules.<sup>2</sup>

1. Art. 24, 5, e, CBA No. 62.
2. Art. 48, CBA No. 62.

### *D. Role of the Trade Unions and of the Employers' Associations*

60. The CBA does not explicitly foresee a role for the trade unions to play. At the same time it should be stressed that the Belgian works council and health and safety committees will play a certain role in the negotiation of the SNB through their power of electing the Belgian representative to the SNB. These committees are almost entirely dominated by the recognized, traditional, most representative trade unions, since they deliver – with the exception of the representation of the managerial personnel – all the candidates for the social elections to the works council and the health and safety committee. It is therefore clear that the (traditional) trade

unions have a major role to play with regard to the Belgian participation in EWCs. The Belgian trade unions furthermore have already reserved themselves an important role to play with regard to Article 13 (Directive) pre-existing agreements.

61. Finally it should be stressed that the same (traditional) Belgian, most representative trade unions and employer's representatives were plainly involved with the implementation of the EWC Directive in Belgian law, since it was they who concluded the CBA No. 62 in the National Labour Council. The role of the traditional trade unions and employer organizations in the European Works Council should thus not be underestimated.

62. It could be stressed here that the social partners within the National Labour Council 'took care' of the obligation to implement the EWC Directive as far as they could, i.e., in relation to matters for which they were competent. Collective Bargaining Agreement No. 62 entered into force on 22 September 1996, which was the deadline set by the Directive. Both the trade unions and the employers' associations (VBO) have published brochures for their members dealing with both the EWC Directive and the CBA No. 62.

#### **IV. Nature, Binding Effect, Form, Language and Interpretation of the Agreement**

##### *A. Nature and Binding Effect*

63. The CBA No. 62 does not specify the true nature of the agreement between Central Management and the SNB, or the establishment of an EWC or a procedure. However, it should be stated that the draft law (further complementing the EWC Directive in Belgian law) foresees that labour courts will become competent to deal with all disputes on the establishment and functioning of the procedures. This implies that the agreements that are reached between the SNB and Central Management are legally enforceable agreements.

##### *B. Form and Language*

64. Both with respect to pre-existing agreements and agreements negotiated with the SNB, the question could be asked whether the agreements have to be drafted in accordance with the applicable linguistic requirements. The applicable Belgian linguistic requirements are different depending on where the seat of the relevant/affected company to whom they will apply is located. The Belgian territory is divided into three sections:

- (1) the Brussels region;
- (2) the Flemish region;
- (3) the Walloon region.

65. In each region a different legal instrument is applicable. The least stringent rules apply in the Brussels region where the co-ordinated laws on the use of language in administrative matters is applicable.<sup>1</sup> These legal provisions are applicable in the 15 communities that form Brussels and in the German-speaking region and in those communities in the Walloon or Flemish region in which a special system of language accommodation is applicable. In these regions the employer addresses its workforce in the ‘language of the employee’. A company located in Brussels is supposed to use either French or Dutch. It has the option to add a translation in one or more languages, if the composition of the workforce warrants it.<sup>2</sup> The original language, however remains French or Dutch.

1. Royal Decree, 18 July 1966, Co-ordinating the laws on the use of language in administrative matters, *Official Gazette*, 2 August 1966.
2. Art. 52, para. 2, Royal Decree, 18 July 1966.

66. Violation of the provisions does not lead to drastic consequences. All relevant documents produced by a company can be retroactively replaced by acts or documents drafted in the correct language. The employer can unilaterally decide to replace the incorrect language version with a correct one. This even holds, for example, for contracts of employment. The employer does not need to obtain (again) the consent and/or signature of the employee.<sup>1</sup>

1. Supreme Court, 16 January 1995, *Sociaal-rechterlijke Kronieken*, 1995, 371.

67. Very different rules apply in the uni-linguistic territories of Flanders and Wallonia where the national Royal Decree mentioned above is not applicable. The Flemish Decree<sup>1</sup> and the Decree applicable in the Walloon region<sup>2</sup> prescribe the use of either Dutch or French depending on the region in which the company is located. If the ‘wrong’ language is used for the act, decision or document, it will be considered null and void. The sanction is very different with the regional decree than with the nationally applicable legislation. The null and void document can be replaced but only having an *ex nunc* (instead of *ex tunc*) effect. Furthermore, the signatures of all parties involved are required.

1. Decree, 19 July 1973, to regulate the use of language for social relations between employers and employees, as well as for the acts and documents prescribed by laws and regulations, *Official Gazette*, 6 September 1973 (partially invalidated by a decision of the Court of Arbitration of 30 January 1986, *Official Gazette*, 12 February 1996, amended by Decree of 1 June 1994, *Official Gazette*, 3 August 1994, partially invalidated by a decision of the Court of Arbitration, No. 72/95, 9 November 1995).
2. Decree, 3 June 1982, relating to the protection of the freedom of the use of the French language in the social relations between the employees and their personnel, as well as the acts and documents of companies prescribed by law and regulations, *Official Gazette*, 27 August 1982, partially invalidated by a decision of the Court of Arbitration of 30 January 1986, *Official Gazette*, 12 February 1986, and by a decision of the Court of Arbitration of 18 November 1986, *Official Gazette*, 10 December 1986.

68. The question is whether the language requirements set out above will apply to the establishment and/or the functioning of the European Works Councils on Belgian territory. Will a company whose European Central Management is located in Flanders, in Wallonia or in Brussels, be obliged to sign an original Dutch or

French version of its EWC agreement, even though the large majority of its European/EU workforce does not understand any Dutch or French?! If meetings are held between Central Management and the SNB or EWC, composed of workers of all of the Member States of the European Union, will the prime language for a company with its Central Management in Antwerp be Dutch? The Flemish Decree foresees a possibility of translation, however, upon two conditions being satisfied:

1. The composition of the workforce needs to justify this; and
2. It should be requested unanimously by the employee representatives within the works council (i.e., national Belgian works council).<sup>1</sup>

One might consider the composition of the workforce of a US company with its chosen Central Management Representative located in Antwerp and with 20 per cent of its European workforce located in Germany, 20 per cent in France, 20 per cent in Denmark, 20 per cent in Italy and finally also 20 per cent in Belgium, could even justify adding a translation in Dutch to the Flemish language version. Furthermore, the rule of the Decree is such that the locally established work council in Antwerp would decide whether a translation should be added. This example already clearly indicates that it would be illogical to apply the language regulations to matters dealing with the European Works Council.

1. Art. 5, Decree, 18 July 1973.

69. The above example deals with the actual functioning and the meetings of the SNB or EWC. The same practical problems do not arise as far as the language versions of the EWC agreement (a pre-existing agreement or an agreement with the SNB) are concerned. Most likely, EWC agreements will be translated into the various languages of the region or country in which parts of the company or group are located. Nevertheless, it remains important to know whether it is possible – in the example given above – to choose English as the prevailing language version of the EWC agreement and to indicate that the other language versions are merely translations. If conflict occurs between the various language versions, the English one would prevail.

70. It is not unlikely that two words, one a literal translation from the other, may in fact have different meanings. An example is the English and French understanding of the word ‘consultation’. It is certain that the respective language regulations will be applicable to the relations (both written and oral) between the establishment of the company located in Belgium and its employees’ representatives. This relationship falls squarely within the employer-employee relationship covered by the respective language requirements. However, the relationship between Central Management and the members of the SNB or the EWC is not an employee-employer relationship as meant by the respective language decrees and regulations. Central Management is not the employer of the employees’ representatives. The employee representatives are as such not employed by Central Management.<sup>1</sup>

Once could even go further and state that Central Management is as such not the employer, not even of the Belgian employees’ representative. Within the framework

of the SNB negotiations and the functioning of the EWC, Central Management is not acting in its capacity as a direct employer. It seems that the same reasoning is present in the draft acts that are supplementing the CBA No. 62 in order to reach full implementation of the Directive under Belgian law.

1. Chamber of Representatives, Doc. 1128/1–96/87, session, 1436–97, 10 July 1997, p. 6.

71. The Law on Accompanying Measures foresees that Central Management is equated to the employer as far as the violation of CBA No. 62 is concerned. Such an explicit equivalence was indispensable in order to be able to impose the sanctions foreseen for employers that violate collective bargaining agreements that are rendered generally binding. The Parliamentary Act of 5 December 1968<sup>1</sup> especially foresees criminal sanctions for employers violating provisions of such collective bargaining agreements.

1. Acticle 5 December 1968 with respect to Collective Bargaining Agreements and Joint Committees, *Official Gazette*, 15 January 1969, subsequently often amended.

72. The Belgian legislation must have considered Central Management not to be covered by the concept of ‘employer’ explicitly foreseen in the Act of 5 December 1968 on collective bargaining agreements. If Central Management is clearly included in the concept, an explicit equivalence would have been superfluous. A similar equivalence is also foreseen in the Law regarding the imposition of administrative fines instead of criminal sanctions. Also in this respect the equivalence is limited in context to the violation by Central Management of the provisions of the CBA No. 62. This means at the same time, that for all other Parliamentary Acts, Decrees, royal Decrees, regulations etc., the same equivalence does *not* hold. With respect to the language requirements that are applicable in Belgium, Central Management is not therefore equated to the employer and is thus not subject to it.

73. Apart from this legal argument, there is the practical argument already made above. The establishment of an EWC and its functioning is clearly a matter of a transnational nature not to be counteracted by parochialism with regard of the language requirements that make sense only for a minor part of the overall workforce of the community-scale undertakings or group.

74. Application of the Flemish or Walloon Decree on the use of language to a pre-existing agreement concluded in English could have serious undesirable consequences. If a pre-existing agreement has been concluded only in English for a group whose Central Management is located in Antwerp, and if at the same time the Flemish language Decree might apply, the agreement would be null and void. No retroactive replacement would be allowed. This would mean that the group concerned would all of a sudden be confronted with a situation where a valid pre-existing agreement no longer exists. It could then be forced to establish a new agreement by establishing an SNB and going through the complete negotiation procedure.

75. It should be mentioned here that a number of the pre-existing agreements that are subject to Belgian law do indeed state that English will be the leading and

prevailing language both for the text of the agreements and for the actual functioning of the EWC.<sup>1</sup> A good example of this is the Petrofina agreement which states that ‘the official text of the agreement is English. In case of differences between the English text and a translation thereof into another language, the English text shall prevail.’<sup>2</sup> ‘English shall also be the main language for the meetings of the Eurodialogue meetings’.<sup>3</sup> All documents that will be circulated will be drawn up in English. Translation of documents may be provided to an employees’ representative until s/he obtains a sufficient knowledge of English. The agreement specifically states that: ‘In order to allow for Eurodialogue Representatives to have sufficient knowledge of English, the local management shall organize, at the Company’s expense, courses in English for the Eurodialogue representatives who need such courses’.<sup>4</sup>

1. *See*, agreement, Part III.

