

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**CONSULTATION**

Proposal to Amend the  
European Works Council  
Directive

SEPTEMBER 2008

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# Executive Summary

## Introduction

1. This consultation document seeks your views on a proposal to recast Council Directive 94/45/EC on the establishment of a European Works Council (EWC) or a procedure in Community scale undertakings for the purposes of informing and consulting employees. The proposal was published by the European Commission on 2 July 2008; the full text of which can be found at **Annex A**.
2. 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.
3. 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.
4. Since the publication of the Commission's proposals, a common position on the revision of the EWC Directive has been developed by the European Social Partners (BusinessEurope, the European Trade Union Confederation, CEEP and UEAPME). This position, which includes a list of suggested amendments to the Commission's proposals, is set out in their joint letter of 29 August this year to the French Presidency of the European Union (EU). It is likely that this common position will strongly influence the forthcoming consideration of the Commission's proposals by both the European Council and the European Parliament. A copy of the joint letter is therefore attached at **Annex B**.
5. 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 will therefore be subject to early and detailed consideration by the Council this autumn, starting with Working Group meetings scheduled for mid- September.
6. Normally, a Government consultation on proposals of this kind would last at least 12 weeks. However, given the unusual speed with which these proposals are likely to be considered within the relevant EU decision-making institutions, it is necessary to shorten the consultation period on this occasion to four weeks. The views of stakeholders can thereby inform Government policy on the revision of this Directive, before these institutions finalise their positions.
7. The Government recognises that this is a very demanding timetable however any comments received before the consultation's closing date would be useful to enable the UK to consider views during discussions with the other member states.

## Structure of this Consultation Document

8. Section 1 of this consultation document provides background information about EWCs and the existing EWC Directive. Section 2 sets out the changes to the Directive which the Commission has proposed. Section 3 sets a number of factors against which the Government will assess the Commission's proposals. It also presents questions for respondents to address.

## Impact Assessment

9. The Department for Business, Enterprise and Regulatory Reform (BERR) has produced an Impact Assessment (IA) of the Commission's proposals on the UK economy. A copy of that IA is enclosed at **Annex C**. It concludes that one-off costs are estimated at £1.98m over three years (wherein 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £3.93m and £4.91m.
10. Whilst it was not possible to quantify benefits given their intangible nature, more effective information and consultation of employees, if achieved, has the potential to demonstrate a positive commitment to employees and to enhance understanding of management, the employee-management relationship and the impact of restructuring on employees.
11. The Commission has produced its own Impact Assessment on the effects of its proposals on the EU. This Impact Assessment can be found [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)

## How to respond

12. The closing date for this consultation is **6 October 2008**. For the reasons discussed above, the Government would welcome responses before this closing date, if possible. Responses should be sent to:  
Karen Goulding  
Employment Relations Directorate  
Department for Business, Enterprise and Regulatory Reform  
Bay 460  
1 Victoria Street,  
London SW1H 0ET  
Fax: 020 7215 6414  
Email: [EWC@berr.gsi.gov.uk](mailto:EWC@berr.gsi.gov.uk)

When responding, please indicate whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## **Additional copies**

13. You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BERR Publications Orderline  
ADMAIL 528  
London SW1W 8YT  
Tel: 0845-015 0010  
Fax: 0845-015 0020  
Minicom: 0845-015 0030  
[www.berr.gov.uk/publications](http://www.berr.gov.uk/publications)

An electronic version can be found at <http://www.berr.gov.uk/files/file47617.pdf>  
Other versions of the document in Braille, other languages or audio-cassette are available on request.

## **Confidentiality and Data Protection**

14. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
15. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## **Help with queries**

16. Questions about the policy issues raised in the document can be addressed to:

Marleen Jannink  
Employment Relations  
Department for Business, Enterprise and Regulatory Reform  
Bay 462  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 3135  
Email: [marleen.jannink@berr.gsi.gov.uk](mailto:marleen.jannink@berr.gsi.gov.uk)

17. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Vanessa Singhateh,  
Consultation Co-ordinator  
Department for Business, Enterprise and Regulatory Reform  
Better Regulation Team  
1 Victoria Street  
London  
SW1H 0ET  
Email: [vanessa.singhateh@berr.gsi.gov.uk](mailto:vanessa.singhateh@berr.gsi.gov.uk)  
Tel: 020 7215 2293  
Fax: 020 7215 0235

A copy of the Code of Practice on Consultation is in **Annex D**.

## Section 1 – European Works Councils (EWCs) and the EWC Directive

1. The European Works Council (EWC) Directive<sup>1</sup> 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<sup>2</sup> and was given effect in UK law in January 2000 by the Transnational Information and Consultation of Employees (TICE) Regulations<sup>3</sup>.
2. 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 at 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.
3. 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, 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.
4. 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.
5. 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 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.

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<sup>1</sup> [Directive 94/45/EC](#)

<sup>2</sup> [Directive 97/74/EC](#)

<sup>3</sup> [SI 1999 No 3323](#)

6. Approximately 820 European Works Councils are operational. This represents about 36 per cent of the multinational companies within the Directive's scope. These EWCs combined cover 14.5 million employees with a view to providing them with information and consultation at transnational level. It is believed that approximately 113 of these are companies with headquarters in the UK. There are an estimated 265 companies with UK headquarters that could potentially fall within the scope of the Directive. This implies a current take-up rate of 43 per cent in the UK

### **The Transnational Information and Consultation of Employees Regulations 1999**

7. The UK implemented the European Works Council Directive via the Transnational Information and Consultation of Employees (TICE) Regulations 1999 which came into force in January 2000. The UK Regulations are based closely on the Directive.
8. The main features of the UK legislation are:
  - Employees or their representatives must make a valid request to management to negotiate an EWC.
  - A Special Negotiating Body representative of all employees must be set up to negotiate with management.
  - Management has 6 months from the request to commence negotiations. If it fails to do so, the provisions of the Schedule (which sets out the statutory model) apply.
  - The parties have 3 years from the request to conclude a written agreement establishing an EWC or alternative information and consultation procedures. If they fail, the provisions of the Schedule apply. The agreement must cover all European Economic Area establishments.
  - The Schedule, which applies in the absence of an agreement, sets out the composition of the EWC and how members are to be appointed, and provides for annual meetings plus exceptional meetings where required.
  - Complaints about a failure to establish an EWC or Information and Consultation procedure, or about the operation of an EWC or Information and Consultation procedure, are made to the Employment Appeal Tribunal (EAT).
  - Breaches of an Article 6 agreement or of the standard rules are liable to a penalty of up to £75,000.
  - Management may withhold confidential information from employee representatives or require them to hold it in confidence, with the Central Arbitration Committee (CAC) empowered to settle disputes.
  - Where the CAC or EAT considers that an application or complaint could be settled by conciliation, it must refer the dispute to Advisory, Conciliation and Arbitration Service (Acas) which must try to promote a settlement.
  - The employees and SNB/EWC members are given statutory protections when claiming their rights or performing duties under the Regulations.
  - The Regulations do not apply to agreements that were drawn up before the legislation came into effect and which cover the entire EEA workforce and provide for transnational Information and Consultation.



## **Related legislation**

9. In addition to the EWC Directive, there are a number of other directives concerning employee involvement. These include:
- Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.
  - Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.
  - Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.
  - Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.
  - Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

## **Previous Consultation by the Department of Trade and Industry**

10. The Department of Trade and Industry (now BERR) held a public consultation in 2003 on the operation of EWCs in the UK. The purpose of that consultation exercise was to gather evidence in advance of the Commission's review of the EWC Directive. Copies of the consultation and response documents can be found at:  
<http://www.berr.gov.uk/employment/employment-legislation/ice/eu-works-council/page47620.html>

## **Section 2 – Description of the Commission's proposals**

1. This Chapter provides a brief overview of the current provisions in the EWC Directive and the changes the Commission has proposed.

### **Article 1 - Objective**

2. Article 1 sets out the purpose of the Directive which is to improve the right to information and consultation of employees in Community-scale undertakings and Community-scale groups of undertakings. This aims to feed into the Commission's underlying aim to ensure the effectiveness of such rights in existing EWCs. One subparagraph has been amended and two new subparagraphs have been proposed. These are described below.

#### *Article 1(2)*

3. In the current Directive, Article 1(2) sets out that an EWC will be established provided that it has been requested in a manner which meets the requirements of Article 5, i.e. either management initiates the negotiations to establish an EWC or at the written request of at least 100 employees or their representatives in at least two undertakings, in at least two Member States.
4. The Commission's Impact Assessment suggests that existing EWCs are not properly informed and consulted in over half of restructuring cases. Subsequently it has amended Article 1(2) 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.

#### *Article 1(3) (new)*

5. The 1994 EWC Directive does not explicitly state that matters for consideration by the EWC should be of a transnational nature. The Commission has proposed a new paragraph which states that, in order that the information and consultation of employees occurs at the relevant level of management and representation according to the subject under discussion, the information and consultation procedures for consideration by EWCs is limited to transnational issues and thereby distinct from matters of national interest.

#### *Article 1(4) (new)*

6. A description is introduced for 'transnational' to distinguish between matters for the consideration of a national level information and consultation body and matters for the consideration by the EWC. The wording duplicates that of the subsidiary requirements at Annex 1(a) of the current EWC Directive. The description of 'transnational' requires that 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.

