

**IMPACT ASSESSMENT**

Implementation of the  
Recast European Works  
Council Directive

APRIL 2010

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>BIS</b>	<b>Title: Review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees. Impact assessment to accompany Government response on implementing draft UK regulations</b>	
<b>Stage:</b> Government response on implementation	<b>Version:</b> Version 2	<b>Date:</b> March 2010
<b>Related Publications:</b> Government consultation document and Government response		

Available to view or download at: <http://www.bis.gov.uk/Consultations/european-works-council-directive>

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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. Following Member State negotiation, the Commission has published a recast of the EWC Directive which seeks to address the problems set out above. The Government has conducted a consultation on draft Regulations that will implement this Directive.

### What are the policy objectives and the intended effects? The Government's objective is to transpose the recast Directive in order to achieve the Commission's objectives in amending the Directive, which 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.

Government issued a consultation paper in September 2008 on the European Commission's proposals to recast Directive 94/45/EC (the European Works Council directive). A Government response to the consultation was published in December 2008. The UK Government held a further consultation on regulations to transpose the recast Directive in November 2009 and plans to publish the accompanying Government response in March 2010. Policy options consist of (1) do nothing or (2) implement the Directive in UK law. Option 1 is not viable as the UK would face infraction proceedings and is only used as a benchmark in this IA. A more detailed description of option 2 can be found later in this IA.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Article 15 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), next report expected in 2011. The Central Arbitration Committee (CAC) and the Employment Appeals Tribunal (EAT) are 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:

Lord Young of Norwood Green, Minister for Postal Affairs and Employment Relations Date: 30/03/2010

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Implement proposed review to the Directive.**

<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 £2.61m over 3 years (as 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £4.87m and £5.95m depending upon scenario considered.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 2.6m	3	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 4.9 – 6.0m	10	<b>Total Cost over 10 years (PV)</b> <b>£ 44.0m – 53.3m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' There are a number of negligible costs relating to Admin Burdens detailed within individual articles.			

<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 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -44.0m – -53.3m	<b>NET BENEFIT (NPV Best estimate)</b> £ m
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What is the geographic coverage of the policy/option?		UK	
On what date will the policy be implemented?		5 June 2011	
Which organisation(s) will enforce the policy?		CAC/ EAT/ ET	
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?	Yes	Yes	Yes     No

<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 1999.

### B: The issue

The TICE Regulations implement the EWC Directive and set out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings, who have their central management in the UK, 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 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 and 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 'subsidiary requirements' will apply which are laid out in the Annex to the Directive and in the Schedule to the TICE Regulations. 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 1994 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 'Article 3 agreements' respectively 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 Directive further sets out the procedures for the handling of confidential information and makes provisions to ensure that the 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*

Responding to concerns about the operation of the 1994 Directive, the European Commission issued a legislative proposal in July 2008 to recast the EWC Directive, aiming to increase the number of EWCs and improve their effectiveness. The resultant recast Directive (2009/38/EC) was heavily informed by joint advice submitted by the European Social Partners (BusinessEurope, the European Trade Union Confederation, CEEP and UEAPME) and, as a result, it represents a compromise that balances the interests of business and employees.

The recast Directive seeks to address existing problems in EWCs – which include ineffective information and 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 European level (i.e. EWCs), increased obligation of reporting of information following information and consultation before and during the establishment of EWCs and the right to training without loss of wages for EWC members.

The Transnational Information and Consultation of Employees (Amendment) Regulations 2010 (TICE 2010) transpose the recast Directive.

## **Consultation**

### *Within government*

These proposals have been developed in consultation with the following Government departments: The Foreign and Commonwealth Office, the Ministry of Justice and the Devolved Administrations.

### *Public consultation*

The Government conducted a public consultation on the proposed negotiating strategy in September 2008. The consultation closed on 6 October 2008. A further public consultation on draft regulations to transpose the recast Directive in the UK was started in November 2009. This consultation closed on 12 February 2010. A total of 44 responses to the second consultation were received, of which 6 commented on the Impact Assessment. These are discussed below in Section E on Costs and Benefits. The consultation responses highlighted a divergence in views between unions and employers on the Government's transposition proposals as well as suggesting alternative approaches to a number of issues, though a majority of those who commented on the IA felt that the estimated cost of an EWC meeting was too low.

