

**BERR** | Department for Business  
Enterprise & Regulatory Reform

**RECAST OF THE EUROPEAN  
WORKS COUNCIL DIRECTIVE**

Impact Assessment

DECEMBER 2008

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BERR</b>	<b>Title: Review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees</b>	
<b>Stage: Government Response</b>	<b>Version: FINAL</b>	<b>Date: 20 November 2008</b>
<b>Related Publications: Government Response to Public Consultation</b>		

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### What is the problem under consideration? Why is government intervention necessary?

A Commission review of the European Works Council (EWC) Directive identified a number of problems with respect to the practical application of the Directive with regard to the information and consultation of employees; legal certainty, and coherence between EWCs and national level procedures, with a significant market failure noted in the form of information asymmetry between employer and employee. Although a non-regulatory approach involving additional promotion of best practice would produce some economic and social benefits, it would entail some additional costs for the EU budget. Moreover, this approach is unlikely to tackle the objectives of legal certainty and coherence in Community legislation. The Commission has therefore published a legislative proposal to amend the EWC Directive which seeks to address the problems set out above.

**What are the policy objectives and the intended effects?** The Commission's objectives for amending the Directive are:

- to improve the effectiveness of information and consultation of employees in existing EWCs;
- to increase the number of EWCs being established;
- to improve legal certainty in the setting up and the operation of EWCs (for example during mergers and acquisitions); and
- to enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

### What policy options have been considered? Please justify any preferred option.

There are three policy options considered by the Commission: (1) Do nothing: leave Directive unchanged; (2) Non-legislative approach to encourage best practices; (3) Legislative Review of existing Directive. As the Commission rules out the first option and judges the second option would, alone, fail to achieve the objectives of the current Directive review, the preferred policy option is (3) – for a review of existing legislation – supplemented by aspects of (2), by encouraging best practices through improved dialogue. Given a non-regulatory approach is not viewed as a viable option to achieve the review's objectives, this Impact Assessment will solely assess legislative review, as in the consultation document, compared with a benchmark of Option (1): Do nothing.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Article 14 of the Directive requires a review by the Commission five years after the revised Directive comes into force. The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS). The Central Arbitration Committee (CAC) is currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs Date: 20 November 2008.

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Implement proposed review to the Directive.</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Direct costs are increased costs borne by existing EWCs and indirect costs capture the cost of additional take-up. One-off costs are estimated at £1.98m over 3 years (as 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £4.09m and £5.06m depending upon scenario considered.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 1.98m	3	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 4.09 – 5.06m	10	
<b>Total Cost over 10 years (PV)</b>			<b>£ -40m – -48.1m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' costs relating to Admin Burdens detailed within individual articles.			There are a number of negligible

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'.  It was not possible to quantify benefits, given their intangible nature.
	<b>One-off</b>	<b>Yrs</b>	
	£ n/a	0	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ n/a	10	
<b>Total Benefit (PV)</b>			<b>£ n/a</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			More effective information & consultation of employees, if achieved, has the potential to demonstrate a positive commitment to employees and to enhance understanding of management, employee-management relationship and the impact of restructuring on employees.

### Key Assumptions/Sensitivities/Risks.

Please refer to Sections E and F, which detail assumptions made and risks identified.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -40m – -48.1m	<b>NET BENEFIT (NPV Best estimate)</b> £ -40m – -48.1m
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	Unknown - consultation
Which organisation(s) will enforce the policy?	CAC
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro      Small      Medium      Large
Are any of these organisations exempt?	No      No      N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £ negligible	Decrease of    £ 0	<b>Net Impact</b> £ negligible

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

### A: Strategic overview

#### *Existing Government initiatives*

The European Works Council (EWC) Directive was adopted in September 1994, with an implementation date of September 1996. At the time, the UK Government had not signed the social chapter of the Maastricht Treaty 1992 and so the Directive did not apply to the UK. The Government accepted the social chapter in June 1997, and as a result the original Directive was extended to cover the UK and was given effect in UK law in January 2000 by the Transnational Information and Consultation of Employees (TICE) Regulations.

#### *Implications for Administrative Burdens (AB)*

Original PwC administrative burdens exercise estimated total post-BAU (Business as Usual) costs of just under £5.4m a year. This was based on an estimated 55 UK-based EWCs. The proposed changes to the Directive on EWCs has no potential to reduce admin burdens, as amendments increase the obligation to provide information in a number of areas. However, as detailed in more depth in Section E, the additional admin burdens are predicted to be negligible in each of the areas when admin burdens are affected.

### B: The issue

The EWC Directive sets out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings with at least 1,000 employees across the Member States of the European Economic Area (EEA) and at least 150 employees in each of two or more of those Member States. The purpose of the Directive is to establish mechanisms for informing and consulting employees where the undertaking has been requested to do so in writing by at least 100 employees or their representatives in two or more Member States, or on the management's own initiative. This will entail the setting up of a European Works Council (or some other form of transnational information and consultation procedure). Where no request is received or where management does not initiate the process, there is no obligation to start negotiations or to set up an EWC.

Once a request has been made (or at the management's initiative) employee representatives<sup>1</sup> are either elected or appointed to a Special Negotiating Body (SNB). Article 6 of the Directive requires the SNB to negotiate with central management to determine the scope, composition, functions of the EWC and the duration of the agreement. Negotiations can last up to three years but where agreement has not been reached after that period, or the undertaking has failed to initiate negotiations six months after receipt of the employees' request to establish an EWC, a set of minimum requirements will apply which are laid out in the Annex to the Directive, entitled the 'subsidiary requirements'. In practice few, if any, EWCs have been set up under these fall-back subsidiary requirements but it is understood that the provisions of many EWC agreements have been influenced by them.

Where a company had already in place arrangements to inform and consult all of its employees in the EEA prior to the Directive coming into force, such agreements are exempt from the provisions of the EWC Directive. These provisions are made at Article 13 of the Directive and apply to agreements concluded by 22 September 1996 (or 15 December 1999 for UK companies when the Directive was extended to the UK). Such voluntary arrangements are often referred to as 'Article 13 agreements' and make up approximately 40 per cent of the EWCs in operation in the EEA today.

