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July 2003

Executive summary

European Works Council (EWC) legislation has been in force since September 1996 (January 2000 in the case of the UK). Its main aim is to foster better information and consultation procedures in large companies that have a trans-European presence. It is one of a number of directives concerning employee involvement in undertakings; other ones include the Information and Consultation directive and the European Company Statute.

The European Commission is under a duty to review the operation of the directive and has indicated that it will begin this process before the end of 2003. The purpose of this document, therefore, is to gather information and views on how European Works Councils have operated in practice and how well the legislation has worked, and to seek views on what issues, if any, should be given priority in any review of the directive. The Government hope that the findings from this consultation will provide more insights into how European Works Councils have operated in practice in order to provide evidence on which it can develop its approach to the review of the Directive.

The Commission has indicated that it will begin its review by consulting the Social Partners at the European level. In the meantime, it has asked the European and Economic Social Committee to prepare an “exploratory opinion” on the practical application of the directive. Section 1 of this document outlines the main features of the directive and the UK implementing legislation and looks at the process and possible timetable for the Commission’s review. It also points out some related developments that may have a bearing on the review.

The UK legislation implementing the EWC directive has now been in force for a little over three years, although in practice many UK based companies have experience of operating European Works Councils for considerably longer than that. Section 2 looks at some of the results of this experience and discusses what seems to have gone well and what has worked less well.

There has been relatively little demand from UK stakeholders for changes to the directive. Nevertheless, it is likely that there will be proposals for change from further afield, notably the European Parliament and the European Trades Union Congress. Section 3 has more detail on some of the key areas of the directive where there is likely to be pressure for change and poses a number of questions arising from such proposals.

Section 4 contains a summary of these questions. The deadline for comments is **7 October 2003**.

Section 1

Main features of the European Works Council directive and background to the proposed review by the European Commission

Introduction

1.1 The European Works Council (EWC) directive¹ 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 at the EU Amsterdam European Council in June 1997, and the UK's "opt-out" from the social chapter was formally ended when the new Amsterdam Treaty, incorporating the Social Chapter, entered into force on 1 May 1999. As a result of this the original directive was extended to cover the UK².

1.2 The EWC directive sets out requirements for informing and consulting employees at the European level in undertakings or groups of undertakings with at least 1000 employees across the Member States of the European Economic Area (EEA)³ 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 is so requested 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.

1.3 After a request has been made (or at the management's initiative) a negotiating body must be established – the "special negotiating body" (SNB). The SNB consists of representatives of all the employees in the EEA Member States in which the undertaking has operations. It is the SNB's responsibility to negotiate an agreement for an EWC (or some other form of transnational information and consultation procedure) with the central management of the undertaking (or groups of undertakings). An agreement reached under this procedure is known as an Article 6 agreement.

¹ Council Directive 94/45 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

² By means of directive 97/74/EC (The Extension Directive)

³ The member states of the EEA are the 15 EU Member States plus Norway, Liechtenstein and Iceland.

1.4 Article 6 sets out some basic issues which the central management and the SNB must determine. These are the composition of the EWC in terms of the number of members etc; the functions and procedure for information and consultation; the venue, frequency and duration of EWC meetings; the financial and material resources to be allocated to the EWC; and the duration of the agreement and the procedure for its renegotiation.

1.5 If management refuses to negotiate within six months of receiving a request for an EWC, or if the parties fail to conclude an agreement within three years, an EWC must be set up in accordance with the statutory model set out in the Annex to the directive. This lays out requirements concerning the size, establishment and operation of a European Works Council. In particular, the Annex lists topics on which the European Works Council has the right to be informed and consulted (e.g. the economic and financial situation of the business; its likely development; probable employment trends; the introduction of new working methods; and substantial organisational changes). The directive also includes provisions concerning the handling of confidential information, statutory protections for EWC members and enforcement by Member States. In practice few, if any, EWCs in the UK have been set up under the statutory model. However it is understood that the provisions of many agreements follow the statutory model quite closely.