## **C: Objectives**

### *Background*

This Impact Assessment (IA) seeks to assess the impact of the proposed amendment of TICE 1999 following the revision of Council Directive 94/45/EC, which allows for the provision and establishment of European Work Councils (EWCs) within companies of more than 1,000 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 was under a duty to review the Directive and, following a Commission review of its failings, the objectives for the recast 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 the proposed implementing Regulations.

## D: Options identification

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

The directive has been agreed at EU level, the UK will now 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 decided that the best approach for achieving their goal of improved operation of EWCs was to recast the EWC Directive.

The Commission's proposal of July 2008, as amended by the Social Partners, has now been adopted, and the Government is undertaking this Impact Assessment accordingly as part of its public consultation exercise on the implementing regulations.

The detail of the proposed changes to UK legislation was discussed fully in the consultation document<sup>1</sup> and is presented in summary form below in the section on costs and benefits.

Given that it is not feasible for the UK not to implement the changes stemming from the recast Directive, the Impact Assessment will solely assess the changes to UK 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>2</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>3</sup> of the current take-up of EWCs in both the UK and across the EEA. The ETUI database has been widely used as a reference source by assorted EU and national institutions as well as research and academic centres.

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 Department of Trade and Industry (DTI) Regulatory Impact Assessment<sup>4</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 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 the then DTI<sup>5</sup>.

More recent data and information have been taken from the European Commission Impact Assessment<sup>6</sup> (IA) of July 2008 which underpinned the proposal for the recast Directive. The European Commission IA itself drew on the findings of a preparatory study<sup>7</sup> and we have used these data where appropriate.

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<sup>1</sup> <http://www.berr.gov.uk/files/file52969.pdf>

<sup>2</sup> ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

<sup>3</sup> As of mid-August 2008

<sup>4</sup> The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

<sup>5</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>6</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\\_assessment\\_part1\\_en.pdf](http://ec.europa.eu/employment_social/labour_law/docs/2008/impact_assessment_part1_en.pdf)

<sup>7</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)

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 2010 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 (2010 prices)\***

Element	Average setting up costs
management time	£23,586
employee time	£10,029
cost of venue	£10,835
Travel	£10,335
translation costs	£5,001
interpretation costs	£18,503
Language and other	£13,335
admin support	£2,000
dissemination costs	£1,667
costs of experts - for employees	£4,829
costs of experts - for management	£6,686
documentation for meetings	£667
admin of ballot	£22,837
<b>Total</b>	<b>£130,308</b>
<b>Commission IA average – 2008</b>	<b>£98,584</b>

Source: Source: UK EWC IA (1999). All figures are updated using RPI (CHAW) (factor change of 1.33) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the average earnings index (JODW), excluding bonuses (a factor change of 1.49). A further 25% uplift has been added to the costs to reflect consultation responses where numerous stakeholders felt the costs presented in the November 2009 IA were underestimated.

## 2. Operating costs

Table 2: Average costs of a UK EWC annual meeting (2010 prices)

Element	Running Costs (£)
management time	£8,153
employee time	£11,886
cost of venue	£24,970
travel	£17,048
translation costs	£8,435
interpretation costs	£17,769
admin support	£2,600
dissemination costs	£4,484
costs of experts - for employees	£3,491
costs of experts - for management	£9,750
documentation for IT	£1,617
<b>TOTAL</b>	<b>£110,204</b>

Source: UK EWC IA (1999) . UK EWC IA (1999). All figures are updated using RPI (CHAW) (factor change of 1.33) apart from figures relating to labour costs (management and employee time & expert costs), whose prices are updated using the average earnings index (JODW), excluding bonuses (a factor change of 1.49). A further 25% uplift has been added to the costs (apart from travel) to reflect consultation responses where numerous stakeholders felt the costs presented in the November 2009 IA were underestimated.