Expenses related to the negotiations are borne by the employer, including the cost of one expert to advise the SNB. The operational cost of the EWC is also met by the employer. The Directive further sets out the procedures for the handling of confidential information and makes provisions to ensure that the

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<sup>1</sup> An employee representative attends the general 'annual' meetings of the EWC and has a duty to represent and report back to colleagues.

employees' representatives do not suffer any detriment as a result of their role. Representatives are also entitled to time off with pay for attending SNB or EWC meetings.

### ***Review of the EWC Directive***

The European Commission is under a duty to review the operation of the EWC Directive. In April 2004, it started that review following which the Commission identified a number of problems in respect of the practical application of the Directive. The Commission has subsequently published a legislative proposal to amend the EWC Directive which seeks to address these problems.

The French Presidency and the European Commission are seeking political agreement from the Member States and the European Parliament on the revision of the EWC Directive by December 2008. The Commission's proposals have been subject to early and detailed consideration by the Council this autumn, with a series of Working Group meetings since mid-September 2008.

Proposed changes to Directive articles seek to address current problems in EWCs – which include ineffective information & consultation (I&C) of employees, lack of legal clarity on I&C issues and lack of coherence between national and transnational procedures – involve clearer definitions of I&C and the scope of EWC activities and purpose, provision for more balanced representation within EWCs, establishment of arrangements to link national-level procedures to those at Commission level (i.e. EWCs), increased obligation of reporting of information before and during the establishment of EWCs and the right to training without loss of wages for EWC members.

### ***Consultation***

#### *Within government*

These proposals have been developed in consultation with the following Government departments: Department for Work and Pensions, HM Treasury, the Cabinet Office, the Foreign and Commonwealth Office and the Devolved Administrations.

#### *Public consultation*

The Government conducted a public consultation on the issue in September 2008. The consultation closed on 6 October. A total of 29 responses were received, of which eight commented on the partial impact assessment. These are discussed below in section E on costs and benefits.

## **C: Objectives**

### ***Background***

This Impact Assessment (IA) seeks to assess the impact of the proposed revision of Council Directive 94/45/EC, which allows for the provision and establishment of European Work Councils (EWCs) within companies of more than 1000 employees operating in two or more EU Member States. The aim of such councils is to improve employee understanding of management decisions in issues such as restructuring by encouraging effective information and consultation for employees in all operating countries. The European Commission is under a duty to review the Directive and, following a Commission review of its current failings, the objectives for amending the Directive are:

1. To improve the effectiveness of information and consultation of employees in existing EWCs
2. To increase the number of EWCs being established
3. To improve legal certainty in the setting up and operation of EWCs
4. To enhance the coherence between EWCs and other national level procedures for informing and consulting employees.

The following analysis will review the impact the Directive has had on such companies with headquarters in the UK since its creation in 1994, as well as the likely effect on affected UK businesses of proposed changes to the Directive. The recent dialogue between Business Europe and ETUC, who are likely to agree on slightly amended changes to those proposed by the Commission, will also be taken into account for practical reasons.

## D: Options identification

### ***Option One: Do nothing***

Once the directive is agreed at EU level, the UK will have to implement the necessary changes. Doing nothing therefore is not a viable option.

### ***Option Two: Implement changes proposed by the draft Directive***

The European Commission impact assessment suggests two possible approaches to achieving the four broad objectives set out above. The first is a non-regulatory approach which involves additional promotion of best practice. The second involves a review of existing legislation.

Although it is recognised that the former does produce some economic and social benefits, it does also entail some additional costs for the EU budget. Moreover, this approach is unlikely to tackle the objectives of legal certainty and coherence in Community legislation and the Commission IA<sup>2</sup> recognises that it would not yield the immediate and spectacular results it is seeking.

Therefore, the Commission's preferred approach is a review of existing legislation. This is being taken forward through a series of working groups during the autumn of 2008 and is therefore the basis on which this Impact Assessment is set out. As stated in the Government Response some aspects have progressed in the light of the Social Partners' changes to a limited number of the proposals. Should the Commission's proposal as amended by the Social Partners be adopted, the Government will undertake an Impact Assessment accordingly as part of its public consultation exercise on the implementing regulations.

The detail of the proposed changes was discussed fully in the consultation document<sup>3</sup> and is presented in summary form below in the section on costs and benefits.

Given a non-regulatory approach is not viewed as a viable option to achieve the review's objectives, this Impact Assessment will solely assess review to Directive legislation.

## E: Analysis of options

### ***Costs and Benefits***

#### *Assumptions*

A number of information sources have been used to inform the cost-benefit analysis that follows. These include data on the current number of EWCs created across the EEA. Although there is no requirement to register EWCs, the European Trade Union Institute (ETUI) maintains a database of EWCs created since the early 1990s<sup>4</sup>, providing information such as date of creation, date ended (if the EWC is no longer effective), the article of the directive under which the EWC was established, the sector in which the undertaking operates, the number of meetings per year and the number of EWC members by country. These are the best available data to allow an up to date analysis<sup>5</sup> of the current take-up of EWCs in both the UK and across the EEA.

More detailed information relating, amongst other things, to the costs of setting up and running EWCs are derived from two key sources. First, we revisit and, where necessary, revise original unit cost estimates used in the original DTI Regulatory Impact Assessment<sup>6</sup> (RIA) which accompanied implementation of Directive 97/74/EC extending to the UK Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in community-scale

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<sup>2</sup> Commission Impact Assessment, 2008, page 62.

<sup>3</sup> <http://www.berr.gov.uk/consultations/page47622.html>

<sup>4</sup> ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

<sup>5</sup> As of mid-August 2008

<sup>6</sup> The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees. Much of the analysis used for that RIA was based on a study commissioned by DTI<sup>7</sup>.

More recent data and information have been taken from the European Commission Impact Assessment<sup>8</sup> (IA) of July 2008 which underpins the proposal for the current draft directive seeking to amend the original directive. The European Commission IA itself drew on the findings of a preparatory study<sup>9</sup> and we have used these data where appropriate.