1.6 The Directive provides for two kinds of EWC agreement, Article 6 agreements as referred to above, and Article 13 agreements. Article 13 agreements are ones concluded by 22 September 1996 (or 15 December 1999 in the case of companies who were covered by the directive as a result of its extension to the UK). Article 13 agreements are exempt from the provisions of the EWC directive if they provide for transnational information and consultation of the employees across the entire workforce in the EEA. Agreements concluded after the above dates must meet the requirements set out in Article 6 of the directive.

1.7 In practice, the majority of EWCs have been set up under Article 13 agreements. It is estimated that around 450 Article 13 EWC agreements are in existence. There are fewer Article 6 EWC agreements, although it is thought these now number well over 100. The European Trade Union Institute (ETUI) estimate that over 600 multinational companies have set up an EWC, although over 1800 undertakings meet the threshold requirements. According to ETUI figures, US, German and UK owned multi-nationals are the most strongly represented, accounting for around 15% each of the total number of EWCs. About 10% are French owned. Dutch, Swedish, Italian, Belgian or Finnish owned undertakings account for between 3 and 7% of EWCs, with the remainder falling under either Austrian, Norwegian, Danish, Luxembourg, Irish, Portuguese or Spanish ownership. There are no EWCs based in Greek owned multinationals⁴.

⁴ *European Works Councils facts and figures*: European Trade Union Institute. October 2002

The Transnational Information and Consultation of Employees Regulations 1999

1.8 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. 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 at least.
- 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 an application or complaint could be settled by conciliation, it must refer the dispute to 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.⁵

⁵ UK-based undertakings which already had EWC agreements made under the regulations of another Member State before the UK legislation came into force, are not automatically subject to the full UK Regulations. Nor are undertakings which had concluded voluntary EWC agreements under Article 3 of the extension directive or Article 13 of the original directive respectively.

The proposed Commission Review

1.9 Article 15 of the European Works Council directive requires that the European Commission shall review the operation of the directive with a view to proposing suitable amendments where necessary. In April 2000 the Commission adopted a report to the Council of Ministers and the European Parliament⁶. The Commission's report concluded that the directive had been "smoothly integrated" into national industrial relations systems, especially in relation to employee representation issues. The report made no proposals to amend the directive, on the basis that it was too early to do so and that closely related proposed legislation in the form of the Information and Consultation directive and the European Company Statute had yet to be agreed. The Commission did, however, identify a number of "legal and practical problems" on the application of the directive including: the absence of a requirement on the adaptation of EWCs to changes in the structure of the undertaking or group; the importance of a right to training for SNB and EWC members; and the need for effective information and consultation systems to exist at the national level and the need for a proper interaction between the respective representative bodies (see also section 3.2).

1.10 The Information and Consultation Directive was adopted in February 2002, and the European Company Statute in October 2001. Given this, the European Commission's legislative and work programme for 2003 contains a commitment to seek the views of the social partners⁷ regarding the possible revision of the EWC Directive and the issues which such a revision should address. The review is expected to begin before the end of 2003. In the meantime, the European Economic and Social Committee (EESC)⁸ has been asked by the Commission to draw up an "exploratory opinion" on the practical application of the European Works Council directive and on any aspects of the directive that might be need to be revised.

1.11 Final adoption of the EESC opinion is expected in September 2003. At the time of writing it is not clear whether the EESC's opinion will take the form of a factually based information report, or whether it will make specific proposals to amend the directive.