Table 3: Total average annual running costs of a UK EWC (2010 prices)

Type of meeting	Average unit cost	Average annual frequency	UK average annual cost	Commission IA average
Annual meeting	<b>£110,204</b>	1.13	£124,530	£79,574
Extraordinary meeting				£79,574
Select Committee	<b>£7,505</b>	1.6	£12,008	£20,208
Training	<b>£38,371</b>		£38,371	£34,440
<b>Total</b>			<b>£174,908</b>	<b>£213,796</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 2009 prices and the 'European averages' come from the Commission IA (2008), converted from Euros at €1 = £0.8760<sup>8</sup>. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data<sup>9</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.

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.

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:

<sup>8</sup> Source: Bank of England, Monthly average End month Spot Quarterly average, Spot exchange rate. Data for February 2010

<sup>9</sup> ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>



- the unit costs for travel and subsistence for an annual meeting are now taken from the GHK study<sup>10</sup> at £17,048
- the unit costs for Select Committees have also been taken from GHK such that per meeting the at £7,505.
- an additional 25 percent has been added to all other unit costs (excluding training which comes from the commission's impact assessment). Numerous consultation responses felt that the impact assessment underestimated the unit costs. One consultation response felt the annual cost of running a EWC could be as much as £500,000 per annum. Other responses felt there was underestimation without expressing the magnitude of likely costs. There was also one response which felt the costs were overestimating. To reflect the most typical view from consultation respondents that the costs were an underestimate a 25 percent uplift was applied. This figure is to an extent arbitrary but attempts to incorporate consultation responses. The underlying figures are derived from the ECOTEC study which are now over 10 years old so there is scope for these costs to drift away from the true costs.

### *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.

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

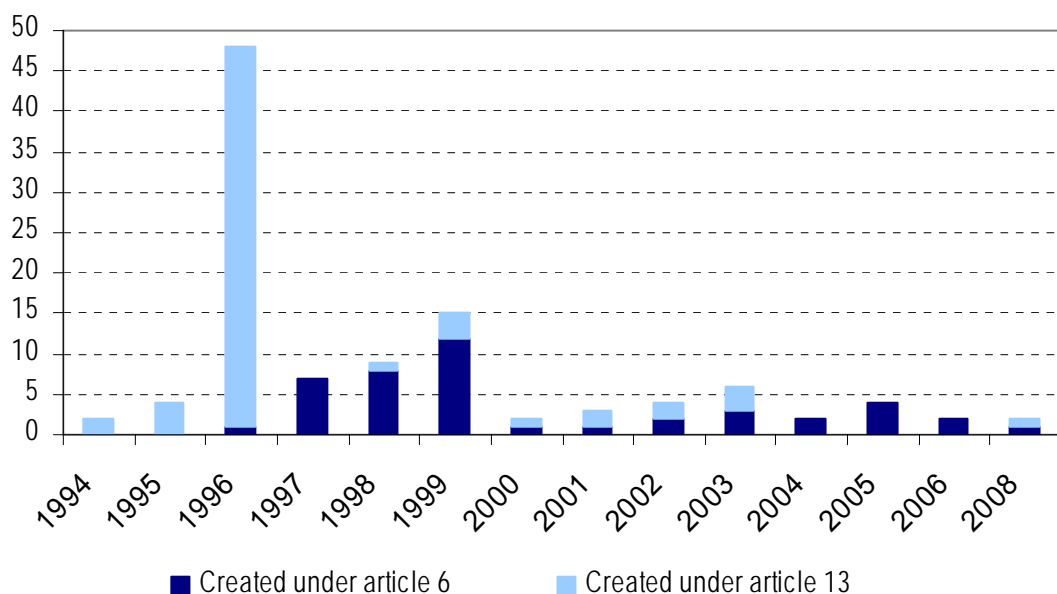
Since the Directive was originally implemented across the EU in 1994 141 undertakings<sup>11</sup> with headquarters in the UK had, according to the EWC database, been established by the end of August 2008. Of these 113 are currently effective.

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.

<sup>10</sup> Travel costs per meeting were estimated at EUR 15,300 and subsistence costs EUR 4,160

<sup>11</sup> In November 2008 146 and 116 of these were still effective.



There are an estimated 265 companies<sup>12</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>13</sup>, which compares with the EEA average of 36 per cent.