## **Article 2 - Definitions**

7. The EWC Directive (Article 2) currently provides a definition for ‘consultation’ but not for ‘information’. 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.

### *Article 2(f)*

8. The following definition for ‘information’ to the EWC Directive has been proposed:

“ ‘information’ means transmission of data by the employer to employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives, in particular, to conduct an appropriate study and, where necessary, to prepare for consultation.”

### *Article 2(g)*

9. The current definition for ‘consultation’ has been amended as follows:

“ ‘consultation’ means the establishment of dialogue and the exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content enables employees’ representatives to express an opinion on the basis of the information provided and within a reasonable time to the competent body of the Community-scale undertaking or Community-scale group of undertakings”.

## **Article 3 – Definition of ‘Controlling Undertaking’**

10. An obsolete reference to Council Regulation EEC No 4064/89 has been deleted and replaced with a correct reference to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

## **Article 4 – Responsibility for the Establishment of an EWC**

11. Article 4 states that the management is responsible for creating the conditions and means necessary for the setting-up of an EWC or an information and consultation procedure. The current Directive further requires (at Article 11(2)) that the undertaking must make available information relating to the number of its employees.
12. A new paragraph has been introduced at Article 4(4) to reflect the interpretation of the European Court of Justice in three cases referred to it concerning the communication of information required to initiate negotiations to establish an EWC. The new text 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. Article 11(2) has been deleted to avoid a duplicate requirement.

## Article 5 – Special Negotiating Body

13. The existing Directive's Article 5 requires that at least 100 employees, or their representatives, in a minimum of two establishments in at least two Member States must present a written request to the undertaking in order to initiate the establishment of an EWC. Following a written request, a Special Negotiating Body (SNB) must be established for the purpose of negotiating an EWC agreement with the management. The composition of the SNB is determined by the spread of employees across the different Member States i.e. the more employees in one Member State the more employee representatives it will have on the SNB. Once established, the SNB is responsible for determining the scope, composition, function and term of office for the EWC.

### *Article 5(2)(b)*

14. The current Directive's Article 5(2)(b) sets out that the SNB must have a minimum number of three and a maximum number of SNB members equal to the number of Member States; each Member State with an establishment is represented by one member and further supplementary members in proportion to the number of employees working in the establishments

15. 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. For example:

<b>EEA state</b>	<b>% of total employees</b>	<b>No. of SNB members</b>
A	38%	4
B	25%	3
C	22%	3
D	15%	2
<b>Total SNB members</b>		<b>12</b>

### *Article 5(2)(c)*

16. 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 these bodies are also informed of the start of the negotiations. 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 been added to the bodies to be informed about these matters.

*Article 5(4) second paragraph (new)*

17. In order to enable employees' representatives 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.

*Article 5(4) third paragraph*

18. 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. The role of trade unions has been acknowledged in the joint 2005 publication 'Lessons learned on European Works Councils' by the European business representative bodies and the trade union organisations, particularly in the reconciliation of different cultures and ensuring ownership by the workforce.

19. 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.

20. A further entitlement is created to allow the SNB to request an expert's presence at the negotiating meeting, where appropriate, to promote consistency at Community level. This entitlement is restricted to the negotiation of the EWC agreement only. All experts advising the SNB are bound by provisions of Article 8, which states that neither the members of the SNB nor any experts are authorised to reveal information provided to them in confidence.

**Article 6 – Content of the Agreement**

21. Article 6 sets out the broad content of the agreement to be reached by the SNB and the central management. Four new sections have been added to this Article, each of which is dealt with separately below.

*Article 6(2)(b)*

22. 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 further take into account the activities, category and gender of the employees of the undertaking.

*Article 6(2)(c)*

23. Article 6(2)(c) currently requires that the management and the SNB must determine the functions and the procedure for information and consultation of the EWC. For reasons of effectiveness, consistency and clarity, this has been extended so that it also requires 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.

#### *Article 6(2)(e)*

24. Under the current Directive's provisions where the subsidiary requirements (set out in the Annex) come into effect, the Directive requires that a select committee, with a maximum of three members, must be created in order to coordinate the activities of the EWC.
25. A new provision has been introduced at Article 6(2)(e) so that, where necessary, the SNB shall set out the composition, the appointment procedure, the functions and the procedural rules of a select committee which has been set up within the European Works Council. The number of members of the select committee has been set at a maximum of five members. For consistency, the Annex's subsidiary requirements relating to the select committee have been increased to five members however it should be noted that unlike the Annex, Article 6(2)(e) does not require the automatic creation of a select committee.

#### *Article 6(2)(g)*

26. The requirement for the management and the SNB to determine the duration of the EWC agreement and procedure for renegotiation has been amended so that it will include the date of the agreements' entry into force and the arrangements for amending and terminating the agreement. Also added is the requirement to determine cases in which the agreements should be renegotiated including, where necessary, when the structure of the undertaking changes.

### **Article 10 – Role and Protection of Employees' Representatives**

27. The title of Article 10 has been expanded to include the 'role' of employees' representatives'. Presently, Article 10 establishes the provisions to ensure that employees' representatives, SNB and EWC members do not suffer detriment as a result of their role. The Article further establishes a right to the payment of wages for the period necessary of SNB / EWC members who are on the staff of the undertaking.
28. The following changes are proposed, which the Commission suggests (see the preamble to the Directive) will ensure that the members of the EWC play their role to the full and that the EWC is useful to the employees.

#### *Article 10(1)*

29. This confers a new duty on the employees' representatives to collectively represent the interest of the employees and creates an entitlement to the 'means required to apply the rights' stemming from this Directive.

### *Article 10(2) and 10(4)*

30. Article 10(2) places 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 text has been copied from paragraph 5 of the Annex to the Directive on subsidiary requirements.
31. The new text at Article 10(4) states that members of the SNB and EWC are to have access to training without loss of wages in so far as this is necessary for their representational duties in an international environment.

### **Article 11 – Compliance with This Directive**

32. As referred to above (paragraph 12 of this Section) with regard to the changes to Article 4, Article 11(2) has been deleted in order to avoid a duplicate requirement.

### **Article 12 - Links between This Directive and Other Community and National Provisions**

33. At present, Article 12 deals with the interrelation of the EWC Directive and a number of other Directives which contain provisions relating to information and consultation rights, such as Collective Redundancies legislation and the safeguarding of employees' right in the event of transfers of undertakings. This has now been expanded so that the EWC Directive is without prejudice to Directive 2002/14/EC<sup>4</sup>.
34. Article 12(2) reiterates that Article 6 requires the SNB and management during negotiating to establish the arrangements for linking the national and transnational arrangements on informing and consulting employees which exist within the company.
35. Article 12(3) seeks to address any failure of the SNB and management to establish these links by creating a new default provision which requires that the national and transnational arrangements for information and consultation are to start in parallel.

### **Article 13 – Agreements in Force**

36. 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, agreements in force on 22 September 1996 are exempt from the provisions of the EWC Directive.

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<sup>4</sup> [Directive 2002/14/EC](#) establishing a general framework for informing and consulting employees in the European Community

37. 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.

#### *Article 13(2)*

38. This new text clarifies that there is no general obligation to renegotiate EWC agreements reached under Article 6 of the Directive.

#### *Article 13(3)*

39. The text proposes that where significant changes occur in the structure of the undertaking and in the absence of provisions in Article 6 or Article 13 agreements concerning such situations, agreements must be renegotiated at the request of at least 100 workers or their representatives or at the management's initiative. The renegotiation of the EWC agreement would commence under the provisions set out under Article 6 of the Directive.

40. The Commission has suggested that these amendments will ensure legal certainty and provide for an effective information and consultation process during mergers and acquisitions.

### **Article 14 – Review by the Commission**

41. Article 14 will require the Commission to report to the Member States and the European Parliament and the European Economic and Social Committee, five years after the revised Directive comes into force.

### **Annex 1 to the Directive– Subsidiary Requirements**

42. The subsidiary requirements are referred to in Article 7 of the Directive and set out the minimum requirements for an EWC agreement. The subsidiary requirements come into effect in three possible scenarios:

- Where the management and the SNB so decide; or
- Where the management has failed to initiate negotiations within six months of the receipt of a written request from the employees or their representatives; or
- Where, after three years of negotiations, the SNB and management have failed to reach agreement.

#### *Annex 1(1)(a)*

43. This text sets out the type of information that the EWC shall consider. This has been brought up from paragraph 2 of the Annex and remains identical to the existing provisions.

#### *Annex 1(1)(c) and 1(1)(d)*

44. Annex 1(1)(c) has been amended so that it presents the same method for the composition of the SNB as proposed in Article 5(2)(b).



45. Annex 1(1)(d) has been amended to increase the maximum number of members of the select committee from three to five to be elected by the EWC in order to assist it in coordinating its duties. This number is consistent with the new provision for a select committee at Article 6(2)(e) (see paragraph 25).

*Annex 1(3)*

46. The current requirement sets out that where there are exceptional circumstances affecting the employees to a considerable extent, the EWC shall have the right to be informed and meet, at its request, the central management so as to be informed and consulted. The trigger of 'exceptional requirements' has been expanded to include 'decisions'.