2. Petrofina agreement, *see* Part III, 13, 1, Art. 22.

3. *Idem*, Art. 23.

4. *Idem*, Art. 13.

76. It could finally also be mentioned that a large majority of the pre-existing agreements deal with Central Management or its representative agent located in Brussels and therefore subject to the national linguistic requirements.

### *C. Interpretation of the Agreement*

77. The interpretation of the text of an agreement has to take place against the background of the EWC Directive and its implementing legislation. The latter itself has, according to case law of the European Court of Justice, to be interpreted in the light of the Directive it transposes into national law.

78. This interpretation self-evidently lies in the first place with the signatory parties to the Agreement and with those in the EWC or procedure. In the case of conflict, it will be the Belgian labour courts that have to interpret and construct the agreement. The draft Act of Parliament will explicitly make the Belgian labour courts competent to deal with any dispute relating to the establishment and/or functioning of the EWC or procedure. A procedure dealing with the issue of confidential information will take place before the President of the Labour Court, instead of the Labour Court itself.

It should be mentioned here that one of the Parliamentary Acts is technically drafted in such a way that it would make provisions on arbitration prior to the conflict arising unenforceable. The Act will add a specific competence to grant the labour courts a new competence by amending the articles of the Code of Civil Procedure. It adds a 6th paragraph to Article 582.<sup>1</sup>

1. Act of 23 April 1998 on Various Provisions, Art. 5.

79. The Code of Civil Procedure holds that all disputes that fall within the scope of the Articles 578 to 583 included, dealing with the competencies of the labour courts cannot be the object of an arbitration clause prior to a dispute arising.<sup>1</sup> Given the fact that the agreement between the SNB and Central Management is not

a collective bargaining agreement as specified in the Act of 5 December 1968 on joint committees and collective bargaining agreements, the court should not treat them in the same way.

1. Art. 1678, §2 Code of Civil Procedure.

## V. Content of the Agreement

### A. Scope

80. The CBA No. 62 allows the establishment of one or more EWC or one or more procedures.<sup>1</sup> The agreement establishing an EWC should foresee which undertakings are covered by it.<sup>2</sup> In principle it should be all companies over which Central Management can exercise a dominant influence. In case more than one EWC is established, a clear definition of which company within the Group is covered by which EWC will become of even more importance. In relation to the procedure established as an alternative to the EWC, nothing is mentioned as far as the scope of the agreement setting up the procedure, is concerned.<sup>3</sup> One can see no reason, however, to make a distinction between the EWC or the alternative procedure. In both cases one needs to know who is covered by the agreement.

1. Art. 23, CBA No. 62.
2. Art. 24, 1, CBA No. 62.
3. Art. 25, CBA No. 62.

### B. Establishment of an EWC

81. The agreement on the establishment and operation of the European Works Council(s) is the result of a majority vote within the SNB.<sup>1</sup> It shall determine at least:

1. the undertakings covered by the agreement;
2. the composition of the European Works Council, the number of members, as well as the allocation of the seats in the council and the term of the mandates;
3. the functions and the procedure for the information and consultation of the European Works Council;
4. the venue, frequency and duration of the meetings of the European Works Councils;
5. the financial and material resources to be allocated to the European Works Council for its operation;
6. the duration of the agreement and the procedure for its renegotiation.<sup>2</sup>

1. Art. 22, CBA No. 62.
2. Art. 24, CBA No. 62.

82. The CBA No. 62 provides for a supplemental agreement to the main agreement between the SNB and Central Management. Such an agreement must be

concluded between the European Works Council itself (or the select committee) and Central Management.<sup>1</sup> This agreement is referred to as the ‘Protocol of Collaboration’.

A number of practical issues dealing with the organization of meetings of the EWC and the select committee have to be regulated in the protocol:

- the chairmanship;
- the secretariat;
- the agenda of the meetings;
- convening of special meetings;
- the communication of reports;
- the modifications in the structure or dimension of the Community-scale undertaking;
- the presence of experts at the meetings;
- the budgetary rules;
- translations and interpretations.<sup>2</sup>

The Directive itself does not require any such agreement or protocol.

Either the agreement between the SNB and Central Management or the Collaboration Agreement just mentioned needs to lay down rules to apply in case of changes in the structure or dimension of the Community-scale undertaking or group.<sup>3</sup>

1. Art. 48, CBA No. 62.

2. Art. 48, CBA No. 62.

3. Art. 46, CBA No. 62.

83. If any such changes would result in the numerical thresholds of the workforce no longer being reached, the CBA No. 62 states that the European Works Council or procedure that resulted from the negotiations between Central Management and the SNB, will continue to exist for an interim period of six months.<sup>1</sup> Thereafter, it will automatically disappear.

1. Art. 47, CBA No. 62.

### *C. Establishment of a Procedure*

84. The SNB and Central Management may decide not to establish a European Works Council in Belgium, but establish one or more information and consultation procedures instead.<sup>1</sup> The agreement by which such procedures are established needs to determine:

- (a) the issues that are the object of information and consultation.  
The information shall relate in particular to transnational questions significantly affecting the interests of the employees; and
- (b) the methods according to which the employee representatives shall have the right to meet in order to discuss the information they received.<sup>2</sup>

1. Art. 25, para. 1, CBA No. 62.

2. Art. 25, para. 2, CBA No. 62.

## Concluding Remarks

145. The EWC Directive does not take away any of the rights and privileges of the other employee consultative organs, such as the national works councils and the health and safety committee.

The already existing Belgian works councils and/or health and safety committees are established at the level of technical unit of production. Such a technical unit of production does not necessarily coincide with the company legal structure. The technical unit of production is established on the basis of social and economic criteria that stress the unity within the technical unit of production.

146. It is possible for such a unit of production to be composed of more than one separate legal entity when the different legal entities show a sufficient degree of coherence (on the basis of social and economic criteria) for them to be treated as one unit for the purpose of the establishment of a works council or health and safety committee.

In order for the different legal entities to be re-grouped ‘within one technical unit of production’, it is absolutely not necessary to establish a relationship of dominance of one legal entity over the other, an issue of quintessential importance for the establishment of a European Works Council.

147. Under Belgian labour law there is no such thing as a groups works council. The works council, on the basis of purely national law is entitled to receive information that would surpass the technical unit of production for which the works council was established. The (Belgian) works council may therefore be entitled to receive information on the larger entity of the group to which the unit for which it was established, belongs.

The European Works Council will add ‘something’ to the existing information and consultation duties given the fact that the Belgian participants in the EWC will get to meet their European counterparts and get to be informed and consulted by Central Management.

148. The Belgian CBA No. 62 explicitly foresees some interaction between the Belgian European Works Council member and national workers’ representatives. The local (Belgian) employees’ representative should be informed by the (Belgian) European Works Council members of the content and result of the information and consultation procedures. The necessary time and means need to be provided for this purpose.<sup>1</sup>

A further connection is provided by the fact that the Belgian members to the SNB are primarily elected by and among either the members of the (Belgian) works council or the health and safety committee.<sup>2</sup> It is clear that in practice, the Belgian representatives to the contractual EWC will most likely also be chosen among the members of the local works council or health and safety committee.

The Belgian members to the statutory EWC under the subsidiary requirements are elected the same way as the Belgian members to the SNB.

1. Art. 44, CBA No. 62.
2. Art. 13, CBA No. 62.

*149.* The social partners that concluded the CBA No. 62 remained very faithful to the concepts and principles of the Directive itself, as construed by the Working Party.

This statement also holds with regard to the definition of one of the core concepts of the Directive, namely the definition of the concept of ‘consultation’.

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## Part II. Documents

### 1. Collective Bargaining Agreement No. 62 of 6 February 1996<sup>1</sup>

Translated by J.M. Didier Associates SA.

COLLECTIVE AGREEMENT NO. 62 OF 6 FEBRUARY 1996 ON THE ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR A PROCEDURE IN COMMUNITY-SCALE UNDERTAKING AND COMMUNITY-SCALE GROUPS OF UNDERTAKINGS FOR THE PURPOSES OF INFORMING AND CONSULTING EMPLOYEES.

In view of the Act of 5 December 1968 on collective labour agreements and joint commissions.

In view of the Directive of the Council of the European Union 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.

In view of Opinion No. 1,141 expressed by the National Labour Council on 6 February 1996 concerning the adaptation of Belgian legislation to the above-mentioned Directive of the European Council.

Whereas the information and consultation of employees must be implemented in Community-scale undertakings and Community-scale groups of undertakings.

Whereas this information and consultation must be implemented by establishing a European Works Council or setting up a procedure of information and consultation.

The following interprofessional organisations of employers and employees:

- The Federation of Undertakings of Belgium;
- The national organizations of middle classes, recognized in accordance with the Acts on the organization of middle classes, as consolidated on 28 May 1979;
- De Belgische Boerenbond (Farmers' organisation);
- The National Federation of Agricultural Trade Unions;
- The Alliance Agricole Belge (Farmers' organisation);
- The Belgian Confederation of Christian Trade Unions;
- The General Labour Federation of Belgium;
- The General Group of Liberal Trade Unions of Belgium;

1. Rendered generally binding by Royal Decree of 22 March 1996 (Official Gazette, 10 April 1996, p. 8465; translated by J.M. Didier Associates SA.).

## **Collective Bargaining Agreement of 6 February 1996**

have concluded on 6 February 1996, within the Belgian Labour Council, the following collective labour Agreement.

### **Chapter I. Objective**

**Article 1.** The objective of this Agreement is to implement Directive 94/45/EC of the Council of the European Union 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.

### **Chapter II. Purpose**

**Article 2.** A European Works Council or an information and consultation procedure shall be established according to the procedure provided by this Agreement, in Community-scale undertakings and Community-scale groups of undertakings which are meeting the obligations laid down in Article 3.

Notwithstanding paragraph 1, where a Community-scale group of undertakings comprises one or more undertakings or one or more groups of undertakings, the European Works Council shall be established at the level of the group unless otherwise agreed.

The council or councils or the information and consultation procedure or procedures, shall cover the whole of the Community-scale undertaking or Community-scale group of undertakings. This obligation concerns only undertakings and establishments situated in the Member States, except if the agreement referred to in Chapter VII, Section III, covers States other than the Member States.