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 2009 recast 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 and 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 recast Directive largely mirror those set out during the establishment of Directive 94/45/EC, as the recast Directive 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>14</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

<sup>12</sup> Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.

<sup>13</sup> Data from the EWC Database in August 2009 suggest that the UK take-up rate around 42 per cent

<sup>14</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

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>15</sup> could thus be reduced, which could far outweigh the costs of the running of an EWC. However, the Department for Business, Innovation & Skills (BIS) does not believe that there is sufficient evidence to support this proposed benefit; whilst effective information and 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.

The Chartered Institute of Personnel Development (CIPD)<sup>16</sup> have identified in principle increased employee voice leads to benefits for employers from employees' skills and knowledge being better used, leading to higher productivity. Employees feeling more valued, so they are more likely to stay and contribute more. The organisation gains a positive reputation, making it easier to recruit good employees. Conflict is reduced and co-operation between employer and employee is based on interdependence. Employees in turn should benefit from having more influence over their work, higher job satisfaction and more opportunity to develop skills.

In July 2009 BIS published its 'Engaging for Success: enhancing performance through employee engagement report'<sup>17</sup>. David MacLeod and Nita Clarke led an independent review on employee engagement. The review found that levels of engagement can positively correlate with performance. One area of evidence was the 2006 Gallup study of 23,910 business units which compared top quartile and bottom quartile financial performance with engagement scores. They found that those with engagement scores in the bottom quartile averaged 31-51 per cent more employee turnover, 51 per cent more inventory shrinkage and 62 per cent more accidents. Those with engagement scores in the top quartile averaged 12 per cent [higher?] customer advocacy, 18 per cent higher productivity and 12 per cent higher profitability. It should be noted that the review found correlation between engagement and performance and that correlation does not necessarily imply causation.

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.

## **COSTS**

The cost estimates presented below focus on two broad areas:

- The direct effect of proposed changes to the Transnational Information and Consultation of Employees Regulations 1999 that seek to implement the recast Directive; and
- The indirect effect of these changes on the possible take-up of EWCs

### **Direct effect of proposed changes**

The changes required by the recast Directive can summarised as follows:

- Information and consultation must be effective and allow undertakings to take decisions effectively (Article 1.2)
- EWCs to be limited to transnational issues only (Article 1.3/4)

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<sup>15</sup> 1999. Commission Impact Assessment, page 41.

<sup>16</sup> <http://www.cipd.co.uk/subjects/empreltns/comconst/empvoice.htm>

<sup>17</sup> <http://www.berr.gov.uk/files/file52215.pdf>

- Information to be defined and consultation to be redefined (Articles 2.1.f and 2.1.g)
- Obligation on management to provide information to enable commencement of negotiations (Article 4.4)
- Changed rules on size and composition of Special Negotiating Body (SNB) 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)
- Where possible, 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 (Articles 6.2.c and 12).
- The option to set up a select committee (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 EWC to represent collectively the interest of employees, with an entitlement to the 'means required' to do this. (Article 10.1)
- EWC members to ensure that they report the outcome of EWC discussions to their members (Article 10.2)
- Access to training without loss of wages for EWC and SNB representatives (10.4)
- 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)

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 and 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 UK has implemented the new measures in a way that seeks to retain the balance of the recast Directive between effective information and consultation and efficient business decision-making.*

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, BIS 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. The UK has introduced the new definition of 'transnational' through Regulation 3 of TICE 2010. It very closely reflects the wording of the Directive. The definition does not include words from recital 16 to the Directive (which sets out what might be considered transnational) as there is no legal obligation on the UK to transpose the recitals of the Directive and it is our policy not to do so generally.*

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. Taking a relatively narrow approach to the implementation of the definition should ensure that the burden on business is controlled.

## 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. The UK has implemented these 'definitions' as obligations on central management to conduct information and consultation in a specified manner because they do not fit easily as pure definitions in the UK legal context.*

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, BIS prefers the logic that improved I&C is likely to improve the impact restructuring has on employees. By introducing the 'definitions' as obligations on management the UK has ensured that they are effectively enforceable, but also that the impact on business is controlled by limiting their application to the information and consultation of EWCs or information and consultation representatives, as was the intention of the recast Directive.