1.12 Once the formal review begins, the Commission is expected to use the two-stage consultation procedure provided for in Article 138 of the EC Treaty. The social partners will first be asked to consider the possible

⁶ http://europa.eu.int/eur-lex/en/com/rpt/2000/com2000_0188en01.pdf

⁷ The Social Partners at the European level are Union of Industrial and Employers Confederations of Europe (UNICE); Organisation representing crafts, trades and SMEs (UEAPME); European Trade Union Federation (ETUC); and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)

⁸ The EESC is a non-legislative consultative body set up under the Treaty of Rome. Its main task is to advise the European Commission, the European Council and European Parliament on a variety of community matters.

direction of Community action in respect of the directive. If the Commission then considers that Community action is advisable, it would initiate a second, more detailed phase of consultation. This would involve asking the social partners whether they want to negotiate revisions to the directive. This is likely to take place early in 2004. At this stage it is not possible to say whether such a negotiation will take place. The process does not require the social partners to negotiate and so a negotiation is not inevitable.⁹ If the social partners do decide to negotiate, the negotiations can be expected to last about 9 months – i.e. until towards the end of 2004. This might result in proposed amendments to the directive and it would then be for the Council of Ministers and the European Parliament to give statutory effect to these proposals in the form of a revised EC directive. If the social partners do not negotiate, the Commission may of its own accord start work on preparing proposed amendments to the directive. Such proposals could be expected to emerge during Summer/Autumn 2004 and would then form the basis for negotiations in the European Council and the European Parliament, both of which would have to agree any amendments. Alternatively, the Commission may decide not to propose any amendments to the directive.

Related Developments

1.13 Any review of the directive will also need to take account of other Community wide developments that provide an important backdrop to the Commission's review.

1.14 **Enlargement:** the Copenhagen Council of December 2002 concluded that 10 new member states will join the European Union on 1 May 2004. These are: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. The EWC directive will be extended to cover these countries. Clearly this will impact on the EWC directive, as many more companies and many more employees will be brought within its scope. ETUI figures estimate that around 30% of the undertakings currently covered by the directive have operations in the accession countries.¹⁰

1.15 **Related legislation:** in addition to the EWC Directive, there are a number of other directives and proposed directives concerning employee involvement. These include the legislation on collective redundancies and transfer of ownership, as well as the Information and Consultation directive, the European Company Statute, and the proposed European

⁹ The same procedure applied when the Commission first proposed the Directive. However, the social partners on that occasion failed to reach agreement and the Directive was subsequently negotiated in the European Council.

¹⁰ European Works Council Bulletin Issue 43, January/February 2003

Cooperative Society directive on Employee Involvement. DTI will be consulting on the implementation of the Information and Consultation directive and the employee involvement aspects of the European Company Statute during 2003¹¹. Sections 2.8 and 3.14 look at the link to the Information and Consultation directive in more detail.

¹¹ See the employment section of the DTI website for more details:
http://www.dti.gov.uk/er/hot_topics.htm

Section 2

The UK experience of European Works Councils

2.1 There has already been quite a lot of research conducted into the effectiveness of European Works Councils. In particular, the Industrial Relations Research Unit at the University of Warwick has carried out a number of studies.¹² Other recent studies include those by the European Trade Union Institute¹³ and Organizational Resources Counsellors Inc (ORC)¹⁴, while the DTI published a study (prepared by ECOTEC Research and Consulting Ltd) of the costs and benefits of EWCs shortly after the implementation of the UK implementing legislation.¹⁵ Some common themes have emerged as to the benefits or otherwise that accrue from EWC agreements. In particular, that some companies have found them to be of value, even if management did have some initial doubts about the resource implications at the time they were set up. Particular benefits identified in the research include better cross-business co-ordination among management teams and a better thought out corporate strategy. Less positive aspects include the increased bureaucracy involved in setting up and running an EWC and sometimes unfulfilled employee expectations about what an EWC might achieve.

2.2 In addition, the DTI has carried out some preliminary information gathering through discussions with companies, unions and representative bodies. The following is based on this evidence, but in order to build up a stronger evidence base from which to consider possible changes to the legislation, we are seeking information and views in response to this consultation document on how EWCs have operated in practice.