### **Chapter III. Definitions and Scope**

**Article 3.** For the purposes of this Agreement.

- ‘Community-scale undertaking’ means any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two different Member States;
- ‘group of undertakings’ means a controlling undertaking and its controlled undertakings;
- ‘Community-scale group of undertakings’ means a group of undertakings with the following characteristics:
  - at least 1,000 employees within the Member States,
  - at least two group undertakings in different Member States, and
  - at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

## Collective Bargaining Agreement of 6 February 1996

- ‘Central Management’ means the management of the Community-scale undertaking or the management of the controlling undertaking, as defined in Article 7, within a Community-scale group of undertakings;
- ‘Consultation’ means the exchange of views and establishment of dialogue between employees’ representatives and Central Management or any more appropriate level of management;
- ‘European Works Council’ means the council established in accordance with either Article 23 or the subsidiary requirements in Chapter VIII, with the purpose of informing and consulting employees;
- ‘Special negotiating body’ means the body established in accordance with Article 10 to negotiate with the Central Management regarding the establishment of a European Works Council or a procedure for informing and consulting employees;
- ‘Member States’ means the Member States of the European Union and the other Member States of the European Economic Area, concerned by the Directive.

### Chapter IV. Agreements in Force

**Article 4.** Without prejudice to the next to last paragraph, Community-scale undertakings and Community-scale groups of undertakings in which there is already before 23 September 1996 an agreement covering the entire workforce concerned by this Agreement, providing for the transnational information and consultation of employees, are not subject to the obligations arising from this Directive.

Are presumed to be agreements covering the entire workforce concerned by this Agreement and providing for the transnational information and consultation of employees, the agreements concluded in writing:

1. either with national representative organizations of employees which are entitled in the Member States concerned to conclude collective agreements and which are represented in the group, undertaking or establishment;
2. or with the majority of the employees’ delegates, who are members of the information and consultation body or bodies provided by the national rules of the Member States concerned;
3. or directly with the majority of employees, when in a given Member State, there is no representation of employees in the establishment(s) and/or in the undertaking(s);
4. or with European organizations of employees which have been endorsed by the trade union organisations represented in the establishment or undertaking;
5. or any other agreement the validity of which would be acknowledged by representative organisations of employees in the meaning of Article 14, §1 (paragraph 2, 4, a) of the Act of 20 September 1948 concerning the organization of the economy, represented in the undertakings concerned.

When the agreements referred to in the above paragraphs expire, the parties to those agreements may decide jointly to renew them.

Where this is not the case, the provisions of this Agreement shall apply.

## Collective Bargaining Agreement of 6 February 1996

### Chapter V. Determination of the Number of Employees

**Article 5.** For the purposes of this Agreement, the prescribed thresholds for the size of the work force shall be based on the average number of employees, including part-time employees, in the establishments and undertakings situated in Belgium who are employed during the two years prior to the day of the request of initiating the negotiation referred to in Article 9.

The average number of employees employed in Belgium shall be calculated in accordance with the regulation concerning social elections adopted in accordance with Article 14, §1, alinea 1 of the Act of 20 September 1948 regarding the organization of the economy.

For the purposes of this provision, employees shall be understood as individuals employed in Belgium under a contract of employment or apprenticeship.

**Article 6.** Once per calendar year and upon request from the employee representatives, information on the number of employees of the Community-scale undertaking or Community-scale group of undertakings shall be made available by the Central Management.

### Chapter VI. Controlling Undertaking

**Article 7.** For the purposes of this Agreement, ‘controlling undertaking’ means an undertaking which can exercise a dominant influence over another undertaking, by virtue, for example, of ownership, financial participation or the rules which govern it.

The exercise of a dominant influence shall be presumed, until proof to the contrary, when an undertaking directly or indirectly: (*See* 1994 Directive – Article 3(2))

- (a) can appoint more than half of the members of the undertaking’s administrative management or supervisory body, or
- (b) controls a majority of the votes attached to that undertaking’s issued share capital, or
- (c) holds a majority of that undertaking’s subscribed capital.

When several undertakings in a Group satisfy one of the criteria laid down in the second paragraph, the undertaking which satisfies the criterion (a) shall be presumed to exercise the dominant influence. If no undertaking satisfies the criterion (a), the undertaking which satisfies criterion (b) shall be presumed to exercise the dominant influence.

For the application of the second paragraph, the rights held by the controlling undertaking as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a

## Collective Bargaining Agreement of 6 February 1996

Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

Notwithstanding paragraphs 1 and 2, and undertaking shall not be a 'controlling undertaking' with respect to another undertaking in which it has holdings, where the former undertaking is an undertaking referred to in Article 3, para. 5, point a) or c) of Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the control of concentration between undertakings.

### Chapter VII. Establishment of a European Works Council or a Procedure on Information and Consultation of Employees

#### *Section I. Responsibility for Establishment*

**Article 8.** The central management shall be responsible for the implementation of the procedure for the establishment of a European Works Council or of an information and consultation procedure in the undertakings or groups referred to in Article 3, in accordance with the provisions laid down in this Chapter, as from time this management has itself initiated this procedure or if the request therefore has been presented by the employees or their representatives.

Where the Central Management is not situated in a Member State, it shall appoint a representative agent in one of the Member States.

In the absence of such a representative, the Central Management shall be presumed to be represented by the management of the establishment or undertaking employing the greatest number of employees in a Member State.

For the purposes of this Agreement, the representatives referred to in the above paragraphs, shall be regarded as the central management.

#### *Section II. Special Negotiating Body*

##### Sub-Section I. Initiation of the Procedure

**Article 9.** The procedure for the establishment of a European works council or an information and consultation procedure shall be initiated:

- either at the initiative of the central management, situated in Belgium, which shall inform thereof the local managements and the employee representatives,
- or upon the written request of a hundred employees or of their representatives. This request shall be addressed to the Central Management defined in accordance with Article 3. The employee representatives may require the local management to inform them about the identity and the location of the Central Management.

The hundred employees referred to in the above paragraph, must be employed in at least two establishments or two undertakings situated in at least two different Member States.

## Collective Bargaining Agreement of 6 February 1996

**Article 10.** When the procedure is started, a special negotiating body shall be established.

### Sub-section II. Competence of the Special Negotiating Body

**Article 11.** The Special Negotiating Body shall have the task of determining, with the Central Management, by written agreement, the scope, composition, functions and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

### Sub-section III. Composition of the Special Negotiating Body

**Article 12.** The employees in each Member State in which the Community-scale undertaking has one or several establishments, or in which the Community-scale group of undertakings has several undertakings, shall be represented by one member in the Special Negotiating Body.

Additional mandates of members shall be granted according to the following rules:

1. one additional mandate if at least 25 per cent of the employees in the Community-scale undertaking or in the Community-scale group of undertakings are employed in the Member State concerned.
2. two additional mandates if at least 50 per cent of the employees in the Community-scale undertaking or in the Community-scale group of undertakings are employed in the Member State concerned.
3. three additional mandates if at least 75 per cent of the employees in the Community-scale undertaking or in the Community-scale group of undertakings are employed in the Member State concerned.

### Sub-section IV – Designation of the Employee-members employed in Belgium, of the Special Negotiating Body, and Creation of a Reserve List

**Article 13.** The provisions in this article concern the Special Negotiating Body established in Belgium or in another Member State.

The employee-members of the special negotiating body employed in Belgium shall be *appointed by and among* the employee representatives employed in Belgium and members of Works Councils. In the absence of agreement between these representatives, the employee-members of the Special Negotiating Body shall be appointed by the majority of their number.

In the absence of a Works Council, the employee-members of the Special Negotiating Body shall be appointed by and among the employee representatives, members of committees for the safety, hygiene and embellishment of workplaces. In the absence of agreement between these representatives, the employee-members of the special negotiating body shall be appointed by the majority of their number.

## Collective Bargaining Agreement of 6 February 1996

In the absence of a Works Council and of a committee for the safety, hygiene and embellishment of workplaces, each joint committee may authorize the trade union delegations in the undertakings or establishments for which this joint committee has a sectoral competence, to designate the employee-members of the Special Negotiating Body.

In the absence of a European Works Council or of a committee for the safety, hygiene and embellishment of workplaces in the undertakings or establishments situated in Belgium, and in the absence of authorization by a joint committee, the employees of the undertaking or establishment shall be entitled to elect or appoint the employee-members of the Special Negotiating Body.

**Article 14.** In order to *ensure continuity* within the special negotiating body in the cases of *death, prolonged work ability, maternity or departure from the undertaking or establishment, or of resignation of a member*, a reserve list shall be established.

The individuals on such reserve list shall be appointed according to the same procedure as for the members of the Special Negotiating Body.

This list shall be composed as follows:

- one replacement per Member State;
- one additional replacement where at least 75 per cent of the employees of the Community-scale undertaking or Community-scale group of undertakings are employed in the State concerned.

**Article 15.** The Central Management situated in Belgium shall be informed of the names of the members of the Special Negotiating Body, and of the names on the reserve list. It shall inform the managements of the establishments of the Community-scale undertaking and the managements of the undertakings making up the Community-scale group of undertakings.

### Sub-section V. Spirit of Co-operation

**Article 16.** The central management situated in Belgium and the special negotiating body must negotiate in a spirit of co-operation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees covered by this Agreement.

### Sub-section VI. Meetings

**Article 17.** Once informed of the names of the members of the Special Negotiating Body, the Central Management situated in Belgium shall convene a first meeting with the Special Negotiating Body. It shall inform the managements of the establishments of the Community-scale undertaking and the managements of the undertakings making up the Community-scale group of undertakings.

## Collective Bargaining Agreement of 6 February 1996

**Article 18.** The Special Negotiating Body is entitled to organize, with the agreement of the central management situated in Belgium, preparatory meetings prior to the meetings with the central management.

### Sub-section VII. Operation

**Article 19.** *The Special Negotiating Body may be assisted by experts of its choice.*

The Special Negotiating Body shall agree with the Central Management situated in Belgium the *practical arrangements for the attendance of experts* to meetings.

The financing by the Central Management situated in Belgium shall be limited to one expert only.

**Article 20.** The Special Negotiating Body may decide to terminate the negotiations with the central management situated in Belgium, or not to open them.

Such decision shall be taken by a two-thirds majority of its members.

Except if otherwise agreed between the Special Negotiating Body and the Central Management situated in Belgium, the Special Negotiating Body shall be dissolved.

When such a decision is taken the subsidiary requirements shall not apply.

A new request to establish the Special Negotiating Body may be made at the earliest two years after the above mentioned decision, unless the parties concerned lay down a shorter period.

**Article 21.** The expenses relating to the negotiations shall be borne by the Central Management situated in Belgium so as to enable the Special Negotiating Body to carry out its tasks in an appropriate manner.

**Article 22.** The decisions of the Special Negotiating Body shall be taken by the majority of its members.

### *Section III – Agreement on the Establishment of a European Works Council or an Information and Consultation Procedure in Belgium*

**Article 23.** The agreement shall concern the establishment of one or several European Works Councils or, of one or several information and consultation procedures.

This agreement shall be in writing.