## 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 structure of its workforce. The UK has implemented this provision by amending the current right for employees to receive information to decide if their company is within scope of the Regulations. The amended Regulations requires that central or local management obtain and provide information to employees or their representatives on the structure of the undertaking or group of undertakings and the structure of its workforce.*

The amendment to this article amounts to the provision of more information, which could involve additional management time. Requests relating to information on number of employees can come from companies covered by the directive and haven't adopted a EWC along with new UK EWCs. We assume in this impact assessment that 50% of companies under scope that don't have a EWC receive information requests from employees, this amounts to 76 companies<sup>18</sup>. Given past growth in EWCs we predict four new UK EWCs per year.<sup>19</sup> In total we estimate 80 companies per year receiving requests. As these companies will be large multinationals it is likely that they may receive more than one request so we assume that on average two requests are received per company per annum. Given the scale of these numbers the total cost will be relatively small. Even if five hours are devoted to such a responsibility, the additional burden would only be  $(5 \times \text{£}22^{20} \times 80 \times 2) = \text{£}17,600$ . At an estimated £220 per company, this is certainly a negligible cost, whatever the extent of aggregation.

## Article 5: Special Negotiating Body (SNB)

A number of changes are proposed for this Article:

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

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

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<sup>18</sup> Based on an estimated 265 companies in scope of the directive using take-up figures (113 companies) from the ETUI database (data extracted on November 2008) we estimate that a 152 companies don't take-up a EWC (265-113).

<sup>19</sup> Taking into account the termination of certain agreements through mergers and acquisitions etc., there has been an average of four new EWCs established per year.

<sup>20</sup> Source: Annual Survey of Hours and Earnings (ASHE). ASHE 2009, managers and senior official code 1 Table 2.5a Hourly pay - Gross (£) - For all employee jobs: United Kingdom, 2009. 21 per cent was added to account for non-wage labour costs and then figures were rounded to the nearest pound.

*The recast Directive introduces a simplified method for the composition of the SNB which means that 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.*

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'. The UK agrees with this view.

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

*There is currently a requirement that the central and local management must be informed about the composition of the SNB. This requirement has been expanded by article 5(2)(c) so that central and local management are also informed of the start of the negotiations and European workers' and employers' organisations are informed of both the SNB composition and the start of negotiations. The UK has applied this duty to the SNB as an extension of the SNB's requirement at Regulation 12(4) TICE 1999 to inform central and local management of the composition of the SNB.*

The obligation to inform management and the European workers' and employers' organisations 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>21</sup> per hour including non-wage labour costs) along with an upper-limit estimate of £200 for external goods 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>22</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. In implementing this provision the UK has required that both meetings take place within a reasonable time of the main SNB meeting.*

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). The requirement that these meetings take place within a reasonable time of the main SNB meeting may help to minimise additional costs to business by keeping costs associated with travel, accommodation and translation to a minimum.

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 **£77,200** (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 £154,400<sup>23</sup>. For the estimated four newly established UK EWCs, this would give a total additional cost burden of **£0.62m**.

#### *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 recast Directive introduces a further entitlement for the SNB's expert to attend the negotiating meeting. The Directive also states 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 sorts of matters.*

<sup>21</sup> Source: Annual Survey of Hours and Earnings (ASHE) ASHE 2009, all employees Table 2.5a Hourly pay - Gross (£) - For all employee jobs: United Kingdom, 2009. 21 per cent has been added to account for non-wage labour costs and figures have been rounded to the nearest pound.

<sup>22</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (figures have been rounded)

<sup>23</sup> Assumed that SNB would meet without management twice.

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.

## **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. In implementing this requirement to the UK has required that this should be recognised where ‘reasonably practicable’.*

It is unlikely that ensuring balanced member composition will involve any significant costs. Firms are only required to ‘take in account’ ‘where reasonably practicable’ 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.*

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 permitted under the subsidiary requirements at Annex 1(1)(d) has been increased from three members to a maximum of five members.*

The current average number of members in a UK EWC that has voluntarily set up a Select Committee is four,<sup>24</sup> and the GHK EU average estimate is five<sup>25</sup> so the amended article to limit the size of the Select Committee under the subsidiary requirements to a maximum of five is unlikely to have a large impact on set-up or operation costs.