2.3 As noted in section 1.7, the majority of EWC agreements are Article 13 agreements, i.e. ones that were concluded before the directive came into force, with the vast majority being Article 6 agreements. Although there are very few requirements as to what these agreements should contain, many agreements are considered to be of a fairly similar nature. Although there appears to be some diversity of practice as to how EWCs are operated in practice, there is also a fair degree of commonality. Typically, an EWC will have one or two meetings per year, one of which would usually be shortly after the announcement of financial results. Some companies use them to discuss top-level company strategy, some to discuss specific operational matters such as new technology policy and changes to working methods. In addition other EWC related meetings may be held in the form of steering group meetings involving only a few EWC

¹² For an overview of EWC literature see : EWC Research: A Review of the Literature; Torsten Muller and Alice Hoffman. Industrial Relations Research Unit. University of Warwick. November 2001.

¹³ European Works Councils facts and figures. European Trade Union Institute. November 2002

¹⁴ ORC European Works Council Survey 2002.

¹⁵ Costs and benefits of the European Works Council Directive; Tina Weber, Peter Foster and Kursant Levent Egriboz. DTI/Employment Relations Research Series No. 9
<http://www.dti.gov.uk/er/emarc/camp.pdf>.

members and preparation/round-up meetings either side of the main meeting.

2.4 As far as costs are concerned, these mainly relate to the cost of holding the main set-piece meeting(s). These costs will include the costs of hiring a venue, transportation to the venue, accommodation, translation and interpretation. Such costs will vary depending on the number of meetings, number of people attending etc. Some companies estimate that they can be as high as £150K-£250K per year.

2.5 There appears to be varying degrees of enthusiasm for EWC meetings on the part of both employers and employees. We were told that it can sometimes be difficult to get employees engaged in matters that do not always have an obvious impact on their workplace. This is particularly so in organisations that have a very diverse portfolio of activity. Some companies' meetings appear to be quite formal affairs at which management make presentations to a large audience, but without much dialogue. It has also been asserted that there was often a lack of cohesion between the employees' representatives from the various Member States, not least because different plants were sometimes seen to be competing with one another. We were told there can be conflicting styles as between the British and European contingents which does not always make for a constructive and balanced dialogue.

2.6 There is evidence that some companies are trying hard to get added value from their EWC and report that they would continue with their EWC regardless of whether there was a legal requirement to have one. Some have established systems of sub-committees which carry out the substantive work and provide for continuity between meetings. They believe the EWC can play a genuine role within the management structure. Indeed some managers acknowledge that the EWC can be a valuable mechanism for testing their ideas out, before they become finalised, on a constituency other than colleagues from senior management. This process can provide useful feedback. Some top management feel it is important to be exposed to the views of "shop floor" employees and the EWC can play a role here on a European-wide basis. The EWC can also be a source of information which is not available through normal management channels. The point was made that proper consultation with EWC representatives can help the process of managing change and offer a better opportunity of employee buy-in. Some companies said that there were occasions when they had made quite significant changes to proposals as a result of consulting the EWC. Most though said that final decisions were unlikely to be changed very often, but that consultation with the EWC can affect some of the detail. Similarly, UK employee representatives report that they have found the EWC useful for extracting information from management and also for networking with EU counterparts who may be better informed about the company.

2.7 It seems, however, there are practical problems that can hinder the effectiveness of an EWC. First, while it is clear that EWCs should focus

on transnational rather than national or local issues, this is not always straightforward. For example it may not be clear whether a plant closure in one Member State has an effect on the company as a whole. And there can be differences of opinion over whether some matters (e.g. pay or pensions) should become transnational matters. This can lead to disputes about whether a matter is within the competence of the EWC. Some firms are reluctant to discuss with the EWC matters relating to specific plants, such as redundancies, before they have discussed them at local level with the workforce directly concerned. Therefore, finding genuinely transnational issues to discuss is not easy.

2.8 It has also been asserted that UK based EWC representatives are not always as skilled as their European counterparts in the art of representation. The implementation of the Information and Consultation directive in the UK may be relevant here. It will provide new rights to employees and employee representatives and is expected to lead to consultative and representative structures being established or revamped in many companies. In time this should lead to an increase in the skills and experience of employee representatives which may spill over in to related areas like EWCs. The advent of the Information and Consultation directive may also help provide a bridge between employee representation at the European and national level.