It should be noted that these studies of EWCs are based on a case study approach and therefore the sample size for obtaining cost estimates is relatively small and may result in wide variations. This may be exacerbated by the fact that the recent European Commission studies report estimates based mainly on EEA averages. These may not always reflect the costs experienced in the creation and operation of UK-based EWCs. Therefore where suitable data exist, we use relevant UK cost estimates wherever possible.

The issue of differential costs by size of EWC was also raised in the consultation. While instructive to present costs with such a breakdown, the lack of reliable data at this level prevents this. Therefore costs in this IA remain based on the average across all sizes of EWC. The unit cost estimates for the set-up and operation of EWCs we have used in this impact assessment are presented in tables 1 and 2 below:

### 1. Set-up costs

The UK price estimates are derived from the ECOTEC study in 1999, which formed the basis of the UK Impact Assessment (1999), updated to 2008 prices. Details of how prices have been updated are noted below relevant tables. The 'Commission IA average', included for the sake of comparison, comes from the 2008 Commission Impact Assessment figure for the average cost of setting up an EWC agreement since 1996 (hence of Article 6 agreements).

Table 1: Average costs of setting up UK EWC (2008 prices)\*

Element	Average setting up costs
management time	£18,796
employee time	£7,992
cost of venue	£8,639
Travel	£8,240
translation costs	£3,987
interpretation costs	£14,752
language and other	£10,632
admin support	£1,776
dissemination costs	£1,329
costs of experts -for employees	£3,848
costs of experts - for management	£5,328
documentation for meetings	£532
admin of ballot	£18,207
<b>Total</b>	<b>£104,057</b>
<b>Commission IA average – 2008</b>	<b>£98,584</b>

Source: UK EWC IA (1999).\* All figures are updated using the RPI (CHAW) index (factor change of 1.329) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the Average Earnings Index, excluding bonuses (factor change of 1.48)

<sup>7</sup> Costs and benefits of the European Works Councils Directive, DTI, ERRS No.9. Tina Weber, Peter Foster and Kursat Levent Egriboz. URN 00/630; <http://www.berr.gov.uk/files/file11620.pdf>

<sup>8</sup> Impact assessment on the revision of the European Works Council Directive SEC(2008)2166 of 2 July 2008, [http://ec.europa.eu/employment\\_social/labour\\_law/docs/2008/impact\\_assesment\\_part1\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2008/impact_assesment_part1_en.pdf)

<sup>9</sup> Preparatory study for an impact assessment of the European Works Council Directive, EPEC GHK, May 2008, [http://ec.europa.eu/employment\\_social/labour\\_law/docs/2008/ewc\\_impact\\_assessment\\_preparatory\\_study\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2008/ewc_impact_assessment_preparatory_study_en.pdf)

## 2. Operating costs

Table 2: Average costs of a UK EWC annual meeting (2008 prices)

Element	Running Costs (£)
management time	£6,497
employee time	£9,472
cost of venue	£19,908
Travel	£15,301
translation costs	£6,725
interpretation costs	£14,167
admin support	£2,309
dissemination costs	£3,575
costs of experts - for employees	£2,782
costs of experts - for management	£7,770
Documentation for IT	£1,289
<b>TOTAL</b>	<b>£89,796</b>

Source: UK EWC IA (1999) \* All figures are updated using the RPI (CHAW) index (factor change of 1.329) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the Average Earnings Index, excluding bonuses (factor change of 1.48).

Table 3: Total average annual running costs of a UK EWC (2008 prices)

Type of meeting	Average unit cost	Average annual frequency	UK average annual cost	Commission IA average
Annual meeting	£89,796	1.13	£101,470	£79,574
Extraordinary meeting				£79,574
Select Committee	£7,193**	1.6	£11,509	£20,208
Training	£34,440		£34,440	£34,440
<b>Total</b>			<b>£147,418</b>	<b>£213,795</b>

Source: UK EWC Impact Assessment (1999) and Commission IA (2008)

\*\*Unit cost for Select Committee taken from Commission IA. The Commission IA total assumes there are 3 meetings per year.

The UK price estimates are again derived from the ECOTEC study in 1999, which formed the base of the UK Impact Assessment (1999), updated to 2008 prices and the 'European averages' come from the Commission IA (2008), converted from Euros at €1 = £0.7863<sup>10</sup>. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data<sup>11</sup>, in which UK EWCs list the number of general meetings held each year, whereas the Commission averages assume each EWC holds on average two full-size plenary meetings each year; one standard annual meeting along with one extraordinary meeting. The frequency of Select Committee meetings is calculated from the ECOTEC study (1999) assumption that 80 per cent of UK EWCs hold Select Committee meetings, of which each holds two per year.

Responses to the consultation noted that some of the unit costs derived from the ECOTEC study may have increased since enlargement of the EU from 2004 onwards. We have therefore revised the following unit costs to take account of this:

- the unit costs for travel and subsistence are now taken from the GHK study<sup>12</sup> which shows an increase per meeting from £13,104 to £15,301

<sup>10</sup> Source: Bank of England, Monthly average End month Spot Quarterly average, Spot exchange rate. Data for October 2008

<sup>11</sup> ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>

<sup>12</sup> Travel costs per meeting were estimated at EUR 15,300 and subsistence costs EUR 4,160

- the unit costs for Select Committees have also been taken from GHK such that per meeting the cost has increased from £2,326 to £6,733.

Costs related to translation and interpretation are approximately the same when comparing the GHK and updated ECOTEC estimates and have therefore not been revised further.