**Article 24.** The agreement on the establishment and the operation in Belgium of one or several European works councils shall determine at least:

1. the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;
2. the composition of the European Works Council, the number of members, as well as the allocation and term of mandates;

## Collective Bargaining Agreement of 6 February 1996

3. the functions and the procedure for the information and consultation of the European Works Council;
4. the venue, frequency and duration of meetings of the European Works Council;
5. the financial and material resources to be allocated to the European Works Council for its operation;
6. the duration of the agreement and the procedure for its renegotiation.

**Article 25.** The Central Management and the Special Negotiating Body may agree to establish in Belgium one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate:

1. the issues subject to information and consultation. This information shall relate in particular to transnational questions which significantly affect the interests of employees of the Community-scale undertaking or Community-scale group of undertakings.
2. the methods according to which the employee representatives shall have the right to meet to discuss the information conveyed to them.

### Chapter VIII. Subsidiary Requirements

#### *Section I. Implementation of the Subsidiary Requirements*

**Article 26.** The subsidiary requirements concerning the establishment in Belgium of a European Works Council shall apply when:

1. the Central Management and the Special Negotiating Body so decide, or
2. the Central Management refuses to convene the Special Negotiating Body within six months of the request introduced according to Article 9, or
3. the Central Management and the Special Negotiating Body do not include an agreement within a three-year period from the date when the procedure has been started in accordance with Article 9, except if the absence of agreement results from a decision as referred to in Article 20.

#### *Section II. Competence of the European Works Council*

**Article 27.** The competence of the European Works Council shall be limited to information and consultation on issues which concern the whole of the Community-scale undertaking or of the Community-scale group of undertakings, or at least two group establishments situated in different Member States.

This competence shall be limited to the establishments and undertakings situated in the Member States.

## 2. Law of 23 April 1998 Laying Down Accompanying Measures

*Law laying down accompanying measures concerning 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.*<sup>1</sup>

ALBERT II, KING OF BELGIUM: ( . . . )

The Chambers have adopted and We sanction the following:

Our Minister for Economic Affairs, Our Minister for Employment and Labour and Our Minister for Justice, are assigned the responsibility of presenting, under Our name, to the legislative Chambers and of bringing in the Chamber of Representatives this draft law the content of which follows:

### **Chapter I: General provision**

**Article 1.** This law governs a subject matter referred to in Article 78 of the Constitution.

### **Chapter II: Scope of Application and definitions**

**Article 2.** This law shall apply to European Works Councils and to procedures of information and consultation of employees, established in accordance with Directive 94/45/EC of the Council of 22 September 1994 concerning 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, as well as the procedure for their establishment.

**Article 3.** For the application of this Law, the following definitions shall apply:

1. 'Community-scale undertaking' means any undertaking with at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States;

1. Official Gazette, 21 May 1998, p. 16414; translated by J.M. Didier Associates SA.

2. 'Group of undertakings' means a controlling undertaking and its controlled undertakings;
3. 'Community-scale undertakings' means a group of undertakings with the following characteristics:
  - at least 1,000 employees within the Member States;
  - at least two group undertakings in different Member States; and
  - at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State.
4. 'Controlling undertaking' means the undertaking which may exercise a dominant influence over another undertaking.
5. 'Central Management' means the Central Management of the Community-scale undertaking, or in the case of a Community-scale group of undertakings, of the controlling undertaking.
6. 'Member State' means the Member States of the European Community and of the other States of the European Economic Area covered by the Directive 94/45/EC of 22 September 1994.

### **Chapter III: Applicable Law**

**Article 4.** The rules concerning the notion of Community-scale group of undertakings and the rules concerning the determination of the undertaking which exercises control within a Community-scale group of undertakings, shall be subject to the law of the Member State whose law governs the controlling undertaking concerned.

Where the law governing the controlling undertaking is not that of a Member State, the applicable law shall be the law of the Member State within whose territory its representative agent is situated, or in the absence of such representative, the law of the Member State within whose territory the Central Management of the undertaking of the group, which employs the greatest number of employees.

**Article 5.** The rules concerning the establishment and operation of a European Works Council or of a procedure for the information and consultation of employees in Community-scale undertakings or groups of undertakings, shall be governed by the law of the Member State where the Central Management of the undertaking or group or its representative is situated.

**Article 6.** The rules concerning the calculation of the number of employees employed, the notion of employees and the designation of employee representatives, shall be governed by the law of the Member State where the establishments or the undertakings concerned are situated.

**Article 7.** The law which governs the rules relating to the status of the employee representatives is the law of the Member State where their employer is located; in the case of conflict of laws, this law shall be determined in accordance with the Convention on the law applicable to contractual obligations adopted in Rome on 19 June 1980.

## **Law on Accompanying Measures, 23 April 1998**

### **Chapter IV: Confidential Information**

**Article 8.** The Central Management shall be authorized with regard to the members of the Special Negotiating Body, of the European Works Council or the employees' representatives who receive pieces of information in the framework of a procedure of information and consultation set up instead, as well as to the experts who are possibly assisting them:

1. to indicate at the time of their communication, the confidential character of certain pieces of information the circulation of which is likely to seriously harm the undertaking; delegates are obliged not to reveal them;
2. not to transmit certain pieces of information, the list of which shall be laid down by the King, when their nature is such that, according to objective criteria, their transmission would seriously harm the functioning of the undertaking or would be prejudicial to it.

### **Chapter V: Protection in the case of dismissal**

**Article 9.** The employees' representatives in Special Negotiating Bodies and European Works Councils, as well as the employees' representatives exercising their mission in the framework of information and consultation procedures which, as the case may be, have been set up instead of European Works Councils, as well as their replacements, shall enjoy the particular dismissal régime laid down by the law of 19 March 1991 laying down a particular dismissal régime for the delegates of personnel to Works Councils and to committees for the safety, hygiene and embellishment of the working places, as well as for the candidates as personnel delegates. This particular régime shall apply to them for any dismissal occurring during a period of time starting on the 30th day preceding their designation and ending when their mandate ends.

### **Chapter VI: Surveillance and sanctions**

**Article 10.** Without prejudice to the powers of officers of judiciary police, the officials appointed by the King shall supervise the respect to the provisions relating to European Works Councils as well as to procedures of information and consultation which, as the case may be, have been set up instead of a European Works Council.

These officials shall exercise this surveillance in accordance with the provisions in the law of 16 November 1972 concerning labour inspection.

**Article 11.** Article 56 of the law of 5 December 1968 concerning collective bargaining agreements and joint committees is completed with the following paragraph:

‘With respect to offences to provisions in collective bargaining agreements which have been rendered generally binding by Royal Decree concerning the establishment of a European Works Council or of a procedure in Community-

## Law on Accompanying Measures, 23 April 1998

scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, the Central Management of the Group of undertakings or its representative, referred to in the collective bargaining agreements, is assimilated to the employer.’

**Article 12.** Article 1, 14 of the law 30 June 1971 concerning administrative fines applicable in case of offence to certain labour laws is completed as follows:

‘With respect to offences to provisions in collective bargaining agreements which have been enforced by Royal Decree concerning the establishment of a European Works Council or of a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, the Central Management of the Group of undertakings or its representative, referred to in the collective bargaining agreements, is assimilated to the employer.’

**Article 13.** Article 458 of the Penal Code shall apply to any member of the Special Negotiating Body, of the European Works Council, of the employees’ representatives exercising their mission in the framework of an information and consultation procedure which, as the case may be, has been set up instead of a European Works Council, as well as to the designated experts, who have disclosed confidential information likely to be prejudicial to the undertaking or to seriously harm the functioning of the undertaking seriously.

### Chapter VII: Entry into force.

**Article 14.** This law shall produce its effect on 22 September 1996, except Articles 11 to 13 which shall come into force the day of their publication in the Belgian Official Gazette.

### 3. Law Laying down Various Provisions, 23 April 1998

*Law laying down various provisions concerning 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.*<sup>1</sup>

ALBERT II, KING OF BELGIANS: ( . . . )

The Chambers have adopted and We sanction the following:

#### **Chapter I: General provision**

**Article 1.** This law governs a subject matter referred to in Article 77 of the Constitution.

#### **Chapter II: Scope of application**

**Article 2.** This law shall apply to European works councils and to procedures of information and consultation of employees, established in accordance with directive 94/45/EC of the Council of 22 September 1994 concerning 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, as well as to the procedure for their establishment.

#### **Chapter III: Disputes concerning confidential information**

**Article 3.** Any dispute resulting from the application of Article 8 of the law of 23 April 1998 laying down accompanying measures concerning 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 shall come under the competence of the chairman of the labour court at the place of the office of the central management or of its representative. The chairman shall decide as a last resort in accordance with the procedure in

1. Official Gazette, 21 May 1998, p. 16413; translated by J.M. Didier Associates SA.

Articles 1035, 1036, 1038 and 1041 of the Judiciary Code. Debates shall be held in “Chambre de Conseil” (i.e. “in camera” – not open to the public).

Where the claim is introduced on the basis of Article 8-2° of the same law or on the basis of Article 8-1° of the same law by another person than those referred to in Article 8 of the same law, the chairman of the labour court shall determine, in the light of the opinion of the “auditeur du travail” (i.e. public prosecutor in social affairs) which piece of information may be disclosed. Only the chairman of the court and the “auditeur du travail” shall be privy to the entire dossier.

The report of the Public Prosecutor and the decision shall not contain any confidential pieces of information.

#### **Chapter IV: Judicial Proceeding**

**Article 4.** The representative organizations of employees, in the meaning of Article 14, §1er, paragraph 2, 4°, a) and b), of the law of 20 September 1948 concerning the organization of the economy, may initiate with labour jurisdictions a proceeding in order to settle any dispute relating to the application of the law of 23rd April 1998 laying down accompanying provisions concerning 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.

**Article 5.** Article 582 of the Judiciary Code, as amended by the laws of 27 June 1969, 30 June 1971 and by the Royal Decree No. 424 of 1 August 1986, shall be supplemented as follows; “6° disputes concerning the establishment and operation of European Works Councils as well as procedures for information and consultation doing instead, to the exception of the special procedure set up by Article 3 of the law of 23 April 1998 laying down various provisions concerning 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”.

**Article 6.** Article 764, 10° of the Judiciary Code, as amended by the law of 3 August 1992, shall be replaced by the following text:

“10° the claims provided in Articles 580, 581, 582, 1°, 2° and 6° and 583.”

**Article 7.** An Article 587ter drafted as follows, shall be inserted in the Judiciary Code:

“The chairman of the labour court shall decide on claims introduced in accordance with Article 3 of the law of 23 April 1998 laying down various provisions concerning the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees”.