## **Section 3 – Questions for respondents**

The UK Government has yet to determine its detailed position on the Commission's proposals. However, among the factors against which the Government will assess the proposals, are the following points:

- The UK Government strongly supports effective employee engagement and considers that EWCs have acted as an useful extra tier for engaging employees in larger multinational companies. Effective employee engagement can help to improve employees' awareness of the business climate in which an organisation is operating and help them to be more responsive to and be better prepared for change. This in turn can benefit the business through increased adaptability to change and improved decision-taking.
- The Government believes that a revised Directive should build on achievements to date and, noting that almost two-thirds of organisations within scope do not operate EWCs, any revisions should encourage more EWCs to be established.
- Whilst the Government recognises that employee engagement is valuable, it also recognises that the regulatory framework which supports it must be sufficiently flexible and adaptable to cover the widely different systems of employment relations which exist in this country and elsewhere.
- The regulatory framework must also support competitive businesses in Europe. It should therefore avoid imposing arrangements which impede and delay decision-taking by managements. European companies need to be able to adapt to change, especially in current economic conditions.
- Revisions to the Directive should avoid imposing disproportionate costs on business, and new regulatory requirements should not be introduced if effective non-regulatory solutions are available.

### **Consultation questions**

- 1. What are your views on the performance and effectiveness of EWCs, especially those covering UK employees? Where, if anywhere, do they face operational difficulties and how could their performance be improved?**
- 2. What is your overall assessment of the Commission's proposals? Should the EWC Directive be revised?**
- 3. Do you have any comments about particular proposals? If so, please specify, indicating clearly the Article you are commenting upon.**
- 4. For those organisations which currently operate an EWC and for those individuals who are members of EWCs, how will the proposals impact on your current EWC arrangement?**
- 5. Do you have any comments on the Impact Assessment at Annex B?**
- 6. Are there any other comments about EWCs and the Commission's proposals? If so, please specify them.**

**Annex A – The Commission's Proposals to recast the EWC Directive**

↓ 94/45/EC (adapted)

2008/0141 (COD)

Proposal for a

⊗ DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE ⊗ COUNCIL

**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**

⊗ (Text with EEA relevance) ⊗

⊗ THE EUROPEAN PARLIAMENT AND ⊗ THE COUNCIL OF THE EUROPEAN UNION,

~~Having regard to the Agreement on social policy annexed to Protocol 14 on social policy annexed to the Treaty establishing the European Community, and in particular Article 2 (2) thereof,~~

⊗ Having regard to the Treaty establishing the European Community, and in particular Article 137 thereof, ⊗

Having regard to the proposal from the Commission ⊗<sup>5</sup>, ⊗

Having regard to the opinion of the European Economic and Social Committee ⊗<sup>6</sup> ⊗,

⊗ Having regard to the opinion of the Committee of the Regions<sup>7</sup>, ⊗

Acting in accordance with the procedure referred to in Article 189e ⊗ 251 of the Treaty ⊗⊗<sup>8</sup> ⊗,

⊗ Whereas: ⊗

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↓ new

(1) A number of substantial changes<sup>9</sup> should be made to 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<sup>10</sup>. In the interests of clarity, that Directive should be recast.

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> OJ C [...], [...], p. [...].

<sup>7</sup> OJ C [...], [...], p. [...].

<sup>8</sup> OJ C [...], [...], p. [...].

<sup>9</sup> See Annex II, part A.

<sup>10</sup> OJ L 254, 30.9.1994, p. 64. Directive as last amended by Directive 2006/109/EC (OJ L 363, 20.12.2006, p. 416).

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↓ 94/45/EC recital 1 (new)

~~On the basis of the Protocol on Social Policy annexed to the Treaty establishing the European Community, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Portuguese Republic (hereinafter referred to as ‘the Member States’), desirous of implementing the Social Charter of 1989, have adopted an Agreement on Social Policy;~~

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↓ 94/45/EC recital 2 (adapted)

~~Article 2(2) of the said Agreement authorizes the Council to adopt minimum requirements by means of directives;~~

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↓ new

- (2) Pursuant to Article 15 of Directive 94/45/EC, the Commission has, in consultation with the Member States and with management and labour at European level, reviewed the operation of the said Directive and, in particular, examined whether the workforce size thresholds were appropriate, with a view to proposing suitable amendments where necessary.
- (3) Having consulted the Member States and management and labour at European level, the Commission submitted a report<sup>11</sup> on the application of Directive 94/45/EC to the European Parliament and the Council.
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↓ 94/45/EC recital 4 (adapted)

~~Point 17 of the Community Charter of Fundamental Social Rights of Workers provides, inter alia, that information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in different Member States; and that ‘this shall apply especially in companies or groups of companies having establishments or companies in two or more Member States’;~~

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↓ 94/45/EC recital 5 (adapted)

~~The Council, despite the existence of a broad consensus among the majority of Member States, was unable to act on the proposal for a Council Directive on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees<sup>12</sup>, as amended on 3 December 1991<sup>13</sup>;~~

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↓ 94/45/EC recital 6 (adapted)

~~The Commission, pursuant to Article 3(2) of the Agreement on Social Policy, has consulted management and labour at Community level on the possible direction of Community action on the information and consultation of workers in Community-scale undertakings and Community-scale groups of undertakings.~~

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↓ 94/45/EC recital 7 (adapted)

~~The Commission, considering after this consultation that Community action was advisable, has again consulted management and labour on the content of the planned proposal, pursuant to~~

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<sup>11</sup> COM(2000) 188, 4.4.2000.

<sup>12</sup> OJ No L 39, 15. 2. 1991, p. 10.

<sup>13</sup> OJ No L 336, 31. 12. 1991, p. 11.

~~Article 3 (3) of the said Agreement, and management and labour have presented their opinions to the Commission.~~

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↓ 94/45/EC recital 8 (adapted)

~~Following this second phase of consultation, management and labour have not informed the Commission of their wish to initiate the process which might lead to the conclusion of an agreement, as provided for in Article 4 of the Agreement.~~

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↓ new

- (4) Pursuant to Article 138(2) of the Treaty, the Commission consulted management and labour at Community level on the possible direction of Community action in this area.
  - (5) Following this consultation, the Commission considered that Community action was advisable and again consulted management and labour at Community level on the content of the planned proposal, pursuant to Article 138(3) of the Treaty.
  - (6) Following this second phase of consultation, management and labour have not informed the Commission of their shared wish to initiate the process which might lead to the conclusion of an agreement, as provided for in Article 138(4) of the Agreement.
  - (7) It is necessary to modernise Community legislation on transnational information and consultation of employees with a view to ensuring the effectiveness of employees' transnational information and consultation rights, increasing the proportion of European Works Councils established, resolving the problems encountered in the practical application of Directive 94/45/EC and remedying the lack of legal certainty resulting from some of its provisions or the absence of certain provisions, and ensuring that Community legislative instruments on information and consultation of employees are better linked.
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↓ 94/45/EC recital 3 (adapted)

- (8) Pursuant to Article ~~1~~ of the Agreement  136 of the Treaty , one particular objective of the Community and the Member States is to promote dialogue between management and labour.
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↓ new

- (9) This Directive is part of the Community framework intended to support and complement the action taken by Member States in the field of information and consultation of employees. This framework should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted.
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↓ 94/45/EC recital 9

- (10) The functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalisation of undertakings and groups of undertakings. If economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees that are affected by their decisions.

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↓ 94/45/EC recital 10

- (11) Procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees. This may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings.
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↓ 94/45/EC recital 11 (adapted)

- (12) Appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings  or Community-scale groups of undertakings  are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed.
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↓ 94/45/EC recital 12

- (13) In order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, it is necessary to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees.
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↓ new

- (14) The arrangements for informing and consulting employees need to be defined and implemented in such a way as to ensure their effectiveness with regard to the provisions of this Directive. To achieve this, information and consultation of the European Works Council should make it possible to give an opinion to the undertaking in a timely fashion, without calling into question undertakings' ability to adapt. Only dialogue at the level where directions are prepared and effective involvement of employees' representatives are capable of meeting the need to anticipate and accompany change.

- (15) Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of a European Works Council must be differentiated from that of national representative bodies and must be limited to transnational matters.

- (16) The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational.
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↓ 94/45/EC recital 13 (adapted)

- (17) It is necessary to have a definition of the concept of controlling undertaking relating solely to this Directive and not prejudging definitions of the concepts of group or control ~~which might be adopted in texts to be drafted in the future~~  in other acts .

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↓ 94/45/EC recital 14

- (18) The mechanisms for informing and consulting employees in such undertakings or groups must encompass all of the establishments or, as the case may be, the group's undertakings located within the Member States, regardless of whether the undertaking or the group's controlling undertaking has its central management inside or outside the territory of the Member States.
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↓ 94/45/EC recital 15

- (19) In accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking or the group's controlling undertaking to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils or other information and consultation procedures so as to suit their own particular circumstances.
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↓ 94/45/EC recital 16

- (20) In accordance with the principle of subsidiarity, it is for the Member States to determine who the employees' representatives are and in particular to provide, if they consider appropriate, for a balanced representation of different categories of employees.
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↓ new

- (21) It is necessary to clarify the concepts of information and consultation of employees, in line with the definitions in the most recent directives on this subject and those which apply within a national framework, with the triple objective of reinforcing the effectiveness of the dialogue at transnational level, permitting suitable linkage between the national and transnational levels of the dialogue and ensuring the legal certainty required for the application of this Directive.