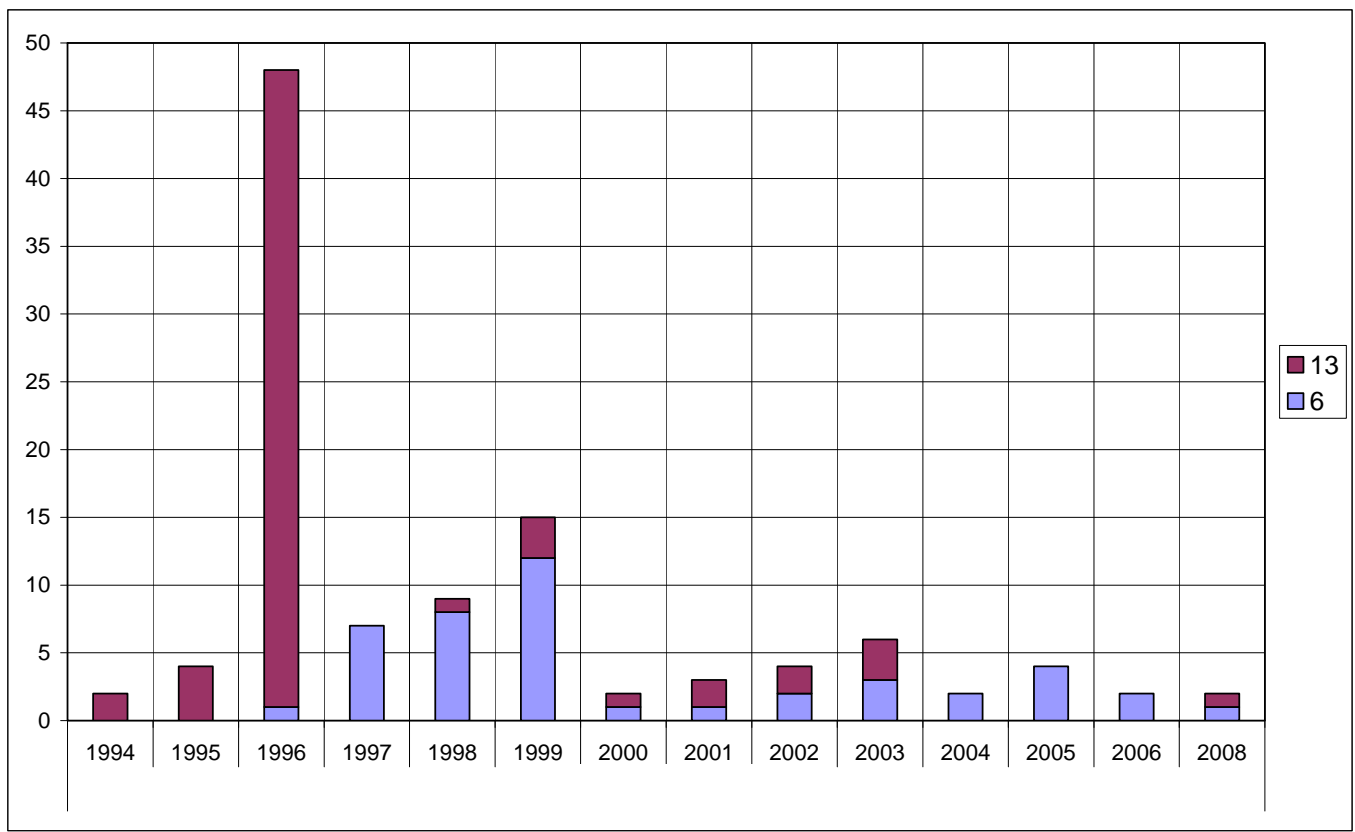
Otherwise, we believe the estimated costs and benefits remain broadly accurate.

**Take-up of EWCs in the UK**

Since the Directive was originally implemented across the EU in 1994 141 undertakings<sup>13</sup> with headquarters in the UK had, according to the EWC database, been established by the end of August 2008. Of these 113 are currently effective.

Graph 1 below provides a summary of UK-based EWCs created by year. Around 60 per cent were created under Article 13 of the Directive, which allows companies to continue with agreements arranged before the Directive came into force, with the remaining 40 per cent having established newly formed council agreements under Article 6, which entails a specific procedure as set out by the Directive.

Graph 1: Creation of UK EWCs (those currently effective) by year and by Directive article.



There are an estimated 265 companies<sup>14</sup> with UK headquarters that could potentially fall within the scope of the Directive. This implies a current take-up rate of 43 per cent<sup>15</sup>, which compares with the EEA average of 36 per cent.

Of the 28 UK EWCs which are no longer effective, 86 per cent were terminated due to Merger or Acquisition. Two thirds of those replaced by other EWCs remained in the UK, with the remainder relocating their headquarters outside of the UK. Furthermore none of the EWC agreements concluded since 2001 have ended.

<sup>13</sup> At the time of updating this impact assessment the total was 146 and 116 of these were still effective. These new data will be used in the impact assessment to accompany the consultation on implementation due in the course of 2009.  
<sup>14</sup> Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.  
<sup>15</sup> Data from the EWC Database in November 2008 suggest that the UK take-up rate is just under 44 per cent.

Data from the ETUI EWC Database indicates that the majority of UK EWCs hold just one annual meeting (with an average of 1.1 meetings per year for UK EWCs), hosting an average of eight UK and eleven non-UK members. Beyond this, nearly all UK EWCs have provision for Select Committees to meet before the annual meeting in order to prepare the agenda, currently with a maximum of three members, which is proposed to be increased to five members.

Under Directive 94/45/EC, companies are only obliged to set up an EWC at the request of 100 or more of its employees. This would remain the case under the 2008 amended Directive, though such amendments intend to allow EWCs to be created more easily, by obliging management to 'obtain and provide information to enable the commencement of negotiations...' Take up could also be increased following proposed improvements to current EWCs, in terms of the provision of more effective information & consultation, improved legal clarity and increased coherence between national and transnational procedures.

## **Benefits**

It is extremely difficult to quantify benefits associated with EWCs, given their intangible nature, though it is still worth considering positive effects the establishment and maintenance an EWC may have for a UK company.

The potential benefits of the proposed amendments to the Directive largely mirror those set out during the establishment of Directive 94/45/EC, as the 2008 proposed revision aims to enhance the working of EWCs, by improving the effectiveness of information and consultation of employees.

Evidence from the ECOTEC study in 1999 identified a number of benefits perceived by a majority of companies surveyed, primarily a notion of 'symbolic value' of EWCs, wherein the presence of an EWC 'demonstrates a positive commitment to employees'. This was accompanied by a general consensus that the establishment of an EWC had increased ability to exchange information with employee representatives and had involved employees more closely in the business.