## **Article 10: Role and Protection of Employees’ Representatives**

*There is 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. Employees can complain to the CAC if the EWC does not do this, but it shall be a defence if the EWC was not provided with the means required from central management to enable it to fulfil its duty.*

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>26</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. In implementing this provision the UK has required that the central management should pay for the necessary training and*

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<sup>24</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>25</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

<sup>26</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904



*that the SNB and EWC members should be provided by their employer with paid time off to participate in the training.*

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.

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>27</sup> of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent<sup>28</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 £38,371 (€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 **£2.17m**, although this cost is divided amongst 56 transnational companies of more than 1,000 employees.

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<sup>27</sup> 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

<sup>28</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.

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 £38,371. This would imply a cost burden of only **£1.08m**.

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>29</sup>

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

*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 implementing Regulations require that this link is related to timing of the start of information and consultation only and that it should not create new rights for national bodies to be informed and consulted.*

### **Article 13: The Adaptation Clause**

The recast Directive requires that unless provisions exist within existing agreements that allow for their modification, 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 5.

As the Directive does not define what constitutes a change in structure, we have assumed (on the basis of recital 40) 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 one 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**.

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<sup>29</sup> Lessons learned on European Work Councils, 2005.

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**Table 4: Summary of estimated direct effect costs**

	<u>Estimated cost p.a £m</u>
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	0.62
Article 6: Content of the Agreement	negligible*
Article 10: Role and protection of Employees' Representatives	1.08 - 2.17**
Article 12: Links between this Directive and Other Community and National Provisions	Not Quantified
Article 13: The Adaptation Clause	0.1
<b>Total</b>	<b>1.70 - 2.79</b>

Source: BIS estimates, 2010. \*\*Depending on training scenario considered.

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## **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 1,642.

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 provides 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	£912,158	£912,158	£781,850	£0	<b>£2,606,165</b>	£260,617
Running costs	£1,224,357	£2,448,715	£3,498,164	£3,498,164	£31,658,383	<b>£3,165,838</b>
Set-up costs (PV)	£2,136,515	£3,360,873	£4,280,013	£3,498,164	£34,264,548	£3,426,455
Running costs (PV)	£912,158	£881,312	£729,865	£0	£2,523,335	£252,333

Source: Impact Assessment (1999) and BIS estimates.

**Table 6:** Summary of quantifiable costs

Table 6: Summary of additional quantifiable costs			
2010 Prices	Direct Costs £m	Indirect Costs £m	Total £m
One-off costs £m*	0	2.6	<b>2.6</b>
Running costs £m #	1.7-2.8	3.2	<b>4.9-6.0</b>

Source: Impact Assessment (1999) and BIS estimates. \*One-off costs are spread over 3 years. # average running costs over 10 years. Figures have been rounded and totals may not sum to individual parts due to rounding.

## 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 introduced by the recast Directive.

## G: Enforcement

The Central Arbitration Committee (CAC), the Employment Appeals Tribunal and the Employment Tribunal (ET) are currently responsible for the enforcement of the Transnational Information and Consultation of Employees Regulations 1999. The enforcement regime will be changed slightly so that the CAC will hear complaints and the EAT will issue penalties, whilst the ET will deal with issues relating to detriment, unfair dismissal and time-off. It is therefore likely that the enforcement of most of the 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.

In response to consultation responses the Government has increased the maximum penalty payable for a failure under the Regulations to £100,000 from £75,000. This was done partly to restore the real value of the penalty to the level first agreed in 1998, since when RPI inflation has totalled 36%.

## 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.

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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)	1.7 - 2.8	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	3.2	2.6	Not quantified – please refer to EWC Benefits description in Section E.

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Source: BIS estimates. Figures have been rounded

## I: Implementation

The changes to the EWC Directive will be implemented by way of the Transnational Information and Consultation of Employees (Amendment) Regulations 2010 which amend the Transnational Information and Consultation of Employees Regulations 1999. Following a consultation on draft regulations the Regulations have been laid in Parliament and will come into force on 5 June 2011.

## 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 2011) 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.ecwdb.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: BIS

### 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.