- (22) The definition of 'information' needs to take account of the goal of allowing employees' representatives to carry out an appropriate examination, which implies that the information be provided at such time, in such fashion and with such content as are appropriate.

- (23) The definition of 'consultation' needs to take account of the goal of allowing for the potential expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate.
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↓ 94/45/EC recital 22

- (24) The information and consultation provisions laid down in this Directive must be implemented in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States by its representative agent, to be designated if necessary, in one of the Member States or, in the absence of such an agent, by the establishment or controlled undertaking employing the greatest number of employees in the Member States.



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↓ new

- (25) The responsibility of undertakings or groups of undertakings in the transmission of the information required to commence negotiations must be specified in a way that enables employees to determine whether the undertaking or group of undertakings where they work is a Community-scale undertaking or group of undertakings and to make the necessary contacts to draw up a request to commence negotiations.
- (26) The special negotiating body must represent employees from the various Member States in a balanced fashion. Employees' representatives must be able to cooperate together to define their positions in the negotiations with the central management.
- (27) Recognition must be given to the role which trade union organisations can play in negotiating and renegotiating the constituent agreements of European Works Councils, providing support to employees' representatives who express such a need. In order to enable them to monitor the establishment of new European Works Councils and promote best practice, trade union and employers' organisations may be informed of the commencement of negotiations.
- (28) The agreements governing the establishment and operation of European Works Councils must include the methods for making modifications thereto, terminating them or renegotiating them when necessary, particularly where the make-up or structure of the undertaking or group of undertakings is modified.
- (29) Such agreements must lay down the arrangements for linking the national and transnational levels of information and consultation of employees appropriate for the particular conditions of the undertaking or group of undertakings. The arrangements must be defined in such a way that they respect the competences and areas of action of the representation bodies, in particular with regard to anticipating and managing change.
- (30) These agreements must provide for the establishment and operation of a select committee in order to permit coordination and greater effectiveness of the regular activities of the European Works Council, together with information and consultation at the earliest opportunity where exceptional circumstances arise.

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↓ 94/45/EC recital 18

- (31) Employees' representatives may decide not to seek the setting-up of a European Works Council or the parties concerned may decide on other procedures for the transnational information and consultation of employees.

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↓ 94/45/EC recital 17 (adapted)

- (32) ~~However, p~~ Provision should be made for certain subsidiary requirements to apply should the parties so decide or in the event of the central management refusing to initiate negotiations or in the absence of agreement subsequent to such negotiations.

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↓ new

- (33) In order to play their representative role to the full and ensure that the European Works Council is useful, employees' representatives must report to the employees that they represent and must be able to receive the training they require.

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↓ 94/45/EC recital 21

- (34) Provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, the same protection and guarantees similar to those provided to employees' representatives by the legislation and/or practice of the country of employment. They must not be subject to any discrimination as a result of the lawful exercise of their activities and must enjoy adequate protection as regards dismissal and other sanctions.
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↓ 94/45/EC recital 24

- (35) The Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.
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↓ new

- (36) For reasons of effectiveness, consistency and legal certainty, there is a need for linkage between the Directives and the levels of information and consultation of employees established by Community and national law. Priority must be given to negotiations on these procedures for linking information within each undertaking or group of undertakings. If there are no agreements on this subject and where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged, the process must start in parallel at both national and European level in such a way that it respects the competences and areas of action of the representation bodies. Opinions expressed by the European Works Council should be without prejudice to the competence of the central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation. National legislation may have to be adapted to ensure that the European Works Council can, where applicable, receive information earlier or at the same time as the national bodies, but must not reduce the general level of protection of employees.
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↓ new

- (37) This Directive should be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC of the European Parliament and of Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community<sup>14</sup> and to the specific procedures referred to in Article 2 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies<sup>15</sup> and Article 7 of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>16</sup>.
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↓ 94/45/EC recital 23 (adapted)

- (38) Special treatment should be accorded to Community-scale undertakings and groups of undertakings in which there ~~exists~~ ☒ existed ☒, ~~at the time when this Directive is~~

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<sup>14</sup> OJ L 80, 23.3.2002, p. 29.

<sup>15</sup> OJ L 225, 12.8.1998, p. 16.

<sup>16</sup> OJ L 82, 22.3.2001, p. 16.

~~brought into effect~~ ☒ on 22 September 1996 ☒, an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.

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↓ new

(39) Where the structure of the undertaking or group of undertakings changes significantly, for example, due to a merger, acquisition or division, the existing European Works Council(s) must be adapted. This adaptation must be carried out as a priority pursuant to the clauses of the applicable agreement, if such clauses permit the required adaptation to be carried out. If this is not the case and a request establishing the need is made, negotiations, in which the members of the existing European Works Council(s) must be involved, will commence on a new agreement. In order to permit the information and consultation of employees during the often decisive period when the structure is changed, the existing European Works Council(s) must be able to continue to operate, possibly with adaptations, until a new agreement is concluded. Once a new agreement is signed, the previously established councils must be dissolved, and the agreements instituting them must be terminated, regardless of their provisions on validity or termination.

(40) Unless this adaptation clause is applied, the agreements in force should be allowed to continue in order to avoid their obligatory renegotiation when this would be pointless. Provision should be made that as long as agreements concluded prior to 22 September 1996 under Article 13 of Directive 94/45/EC remain in force, they should continue not to be subject to this Directive, and there should be no general obligation to renegotiate agreements concluded pursuant to Article 6 of Directive 94/45/EC prior to the entry into force of this Directive.

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↓ 94/45/EC recital 19

(41) Without prejudice to the possibility of the parties deciding otherwise, the European Works Council set up in the absence of agreement between the parties must, in order to fulfil the objective of this Directive, be kept informed and consulted on the activities of the undertaking or group of undertakings so that it may assess the possible impact on employees' interests in at least two different Member States. To that end, the undertaking or controlling undertaking must be required to communicate to the employees' appointed representatives general information concerning the interests of employees and information relating more specifically to those aspects of the activities of the undertaking or group of undertakings which affect employees' interests. The European Works Council must be able to deliver an opinion at the end of that meeting.

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↓ 94/45/EC recital 20

(42) Certain decisions having a significant effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible.

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↓ new

(43) The content of the subsidiary requirements which apply in the absence of an agreement and serve as a reference in the negotiations must be clarified and adapted to developments in the needs and practices related to transnational information and consultation. A distinction should be made between fields where information must be provided and fields where the European Works Council must also be consulted, which involves the possibility

of obtaining a response and the reasons for that response to any opinions expressed. To enable the select committee to play the necessary coordinating role and deal effectively with exceptional circumstances, such committee must be able to have up to five members and be able to consult regularly.

(44) Since the objectives of this Directive, namely the improvement of the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in the said Article of the Treaty, this Directive does not go beyond what is necessary to achieve these objectives.

(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right of workers or their representatives to be guaranteed information and consultation in good time at the appropriate levels in the cases and under the conditions provided for by Community law and national laws and practices (Article 27 of the Charter of Fundamental Rights of the European Union).

(46) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(47) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits set out in Annex II, Part B for transposition into national law and application of the Directives.

↓ 94/45/EC (adapted)

⊗ HAVE ⊗ ADOPTED THIS DIRECTIVE:

## SECTION I

### GENERAL

#### *Article 1*

#### **Objective**

1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

↓ 94/45/EC (adapted)

⇒ new

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5(1), with the purpose of informing and consulting employees ~~under the terms, in the manner and with the effects laid down in this Directive.~~ ⇒ The arrangements for informing and consulting employees

shall be defined and implemented in such a way as to ensure the effectiveness of the procedure and to enable the undertaking or group of undertakings to take decisions effectively. ↩

↓ new

3. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence of the European Works Council and the scope of the information and consultation procedure for workers governed by this Directive shall be limited to transnational issues.

4. Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.

↓ 94/45/EC

35. Notwithstanding paragraph 2, where a Community-scale group of undertakings within the meaning of Article 2(1)(c) comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings within the meaning of Article 2(1)(a) or (c), a European Works Council shall be established at the level of the group unless the agreements referred to in Article 6 provide otherwise.

46. Unless a wider scope is provided for in the agreements referred to in Article 6, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in paragraph 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

57. Member States may provide that this Directive shall not apply to merchant navy crews.

## Article 2

### Definitions

1. For the purposes of this Directive:

- (a) 'Community-scale undertaking' means any undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States;
- (b) 'group of undertakings' means a controlling undertaking and its controlled undertakings;
- (c) 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:
  - at least 1000 employees within the Member States,
  - at least two group undertakings in different Member Statesand
  - at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;
- (d) 'employees' representatives' means the employees' representatives provided for by national law and/or practice;

- (e) ‘central management’ means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

↓ new

- (f) ‘information’ means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives, in particular, to conduct an appropriate study and, where necessary, prepare for consultation;

↓ 94/45/EC (adapted)

⇒ new

- ~~(g)~~ ‘consultation’ means the ~~exchange of views and~~ establishment of dialogue  and exchange of views  between employees' representatives and central management or any more appropriate level of management  , at such time, in such fashion and with such content enables employees' representatives to express an opinion on the basis of the information provided and within a reasonable time to the competent body of the Community-scale undertaking or Community-scale group of undertakings ;

↓ 94/45/EC (adapted)

- ~~(h)~~ ‘European Works Council’ means the council established in accordance with Article 1(2) or the provisions of the Annex, with the purpose of informing and consulting employees;
- ~~(i)~~ ‘special negotiating body’ means the body established in accordance with Article 5(2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1(2).

2. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

### Article 3

#### Definition of ‘controlling undertaking’

1. For the purposes of this Directive, ‘controlling undertaking’ means an undertaking which can exercise a dominant influence over another undertaking (‘the controlled undertaking’) by virtue, for example, of ownership, financial participation or the rules which govern it.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when  an undertaking  , in relation to another undertaking directly or indirectly:

- (a) holds a majority of that undertaking's subscribed capital;

or

- (b) controls a majority of the votes attached to that undertaking's issued share capital;

or

- (c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

3. For the purposes of paragraph 2, a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

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↓ 94/45/EC (adapted)

4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EEC) No ~~4064/89~~  139/2004  of ~~21 December 1989~~  20 January 2004  on the control of concentrations between undertakings<sup>17</sup>.

↓ 94/45/EC

5. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

6. The law applicable in order to determine whether an undertaking is a 'controlling undertaking' shall be the law of the Member State which governs that undertaking.

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

7. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

## SECTION II

### ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE

#### *Article 4*

#### **Responsibility for the establishment of a European Works Council or an employee information and consultation procedure**

1. The central management shall be responsible for creating the conditions and means necessary for the setting-up of a European Works Council or an information and consultation procedure, as

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<sup>17</sup> OJ No L ~~395~~ 24, ~~30-12-1989~~ 29.1.2004, p. 1.

provided for in Article 1(2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the management referred to in the second subparagraph of paragraph 2, shall be regarded as the central management.

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↓ new

4. The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of this Directive the information required for commencing negotiations referred to in Article 5, and in particular the information concerning the structure of the undertaking or the group and its workforce. This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(a) and (c).

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↓ 94/45/EC

## Article 5

### Special negotiating body

1. In order to achieve the objective in Article 1(1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

- (a) The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories.

Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.



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↓ 2006/109/EC Art. 1 et Annexe

~~(b) The special negotiating body shall have a minimum of three members and a maximum of members equal to the number of Member States.~~

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↓ new

(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State in which at least 50 employees are employed one seat per portion of employees employed in that Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together;

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↓ 94/45/EC

⇒ new

~~(c) In these elections or appointments, it must be ensured:~~

~~— firstly, that each Member State in which the Community-scale undertaking has one or more establishments (SIC! establishments) or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,~~

~~— secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.~~

(~~c~~) The central management and local management ⇒ and the competent European workers' and employers' organisations ⇐ shall be informed of the composition of the special negotiating body ⇒ and of the start of the negotiations ⇐.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a meeting with the special negotiating body. It shall inform the local managements accordingly.

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↓ new

Before and after any meeting with the central management, the special negotiating body shall be entitled to meet, using the necessary means for communication, without representatives of the central management being present.

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↓ 94/45/EC (adapted)

⇒ new

For the purpose of the negotiations, the special negotiating body may ☒ request ☒ assistance ☒ with its work ☒ from experts of its choice ⇒ , for example representatives of appropriate Community-level trade union organisations. Such experts may be present at negotiation meetings

in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level ⇐.

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↓ 94/45/EC

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened. Such a decision shall stop the procedure to conclude the agreement referred to in Article 6. Where such a decision has been taken, the provisions in the Annex shall not apply. A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

#### Article 6

#### Content of the agreement

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↓ 94/45/EC

1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1(1).

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↓ 94/45/EC  
⇒ new

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 between the central management and the special negotiating body shall determine:

- (a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;
  - (b) the composition of the European Works Council, the number of members, the allocation of seats ⇒ , taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, ⇐ and the term of office;
  - (c) the functions and the procedure for information and consultation of the European Works Council ⇒ and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in compliance with the principles set out in Article 1(3) ⇐;
  - (d) the venue, frequency and duration of meetings of the European Works Council;
- 

↓ new

(e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

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↓ 94/45/EC

(ef) the financial and material resources to be allocated to the European Works Council;

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↓ 94/45/EC (adapted)  
⇒ new

(fg) the ⇒ date of entry into force ⇐ ⊗ of the agreement and its ⇐ ⊗ duration ~~de l'accord~~ ⇒ , the arrangements for amending or terminating the agreement and the cases in which the agreement should be renegotiated ⇐ and the procedure for its renegotiation ⇒ , including, where necessary, when the structure of the Community-scale undertaking or Community-scale group of undertakings changes ⇐.

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↓ 94/45/EC

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of the Annex.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

#### *Article 7*

#### **Subsidiary requirements**

1. In order to achieve the objective in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

– where the central management and the special negotiating body so decide;

or

– where the central management refuses to commence negotiations within six months of the request referred to in Article 5(1);

or

– where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in the Annex.

## SECTION III

### MISCELLANEOUS PROVISIONS

#### Article 8

##### **Confidential information**

1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees' representatives in the framework of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

#### Article 9

##### **Operation of the European Works Council and the information and consultation procedure for workers**

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↓ 94/45/EC

The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

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↓ 94/45/EC

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

#### Article 10

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↓ 94/45/EC (adapted)

⊗ **Role and** ⊗ **Protection of employees' representatives**

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↓ new

1. Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall collectively represent the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings and shall have the means required to apply the rights stemming from this Directive.

2. Without prejudice to Article 8, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Directive.

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↓ 94/45/EC (adapted)

3. Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6(3) shall, in the exercise of their functions, enjoy protection and guarantees similar  to those  provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

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↓ 94/45/EC

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6(3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

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↓ new

4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be have access to training without loss of wages.

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↓ 94/45/EC

## Article 11

### Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.

~~2. Member States shall ensure that the information on the number of employees referred to in Article 2(1)(a) and (c) is made available by undertakings at the request of the parties concerned by the application of this Directive.~~

3. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

43. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.

Such procedures may include procedures designed to protect the confidentiality of the information in question.

#### Article 12

↓ 94/45/EC (adapted)

#### Link between this Directive and other Community and national provisions

↓ 94/45/EC (new)

~~1. This Directive shall apply without prejudice to measures taken pursuant to Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies<sup>18</sup>, and to Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses<sup>19</sup>.~~  
~~2. This Directive shall be without prejudice to employees' existing rights to information and consultation under national law.~~

↓ new

1. Information and consultation of the European Works Council shall be linked with that of the national representation bodies, with due regard for the competences and areas of action of each and for the principles set out in Article 1(3).

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. Such agreement must comply with the provisions of national law on the information and consultation of employees.

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting the European Works Council and the national bodies start in parallel in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

4. This Directive shall be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC and to the specific procedures referred to in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

5. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

<sup>18</sup> OJ No L 48, 22. 2. 1975, p. 29. Regulation as last amended by Directive 92/56/EEC (OJ No L 245, 26. 8. 1992, p. 3).

<sup>19</sup> OJ No L 61, 5. 3. 1977, p. 26.

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↓ 94/45/EC (adapted)  
⇒ new

### Article 13

#### Agreements in force

1. Without prejudice to paragraph ~~2~~<sup>3</sup>, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, ~~on the date laid down in Article 14(1) for the implementation of this Directive or the date of its transposition in the Member State in question, where this is earlier than the abovementioned date,~~ there ~~is~~ <sup>was</sup> ~~is~~ <sup>is</sup> already an agreement ~~in~~ <sup>on</sup> 22 September 1996 ~~in~~ <sup>in</sup>, covering the entire workforce, providing for the transnational information and consultation of employees ~~in~~ <sup>in</sup>, in so far as such agreements are still in force ~~in~~ <sup>in</sup>. ~~2.~~ <sup>2.</sup> When ~~the~~ <sup>the</sup> ~~is~~ <sup>is</sup> these ~~is~~ <sup>is</sup> agreements referred to in paragraph 1 expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, the provisions of this Directive shall apply.

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↓ new

2. Without prejudice to paragraph 3, this Directive does not establish a general obligation to renegotiate the agreements concluded pursuant to Article 6 of Directive 94/45/EC between 22 September 1996 and the date provided for under Article 15 of this Directive.

3. Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force pursuant to Article 6 or to this Article, or in the event of conflicts between the relevant provisions of two or more agreements applicable, the central management shall initiate the negotiations referred to in Article 5 on its own initiative or at the written request of at least 100 employees or their representatives.

At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Article 5(2).

During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements agreed between the members of the European Works Council(s) and the central management.

When the new European Works Council established following the procedure referred to in the first subparagraph takes up its activities, the previously existing European Works Council(s) shall be dissolved and the agreement(s) instituting them shall be terminated.

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↓ 94/45/EC (adapted)

### Article 14

#### Final provisions

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 22 September 1996 or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times~~

~~to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.~~

~~2. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

#### *Article ~~15~~ 14*

### **Review by the Commission**

~~Not later than 22 September 1999, the Commission shall, in consultation with the Member States and with management and labour at European level, review its operation and, in particular examine whether the workforce size thresholds are appropriate with a view to proposing suitable amendments to the Council, where necessary.~~

↓ new

Five years after the date specified in Article 15 of this Directive, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

↓

#### *Article 15*

### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] and Annex I, points [...] [*The articles and annexes which have been changed as to the substance by comparison with the earlier Directive*] no later than [...] or shall ensure that management and labour introduce on that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 16*

### **Repeal**

Directive 94/45/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from [...] [day after the date set out in the first subparagraph of Article 15(1) of this



Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

*Article 17*

**Entry into force**

This Directive shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

Articles [...] and Annex I, points [...], [*The articles and annexes which are unchanged by comparison with the earlier Directive*] shall apply from [day after the date set out in the first subparagraph of Article 15(1)].