A number of sample companies also believed the EWC had improved employees understanding of reasons for management decisions.

GHK (2008)<sup>16</sup> drew similar perceived benefits from their survey of EWCs across Europe, with 81 per cent of surveyed EWCs agreeing or strongly agreeing that understanding of management decisions had been improved; 79 per cent that there was a better exchange of information trans-nationally and 75 per cent that relations between management and employees had improved. Such benefits, as with those found by ECOTEC, are surely a desirable consequence of the presence of an EWC, though it remains difficult to assess their economic impact and indeed to be certain that the perceived benefits mirror reality.

The Commission Impact assessment goes further in their benefit analysis, suggesting that associated improvements in legal clarity and effectiveness of information and consultation of employees – particularly on restructuring issues – is likely to improve the management of change within the company. From this, they suggest costs relating to labour disputes and legal processes in situations could be reduced; huge economic costs relating to redundancy payouts (of up to €220 000 per worker)<sup>17</sup> could thus be reduced, which could far outweigh the costs of the running of an EWC. However, BERR does not believe that there is sufficient evidence to support this proposed benefit; whilst effective information & consultation is highly desirable in effecting management of change, the presence of an EWC is unlikely to have such a direct impact on issues of this kind.

Given mixed evidence for company support for the merits of EWCs, the potential positive impact of EWCs on issues such as the management of change should not be overestimated. It seems more reasonable that, at best, the establishment and presence of an EWC may ameliorate the impact of restructuring on employees rather than achieving significant reductions in the cost of restructuring.

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<sup>16</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

<sup>17</sup> 1999. Commission Impact Assessment, page 41.

## Costs

The cost estimates presented below focus on two broad areas:

- the direct effect of proposed changes to the directive that seek to improve the effectiveness of EWCs; and
- the indirect effect of these changes on the possible take-up of EWCs

### **1. Direct effect of proposed changes**

The changes proposed by the draft Directive are presented in greater detail in the accompanying consultation document, but are summarised again below:

- More clearly defined and implemented information & consultation of employees (Article 1.2)
- EWCs to be limited to transnational issues only (Article 1.3/4)
- Information to be defined and consultation to be redefined (Articles 2f and 2g)
- Obligation on management to provide information to enable commencement of negotiations (Article 4)
- Changed rules on size and composition of Special Negotiating Body to ensure balanced representation of employees (Article 5.2.b)
- The SNB to be allowed to meet before and after any meeting with the central management, without presence of employee representatives (Article 5.4)
- Ensuring balanced representation of employees as EWC representatives (Article 6.2.b)
- Establishment of arrangements for linking EWC procedures with those of national employee representation bodies.
- Increase in maximum size of Select Committee; from three to five members (Article 6.2.e)
- Management and SNB able to amend and terminate agreement and date of entry into force (Article 6.2.g)
- Duty of employer to represent the interest of employees, with an entitlement to the 'means acquired to apply the rights' to this. (Article 10.1)
- Access to training without loss of wages for EWC and SNB representatives (Article 10.2 and 10.4)
- Requiring national and transnational arrangements to start in parallel (Article 12.3)
- Clarification that there is no obligation to renegotiate EWC agreements established under Article 6.
- In the case of 'significant changes in structure' taking place within the company, agreements must be renegotiated at the request of at least 100 employees or their representatives (Article 13.3)

The anticipated effect of each of these changes and their estimated costs are presented in turn below.

### **Article 1: Legal Clarity on EWC objectives and information & consultation**

*Article 1 has been amended so that the arrangements for informing and consulting employees must be defined and implemented in such a way to ensure the effectiveness of the procedure and enable the undertaking to take decisions effectively.*

The Commission Impact Assessment argues that the current lack of clarity on information and consultation leads to time-consuming and therefore costly disputes within companies, citing examples of EWC companies who have suffered greatly lengthened restructuring processes, which they claim to be partially as a result of such a lack of clarity. Therefore, it is argued that proposals to this Directive should reduce costs in this area, rather than increase them. However, BERR questions the extent to which a clarification of I&C would reduce costs associated with restructuring and prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

*In addition, the Commission has proposed a new paragraph in order to clarify that the information and consultation procedures for consideration by EWCs is limited to transnational issues and thereby distinct to matters of national interest only. Thus, matters for the consideration of the EWC must concern the Community scale undertaking as a whole, or at least two undertakings or establishments situated in two different Member States.*

Clarifying that EWC business should be limited to transnational issues only is unlikely to create any additional costs; conversely, it is likely to shorten EWC meetings by ensuring that the objectives of EWC meetings are understood.

## **Article 2: Definitions of information and consultation**

*The Commission has proposed a new definition for 'information' and has amended the definition for 'consultation', introducing the concept of time, fashion and content for the information and consultation procedures, in order to bring it into line with other Directives containing information and consultation provisions.*

This is a very similar argument to part one of Article 1 (above), wherein more clearly defined information and consultation could improve company operations, for example by reducing costs resulting from lengthening of undertaking restructuring due to labour disputes. However, BERR prefers the logic that improved I&C is likely to improve the impact restructuring has on employees.

## **Article 4: Responsibility for the establishment of an EWC**

*The undertaking must make available information relating to the number of its employees. The new text also states that the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body (SNB); in particular to the structure of the undertaking and the size of its workforce.*

The amendment to this article amounts to the provision of more information, which could involve additional management time. However, given the predicted four new UK EWCs per year (based on past growth in EWC numbers)<sup>18</sup>, even if five hours are devoted to such a responsibility, the additional burden would only be  $(5 \times £22^{19} \times 4) = \text{£}440$ . At an estimated £110 per company, this is certainly a negligible cost, whatever the extent of aggregation.

