PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)

Direct Tax Changes Resulting from the Implementation of the EU Regulation on the European Company

Purpose and intended effect of the measure

The policy objectives

1. It has been possible to form a European Company since October 2004. The Pre-Budget Report confirmed the imminent exposure of a Technical Note and draft clauses detailing changes to UK tax law that will give UK companies tax certainty if they form or operate a European company. The clauses mean the European Company will be taxed on a similar basis to a UK company.

Background

2. The European Company Statute (ECS) was adopted by the European Council of Ministers on 8 October 2001. The ECS permits the formation of a European Company (referred to in the ECS as the Societas Europaea or SE) and provides for other rules governing SEs. This partial Regulatory Impact Assessment (RIA) covers the tax measures that will be required to ensure the successful implementation of the ECS in the UK.

3. The ECS came into effect on 8 October 2004 and permits the formation of an SE by various mechanisms:

- "transformation", i.e. the conversion of a UK company (or similar company in another Member State) into an SE
- formation of a subsidiary SE
- formation of a parent SE
- the merger between two (or more) companies in different Member States into an SE.

4. The ECS relates to company law and does not mention tax. The DTI have issued regulations enabling mergers prescribed by the ECS to form SEs to be possible in UK law.

Interaction with the Mergers Directive and formation of an SE by cross border merger

5. For most UK tax purposes, an SE based in the UK will be treated like a UK PLC and will fit within the existing corporation tax regime and other regimes relating to UK companies. The most significant issue for direct tax relates to the fourth bullet - the formation of SEs by cross-border merger.

This is governed by the Mergers Directive (90/434/EEC) as the EU Commission proposed that SEs were to be added to the Mergers Directive.

6. The effect of the Mergers Directive will be, broadly, that the formation of an SE by merger should be tax-neutral. To achieve this, some changes to UK tax legislation are needed to ensure that this "fit" is as seamless as possible.

7. Formation of a SE by merger is a new option for business in the UK and the EU. The tax measures to implement the ECS will not have any impact on existing businesses unless they choose to become a SE. This can therefore be viewed as a deregulatory measure.

8. Although formation by merger is the most significant aspect of the ECS for UK tax legislation, there are other articles of the ECS which will have some effect on UK tax legislation.

Other provisions of the ECS

9. Articles 7 and 8 of the ECS set out rules for the registered office of an SE, and in particular, for the transfer of the registered office of an SE from one member states to another. This provision and the addition of SEs to the Mergers Directive mean that a tax charge should not arise on such a transfer other than those that involve the actual transfer of ownership of assets outside the jurisdiction of the transferor Member State.

10. Articles 9 and 10 of the ECS set out a hierarchy of the rules governing SEs and article 68 provides that member states should make such provision as is appropriate to ensure the effective application of the ECS.

This Regulatory Impact Assessment

11. This partial Regulatory Impact Assessment covers the provisions which are necessary to accommodate mergers to form SEs in UK tax law. Further changes may be consulted on shortly. The RIA will be updated and developed as those legislative changes become clearer.

12. The draft clauses dealt with in this RIA mainly cover a Tax Deferral. Clause 1 will ensure that assets transferred between the merging companies in the process of forming an SE will attract no charge (i.e. a deferral) for the purpose of corporation tax on chargeable gains until such assets are sold. Where the newly formed SE is non-UK resident, tax deferral still occurs as long as the foreign resident SE maintains a permanent establishment in the UK.

13. Clauses 2 to 4 cover loan relationships and financial instruments that are capital items in terms of the Mergers Directive but treated for UK tax purposes within their own bespoke but essentially income regime.

14. Clause 5 gives effect to transfers of assets on which capital allowances may be claimed.

15. Clause 6 addresses consequential amendments.

The risks being addressed

16. This is an enabling measure, allowing companies to benefit from a new form of company organisation permitted by an EU Regulation. So in terms of addressing risks, there are two elements. Firstly, if we did not provide certainty for UK business there would be a risk that UK companies and businesses might operate at a commercial competitive disadvantage to their European rivals.