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↓ 94/45/EC

*Article ~~16~~ 18*

This Directive is addressed to the Member States.

**ANNEX I**

**SUBSIDIARY REQUIREMENTS**

**referred to in Article 7 of the Directive**

1. In order to achieve the objective in Article 1(1) of the Directive and in the cases provided for in Article 7(1) of the Directive, the establishment, composition and competence of a European Works Council shall be governed by the following rules:

~~(a) The competence of the European Works Council shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.~~

~~In the case of undertakings or groups of undertakings referred to in Article 4(2), the competence of the European Works Council shall be limited to those matters concerning all their establishments or group undertakings situated within the Member States or concerning at least two of their establishments or group undertakings situated in different Member States.~~

- (a) The competence of the European Works Council shall be determined in accordance with Article 1(3).

The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express.

- (b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice.

~~(e) The European Works Council shall have a minimum of three members and a maximum of 30.~~

~~Where its size so warrants, it shall elect a select committee from among its members, comprising at most three members.~~

~~It shall adopt its own rules of procedure.~~

~~(d) In the election or appointment of members of the European Works Council, it must be ensured:~~

~~— firstly, that each Member State in which the Community-scale undertaking has one or more establishments or in which the Community-scale group of undertakings has the controlling undertaking or one or more controlled undertakings is represented by one member,~~

~~— secondly, that there are supplementary members in proportion to the number of employees working in the establishments, the controlling undertaking or the controlled undertakings as laid down by the legislation of the Member State within the territory of which the central management is situated.~~

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↓ new

(c) The members of the European Works Council shall be elected or appointed in proportion to the number of employees in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State in which at least 50 employees are employed one seat per portion of employees employed in that Member State amounting to 10%, or a fraction thereof, of the number of employees employed in all the Member States taken together;

(d) To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must have the conditions enabling it to exercise its activities on a regular basis.

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↓ 94/45/EC (adapted)

⇒ new

☒ It shall adopt its own rules of procedure; ☒

(e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council.

(f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 of the Directive or to continue to apply the subsidiary requirements adopted in accordance with this Annex.

Articles 6 and 7 of the Directive shall apply, mutatis mutandis, if a decision has been taken to negotiate an agreement according to Article 6 of the Directive, in

which case 'special negotiating body' shall be replaced by 'European Works Council'.

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

~~The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organization, introduction of new working methods or production processes, transfers of production, mergers, cut backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.~~

3. Where there are exceptional circumstances  $\Rightarrow$  or decisions  $\Leftarrow$  affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted ~~on measures significantly affecting employees' interests.~~

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the ~~measures~~  $\Rightarrow$  circumstances or decisions  $\Leftarrow$  in question shall also have the right to participate ~~in the~~  $\boxtimes$  where a  $\boxtimes$  meeting is organised with the select committee.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the ~~Communityscale (SIC)~~ Community-scale~~z~~ undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

$\Rightarrow$  The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to Article 1(2) and Article 8 of this Directive.  $\Leftarrow$

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. Without prejudice to Article 8 of the Directive, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a ~~Communityscale (SIC)~~ Community-scale~~z~~ group of undertakings or, in the absence of representatives, the workforce as a whole, of the

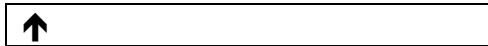
content and outcome of the information and consultation procedure carried out in accordance with this Annex.

6. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.
7. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit funding to cover one expert only.



**ANNEX II**

**Part A**

**Repealed Directive with its successive amendments**  
(referred to in Article 16)

Council Directive 94/45/EC	(OJ L 254, 30.9.1994, p. 64)
Council Directive 97/74/EC	(OJ L 10, 16.1.1998, p. 22)
Council Directive 2006/109/EC	(OJ L 363, 20.12.2006, p. 416)

## Part B

### Time-limits for transposition into national law (referred to in Article 16)

Directive	Time-limit for transposition
94/45/EC	22.09.1996
97/74/EC	15.12.1999
2006/109/EC	1.1.2007

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### ANNEX III

#### CORRELATION TABLE

Directive 94/45/EC	This Directive
Article 1(1)	Article 1(1)
Article 1(2)	Article 1(2), first sentence
-	Article 1(2), second sentence
-	Article 1(3) and (4)
Article 1(3)	Article 1(5)
[...]	[...]
Annex	Annex I
-	Annexes II and III



## **Annex B – Joint letter from the European Social Partners**

## Joint letter by BusinessEurope and ETUC



European Trade Union  
Confederation (ETUC)  
Confédération Européenne  
des Syndicats (CES)



**Monsieur Xavier Bertrand**  
President of the Employment,  
Social Policy, Health and Consumer  
Affairs Council (EPSSCO)  
127 rue de Grenelle  
F- 75007 Paris

29 August 2008

Monsieur le Président, Monsieur le Ministre,

Following your request at the informal meeting of Ministers for Labour and Social Policy in Chantilly on 10 July, we have had further discussions on the scope for joint advice by the social partners on the EWC "Recast" Directive.

It has been the express wish of the European Parliament, the European Commission, the French Presidency and trade unions to have a revision of the existing directive passed as soon as possible. In order to realise this objective in 2008 or early in 2009 we have decided to accept the Commission proposal for a directive on EWC (recast) of 2 July as the basis for the revision.

Given the tight time-scale, we have surveyed the restricted number of issues on which either side particularly considers that changes to that proposal should be sought. These are listed in the Annex to this letter, including suggested wording.

We will be calling on the European Parliament and the Council of Ministers to take our common views at annex into account in their consideration of the issues. ETUC and the European employers, BUSINESSSEUROPE, CEEP, UEAPME, are prepared to inform their members about the extended possibilities offered by this revised directive.

We would be happy to come to meet you again if you consider that useful. We are sending a copy of this letter and its annex to Commissioner Spidla and to Mr Jan Andersson, Chairman of the Committee on Employment and Social Affairs of the European Parliament.

Yours sincerely,

John Monks  
General Secretary

Philippe de Buck  
Secretary General

Andrea Benassi  
Secretary General

Rainer Plassmann  
Secretary General



European Trade Union  
Confederation (ETUC)  
Confédération Européenne des  
Syndicats (CES)



29 August 2008

**JOINT ADVICE BY THE SOCIAL PARTNERS ON THE EUROPEAN WORKS COUNCIL “RECAST” DIRECTIVE**

**Proposals on the issues considered in the joint advice  
to European Parliament and Council of Ministers**

1. **Art 2 (f):** “Information” means transmission of data by the employer to the employees’ representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees’ representatives *to undertake an in-depth assessment of the possible impact and where appropriate prepare consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;*
2. **Art 2 (g):** “Consultation” means the establishment of dialogue and exchange of views between employees’ representatives and central management or any more appropriate level of management, at such time, in such fashion and with such content (as) enables employees’ representatives to express an opinion on the basis of the information provided *about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken in to account within the Community-scale undertaking or Community-scale group of undertakings.*
3. **Art 5.4 §3:** For the purpose of the negotiations, the special negotiating body may request assistance with its work from experts of its choice *which can include representatives of competent recognised Community-level trade union organisations.* Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.
4. **Art 10.1:** Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall *have the means required to apply the rights stemming from this Directive, to collectively represent the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.*



European Trade Union  
Confederation (ETUC)  
Confédération Européenne des  
Syndicats (CES)



#### JOINT ADVICE BY THE SOCIAL PARTNERS ON THE EUROPEAN WORKS COUNCIL “RECAST” DIRECTIVE

5. **Art 10.4:** In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall *be provided with training without loss of wages*.
6. **Art 12.3:** Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting *are conducted in the European Works Council as well as in the national bodies* in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.
7. **Art 13.1** Without prejudice to paragraph 3, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which there was already an agreement on 22 September 1996, *or in which an agreement is signed or an existing agreement is revised during the two years following the adoption of the present text*, or in undertakings in which such agreements exist and which are due to negotiate under paragraph 3, covering the entire workforce providing for the transnational information and consultation of employees. When these agreements expire, the parties to those agreements may decide jointly to renew them. Where this is not the case, the provisions of the Directive shall apply”.
8. **Art 13.3** last paragraph to be deleted

## **Annex C – Impact Assessment**

## Summary: Intervention & Options

<b>Department /Agency:</b> BERR	<b>Title: Partial Impact Assessment of the review of Commission Directive 94/45/EC on European Work Councils for the purpose of informing and consulting employees.</b>	
<b>Stage: Consultation</b>	<b>Version: FINAL</b>	<b>Date: 28 August 2008</b>
<b>Related Publications: Consultation document</b>		

Available to view or download at: <http://www.berr.gov.uk/files/file47617>

Contact for enquiries: Tim Harrison/Marleen Jannink

Telephone: 0207 215 5799/3135

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

A Commission review of the European Works Council 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: 31<sup>st</sup> August 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 (wherein 19 new EWCs are expected to be established) and average annual (running) costs are estimated at between £3.93m and £4.91m depending upon scenario considered.		
	<b>One-off</b> (Transition)	<b>Yrs</b>			
	£ 1.98m	3			
	<b>Average Annual Cost</b> (excluding one-off)				
	£ 3.93 – 4.91m	10			
			<b>Total Cost over 10 years (PV)</b>	<b>£ 34.3m – 42.4m</b>	
Other <b>key non-monetised costs</b> by 'main affected groups' relating to Admin Burdens detailed within individual articles.			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 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ (-42.4m) – (- 34.3m)	<b>NET BENEFIT (NPV Best estimate)</b> £ - 34.3m
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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 admin 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 AB, 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 AB 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 1000 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>20</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 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.