2.9 We would welcome information from respondents concerning their own experience of EWCs. In particular it would be useful to have details of their size, frequency of meetings, subjects discussed, costs of operation, duration of agreements and procedures for re-newing/terminating them, as well as general views on what makes for an effective EWC and what are the obstacles to an effective EWC. Please indicate if you wish information to be treated in confidence.

Section 3

Possible changes to the legislation

3.1 The Government will look at any possible changes to the directive from a pragmatic point of view, focusing on how to make the directive a more effective tool for transnational information and consultation. As with other legislation in this field, the Government's key aim is to strike the right balance between providing effective rights for employees to be informed and consulted, without creating undue or unnecessary burdens on business.

3.2 To date, there has been relatively little demand from UK stakeholders for changes to the directive. An oft made point is that EWCs are still young organisations which should be given time to evolve before change is imposed. Nevertheless, it is quite possible that substantial and potentially far-reaching amendments to the directive will be discussed as part of the Commission review. As referred to in section 1.9, the European Commission in its report on the implementation of the directive highlighted what it saw as some of the "legal and practical" problems" on the application of the directive. These include:

- The low level of transnational information and consultation provided for in some agreements
- The absence of a provision in the directive requiring an adaptation clause in agreements to cover changes in the make-up of the undertaking or group.
- The question of what makes for timely provision of information and consultation – i.e. before a decision is taken
- A right to training for SNB and EWC members
- The need for effective information and consultation systems to co-exist at the national and European levels.

The European Parliament (EP) and the European Trade Union Confederation (ETUC) have also put forward a number of detailed amendments, some of which are covered in more detail in the Annex.

Possible Areas for Revision

3.3 The section below looks at some of the key areas of the directive where changes may be considered during the Commission review and poses some questions about such changes on which we would welcome respondent's views.

Scope

3.4 Article 15 of the directive says that the Commission, when reviewing the Directive, should in particular examine whether the workforce size

thresholds are appropriate. It is expected that any moves to alter the threshold levels would see them reduced from the current level of 1000 employees, with at least 150 in each of two or more Member States. For example, the ETUC and the EP both believe the thresholds in the directive should be reduced to at least 500 employees within Member States and at least 100 employees in each of at least two Member States. These were the levels proposed by the EP when the directive was originally negotiated in 1994 and would clearly bring a considerably greater number of undertakings within the scope of the directive. The extension of the directive to the accession countries will of itself have an impact in that a number of additional undertakings would fall within the thresholds once employees in the accession countries are included.

Do you think there should be any changes to the level of the thresholds? If so, at what level should they be set and what is the case for making such a change?

SNB procedure

3.5 Since 1996 there have been proportionally fewer Article 6 agreements than there were Article 13 agreements. Under the Article 6 procedure it is necessary to set up an SNB representing all Member State employees in order to reach an agreement. Some have argued that this procedure is unduly complicated. There have also been concerns over the amount of time (i.e. three years) that is allowed for an agreement to be reached. The EP has suggested some changes here (see paragraph 5 of the Annex).

3.6 The nature of the SNB procedure is one possible explanation as to why there may have been relatively fewer agreements concluded since 1996. However, the fact that only one third of undertakings, who fall within the scope of the legislation, have an EWC, may also suggest a lack of employee demand.

Are there changes that could be made to the SNB procedure that would better facilitate effective EWC agreements?

Article 6/13 agreements

3.7 The directive does not set out many requirements as to the content of an Article 6 agreement. It refers to an agreement between the central management and the SNB to determine the undertakings covered by the agreement; the composition of the EWC in terms of the number of members etc; the functions and procedure for information and consultation; the venue, frequency and duration of EWC meetings; the financial and material resources to be allocated to the EWC; and the duration of the agreement and the procedure for its renegotiation.

3.8 Both the ETUC and the EP have made proposals to strengthen the directive's requirements in this area. For example, "information" is not

defined in the directive. The ETUC have proposed a specific definition and also propose that the definition of consultation is expanded (see paragraphs 1 and 2 of the Annex).