## **Article 5: Special Negotiating Body**

A number of changes are proposed for this Article:

- *Introduction of a simplified method for composition of the SNB*
- *Informing other bodies about SNB negotiations*
- *Entitlement for SNB to meet separately from central management*
- *Use of experts*

### *Introduction of a simplified method for composition of the SNB*

*The Commission has proposed a simplified method for the composition of the SNB which means that, subject to a minimum of 50 employees in one Member State, one SNB seat will be allocated per portion of employees employed in that Member State amounting to 10 per cent, or a fraction thereof, of the total number of employees of the undertaking in the EEA.*

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<sup>18</sup> Taking into account the termination of certain agreements through M&A etc., there has been an average of four new EWCs established per year.

<sup>19</sup> Source: Annual Survey of Hours and Earnings (ASHE).

The Commission IA (2008) states that the change to SNB composition is not controversial and that this Directive update would have 'minimal impact on set-up costs' and lead to a 'limited increase in the number of SNB members and therefore in the costs'

#### *Informing other bodies about SNB negotiations*

*Article 5(2)(c) currently requires that the central and local management must be informed about the composition of the SNB. This requirement has been expanded so that central and local management are also informed of the start of the negotiations.*

The obligation to inform management about the start of negotiations is likely to take very little additional employee representative time. Even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13<sup>20</sup> per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**<sup>21</sup> to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

#### *Entitlement for SNB to meet separately from central management*

*In order to enable employees' representatives to be able to cooperate together to define their positions in the negotiations, a new entitlement has been proposed to allow the SNB to meet before and after any meeting with the central management without the employers' representatives being present.*

The entitlement for the SNB to meet separately will increase set-up costs of an EWC, by increasing the time and resources taken up by SNB negotiations. If it is assumed that, in addition to the one standard meeting with management there would be two additional meetings held solely by the SNB (one before meeting with management and one after)

Taking the cost break-down for setting up of an EWC, which in practice details the cost of the SNB meeting aimed to establish the EWC, the average daily cost of an SNB meeting of **£61,726** (excluding management time and costs of experts for management - which are not relevant, and excluding ballot costs - which should not be duplicated), giving a total average costs per SNB of £123 452<sup>22</sup>. For the estimated four newly established UK EWCs, this would give a total additional cost burden of **£0.49m**.

#### *Use of experts*

*Article 5(4) entitles the SNB to be assisted by experts of its choice; **the cost of one of which must be met by the undertaking**. The Commission seeks to recognise the role that trade union organisations can play in negotiating EWCs agreements. A further entitlement is created to allow the SNB to request an expert's presence at the negotiating meeting, where appropriate. The Commission has therefore amended the text to suggest that an appropriate Community level trade union could fulfil the role of an expert, although it should be noted that the choice remains one for the SNB to make. In order to enable the monitoring of new EWCs being established and the promotion of best practice, European trade union organisations and European employers' organisations have also been added to bodies to be informed about these matters.*

The amendment only extends the amendment so that 'an appropriate Community level trade union could fulfil the role of an expert'; 'the choice remains one for the SNB to make.' There is therefore little likely increase in costs related to the use of experts, rather a wider choice for the SNB.

<sup>20</sup> Source: Annual Survey of Hours and Earnings (ASHE).

<sup>21</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904.

<sup>22</sup> Assumed that SNB would meet without management twice.

## **Article 6: Content of the Agreement**

### *EWC composition – size and representation*

*The current requirement, relating to the composition of the EWC, its size and how seats are allocated, has been expanded to include that, where possible, in the interest of the balanced representation of employees, its composition should also take into account the activities, category and gender of the employees of the undertaking.*

It is unlikely that ensuring balanced member composition will involve any significant costs. Firms are only required to 'take in account' 'where possible' the composition of representation in terms of activities, categories and gender, which should not involve more than a simple consideration in the case of setting up a new EWC and perhaps a minor redistribution of representative members in the case of established EWCs.

### *Linking national and transnational provisions*

*The establishment of arrangements for linking of the EWC procedures with national employee representation bodies. This Article is closely related to the amendments made at Article 12 about the links between the EWC Directive and other Community and national provisions.*

For this reason, the impact of linking of national and transnational provisions is detailed under Article 12.

### *Composition of the Select Committee*

*The number of members of the Select Committee has been increased from three members to a maximum of five members.*

The current average number of members in a UK EWC Select Committee is four,<sup>23</sup> - and the GHK EU average estimate is five<sup>24</sup> - so the amended article to limit the size of the Select Committee to a maximum of five is unlikely to have a large impact on set-up or operation costs. In fact, it is likely to reduce the size and therefore costs of a number of UK EWC Select Committees who currently have more than five members and who will be obliged to diminish the size of their Select Committees.

## **Article 10: Role and protection of Employees' Representatives**

*There would be a new duty on the members of the EWC to inform the employees of the content and outcome of an information and consultation procedure carried out in accordance with this Directive.*

This duty to inform employees could take additional time of EWC members. However, as with the argument provided in Article 5, even if each EWC needed to devote two labour hours to the task, this would cost only £26 to the company (at £13 per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external good and services. Retaining the logic that there are on average four new UK EWCs created per year, this gives an annual cost burden of only **£904**<sup>25</sup> to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

*Members of the SNB and EWC are to have access to training without loss of wages in so far this is necessary for their representational duties in an international environment.*

The right of members of the SNB and EWC to training without loss of wages is likely to account for the largest increase in cost burden to UK EWCs, as both current and newly established EWCs will be affected.

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<sup>23</sup> Average members in Select Committee of effective UK EWCs giving relevant data: ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu>

<sup>24</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

<sup>25</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (4 x £226).

Though evidence on current provision of training within EWCs is rather limited, the most recent study on EWCs (GHK, 2008) indicates that only around 36 per cent<sup>26</sup> of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent<sup>27</sup> of EWC companies provide training to at least one member of the EWC. Therefore, if an upper-limit estimation is taken by which 50 per cent of current UK EWCs do not provide any EWC members with training (and thus the remaining half provides full training: a simplification of the picture perceived by GHK), then 50 per cent x 113 = 56 UK EWCs would be obliged to provide training following the revision of the Directive. The GHK report (2007) on EWCs suggests that the European average that those who already provide training are spending is £34,440 (€43 800) per EWC.