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<sup>20</sup> An employee representative attends the general 'annual' meetings of the EWC and has a duty to represent and report back to colleagues.



## *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 will therefore be subject to early and detailed consideration by the Council this autumn, starting with Working Group meetings scheduled for 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*

This impact assessment will accompany a public consultation on the issue in September 2008

## **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>21</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.

The detail of the proposed changes is discussed fully in the accompanying consultation document and 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, as is the case in the Consultation Document.

## 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>22</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>23</sup> of the current take-up of EWCs in the UK.

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>24</sup> (RIA) which accompanied implementation of Directive 97/74/EC which extended 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 DTI<sup>25</sup>.

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<sup>21</sup> Commission Impact Assessment, 2008, page 62.

<sup>22</sup> ETUI – Database on European Works Councils Agreements: <http://www.ewcdb.eu/>

<sup>23</sup> As of mid-August 2008

<sup>24</sup> The Transnational Information and Consultation of Employees Regulations 1999, <http://www.berr.gov.uk/files/file34183.pdf>

<sup>25</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>

More recent data and information have been taken from the European Commission Impact Assessment<sup>26</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>27</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 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>26</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>27</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	£13,104
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>£87,599</b>

Source: UK EWC IA (1999).<sup>\*</sup> 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	£87,599	1.13	£98,987	£80,224
Extraordinary meeting				£80,224
Select Committee	£2,326**	1.6	£3,721	£20,373
Training	£34,722		£34,722	£34,722
<b>Total</b>			<b>£137,430</b>	<b>£215,544</b>

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

\*\*Average cost of a Select Committee has been updated to 2008 prices from the 1999 UK IA estimate, again using the AEI as the majority of costs (not broken down) are predicted to be associated with labour, because there are greatly reduced venue and subsistence costs.

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 = £0.792731. The average annual frequency of general (plenary) meetings is derived from the ETUI EWC database data<sup>28</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.

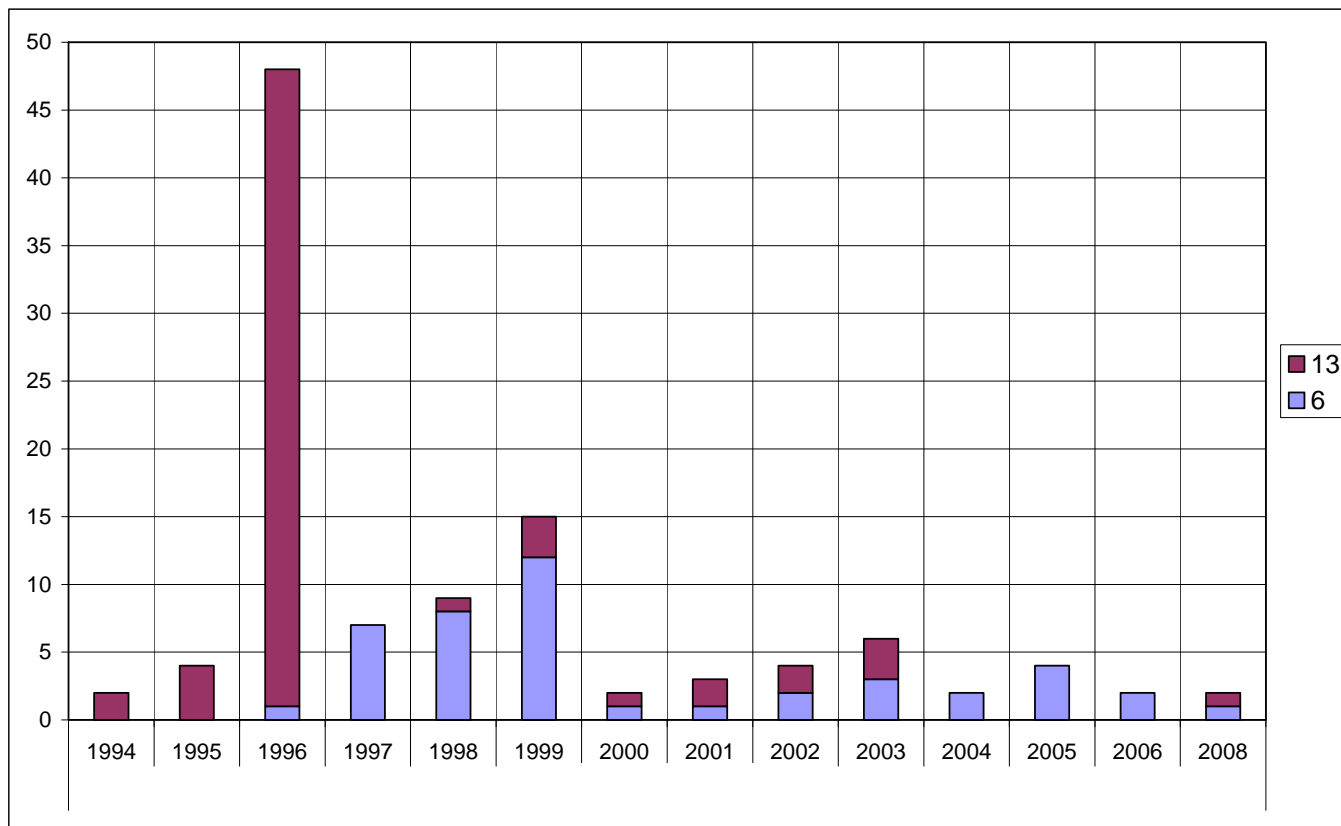
### *Take-up of EWCs in the UK*

Since the Directive was originally implemented across the EU in 1994 141 undertakings with headquarters in the UK have been established. Of these 113 are currently effective.

<sup>28</sup> ETUI Database on European Works Councils Agreements <http://www.ewcdb.eu/>

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>29</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, 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.

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.

<sup>29</sup> Commission Impact Assessment 2008, page 66, from ETUI-REHS, Brussels, 2006.

## **BENEFITS**

It would be 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>30</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>31</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.

## **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

### **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:

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<sup>30</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007.

<sup>31</sup> 1999. Commission Impact Assessment, page 41.

- 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>32</sup>, even if five hours are devoted to such a responsibility, the additional burden would only be  $(5 \times \pounds 22^{33} \times 4) = \pounds 440$ . 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.*

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>34</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>35</sup> to UK companies; another negligible aggregated cost, at only **£226** per new EWC.

<sup>32</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>33</sup> Source: Annual Survey of Hours and Earnings (ASHE)

<sup>34</sup> Source: Annual Survey of Hours and Earnings (ASHE)

<sup>35</sup>  $(\pounds 200 + (2 \times \pounds 13 \text{ per hour}) = \pounds 226 \text{ per EWC} = \text{total of } \pounds 904$



### *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>36</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

## **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.*

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<sup>36</sup> Assumed that SNB would meet without management twice.

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>37</sup> - and the GHK EU average estimate is five<sup>38</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>39</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.

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>40</sup> of companies with EWCs currently provide training to all members. However, beyond this, another 43 per cent<sup>41</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 £35 000 (€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 **£1.96m**, although this cost is divided amongst 56 transnational companies of more than 1000 employees.

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<sup>37</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>38</sup> A Preparatory Study for an Impact Assessment of the European Works Council Directive: GHK Consulting, 2007, page 17.

<sup>39</sup> (£200 + (2 x £13 per hour) = £226 per EWC = total of £904 (4 x £226)

<sup>40</sup> 46 per cent (fraction which provided training) x 79 per cent (companies which provided at least some training within their EWCs)

<sup>41</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 £35 000. This would imply a cost burden of only **£0.98m**

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>42</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, 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.

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<sup>42</sup> Lessons learned on European Work Councils, 2005.

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	0.98 - 1.96**
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>1.57 - 2.55</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	£962,010	£1,786,590	£2,611,170	£2,611,170	£23,637,960	£2,363,796
Set-up costs (PV)	£703,767	£582,830	£563,121	£0	£1,849,718	£184,972
Running costs (PV)	£929,478	£1,667,801	£2,355,126	£2,275,484	£19,352,925	£1,935,292

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 #	1.57 - 2.55	2.36	3.93 - 4.91

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 is negotiated at EU level during the autumn of 2008. We will continue to firm up our estimates for the final impact assessment as new data and information become available.

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 for each option.

The 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)	1.57 - 2.55	0	Not quantified – please refer to EWC Benefits description in Section E.
Indirect effect of increased take-up of EWCs	2.36	1.98	Not quantified – please refer to EWC Benefits description in Section E.