3.9 As mentioned above, the Commission has noted the absence of any provisions in the directive regarding what should happen to the EWC in the eventuality that there are significant changes of the structure of the undertaking or group. This is a point also reflected in the ETUC proposals (see paragraphs 14 and 15 of the Annex).

3.10 The “window” for concluding an Article 13 agreement closed in September 1996 (December 1999 in the case of undertakings covered by the directive as a result of its extension to the UK). All agreements concluded after these dates must follow the Article 6 procedure, or the subsidiary requirements in the event of no Article 6 agreement being reached. Some would like to see new Article 13 agreements allowed. The ETUC, on the other hand believe that existing Article 13 agreements should not be allowed to continue indefinitely, and that they should be legally enforceable (see paragraph 6 of the Annex).

Are there any changes that could be made to Article 6 of the directive that would make for better agreements or make it easier to reach an agreement? Should there be specific provisions that apply in the event of a restructuring? How can more innovative EWC agreements be fostered? Do you think any changes in relation to Article 13 agreements should be made?

The Subsidiary Requirements

3.11 If there is no agreement between central management and the SNB, or if the central management refuses to begin negotiations within 6 months of a valid request being made by the employees, the subsidiary requirements of the directive will apply (as laid down in the legislation of the Member States). As referred to in section 1.5, it is believed that few, if any, EWCs have been set up under the statutory model as set out in the subsidiary requirements of the directive, but these requirements are thought to be of considerable influence in the drawing up of Article 6 agreements.

Are there any changes that you think should be made to the subsidiary requirements?

Facilities/support for EWC members

3.12 The directive requires Member States to provide EWC representatives with the same protection and guarantees that employee representatives enjoy under domestic legislation. There are no provisions that allow rights for time-off for training of EWC members, and as mentioned above, this is a point the Commission is referred to in their

report on implementation. Paragraphs 7-9 of the Annex have more details on the ETUC and EP proposals in this area, including the provision of training in certain matters and the possible role of outside experts in the setting up and running of an EWC.

Should the Directive provide a right to time off for training of EWC representatives? Are any changes needed to the provisions concerning the use of outside experts in the setting up and running of EWCs?

Compliance/sanctions

3.13 It is for Member States to provide appropriate enforcement mechanisms in the event of a failure to comply with the directive. These sanctions must be effective, proportionate and dissuasive. Both the ETUC and the EP have made fairly radical proposals to strengthen the enforcement mechanisms within the directive (see paragraphs 10-13 of the Annex). In particular, they are concerned about what they see as inadequate consultation in respect of a restructuring.

Do you consider that the directive's provisions on sanctions require strengthening in any way?

The link to the Information and Consultation directive

3.14 This is another issue referred to in the Commission's review. The UK legislation to implement the above directive is due to come into force in March 2005 and the Government will be consulting about the implementation of the directive during the course of 2003. The implementation of the Information and Consultation directive applies many of the principles of the EWC directive down to the national and local level. Although, in theory at least, the EWC directive concerns transnational issues, and the I&C directive is intended to apply at the national level, in practice it can be difficult to draw a clear boundary between national and transnational issues. Accordingly, the introduction of the I&C directive may give rise to a potential overlap between information and consultation at the transnational level and at the domestic level.

Do you see any implications for the EWC directive, or for the Commission's review, from the introduction of the I&C directive?

EU enlargement

3.15 It may be necessary to make some technical adjustments to the EWC directive as a result of the enlargement process. In particular, the minimum and maximum number of members of the SNB and the EWC may need to be reviewed. Article 5 of the directive currently provides for a minimum of 3 and a maximum of 18 members of the SNB. The maximum was increased from 17 to 18 when the directive was extended to cover the UK. The subsidiary requirements of the directive (section 1(c))

states that the EWC shall have a minimum of 3 and a maximum of 30 members.

Do you think these numbers should be revised as a result of the extension of the directive to the accession countries? Are there any other implications for EWCs as result of the expansion of the European Union that need to be taken into account during the review of the directive?