If these 56 EWCs were to all immediately spend this average amount on training, then the total additional cost burden would be **£1.93m**, although this cost is divided amongst 56 transnational companies of more than 1000 employees.

It should also be noted that:

- a) There is likely to be some additional deadweight within this estimation, as in reality some proportion of the 'remaining 50 per cent of EWCs' not currently reported to provide training are likely to do so to some extent, to all or some members of their EWC.
- b) The average training figure per EWC may overestimate the true average amount an EWC will spend on training, because the figure used is taken uniquely from firms which are providing training on initiative and therefore are more likely to have a strong culture of training.

In order to account for this issue, an alternative scenario – potentially closer to the true likely consequence of the Directive changes – could be added to the analysis above. If only 25 per cent of EWCs were to start fully training their EWC members following Directive amendments – taking into account the deadweight issue and the likelihood that there would not be a 100 per cent take-up of training, then only 28 EWCs will be subject to the training costs of £34,440. This would imply a cost burden of only **£0.96m**.

This amendment is not said to be controversial in the eyes of the social partners, who recognise the benefit to the EWC of having a well-trained representative body, which would be extended to include EWCs not currently offering training to their employees.<sup>28</sup>

### **Article 12: Links between this Directive and Other Community and National Provisions**

*National and transnational arrangements for information and consultation are required to start in parallel. Further to this, the SNB and management are required to establish the arrangements for linking the national and transnational arrangements on informing and consulting employees which exist within the company during the negotiating period.*

The enforced linking and alignment of national processes with Community level provisions is a point of concern. If the amended Directive on EWCs were to spill over into national provisions on information and consultation, risking a re-opening of discussions on the UK Information and Consultation Directive, this would have large economic cost in terms of time and resources. This is not to be quantified at this stage, rather highlighted as an undesirable potential consequence resulting from amendments the Community Directive.

### **Article 13: Agreements in force**

Article 13 enables companies to continue with agreements which were concluded voluntarily before the Directive came into force provided such agreements cover its entire workforce and provides for the transnational information and consultation of employees. Once the Directive came into force, EWC agreements were required to meet the more specific requirements laid out in Article 6. In other words,

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<sup>26</sup> 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

<sup>27</sup> 54 per cent (of companies providing training to less than all EWC members) x 79 per cent (of all EWC companies providing training) = 43 per cent.

<sup>28</sup> Lessons learned on European Work Councils, 2005.

agreements in force on 22 September 1996 are exempt from the provisions of the EWC Directive. With regard to the UK where the Directive came into force on 15 December 1999 existing arrangements meeting the above criteria are similarly deemed exempt from the Directive.

The current proposal envisages that unless specific provisions exist in current Article 6 or Article 13 agreements, any *significant change to the structure* of an undertaking would result in the requirement for an EWC agreement to be renegotiated under the provisions of Article 6.

As the proposals do not define what constitutes a change in structure, we have assumed here that this would relate to mergers and acquisitions (M&A). Using data from the ETUI EWC database, of the 28 UK-based EWC agreements that are no longer effective 86 per cent – or 24 agreements – were because of mergers and acquisitions. Furthermore the results of these mergers and acquisitions indicate that a third of these re-located their headquarters outside of the UK. Therefore, overall, 16 of the 28 agreements that ended resulted in new UK-based EWCs. Since 1992 this averages at two UK-based EWCs a year that may undergo a merger or acquisition.

In the absence of detailed information concerning provisions for changes of structure within existing Article 6 or Article 13 provisions, we assume here that such provisions exist in half of all EWC agreements. From this we estimate therefore that the proposed changes to Article 13 would affect 1 UK-based EWC each year. Using the estimated set-up costs from table 1 above this would lead to an **increase in costs to business of around £0.1m a year.**

Table 4: Summary of estimated direct effect costs

	Estimated cost p.a £m
Article 1: Legal Clarity on EWC objectives and information & consultation.	Not quantified
Article 2: Definitions of Information & Consultation	Not quantified
Article 4: Responsibility for the establishment of an EWC	negligible*
Article 5: Special Negotiating Body	0.49
Article 6: Content of the Agreement	negligible*
Article 10: Role and protection of Employees' Representatives	0.96 - 1.93**
Article 12: Links between this Directive and Other Community and National Provisions	Not Quantified
Article 13: Agreements in force	0.1
<b>Total</b>	<b>1.55 - 2.52</b>

Source: BERR estimates, 2008. Estimated increased cost burden of £110 and £425 respectively per new UK EWC.

\*\*Depending on training scenario considered.

## 2. Indirect effect of new directive on take-up of EWCs

As noted above, the database of EWCs indicates that there are 113 effective UK headquartered EWCs and the most recent data available on the total number of companies covered by the Directive (ETUI-REHS, 2006) suggests there to be 265 with headquarters in the UK. This gives a UK take-up rate of 42.6 per cent, compared to the EEA average of 35.5 per cent, where 583 EWCs have been established from a potential 1642.

One objective of the proposed amendments to the existing Directive is to increase the take-up rate. An addition to Article 4 of the Directive states that ‘the undertaking must obtain and provide information to enable the commencement of negotiations undertaken by the Special Negotiating Body’, which seems to be the most direct attempt to encourage take-up. Proposed improvements to EWCs – through improved effectiveness of information and consultation, legal clarity and coherence – could also be seen as an indirect method for inciting eligible companies to establish a new EWC.

However, it seems unlikely that the 152 eligible UK companies are currently without an EWC agreement solely due to a lack of guidance on information provision; in other words it is questionable whether amendments of this nature are likely to greatly increase the current take-up of EWCs in the UK. As it is only 28 new UK-based EWCs have been created since 2001.

Further to this, evidence from the Commission Impact Assessment suggests that the establishment of an EWC depends upon factors such as the sector the company operates in (41 per cent average take-up rate in the metals sector compared to only 24 per cent in the services sector) and the presence of employees in certain EEA member states (for instance, over half of eligible companies operating in Sweden have established an EWC).

Perhaps most essentially, it will remain the case that the establishment of an EWC agreement is voluntary and company management are only obliged to do so at the request of at least 100 employees, hence the proposed changes to the Directive are unlikely to have any marked impact on the take-up rate.