Source: BERR estimates. Figures have been rounded

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## 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

## 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 A4 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.



## **Annex D – The Consultation Code of Practice Criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

The complete code is available on the Better Regulation Executive's web site, address <http://bre.berr.gov.uk/regulation/consultation/code/>

### **Comments or complaints**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Vanessa Singhateh,  
BERR Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone Vanessa on 020 7215 2293  
or email to: [Vanessa.singhateh@berr.gsi.gov.uk](mailto:Vanessa.singhateh@berr.gsi.gov.uk)

## Annex E – List of Consultees

Below is a list of organisations that were sent the consultation document:

Independent Democratic Union	RollsRoyce	Bayer
Acas	Royal & Sun Alliance Insurance Group	BAYERISCHE HYPO-UND VEREINSBANK AG
ACCORD	Royal Bank Of Scotland Group	Benteler
Unite Amicus	RPC Group	BMW
Bakers, Food and Allied Workers' Union	Scancem Group	Boehringer Ingelheim
Department for Communities and Local Government	Scottish & Newcastle	Robert Bosch Limited
Department for Culture, Media and Sport	Securicor Group	Bosch Und Siemens Hausgeräte
Department for Innovation, Universities and Skills	Group 4 Securicor	Cognis UK Ltd.
Department for Children, Schools and Families	Sema	DaimlerChrysler
Department for Employment and Learning	Severn Trent	Deutsche Bank
Department for Environment, Food and Rural Affairs	Smith & Nephew PLC	Deutsche Post World Net
Department for International Development	Smiths Group	Deutsche Telekom
Department for Transport	Stagecoach	E.ON
Department for Work and Pensions	SYNSTAR	EDSCHA UK MANUFACTURING LIMITED
Department of Constitutional Affairs	T&N PLC	EPCOS UK LTD.
Diageo Staff Association	Tate & Lyle	FRESENIUS MEDICAL CARE (UK) LIMITED
Employment Appeal Tribunals	Transport Development Group Plc	Gerresheimer Glass
Employment Law Bar Association	Thomas Cook Group	Hager Electro
Employment Lawyers Association	Tomkins	Heidelberg Cement Group
Employment Tribunals Service	United Cinemas International	Hochtief
Engineering Employers' Federation (EEF)	UNIQ (unigate)	Jungheinrich
Equity	United Biscuits (holdings)	Leoni
Eversheds Solicitors	Vodafone Group	LSG Lufthansa Service Holding AG
FDA	Wagon Automotive	Merck KGaA
Foreign and Commonwealth Office	Mayr-Melnhof Group	Moeller
G4S Justice Services Staff Association	Aliaxis	Monier
General Federation of Trade Unions	Barco	NKT Services Ltd
National Assembly for Wales	Bekaert	Otto Group
National Farmers' Union	Bosal Holding	Pierburg Pump Technology UK Ltd.

National Union of Journalists	Autoglass	RWE
National Union of Mineworkers	Bracknell Roofing Co. Ltd	Schmitz Cargobull
National Union of Rail, Maritime & Transport Workers	Global One Communications	Schott Glass
The Bar Council	Lhoist	SEW Eurodrive
The British Chambers of Commerce	Recticel	Siemens
The Department of Health	Solvay Chemicals Ltd	BauschLinnemann UK Ltd.
The Law Society Scotland	Tessengerlo Group	Thyssen Krupp
Trades Union Congress	UCB	Triumph International
Unite T&G	Umicore	TUI Group
Transport Salaried Staffs' Association	Vandemoortele International	Vaillant Group
Union of Construction, Allied Trades & Technicians	Laiki Group	Voith
Union of Shop, Distributive & Allied Workers	Carlsberg	Volkswagen
UNISON	Danfoss	Wella
Better Regulation Commission	Danske Bank	ABN Amro Holdings (UK) Ltd
Bevans Solicitors	DISA	Aegon
Birmingham Law Society	Nycomed Amersham Imaging	Akzo Nobel
British Air Line Pilots Association	Icopal Group	Basell UK Ltd.
British Printing Industries Federation	International Service System A/s (iss)	Draka Holding
British Retail Consortium	Lego	EADS Defence & Security Systems Ltd
Cabinet Office	Novo Nordisk	Ineos
Central Arbitration Committee	Rockwool International	Fortis
Chartered Institute of Personnel and Development	Ahlstrom	Gamma Holding
Communication Workers Union	Cargotec	Getronics
CONNECT	Finnforest	Impress Metal Packaging
GMB	Fortum	Edmund Nuttall Ltd
Hammonds Solicitors	Huhtamäki	MBDA
Health and Safety Executive	Kemira	Skretting
HM Revenue and Customs	Kone	Philips Electronics
HM Treasury	M-Real	Randstad Holding
Home Office	Metso	Koninklijke Ten Cate
Institute of Directors	Nokia	Unilever
International Labour Office	Rautaruukki	Unisource
IRS Employment Review	StoraEnso	Atlas Copco
Law Society	Tietoerator Corporation	Duni
Local Government Association	UPM-Kymmene	Electrolux
Offshore Industry Liaison Committee	Accor	Ericsson
PCS	Alstom	Getinge UK Ltd
Professional Association of Cabin Crew Employees	Areva	H&M Hennes & Mauritz
Prospect	AXA	Ikea

Scottish Executive	BNP Paribas	Sandvik
Scottish TUC	Cap Gemini Ernst & Young	SCA
Wales TUC	Converteam	Scania
Working Lives Research Institute	Cox and Wyman	Skandia
IPA	EDF	Stena
Allied Domecq	Eramet	Svenska Handelsbanken
Arjo Wiggins Appleton	Liffe	Swedish Match
Arriva	Airbus UK	Trelleborg
AstraZeneca	Legrand	Air Products
Autobar	Faurecia	Alcoa
Avecia	Groupama Holding	American Standard Companies
Barclays	Orange	Amphenol
British American Tobacco	Geodis	ArvinMeritor
Baxi	Imerys	Autoliv
Boots	L'Oreal	Baker Hughes
British Petroleum	Lafarge	Bühler
BPB Industries	Lagardère	Bunge
British Airways	Montupet	Cargill
BT Group	Renault-Nissan Alliance	Caterpillar
Bunzl plc	Otis	Chemtura
Burmah Castrol	Pernod Ricard	Chesapeake
Cable & Wireless	Renault	Citibank
Cadbury Schweppes	Rhodia Group	Coca-Cola
Car Care Plan	Saint-Gobain	Continental Can
Cellular Subscriber (ECSD-Motorola)	Sanofi-Aventis	Cooper Industries
CEVA Logistics	Schneider Electric	Corning
Aviva	SCOR Group	Crown Cork And Seal Company
Clarks International	Société Générale	CUMMINS-ALLISON LIMITED
Coats	Sodexo	DAF Trucks
Compass Group	Suez	Dayco
Courtaulds	Thales	DuPont
Dalgety	Thomson Multimedia	Kodak
David S. Smith	Total	ExxonMobil
De La Rue	Transdev	FCI
Devro International	UAP	Federal-mogul
Diageo	Vallourec & Mannesmann Tubes	Fedex
Reckitt Benckiser	Veolia Environnement	Flowserve
Exel	VINCI	Ford
Bunzl (pp Payne Filtrona)	Amcor	General Motors
FKI Energy Technology Group	CHEP	Goodrich
Gallaher Group	Alcan	Goodyear
GE Healthcare	Bombardier Transportation	MultiServ
General Electric Plastics	McCain Foods	Heinz
GKN	Aer Lingus	Honeywell

GlaxoSmithkline	Dimplex UK	Ingersoll-Rand
Great Universal Stores	Smurfit Kappa Group	ITT-Industries
Guardian Financial Services	Alitalia	Jabil Circuit
Hanson Brick	Fiat	Jacobs Engineering
Heathrow Express	Generali Group	Johnson & Johnson
Hepworth Building	Indesit	Johnson Controls
Hilton International	Pirelli	Kellogg
Howden Group	UniCredit Group	Kimberly-clark
HSBC Holdings - Midland Bank	Bridgestone - Firestone	Kraft Foods
Hyder	Canon (UK) Ltd	Levi Strauss
Imperial Chemical Industries	Daikin	Manitowoc
IMI	Fujitsu	Monsanto
Imperial Tobacco Group	Gallaher UK	Oracle
Invensys plc	Komatsu	Owens-Corning
Kingfisher	Seiko Epson Corporation	Parker Hannifin
Hilton Group plc	Sharp	Pfizer
Ladbrokes Group	Sony Europe	ConocoPhillips
Lloyds TSB	Toray Industries	PPG Industries
Marks and Spencer	Toshiba	Xerox Ltd.
Mecom Group	TOYOTA MOTOR MANUFACTURING (UK) LIMITED	Rockwell Automation
Meggitt	Yamaha	Sara Lee
Saint-Gobain Building Distribution Limited	Dyno Nobel	Schlumberger
Morgan Crucible Company	Elopak	Stryker Corp.
Nortel Networks	Glamox	Tenneco
Northern Foods	Hydro	Texaco
Norwich Union Insurance Group	Kverneland	Textron
Novar	Nexans	Tyco International
O2	Sappi	Unisys
Pearson PLC	Sasol Group	UPS
Pilkington	Samsung	VF Limited
Rank Group	BBVA	Visteon
Reed Elsevier	Power Control GE	VWR International
Renold PLC	Sonae UK Ltd.	West Pharmaceutical Services
Rentokil Initial	Armstrong Holdings Inc	Whirlpool
Reuters Holdings	Allianz	European Study Group
Rexam	B. Braun Ltd	
RMC (Readymix Concrete) Group	BASF	