#### **Chapter V: Entry into force**

**Article 8.** This law shall come into force on 22 September 1996.

## **Royal Decree of 10 August 1998**

### **4. Royal Decree in Furtherance of Article 8 of the Law Laying Down Accompanying Measures of 23 April 1998, 10 August 1998**

*Royal Decree in Furtherance of Article 8 of the Law Laying Down Accompanying Measures concerning the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees.<sup>1</sup>*

#### **Article 1.**

The Central Management of the Community-scale undertakings or the Community-Scale groups of undertakings within which a European Works Council or a procedure for information and consultation of employees has been established, are authorized not to transmit the following pieces of information if, on the basis of objective criteria, their transmission would seriously harm the functioning of the undertaking or would be prejudicial to it:

1. information on distribution margins;
2. turnover in absolute terms and broken down by undertaking that is part of the group;
3. level of and trends in unit costs and selling prices per unit;
4. data on cost distribution by product and by undertaking that is part of the group;
5. under the heading of the programme and general plans for the future for undertakings in the distribution business, intentions regarding the opening of new sales outlets;
6. data with regard to scientific research;
7. the distribution by undertaking that is part of the group of profit and loss account data.

#### **Article 2.**

The Minister of Economic Affairs is entrusted with the further execution on the present Decree.

1. *Official Gazette*, 17 October 1998, p. 34522.

## Part III. Selected Agreements

### A. Art. 13 (Directive) Agreements

#### 1. PETROFINA, 26 JUNE 1995

##### **Agreement for the Establishment of a Body for Information and Consultation at European level for the PetroFina companies engaged in the petroleum and petrochemical industry ('Eurodialogue')**

BETWEEN

PETROFINA S.A., mother company of the subsidiaries forming part of the PetroFina Group, represented by the representatives of the Central Management, the names of such representatives are mentioned in Annex 1 hereto,

AND

THE EMPLOYEE REPRESENTATIVES, listed in Annex 2 hereto, who have been designated amongst and by the personnel representatives who are members of the existing local information and consultation bodies of the companies, also listed in Annex 2,

AND

EESCID, acting as an expert in European information and consultation for the personnel, as well as the co-ordinator of its affiliated members, represented by its Secretary General,

(hereafter called 'Signatories')

IT IS STATED THAT:

##### *Preamble*

WHEREAS

the PetroFina Group operates via subsidiaries in various countries around the world, essentially however in Europe and in the USA;

the Group wishes to improve the communication with its personnel at all levels, i.e., individual level, local unit level, company level, business segment level and on European level, in order to create added value to the joint venture existing between the Group and each person it employs and in order to improve the co-operation between all of its members;

the Directive of the European Union 94/45/EC of 22/9/94 allows and promotes the conclusion of agreements in groups operating in several countries of the European Union on transnational information and consultation before the said Directive enters into effect;

Signatories wish, in the scope of the effort of improvement of communication as described above, to conclude such an agreement on transnational information and consultation;

IT IS NOW, THEREFORE, HEREBY AGREED AS FOLLOWS:

#### *Article 1. Definitions*

**Agreement:** means the present agreement together with its annexes, all of which as modified from time to time pursuant to the terms and conditions hereunder.

**Affected Companies:** means the companies directly and simultaneously affected by exceptional circumstances.

**Annex:** means the Annex or Annexes, as the context may require, to the present Agreement. They form an integral part of the Agreement.

**Central Management** means the Management of PetroFina. For the purpose of notification under the present Agreement, Central Management shall be represented by the Human Resources General Manager of PetroFina. For other purposes hereunder Central Management shall be represented by such persons as the CEO may designate.

**CEO** means Chief Executive Officer of the Group.

**Chairperson** means the person described in Article 9a hereof.

**Company** means a legal entity, validly existing and incorporated in its country of origin in conformity with local laws, the capital of which is owned for 51 per cent or more by PetroFina or one of its subsidiaries, and which employs more than 100 Employees, either directly or indirectly through subsidiaries. In case such company has subsidiaries, such company and its subsidiaries are taken as a whole. The definition of Company does not apply to PetroFina. The companies are listed in Annex 2 hereof, as modified from time to time to take into account the evolution of the group's activities.

Consultation involves oral or written exchanges of views and a dialogue of questions and answers between the management (central or local) and the Employee representatives regarding all Information.

Country means a country in which the group operates via one or more companies.

Employee or Employees, as the context may require, are all regular staff considered as 'Employees' under an employment contract according to the legislation/practice in each member state of employment.

Eurodialogue means the body described in Art. 2b hereof.

Eurodialogue representatives means the representatives of the Employees participating in Eurodialogue and designated in accordance with Arts. 6 and 7 hereof.

Europe: means the European continent and all countries being part of such continent, whether or not such countries are Member States of the European Union.

Exceptional Circumstances means circumstances affecting to a considerable extent the interests of the employees of affected companies in particular: relocations, closure of companies or collective redundancies, provided such events are transnational.

Fescid means the European Federation of Chemical and General Workers Unions, which has its offices at 109 avenue de Beco, 1050 Brussels, Belgium.

Group means PetroFina and all of its subsidiaries.

Information involves the exchange of oral and written data and the provision of oral explanations on such data.

Management means the Central Management and the local management either jointly or separately as the context may request.

Party means PetroFina on the one hand and the employee representatives mentioned in Annex 2 hereto, or, as the context may require, the Eurodialogue representatives mentioned in Arts. 15 or 16 hereof.

PetroFina means PetroFina SA incorporated in Belgium having its registered office at 52, rue de l'Industrie, 1040 Brussels, Belgium.

Pre-meeting means the preparatory meeting provided for under Art. 9c2.

Secretary means the secretary appointed in accordance with Art. 10 hereof.

Sigma Group means the separate functional organization active in paints.

Signatory or Signatories means the persons whose names are appearing on the signature page of this agreement, as well as in Annex 1 and Annex 2 hereto.

Special Meeting means the meeting for information and consultation on exceptional circumstances.

Transnational means producing effects in at least 2 countries.

#### *Article 2. Objective*

- (a) The objective of the present Agreement is to set up a body for transnational information and consultation at European level for all employees and for all units whatever their size even without representatives of their own engaged in petroleum and petrochemical activities within the PetroFina Group.
- (b) This objective shall be reached by meetings of a European information and consultation body called 'Eurodialogue' in which both management and Eurodialogue representatives shall participate.
- (c) For the paint activities, which take place in a separate functional organization called the Sigma Group a separate system shall be set up covering transnational information and consultation on the Sigma Paint business and in which Sigma management and personnel shall participate.

#### *Article 3. Spirit of Co-operation*

The management and the Eurodialogue representatives shall participate in Eurodialogue in a spirit of co-operation good faith, and mutual trust. They shall have due regard to their reciprocal rights and obligations as well as due consideration for the interests of the group as a whole.

#### *Article 4. Competence*

- (a) Eurodialogue is competent for information and consultation on general issues of a strategic and transnational character concerning the group as a whole at European level. Within this scope Eurodialogue issues are in particular:
  - (1) the group's overall strategy, structure, economic and financial situation;
  - (2) the probable development of its business, production and sales;
  - (3) the situation and probable trend of employment;
  - (4) the situation and probable trend of investment;
  - (5) substantial changes concerning organization, introduction of new working methods or production process;
  - (6) transfers of production, mergers, cut-backs, closures of companies collective redundancies, provided such transfers of production, mergers, cut-backs, closures of companies or collective redundancies transnational;

- (7) health and safety matters;
- (8) environmental protection matters.
- (b) Eurodialogue is not competent for:
  - (1) giving binding opinions prior to decision-making or making decisions;
  - (2) local or national issues subject to national legislation or to local or national collective agreements;
  - (3) compensation, salaries and benefits;
  - (4) negotiations;
  - (5) individual or political matters;
  - (6) the rights of existing information and consultation bodies.

#### *Article 5. Scope*

Subject to Article 2c hereof, the present Agreement covers the entire workforce of the group in all its units (subsidiaries, branches, etc.) whatever their size in all countries of Europe where the group operates. A list of those countries is given in Annex 4 hereto.

#### *Article 6. Allocation of Eurodialogue Representatives*

The following allocation of seats shall apply:

- 1 representative for each company employing more than 100 but less than 501 employees;
- 2 representatives for each company employing more than 500 employees.

The list of countries, companies and member of Eurodialogue representations per company is given in Annex 3 hereto.

#### *Article 7. Designation of Eurodialogue Representatives*

The Eurodialogue representatives shall be designated in accordance with the following rules:

- candidates for designation as Eurodialogue representatives must be regular employees of the group and be a member of the personnel representatives of the existing local information and consultation body in accordance with local law and practice;
- the employee representatives participating in local information and consultation bodies shall in accordance with local law or practice, designate amongst their peers the Eurodialogue representative or representatives as provided for under Art. 6, as well as 1 substitute for each Eurodialogue representative so designated;
- such designation shall be for the same period of time as provided for under local law or practice for the exercise of the current mandate of the employee representatives in the local information and consultation body;

- the substitute is to attend Eurodialogue if and when the Eurodialogue representative cannot attend for whatever reason. The substitute shall replace the Eurodialogue representative if the latter's employment contract with the company comes to an end or if such representative ceases to be a member of the employee representatives participating in the local information and consultation body;
- names of the Eurodialogue representatives and their substitutes shall be notified by the local management to Central Management. Central Management shall notify to the secretary, to all Eurodialogue representatives and to the local managements the names of Eurodialogue representatives;
- if employee representatives in a specific local information and consultation body cannot agree on the designation as aforesaid of their Eurodialogue representative or substitute, they shall refer the matter to the Central Management, who shall use its best endeavours to resolve the issue, if necessary in consultation with the secretary general of Fescid.

*Article 8. Protection of Eurodialogue Representatives*

The Eurodialogue representatives shall enjoy, in exercising their functions the same protection as provided for personnel representatives under national law or practice in force in their country of employment.

*Article 9. Annual Meetings*

(a) Chairperson

The Eurodialogue annual meetings shall be chaired by the Group's CEO or by such person as he may designate.

(b) Participants

Both the designated Eurodialogue representatives and the representatives of the management shall participate in the annual meetings.

(c) Frequency

- (1) A plenary meeting shall be held once a year, one day per year, upon invitation at a date and place agreed upon between the Central Management and the secretary. Such meeting shall in general take place in the fourth quarter of each calendar year.
- (2) A one-day preparatory meeting of Eurodialogue representatives shall be held the day before the plenary annual meetings, without the management being present. Such preparatory meeting shall hereafter be called 'Pre-meeting'.

**(d) Agenda**

The Central Management shall establish a draft agenda of the annual plenary meeting which shall be circulated by the secretary two months before the said plenary meeting. Items suggested by Eurodialogue representatives one month in advance shall be incorporated in the agenda if agreed upon between the secretary and the Central Management. The final agenda shall be circulated at least three weeks in advance of the relevant meeting.