17. The other risk is that in the absences of any amendments to UK legislation, the new situation created by the ECS potentially may permit some companies to use what should be a commercial decision simply to avoid a tax charge.

Options considered in drafting this legislation

18. Consideration of the risks above led us to consider three broad options when developing policy:

- *Doing nothing or the absolute minimum:* the ECS is a company law measure, not tax legislation. The Government did consider allowing existing tax legislation simply to apply to SEs as there are existing rules, which could have applied to the main transactions affecting SEs. However, there is not a perfect match between existing tax law and the company law regime introduced by the ECS. Doing nothing may have generated uncertainty and additional compliance costs for business.

- *Wait until the ECS beds in:* the attraction of this option was to see what the take-up of the option to form SEs was in practice. It would also have enabled the Government and business to await the outcome of developments on other proposed EU legislation. The problem with this option is that if there were tax uncertainty, this would hinder use of SEs, which in turn would feed into take up.

- *Bespoke tax rules for certain transactions affecting SEs:* This was the option chosen by the Government. Certain transactions, such as formation by cross-border *merger* and transfer of registered office, are unprecedented in UK company law. The Government's view is that the design of specific tax rules for these situations would provide certainty for business.

Business sectors affected

19. These measures will in general affect larger companies. Public limited companies and the equivalents in other EU Member States will be eligible to form SEs.

Issues of equity and fairness

20. Our initial assessment is the measure does not raise particular issues around the sectors affected or issues of equity or fairness. However, we would be interested in any views that consider this to be an overly simplistic analysis.

Benefits

21. The wider benefits of the ECS in a UK context are discussed in the RIA produced by the DTI in their consultation of October 2003. This RIA is attached as an Annex.

22. The tax changes exposed here mean that the formation of a SE by merger will be tax neutral for any company or SE wishing to take advantage of these provisions. Similarly they will provide a tax neutral environment in the case of a transfer of the registered office of a SE.

23. The changes are also designed to provide companies contemplating forming a SE or SEs themselves with certainty about the tax rules which will apply to transactions involving them. By choosing the option of bespoke legislation the Government has given business certainty which in turn reduces the cost to business of tax advice in investigating whether an SE might be for them.

Costs

Policy costs

24. There are no direct costs that the policy requires companies to incur. There are indirect costs of dealing with the company law changes brought about by the ECS and of complying with new tax rules.

Implementation (compliance) costs

25. Since the aim of the continuity provisions is to prevent additional tax costs to companies forming/becoming SEs, there should be no arising costs to companies. There may be some costs arising from the machinery provisions, but it is expected to be negligible.

Exchequer effect/distributional impacts

26. The aim of the ECS is to eliminate any tax charge arising on formation of an SE by cross border merger. Since such a mechanism has no previous comparison there is no direct methodology for making an assessment. On the basis that previously a cross border merger of the type the ECS provides for, could have given rise to a tax charge, then we anticipate a very small to negligible cost to the Exchequer.

Small Business impacts

27. Although there is nothing intrinsically precluding small businesses from making full use of the ESC, its international scope leads us to an initial assessment that the measure is unlikely to have much if any impact on small businesses. We would welcome the views of small businesses or their representatives that our understanding here is correct.

Other costs and benefits (public & private sector)

28. We do not see any particular infrastructure costs involved in the measure. It will provide a new option for business to conduct re-structuring within a European context and enable UK business to operate on a level playing field with their counterparts elsewhere in the EU.

Unintended consequences

29. We do not see any unintended consequences arising from the tax legislation in relation to ECS.

Other impacts

30. We see no impact of the ECS tax legislation for human rights, devolution, E-policy, environmental impacts or rural communities.

Competition assessment

31. The new tax legislation will affect all markets since formation of a SE is not restricted to any particular sector. In like manner to company tax provisions, in relation to the SE, this legislation will not impose additional costs - either set-up or ongoing - on any companies, nor restrict the ability of companies to choose the price, quality, range or location of their products.