Better Regulation

3.16 The Commission presented its Action Plan for simplifying and improving the regulatory environment on 5 June 2002. The Action Plan fulfils the mandate set by the Lisbon European Council in March 2000. One of the key elements of the plan is the creation of a programme of simplification of existing legislation.

Are there any changes of a deregulatory nature that might help better achieve the aims of the directive? Would best practice guidance be helpful in addition to, or as an alternative to changes to the directive? If so, guidance on what?

The Transnational Information and Consultation of Employees Regulations 1999

3.17 The UK implementing regulations have been in force for over three years. As with the directive, to date there has been no great demand to amend the UK regulations, and the regulations appear to be operating in a reasonably straightforward manner. However, the Government is willing to consider any areas for amendment that arise out of this consultation, including any of a deregulatory nature.

3.18 One area that has already been highlighted concerns the ability of the EWC to bring a complaint to the Employment Appeal Tribunal. Regulation 21 (3) of the TICE regulations refers to the European Works Council being a “relevant applicant” in the context of a complaint to the EAT. However, it is not clear whether that means that the all members of the EWC must agree to bring a complaint. Given that an EWC will often include representatives of management, that may well preclude such a complaint being made.

We would welcome views on whether this is a practical problem that needs to be addressed or on any other aspects of the regulations that could be improved.

Section 4

Questions for consideration

4.1 A number of important questions about the possible revision of the directive have been referred to in this document. Here is a summary of the questions on which we would welcome respondents' views:

- **The nature of EWCs, including details of their size, frequency of meetings, subjects discussed, costs of operation, duration of agreements and procedures for re-newing/terminating them, as well as general views on what makes for an effective EWC and what are the obstacles to an effective EWC.**
- **Do you think there should be any changes to the level of the directive's thresholds? If so, at what level should they be set and what is the case for making such a change?**
- **Are there changes that could be made to the SNB procedure that would better facilitate effective EWC agreements?**
- **Are there any changes that could be made to Article 6 of the directive that would make for better agreements or make it easier to reach an agreement? How can more innovative EWC agreements be fostered? Do you think any changes in relation to Article 13 agreements should be made?**
- **Are there any changes that could be made to the fallback provisions in the directive. For example, are the minimum and maximum number of members for the EWC appropriate. Should they be altered as a result of the expansion of the EU?**
- **Should the directive contain specific provisions that would provide for rights to time-off for training of EWC representatives? Are any changes needed to the provisions concerning the use of outside experts in the setting up and running of EWCs?**
- **Do you consider that the directive's provisions on sanctions require strengthening in any way?**
- **Do you see any implications for the EWC directive, or for the Commission's review, from the introduction of the Information and Consultation directive?**

- **Do you think the number of SNB members or EWC members under the annex requirements should be revised as a result of the extension of the directive to the accession countries? Are there any other implications for EWCs as result of the expansion of the European Union that need to be taken into account during the review of the directive?**
- **Are there any changes of a deregulatory nature that might help better achieve the aims of the directive? Would best practice guidance be helpful in addition or as an alternative to changes to the directive? If so, guidance on what?**
- **Are there any aspects of the UK implementing regulations (TICE) that needs to be addressed or on any other aspects of the regulations that could be improved.**

4.2 The views of respondents on the above questions will be helpful in preparing for the Commission's review. Responses to these questions can be e-mailed to informing@dti.gsi.gov.uk, or sent to:

Iain Adlington
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The deadline for comments is 7 **October 2003**

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ANNEX

Proposals made by the European Trade Union Confederation and the European Parliament¹⁶