**(e) Minutes**

The Central Management will be responsible for drafting the minutes on the content and outcome of Eurodialogue plenary annual meetings, subject to Art. 17 hereof. The master copy of the minutes shall be drafted in English. Such minutes are to be agreed upon between the Central Management and the secretary. The Central Management shall send these minutes to the Eurodialogue representatives and to the local Managements.

**(f) Reporting back**

The reporting back to the local information and consultation bodies on the content and outcome of Eurodialogue plenary annual meetings is a joint responsibility of the Eurodialogue representatives and the management. It is the management's responsibility to reach the whole of the group's employees in Europe.

*Article 10. Secretary*

The secretary and one substitute secretary shall be designated each year at the pre-meeting by and amongst the Eurodialogue representatives participating thereto. Their names shall be communicated to the Central Management at the end of the pre-meeting.

The term of office of the secretary shall start on the date of his or her designation as aforesaid up to the designation of a successor to the secretary pursuant to the immediately preceding paragraph.

The secretary shall chair the pre-meeting and act as co-ordinator between the Eurodialogue representatives and the Central Management on items such as the agreement to be reached between the Eurodialogue representatives and the Central Management on the date and place of annual meetings, on agenda points, on the minutes of the meeting and on experts as provided for under Art. 14.

The secretary may also act as spokesperson on meetings without prejudice to the right of each Eurodialogue representatives to participate in the dialogue.

In order to be able to fulfil his or her task efficiently the secretary shall have a good command of the English language.

The secretary shall be responsible for the keeping of the records of all information concerning Eurodialogue.

The company which employs the secretary shall give him or her the necessary means to allow the secretary to fulfil his or her tasks. Such means shall be agreed upon between the secretary and his or her management.

*Article 11. Exceptional Circumstances/Special Meetings*

In case of exceptional circumstances affecting directly and simultaneously companies of the group (hereafter called 'affected companies'), the Eurodialogue representatives who are employees of such affected companies and the secretary shall be convened in a special meeting for information and consultation on the said exceptional circumstances. The initiative of such special meeting may be taken by either the Central Management or the secretary acting on behalf of the Eurodialogue representatives of the affected companies. No other Eurodialogue representatives shall attend. The local management of the affected companies shall be present.

*Article 12. Expenses/Time off*

All costs and expenses relating to the organization of the Eurodialogue meetings, the pre-meetings or the special meetings inclusive of simultaneous translation, accommodation and meals of participants shall be borne by PetroFina.

The Company which employs the Eurodialogue representative(s) shall give to such employee(s) time off from their normal duties with pay for their participation in Eurodialogue meetings the pre-meetings or the special meetings together with all costs in connection herewith. All arrangements for time off and travel must be agreed by Eurodialogue representatives in advance with their respective local managements.

*Article 13. Language*

English shall be the main language of Eurodialogue meetings. All Eurodialogue documents circulated within the group shall be drawn up in English. If requested by a Eurodialogue representative and pending his sufficient knowledge of English, translation into his national language shall be provided for by local management Likewise and to the extent necessary, simultaneous translation shall be provided for during meetings, pending sufficient knowledge of English by all participants.

In order to allow for Eurodialogue representatives to have sufficient knowledge of English, the local management shall organize, at company's expense, courses in English for the Eurodialogue representatives who need such courses.

2. SOLVAY GROUP, 5 OCTOBER 1995

**Agreement establishing the Solvay Group European Works Council***Preamble*

The Central Management of the Solvay Group, wishing to practise and develop constructive social dialogue with personnel representatives in areas relating to the group's companies and their employees, and taking into account the adoption by the Council of the European Union of Directive 94/45/EC of 22 September 1994 on the improvement of the right to information and consultation of employees in Community-scale groups of undertakings, set up a Special Negotiating Body in 1995 with a view to establishing a European Works Council.

The Special Negotiating Body comprises 22 employees of Solvay SA and of subsidiaries whose registered offices are located in a European Union Member State and more than half of whose share capital is held directly or indirectly by Solvay SA.

The breakdown of employee membership of the Special Negotiating Body by country is given in Appendix 1 to this agreement.

The rules for the appointment of employees to the Special Negotiating Body have been established by an agreement in each European Union country concerned between the representative of the management of the Solvay Group authorised for this purpose on the one hand, and the employees' legal representatives in accordance with national legislation or tradition on the other:

agreement of 27.9.95 for France,  
agreement of 18.8.95 for Germany,  
agreement of 19.9.95 for Belgium,  
agreement of 28.9.95 for the Netherlands,  
agreement of 25.9.95 for Spain,  
agreement of 19.9.95 for Italy,  
agreement of 2.6.95 for Austria,  
agreement of 13.6.95 for the United Kingdom,  
agreement of 25.9.95 for Portugal.

Convinced of the benefits of setting up a European Works Council for keeping all the employees concerned within the Solvay Group better informed and promoting social dialogue, the Central Management of the Solvay Group and the Special Negotiating Body, acting by a majority of its members, have agreed upon the following provisions.

THE UNDERSIGNED

The company Solvay SA, a public limited company under Belgian law, whose registered offices are at 33, rue du Prince Albert, Brussels (Belgium),

represented by Mr. Daniel Janssen, Chairman of the Executive Committee of Solvay SA

and

Mr. Pierre Fortpied, General Manager for Human Resources

of the first part,

AND

The undersigned members of the Special Negotiating Body set up in the spirit of European Community Directive 94/45 of 22.9.1994:

Mr. Noël Tritz

- Member of the personnel of the company Solvay SA (Tavaux plant)
- CFDT central union delegate
- French representative on the Special Negotiating Body, duly appointed by the Fédération nationale des Industries chimiques/CFDT in application of the agreement of 27.9.1995 setting out rules for France for the appointment of the French representatives on the Special Negotiating Body

Mr. Régis de Lacotte

- Member of the personnel of the company Solvay SA (Tavaux plant)
- CFE-CGC union delegate
- French representative on the Special negotiating Body, duly appointed by the Fédération nationale des Industries chimiques/CFE-CGC in application of the agreement of 27.9.1995 setting out rules for France for the appointment of the French representatives on the special negotiating body

Mr. Jean-Pierre Boichut

- Member of the personnel of the company Solvay SA (Tavaux plant)
- CFTC union delegate
- French representative on the Special Negotiating Body, duly appointed by the Fédération nationale des Industries chimiques/CFTC in application of the agreement of 27.9.1995 setting out rules for France for the appointment of the French representatives on the Special Negotiating Body

Mr. Dominique Berner

- Member of the personnel of the company Solvay SA (Tavaux plant)
- CGT union delegate
- French representative on the Special Negotiating Body, duly appointed by the Fédération nationale des Industries chimiques/CFE-CGC in application of the agreement of 27.9.1995 setting out rules for France for the appointment of the French representatives on the Special Negotiating Body

Mr. Jacques Dieu

- Member of the personnel of the company Solvay SA (Tavaux plant)
- CGT-FO union delegate

- French representative on the Special Negotiating Body, duly appointed by the Fédération nationale des Industries chimiques/CGT-FO in application of the agreement of 27.9.1995 setting out rules for France for the appointment of the French representatives on the Special Negotiating Body

Mr. Klaus Helmes

- Member of the personnel of the company Solvay Deutschland (Rheinberg plant)
- German representative on the Special Negotiating Body, duly appointed by the general Works Council in application of the agreement of 18.8.1995 setting out rules for Germany for the appointment of the German representatives on the Special Negotiating Body

Mr. Hartmut Just

- Member of the personnel of the company Salzgewinnungsgesellschaft Westfalen GmbH
- German representative on the Special Negotiating Body, duly appointed by the general Works Council in application of the agreement of 18.8.1995 setting out rules for Germany for the appointment of the German representatives on the Special Negotiating Body

Mr. Bärbel Koch

- Member of the personnel of the company Solvay Deutschland GmbH (Bernburg plant)
- German representative on the Special Negotiating Body, duly appointed by the general Works Council in application of the agreement of 18.8.1995 setting out rules for Germany for the appointment of the German representative on the Special Negotiating Body

Mr. Gerhard Nissing

- Member of the personnel of the company Salz GmbH (Borth plant)
- German representative on the Special Negotiating Body, duly appointed by the general Works Council in application of the agreement of 18.8.1995 setting out rules for Germany for the appointment of the German representatives on the Special Negotiating Body

Mr. Wolfgang Thelen

- Member of the personnel of the company Solvay Deutschland (Hannover)
- German representative on the Special Negotiating Body, duly appointed by the general Works Council in application of the agreement of 18.8.1995 setting out rules for Germany for the appointment of the German representatives on the Special Negotiating Body

Mr. Carlos Bravo

- Member of the personnel of the company Solvay Bruxelles (NOH)
- SETCa-BBTK union delegate
- Belgian representative on the Special Negotiating Body, duly appointed by the trade unions in application of the collective agreement of 19.9.1995 setting out rules for Belgium for the appointment of the Belgian representatives on the Special Negotiating Body

Mr. Francis Careme

- Member of the personnel of the company Solvay-Jemeeppe
- FGTB union delegate
- Belgian representative on the Special Negotiating Body, duly appointed by the trade unions in application of the collective agreement of 19.9.1995 setting out rules for Belgium for the appointment of the Belgian representatives on the Special Negotiating Body

Mr. Christian Verstraeten

- Member of the personnel of the company Plavina at Audenaerde
- ACV-CCMECC union delegate
- Belgian representative on the Special Negotiating Body, duly appointed by the trade unions in application of the collective agreement of 19.9.1995 setting out rules for Belgium for the appointment of the Belgian representatives on the Special Negotiating Body

Mr. R. Mestrom

- Member of the personnel of the company Solvay Chemie (Linnen Herten plant)
- FNV union delegate
- Dutch representative on the Special Negotiating Body, duly appointed by the FNV in application of the agreement of 28.9.1995 setting out rules for the Netherlands for the appointment of the Dutch representatives on the Special Negotiating Body

Mr. J. Vaarten

- Member of the personnel of the company Solvay Duphar (Weesp plant)
- VHP union delegate
- Dutch representative on the Special Negotiating Body, duly appointed by the VHP in application of the agreement of 28.9.1995 setting out rules for the Netherlands for the appointment of the Dutch representatives on the Special Negotiating Body

Mr. Francisco Espanol Fernandez

- Member of the personnel of the company Solvay SA (Martorell plant)
- CC OO union delegate

- Spanish representative on the Special Negotiating Body, duly appointed by the CC OO in application of the agreement of 25.9.1995 setting out rules for Spain for the appointment of the Spanish representatives on the Special Negotiating Body

Mr. Antonio Pérez Ortega

- Member of the personnel of the company Solvay SA (Martorell plant)
- UGT union delegate
- Spanish representative on the Special Negotiating Body, duly appointed by the UGT in application of the agreement of 25.9.1995 setting out rules for Spain for the appointment of the Spanish representatives on the Special Negotiating Body