32. It is anticipated that the legislation will not affect competition, either positively or negatively. However, it is possible that the legislation will have an effect on market structure since the formation of SEs by merger could lead to a smaller number of UK registered companies, although this could be off set by non-UK companies migrating into the UK.

Securing compliance

33. At present there are number of tax provisions that apply to companies that are engaged in a merger. In essence, provided the merger is undertaken for bona fide commercial reasons then, notwithstanding that otherwise there would have been a taxable disposal of the assets at the company tier, this disposal from one company to the other will not trigger a tax charge. The

clauses extend those provisions to SEs created by the ECS and we see no particular need for any compliance provision over and above that provided for any other merger involving a UK company.

Consultation

34. Within government we have consulted the DTI and reviewed the responses received to their October 2003 consultation. But we would welcome any views business or their representatives have on the substance of these clauses or any administrative or regulatory costs of their implementation.

Monitoring and evaluation

35. Once we have considered the responses to this Technical Note, we intend to draw up a programme to monitor take up and use of SEs over their first year of their introduction. Our remit will be to ensure this legislation adequately provides for SEs in UK law and if it doesn't then to engage with users and potential users of SEs to see what further changes may be needed. We will also set in train work to monitor the extent to which SEs are being made use of in other EU countries and if take up is markedly different from the UK experience to look at the reasons why this is the case.

Summary and recommendation

36. We believe the ECS represents an important step in the development of a single internal market. It will enable UK business to operate on the same basis as their EU competitors and for EU businesses to structure themselves more effectively to compete on a global stage.

37. The Technical Note published today includes most of the draft tax clauses needed to provide certainty for UK companies to consider the merits of SEs as a corporate wrapper for their business. We welcome any comments on this legislation and in particular whether the clauses included here will achieve the policy purpose of enabling SEs to be formed and to operate in the UK on the same or similar basis to ordinary companies.

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Annex

DRAFT REGULATORY IMPACT ASSESSMENT issued by the DTI as part of their October 2003 Consultative Document

<u>The European Company Statute</u>

Purpose and intended effect of the measure

Objective

The European Company Statute (ECS) creates a legal framework for a new form of company, the European Company or 'Societas Europaea' (SE). The ECS consists of a Regulation setting out the core company law framework and an accompanying Directive that specifies the employee involvement arrangements that would apply to an SE. The new form of company - which will be a European public limited liability company registered in one of the Member States with a minimum share capital of EUR 120,000 and having legal personality - will be available to commercial bodies with operations in more than one Member State. Its use will be entirely voluntary. The domestic legislation facilitating the operation of the SE (see paragraph 7 below) will apply in Great Britain.

2 Since forming an SE will be entirely voluntary only those companies which perceive that there is likely to be a real benefit will consider forming an SE. The ECS has created a framework by which GB companies will be able to engage in cross-border mergers with companies from other Member States. At present, there are no harmonised rules in the EU governing cross-border mergers. Secondly, a GB company wishing to take over a company from another Member State, or wishing to establish a joint venture with a company in another Member State, might find it easier to reach agreement with the overseas company if it decided to form a joint holding company or joint subsidiary in the form of an SE. Thirdly, a GB public company wishing to operate in several Member States simultaneously might consider that there were presentational advantages in adopting the SE name and form. The name of an SE will be preceded or followed by "SE" and only SEs will be permitted to include the abbreviation SE in their name.

Background

3 There are five methods of forming an SE set out in the Regulation, as follows:-

i) by the merger of PLCs provided at least two of them are governed by the laws of different Member States;

ii) by the formation of an SE as a holding company for public or private limited companies from at least two different Member States;

iii) by the formation of an SE as a subsidiary of companies from at least two different Member States;

iv) by the transformation of an existing PLC which has, for at least two years, had a subsidiary in another Member State;

v) by the formation of subsidiary SEs where an SE is the parent.

4 The Regulation provides that once an SE has been formed, by any method, it may transfer its registered office from one Member State to another without the winding up of the SE or the creation of a new legal person. In addition, an SE may convert to a PLC although not for at least two years (or before the first two sets of annual accounts have been produced). Conversion to a PLC would not result in the winding up of the company or the creation of a new legal person.