In light of this, it is worth considering the additional cost burden which would be borne if the UK take-up rate were to increase. For illustrative purposes we have assumed an increase in the take-up rate to 50 per cent from the current level of 42.6 per cent, which would result in 132 UK-based EWCs, or 19 new UK EWCs. It seems reasonable to assume that the creation of these new EWCs would be spread over a number of years following the amendment to the Directive. We assume here a 3-year period for creation of the 19 new EWCs with seven established in the year following the Directive amendment and six more established in each of the following two years. On this basis the estimated additional costs to the set-up and running of UK EWCs would be as follows:

**Table 5:** Indirect costs, per year, envisaged as a result of additional take-up of EWCs (current prices followed by Present Values)

Table 5: Indirect costs, per year (with Present Value prices)						
Year following change	1	2	3	4 etc.	TOTAL over 10 year	Average per year – over 10 years
Discount Rate	3.50%					
Number of new EWCs	7	6	6	0		
Set-up costs	£728,399	£624,342	£624,342	£0	£1,977,083	£197,708
Running costs	£1,031,926	£1,916,434	£2,800,942	£2,800,942	£25,355,896	£2,535,590
Set-up costs (PV)	£703,767	£582,830	£563,121	£0	£1,849,718	£184,972
Running costs (PV)	£1,031,926	£1,851,627	£2,614,709	£2,526,289	£21,486,018	£2,148,602

Source: Impact Assessment (1999) and BERR estimates.

**Table 6: Summary of quantifiable costs**

Table 6: Summary of additional quantifiable costs			
2008 Prices	Direct Costs £m	Indirect Costs £m	Total £m
One-off costs £m*	0	1.98	1.98
Running costs £m #	1.55 - 2.52	2.54	4.09 - 5.06

Source: Impact Assessment (1999) and BERR estimates. \*One-off costs are spread over 3 years.  
# average running costs over 10 years.

## F: Risks

The estimates of costs and benefits presented in this impact assessment are based upon actual data sources where they exist. Beyond this a number of assumptions have been made where there are gaps in the data. Furthermore there is inevitably a degree of uncertainty surrounding the indirect and direct effects of the changes proposed by the draft directive. Moreover further changes may result as the draft directive continues to be negotiated at EU level during the autumn of 2008. We will continue to firm up our estimates as new data and information become available and present these with the impact assessment to accompany the consultation on implementation during the course of 2009, should the proposals be adopted.

Please also refer to the potential cost related to amendments to Article 12 in Section E, which details the risk of re-opening of discussions on UK Information & Consultation Directive.

## G: Enforcement

The Central Arbitration Committee (CAC) is currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999. It is therefore likely that the enforcement of any amendments to the EWC Directive will fall to the CAC. The number of cases brought before the CAC under the Transnational Information and Consultation of Employees Regulations to date has been minimal, suggesting that compliance is high. Therefore there is no reason to believe that these proposed changes are likely to have a significant impact.

## H: Recommendation and summary table of costs and benefits

**Table 7** below presents a summary of the estimated quantifiable costs and benefits. These costs and benefits reflect the policy option of implementing amendments set out by revised Community Directive 94/45/EC on European Work Councils.

Table 7. Summary of quantifiable costs and benefits			
Scope of law, £m	Annual Costs (ongoing)	One off costs	Annual Benefits (£m p.a.)
Direct Effect of Changes Proposed by Directive (i.e. on existing EWCs)	1.55 - 2.52	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	2.54	1.98	Not quantified – please refer to EWC Benefits description in Section E.

Source: BERR estimates. Figures have been rounded

## **I: Implementation**

It is likely that any legislative changes to the EWC Directive will be implemented by way of a revision of the Transnational Information and Consultation for Employees Regulations 1999 which transposed the provisions of Directive 94/45/EC on the establishment of a European Works Council. However, the Government will prepare a further public consultation to seek stakeholders' views on the implementation of the revised Directive.

## **J: Monitoring and evaluation**

A review of the EWC Directive will be undertaken by the European Commission five years after the Directive comes into force.

The Government will continue to monitor the take up and use of EWCs through the Workplace Employment Relations Survey (WERS) (expected to be completed in 2010) which provides an integrated picture of employment relations, including information and consultation arrangements.

The Government monitors the cases brought before the CAC under the Transnational Information and Consultation for Employees Regulations 1999, which are published annually in the CAC's Annual Report. It will continue to do so following the implementation of the revised EWC Directive.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## Annex A: SPECIFIC IMPACT TESTS

### 1. Competition Assessment

#### *Business sectors affected*

Table A1 below presents the distribution of currently effective EWC's with UK headquarters. All of these EWCs are in the private sector.

The initial analysis of the competition filter is that a detailed competition assessment is not considered necessary (see table A2 below). The proposed legislation will apply to all undertakings with at least 1,000 employees within EU member states and, given the relatively small magnitude of the costs, is unlikely to affect the competitiveness of any particular sector.

Table A1: Distribution of currently effective UK-based EWCs by sector

% distribution	Effective
Building and Woodwork	3%
Chemicals	20%
Food, hotel, catering and agriculture	15%
Graphical	5%
Metal	24%
Other services	10%
Public services	0%
Services Commerce	5%
Services Finance	7%
Services IBITS	2%
Textile	2%
Transport	7%

Source: EWC Database, ETUI\*\*

\*\*Online database accessible through <http://www.ewcdb.eu/>. Data accessed and retrieved on 20 August 2008

Table A2. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BERR

### 2. Small Firms Impact Test

Undertakings with fewer than 1,000 employees across the EEA and fewer than 150 employees in any member state are not affected by the provisions of this directive.

### **3. Equality Impact Assessment**

In line with better regulation best practice and the Equalities Duties we have considered the impact of changing the law by gender, race and disability.

The Commission Impact Assessment has not identified any negative impacts on equality which would result as a consequence of a revision to this Directive.

In addition, the proposed amendment to Article 6, detailed in Section E, stipulates 'balanced representation of employees within the EWC', taking the 'activities, category and gender' of employees of the undertaking into account.