Mr. Antonio Fidanza

- Member of the personnel of the company Solvay SA (Rosignano plant)
- RSU union delegate
- Italian representative on the Special Negotiating Body, duly appointed by the Federazione Unitaria Lavoratori Chimici/RSU in application of the agreement of 19.9.1995 setting out rules for Italy for the appointment of the Italian representatives on the Special Negotiating Body

Mr. Umberto Roberti

- Member of the personnel of the company Solvay SA (Rosignano plant)
- RSU union delegate
- Italian representative on the Special Negotiating Body, duly appointed by the Federazione Unitaria Lavoratori Chimici/RSU in application of the agreement of 19.9.1995 setting out rules for Italy for the appointment of the Italian representatives on the Special Negotiating Body

Mr. Quatember

- Member of the personnel of the company Solvay Österreich
- Union delegate of the Österreichischer Gewerkschaftsbund, Fachgruppe Gewerkschaft der Chemiarbeiter
- Austrian representative on the Special Negotiating Body, duly appointed by the general Works Council in accordance with the document of 2.6.1995

Mr. Gary Bevan

- Member of the personnel of the company Alkor Plastics Limited (Watford)
- British representative on the Special Negotiating Body, duly appointed in accordance with the document of 13.6.1995

Mr. Gregorio Branco

- Member of the personnel of the company Solvay Portugal Produtos Quimicos SA (Povoa plant)

- Member of the workers' committee
- Portuguese representative on the Special Negotiating Body, duly appointed by the workers' committee in application of the agreement of 25.9.1995 setting out rules for Portugal for the appointment of the Portuguese representatives on the Special Negotiating Body

of the other part,

HAVE AGREED AS FOLLOWS:

*Article 1. Functions*

The European Works Council shall have a function of information and consultation (within the meaning of Article 2(1)(f) of Directive 94/45/EC) between the representatives of the group employees concerned and the Central Management on economic, financial and social matters which, because of their strategic importance or wider implications, touch upon the interests of group employees and companies within the European Union.

The information shall include:

- the Solvay group's position and strategy within its various sectors of activity,
- the economic and financial situation, investment and environmental policy,
- the group's general social policy and developments in Community social legislation.

The information passed on within the context of the European Works Council shall supplement any information given to such employees' representative bodies as may already exist within each of the group's European companies. In no circumstances may the European Works Council substitute these bodies or encroach upon their sphere of competence.

*Article 2. Sphere of Competence*

Solvay SA and those of its subsidiaries which have their registered offices within a European Union Member State and more than half of whose share capital is held directly or indirectly by Solvay SA shall fall within the sphere of competence of the European Works Council. These subsidiaries are listed in Appendix 2 to this agreement.

*Article 3. Composition*

The European Works Council shall comprise:

- of the first part:
  - the chairman of the executive committee of Solvay SA, who shall chair the European Works Council,

- the corporate secretary,
  - the general manager for human resources,
  - the chairman of the executive committee may invite one or more managers from the group to attend meetings of the European Works Council, depending on the agenda;
- of the other part:
- the employees' representatives who are members of the personnel of the companies listed in Article 2, (number and breakdown by country in Appendix 3 to this agreement),
  - at least one member for each country within the European Union where the Solvay group employs a personnel of 150 or more.

In the event of significant changes to the group's European structure, the signatories may agree to alter the breakdown by country, in accordance with the rule laid down in Appendix 3, whereby the total membership of the European Works Council may not exceed 30.

*Article 4. Rules for the Appointment of Employees' Representatives*

The employees' representatives on the European Works Council must be employed by an undertaking which falls within its sphere of competence and, where a constituted employee representation already exists, must hold an elected or union mandate to represent employees therein.

In the event that a member of the European Works Council should lose his or her elected or union mandate, the employees' representatives of the country concerned competent to appoint members to the European Works Council (under the terms of Appendix 4 to this agreement) shall appoint a new member who shall meet the requirements of paragraph 1 of this Article. However, if they prefer, they may instead confirm the appointment of the member who has lost his or her mandate.

Within each country required to appoint one or more employees' representatives to the European Works Council, the regional management for the country concerned or the management of a company shall be appointed by the executive committee of Solvay SA as co-ordinator to oversee the appointment procedure for that country.

For each country, the co-ordinator shall ensure that the appointment of employees' representatives to the European Works Council complies with legal and traditional national criteria on representation. The rules agreed in each country are given in Appendix 4 to this agreement.

*Article 5. Organization*

The chairman of the executive committee of Solvay SA shall chair the European Works Council.

The European Works Council shall appoint, by majority vote, one secretary and two assistant secretaries from among its members.

The secretary's duties shall include chairing the preparatory meetings provided for in Article 6 of this agreement and drawing up the agenda for plenary meetings.

The secretary and assistant secretaries shall receive the resources they require for the performance of their duties from the management of the establishments which employ them.

#### *Article 6. Operation*

The European Works Council shall hold one meeting a year, which shall be convened by the chairman.

The plenary meeting shall last one day.

One the eve of each plenary meeting, the members of the European Works Council may hold a one-day preparatory meeting in premises placed at their disposal by the Central Management of the Solvay group.

At the preparatory meeting, the European Works Council may be assisted by one representative from each European trade union federation. Where necessary for the performance of its functions, the council may also be assisted by an expert, subject to agreement by the Central Management.

The material resources required to hold the plenary and preparatory meetings, in particular the provision of premises and simultaneous interpreting during debates, shall be supplied by the Solvay group.

The agenda of the plenary meeting shall be drawn up by the chairman or his representative by agreement with the secretary. It shall be sent to the members of the European Works Council at least two months before the date scheduled for the plenary meeting.

The minutes of the plenary meeting shall be drawn up in French by the Central Management, which shall arrange for them to be translated by a qualified translator into the native language of each member of the European Works Council. They shall be forwarded to each of the members of the European Works Council via their regional management or the management of the companies to which they belong.

The rules of procedure for the European Works Council shall be drawn up by agreement between the secretariat of the European Works Council and the Central Management. They shall be submitted to the members of the European Works Council for approval.

The secretary and assistant secretaries shall be informed of any exceptional circumstances affecting several European Union countries. The European Works Council may meet at the request of its chairman or a majority of members, with the agreement of both parties.

The members of the European Works Council shall have a duty to show discretion with respect to information which has been communicated to them expressly in confidence. The employees' representatives shall continue to be bound to discretion after their term of office, for as long as the information remains confidential.

#### *Article 7. Term of Office*

Members of the European Works Council, the secretary and the assistant secretaries shall be appointed for a renewable term of three years. The term of office shall commence at the first plenary meeting of the European Works Council.

In the event that a member of the European Works Council should be temporarily or permanently unable to perform his or her duties, a replacement may be appointed under the rules laid down in Article 4 of this agreement.

In the event that a member of the European Works Council should be permanently unable to perform his or her duties, the term of office of the representative called upon to replace him or her shall end on the date scheduled for the renewal of the other members' terms.

The protection and guarantees enjoyed by the members of the European Works Council by virtue of their national elected or union mandate shall apply during their term of office as members of the European Works Council.

#### *Article 8. Funds*

The members of the European Works Council shall receive expenses on the basis of the rules applied in the companies and establishments to which they belong for the time spent at plenary and preparatory meetings. The same shall apply to refunds for travelling time and travelling expenses incurred in attending meetings.

During their term of office, the members of the European Works Council shall receive training centred on knowledge of the Solvay group, Community social legislation, and one of the group's two official languages (English or French).

This training shall be organized following consultation with the secretary and the associated costs will be met by the Solvay group.

The members of the European Works Council shall be kept informed of events affecting the group by means of appropriate documentation regularly forwarded by the Central Management of the Solvay group.

3. TRACTEBEL GROUP, 30 APRIL 1996

**Tractebel Group, European Social Dialogue Body**

BETWEEN:

Tractebel SA, a limited company under Belgian law with its head offices at 1, Place du Trône, B-1000 Brussels

acting for the sole provisions of this agreement as an undertaking exercising control as defined in the European Directive 94/45/EEC of 22 September 1994,

represented here by delegates of its Central Management which controls those undertakings making up the Tractebel group, itself a Community-scale undertaking according to the terms of this Directive:

ON THE ONE HAND, AND:

The employees of the Tractebel group represented by:

1. The ETUC (European Trade Union Confederation), represented by:
2. Eurocadres, represented by:
3. The CEC (European Confederation of Executive Staff), represented by:
4. The FGTB/ABW (General Federation of Belgian Workers), represented by
5. The CSC/ACV (Confederation of Christian Unions), represented by:
6. The CGSLB/ACLVB (General Confederation of Belgian Free Trade Unions), represented by:
7. The CNC/NCK (National Confederation of Executive Staff), represented by:

acting on behalf of their respective organizations and the corresponding organizations in other Member States, either because they have been given a mandate to do so or because they are vouching for these organizations.

THE FOLLOWING HAS BEEN ESTABLISHED:

0.1 The process that led to the construction of the European Union and the European Economic Area (EEA) has changed the economic and political context in which undertakings evolve, and in some cases this change has been radical. This primarily concerns undertakings or groups of undertakings that have establishments located in several Member States. This process has the effect of gradually ironing out specific national characteristics in so far as these represent or could represent an obstacle to free trade within the Union and the EEA.

It is clear that the social dialogue currently developing at national level should evolve in much the same way. It is the success of this social dialogue that will largely determine the durability of the economic and political evolution required by the Union and the EEA.

0.2 In light of this construction of a Social Europe, in its directive 9176/94 the European Council set out a legislative framework establishing a European Works Council or a procedure for the information or consultation of employees to be constructed by both sides of industry. However, postponing the initiatives until the date of this directive's entry into force (22 September 1996) would be to underrate the Directive's fundamental basis.

By stressing the autonomy of the parties concerned and the subsidiary of its provisions the directive is basically an invitation to both sides of industry to start dialogue immediately in a spirit of co-operation.

0.3 In this framework and given the activities of the Tractebel group in the European Union and the EEA and the desire of management and labour to promote constructive social dialogue, both parties have agreed after negotiations to set up a suitable body for social dialogue in the Tractebel group.

This dialogue will be based on the information and consultation of employees as defined in the Community texts in those areas concerning the whole Tractebel Group and its employees.

0.4 In so far as the countries of the EEA are full economic trading partners of the Union, they will be included in the scope of application of this process of social dialogue.

If European nations sign association agreements with the European Union in the social domain then the body created will gradually integrate members of these countries as the group's interests develop there.

The representative will have observer status and will represent all employees of his country.