Quality and timing of Information and Consultation

1. Information is not currently defined in the directive. The ETUC propose that it should be so that comprehensive, written information is provided in a timely manner and on a continuous basis. They also propose that the definition of “consultation” is expanded so that the opinion of employees’ representatives can still be considered before final decisions are taken
2. The EP also want I&C defined more precisely so that it takes place in good time, before decisions are taken, and so that representatives can genuinely influence the process. There should be an enhanced consultation procedure in the event of a restructuring and reps should be allowed to submit alternative proposals. In these circumstances, it should be possible to suspend the final decision where it may have a negative impact on employees so that negotiations can continue.
3. The directive’s subsidiary requirements (regulation 3) provide for exceptional information and consultation meetings, especially in the event of a closure, a relocation, or collective redundancies. The ETUC want these rights extended so that the EWC is given time to examine the information, present an opinion and meet with management with a view to reaching agreement.
4. The EP propose that Article 6 of the Directive should specifically refer to measures planned by company or group management relating to training, equal opportunities, health and safety, and possible employees’ financial participation in the undertaking (e.g. share options) as matters that should form part of the information and consultation process.

The SNB Procedure

5. The EP is concerned about the period of three years laid down in Article 7(1) before the minimum standards in the Annex come into effect. When the directive was originally negotiated, the EP considered that this was too long a period to wait if central management and the special negotiating body were unable to conclude an agreement. Parliament’s amendment at the time suggested an 18-month period, after which the provisions of the Annex would come into force. They continue to believe that consideration should be given again to reducing the three-year period.

¹⁶ Further information on these proposals can be found at: <http://www.etuc.org/EN/> (ETUC) and on the European Parliament website: http://www.europarl.eu.int/home/default_en.htm (Report number A5-0282 of July 2001).

Article 13 Agreements

6. The ETUC believe that these agreements should be time limited. If they are not, notice of cancellation can be given with a delay of three months. After the term of notice has run out, the provisions of this Directive apply. Member States shall provide for measures, including legal procedures, in case of a violation of existing article-13 agreements. Measures already implemented or in the process of being implemented are null and void, insofar as they affect workers.

Facilities/Support for EWC Members

7. ETUC think that more needs to be done to ensure EWC members communicate with each other. Few agreements specify any training measures. There are also few provisions in agreements for attendance at EWC meetings of external trade unionists.

8. The EP also believes that investment in training of employee representatives is vital if works councils are to function effectively. Language difficulties are a particular concern. For this reason, the EP would like to see specific mention of the possibility of language training for members of the works councils and the special negotiating bodies, as this will in the long term help improve communication with the whole workforce of the undertaking. The EP also believe that training is urgently needed in accounting regulations, employment law and industrial relations systems applied in other Member States.

9. The ETUC want Article 10 of the directive amended so that EWC members are entitled to paid time-off, training for and time-off for meetings with national representatives.

Compliance/Sanctions

10. The ETUC want Article 9 of the directive strengthened significantly, so that measures that affect workers are invalid if the information and consultation procedures are not carried out in "due order".

11. Also, any company not complying with these obligations should be temporarily excluded from procedures concerning the awarding of public contracts, and excluded from any EU financial support for which it might otherwise have been eligible.

12. The EP believes the wording in Article 11 is weak. Paragraph 3 states that 'Member States shall provide for appropriate measures in the event of failure to comply with this Directive'. The EP wishes to see the introduction of appropriate sanctions for non-compliance in Article 11, although they do not specify what form such measures might take.

13. The EP also wishes to see the introduction of an obligation on companies proposing to merge to prove that they have complied with this Directive before the merger is authorised by the Commission. It would also like to see a requirement for the repayment, in certain circumstances, of any Structural Fund monies or national aid given to companies for the promotion of regional development and/or employment, should they not have respected their obligations under the directive.

Restructuring

14. The directive's subsidiary requirements (regulation 3) provide for exceptional information and consultation meetings, especially in the event of a closure, a relocation, or collective redundancies. The ETUC want these rights extended so that the EWC is given time to examine the information, present an opinion and meet with management with a view to reaching agreement.

15. The ETUC believe that in the event of a restructuring, EWC agreements should be adjusted so that they cover all employees in the new structure. In addition, the EP believes that consideration should be given to a clause in the directive which would allow for an adjustment in the numbers of members of both the European works council and the special negotiating body where there is a major restructuring of a company, so that the composition of both bodies properly reflects the proportion of employees working in the establishments after restructuring.