THE PARTIES ALSO AGREED ON THE FOLLOWING:

*Art. 1. Standard Definitions and Abbreviations*

1.1 The term 'group' shall always be taken to mean the Tractebel group composed of all the undertakings controlled by Tractebel SA. A controlled undertaking is a company in which Tractebel SA:

- (a) holds the majority of the company's subscribed capital, or
- (b) holds the majority of votes associated with the company's shares, or
- (c) can appoint more than half the members of the company's board of directors, steering committee or supervisory board.

1.2 The term 'undertaking' shall mean any group company having a legal personality and founded in one of the Member States of the European Union or of the EEA in accordance with national legislation.

1.3 The term 'employees' shall mean all those people employed through a work contract, a trainee contract or an apprentice contract in accordance with the national legislation of the European Union state concerned but excluding management staff and people employed through a temporary contract or the

national equivalent. Unless mentioned separately, 'executive staff' are included in the notion of 'employees'.

- 1.4 The term 'Central Management' shall mean the management of Tractebel SA as an undertaking exerting control according to the terms of the European Directive mentioned in the preamble.

*Art. 2. Nature and Object*

- 2.1 The object is to create a social dialogue body between the employers and the representatives of the group's employees at European Union and EEA level based on cooperation built on mutual confidence.

The social dialogue body is a structure empowered to provide information and consultation on issues concerning all group undertakings or at least two group establishments or undertakings located in different countries. The ways and means of information and consultation are specified in Article 6 of this agreement.

- 2.2 Social dialogue shall in particular concern:
- **at the economic level:** general organization and activity, general technological changes, and the research and development policy;
  - **at the financial level:** the profit and loss accounts and the annual consolidated accounts of the group and any major changes prior to the annual meeting of the body;
  - **at the social level:** employment policy (volume, structures, forecasts, etc.).
- 2.3 The functioning of this social dialogue body does not affect the various rights of the employees or their representatives in each of the Member States, or the prerogatives and powers of central or local management.

*Art. 3. Scope*

- 3.1 This agreement covers all group employees in all Member States of the European Union and the EEA. A list of the companies concerned shall be drawn up on the date this agreement is signed and is included in Annex 1.

*Art. 4. Number and Appointment of Members of the Social Dialogue Body*

4.1 Employees' Representatives

4.1.1 Representatives of non-executive staff

*4.1.1.1 Number of representatives*

- The Body shall have one employees' representative per European Union or EEA Member State where one or more undertakings are located and for as long as the group undertakings in this country employ at least 100 employees.

- If, during one term of office of the Social Dialogue Body, one or more undertakings are set up in a Member State of the Union or of the EEA or if a new state should join and if the workforce criterion mentioned above applies, one employees' representative from that country will be appointed as specified below if at least one annual meeting is to be held before the Body's mandate comes for renewal again.
- If a Member State withdraws from the European Union, the mandates of the employees from these countries will be automatically rendered null and void.
- Moreover, three extra mandates are assigned to any Member State that is the base for more than 20 per cent of the Group's employees; similarly 5 mandates are assigned for 50 per cent and 7 mandates for 70 per cent.

This quota is valid for the duration specified in 4.2 below.

These additional mandates will be distributed on the basis of the Group's activities and according to the workforce per establishment in each Member State.

- Any undertaking no longer fulfilling the above criteria will automatically cease to be covered by this agreement and the mandates of its representatives on the Body shall be declared vacant.

*4.1.1.2 Appointment of representatives* In each relevant European Union and EEA Member State, the employees' representative(s) shall be appointed from among the group's workforce in the following way.

In principle, the members of the body are appointed by consensus between the trade union organizations and/or between the trade union organizations and the elected representatives of national or local negotiation and consultation bodies.

If no consensus is found then the national legal rules or practices shall apply, in particular regarding the organization of second level elections at the level of the local bodies of negotiation and consultation.

In those countries where national legislation provides for it, candidates will be nominated by the employees' representative organizations recognized within the framework of the social elections. They will be members of the national or local bodies for information and consultation.

In default of a consensus and of information and consultation bodies in all undertakings of a State, the representative is chosen from the undertaking occupying the largest work force.

Central Management will be informed of the names of the appointed members.

#### 4.1.2 Representatives of executive staff

*4.1.2.1 Number of representatives* The overall representation of executive staff shall be proportional (rounded up) to the number of executive staff on the workforce.

These representatives shall be taken from countries where there are more than 100 executive staff members.

*4.1.2.2 Appointment of members* Members are appointed in the same way as the other representatives, namely from among the group's executive staff members. They will come from the legal national or local information and consultation bodies.

#### 4.2 Duration and Termination of Mandates

- All mandates shall terminate at the end of each four-year period following the date this agreement is signed and the employees' representation will be renewed as set out in 4.1.
- Moreover, the mandate of a member of the body is terminated when his work contract is terminated for whatever reason or when his mandate expires within his legal national or local information and consultation body. In this second case, his seat is taken by one delegate appointed from the list of replacements.

#### 4.3 Central Management Representatives

The social dialogue body shall include as many representatives of central management as there are employees' representatives. Central Management will be represented by at least six members selected by central management and/or the management of the group undertakings. It can increase the number of its members without however exceeding the above-mentioned maximum. The secretariat of the body is informed of any such changes.

#### 4.4 A List of Replacements is drawn up in the Following Way:

For non-executive employees:

- one replacement per Member State;
- one additional replacement if at least 50 per cent of workers are employed in a given Member State;
- two additional replacements if at least 70 per cent of workers are employed in a country.

These people are appointed according to the same procedure as the full members.

For executive staff: one replacement.

For management: six replacements appointed using the same procedure as the full members.

The deputy member may replace the full member whatever the reason of his absence.

#### *Art. 5. Composition of the Social Dialogue Body*

5.1 The chairman of the body is the general manager of Tractebel SA.

5.2 The secretary is appointed by and from the employees' representatives. A deputy secretary – with a logistical mission – is appointed by the representatives of Central Management.

- 5.3 To accelerate and facilitate information and consultation in exceptional circumstances, a select committee shall be formed comprising the secretary, two employees' representatives and two management representatives.

*Art. 6. Functioning of the Social Dialogue Body and Organization of the Information*

6.1 Normal Operation

- 6.1.1 The social dialogue body shall meet once a year with meetings convened by the chairman. He and the secretary determine the date and place of the meeting according to the possibilities.

- 6.1.2 One working day before the annual meeting and on condition that they have informed central management of this at least two weeks in advance, the employees' representatives have the right to hold a preparatory meeting to which the representatives of Central Management are not invited.

- 6.1.3 The annual meeting will mostly focus on:

- the group's structure;
- the group's economic and financial situation and investments;
- probable trends in group activities, production and sales;
- the employment situation and probable trends;
- the group's main strategies;
- important changes concerning work organization, the introduction of new working methods and new production processes;
- transfers of production, mergers, downsizing or closures, and collective redundancies;
- the themes of training, health and the environment will be tackled within the framework of the relevant European Directives.

Any specific European issue could be dealt with as a special theme of the meeting.

- 6.1.4 To facilitate the proceedings, Central Management will draft a report prior to the meeting setting out the significant aspects of the subjects listed above.

- 6.1.5 Two months before the annual meeting is held the chairman and secretary shall draw up a draft agenda. The secretary then has one month to include one or more additional questions on the information provided, on behalf of the employees' representatives. However, these questions may not touch on any of the following issues:

- local or national issues subject to national or local legislation or a national or local collective agreement;
- issues regarding pay, benefits or working conditions;
- the rights of existing information and consultation bodies.

- 6.1.6 The final agenda for the annual meeting is sent with the report to the secretary, normally four weeks before this meeting.
- 6.1.7 The minutes of each full session shall be drawn up by the secretary and submitted for the approval of the chairman before being distributed to the members of the social dialogue body.

## 6.2 Special Circumstances

- 6.2.1 In accordance with the terms of Article 2 above, when special circumstances arise that significantly affect the interests of employees, and in particular in the case of relocation, the closure of undertakings or establishments, or collective redundancies, then the select committee – with the inclusion of a representative of the countries concerned if the latter don't already have a member in the select committee – is entitled to be informed and consulted.
- 6.2.2 If, at a meeting called under the terms of 6.2.1, the select committee considers that an extraordinary meeting of the social dialogue body is called for as a result of quite exceptional circumstances, then such a meeting may be convened.
  - 6.2.2.1 A special report is drawn up by Central Management and sent to the secretary within a reasonable time so that the employee's representatives can prepare for the special meeting with central management.
  - 6.2.2.2 The minutes of the extraordinary meeting are drawn up by the secretary, submitted for the approval of the chairman and then distributed to the employees' representatives concerned.
- 6.2.3 The information and consultation meet is held as soon as possible and at a time when this information and consultation is still relevant, i.e. between the time a decision is taken and the time it is made public.

## 6.3 Interpreting

Simultaneous interpreting facilities will be made available by Central Management for meetings of the special Negotiating Body, and for any preparatory meeting. The languages to be used will be specified by the body itself.

## 6.4 Expert Assistance

The group of employees' representatives and the group of central management representatives can call on the assistance of three experts in the meetings on condition that this is necessary for the accomplishment of their tasks.

Assistance may also be used for preparatory meetings depending on the topics to be dealt.

The travel and accommodation costs for one single expert will be met by the group.

*Art. 7. Running Costs*

- 7.1 The cost of organizing the meetings of the social dialogue body and any preparatory meetings shall be met by the Tractebel group.
- 7.2 The undertakings shall give the employees' representatives the time they require to participate in these meetings.
- 7.3 Arrangements relating to the trip and releasing them from their normal duties shall be agreed on in advance between the employees' representatives and the management of the undertakings that employ them.
- 7.4 An annual budget will be allocated so that the secretary can perform his role correctly.
- 7.5 Methods and means of information dissemination will be provided for by internal regulations.

*Art. 8. Confidentiality*

- 8.1 Members of the social dialogue body are bound to respect a minimum of discretion with regard to the information they receive. Moreover, the employees' representatives and, when applicable, the experts, are not permitted to disseminate or use the information that has been sent out by Central Management and declared confidential. This prohibition remains valid even when the member's mandate on the social dialogue body has terminated.

*Art. 9. Protection*

The members of the body shall, in the exercising of their functions, benefit from the same protection and guarantees afforded to employees' representatives by law and/or by the national practices in their country of employment.

*Art. 10. Duration of the Agreement*

- 10.1 This agreement shall be valid for an evaluation period of four years, and thereafter shall run for an indefinite period.

# Annex 1

## Countries within Scope of the EWC and the Number of their Delegates

France 5  
Germany 4  
UK 3  
Ireland 2  
Belgium 2  
Spain 2  
Italy 2  
Portugal 1  
Switzerland 1  
Austria 1  
Sweden 1  
Greece 1  
Poland 1  
Russia 1  
Czech 1  
Hungary 1  
Denmark 1

## Annex 1