5 The accompanying Directive sets out requirements for the information, consultation and participation of employees ("employee involvement") in European Companies. All SEs must have employee involvement arrangements. These will always cover information and consultation, and may cover employee participation on the board in certain circumstances (in particular, if it existed within one or more of the participating companies). Before registration of the SE is possible, provision for employee involvement in the SE must be agreed.

6 The Regulation was adopted by Member States on 8 October 2001 and comes into force on 8 October 2004. It is free-standing and will be directly applicable throughout the European Economic Area (EEA), ie Norway, Iceland and Liechtenstein and the 15 Member States of the EU (plus, by the coming into force date, the 10 accession countries). In addition, on many matters, it applies to SEs the national legislation applicable to public companies in the Member State where the SE is registered. For example, GB company law applicable to accounts and to winding up, liquidation and insolvency will be directly invoked by the Regulation. (Article 9 sets out the law and other provisions applicable to an SE, and the respective priority in which they apply.)

7 The Regulation lays down a number of Member State options and new domestic legislation will be required to set out the options adopted. This domestic legislation will also need to provide, as set out in Article 68 of the Regulation, for the effective application of the Regulation in GB such as requiring that documentation relating to the new procedures for registering an SE be filed at Companies House. It will also set out the sanctions and penalties for contraventions of the Regulation. The domestic legislation - which will also come into force on 8 October 2004 - will also implement the employee involvement Directive.

Risk assessment

8 In the context of both the existing law and the law as amended by the regulations there is no perceived hazard or situation which would lead to any harm or detriment to any individual, company or organisation.

Options

9 As noted above, the Regulation is directly applicable throughout the EEA. All Member States will need to provide for its effective application within their territory. In addition, all Member States will need to implement the accompanying employee involvement Directive. In respect of the Regulation, there are 31 Member State options. The approach of GB in deciding which options to adopt is in general to apply a light touch, ie to impose the minimum duties and costs on companies seeking to form, or convert to, SEs. In other cases, the approach adopted has been to align the provision in the Regulation with the existing law set out in the Companies Act 1985 such as providing that SEs must have a minimum of two directors but not to prescribe a maximum number. There are also 11 requirements on Member States to legislate which relate mainly to the publicising of documents by companies intending to become SEs. The approach adopted by GB in this respect is to introduce measures which reflect the measures already implemented for domestic mergers (in GB these are also set out in the Companies Act 1985).

10 The principal option in the Regulation, as far as GB is concerned, is that set out in Article 39(5). Under this option, a Member State may adopt appropriate measures in relation to SEs where no provision for a two-tier system is made in its plc law. While the Companies Act 1985 dictates neither a one-tier or two-tier board, its provisions generally assume a unified structure. However, there is nothing in law that presently prevents PLCs incorporated in GB from adopting articles under which the powers that are granted are divided between two tiers of directors, one exercising management functions and the other exercising a supervisory role in relation to those functions. Special provision for two-tier boards might create greater certainty in respect of what the law required of SEs since less consideration would need to be given to the interaction between the Regulation, existing company law and the new domestic legislation. However, creating special provision for the board structure of SEs would be prescriptive and less flexible.

Benefits

11 Since forming an SE will be entirely voluntary, only those companies which perceive that there is likely to be a real benefit will consider forming, or converting to, an SE. Quantification of that benefit is not possible, not least because it is not possible to assess the likely take-up of the SE form by GB companies. It would be helpful if companies that are considering setting up an SE could offer an assessment of the financial advantages of the benefits summarised here. The ECS has created a framework by which GB companies will be able to engage in cross-border activities with companies from other Member States. Secondly, a GB company wishing to take over a company from another Member State, or wishing to establish a joint venture with a company in another Member State, might find it easier to reach agreement with the overseas company if it decided to form a joint holding company or joint subsidiary in the form of an SE. This might prove more acceptable to the “target” company than a straightforward takeover of it by the GB company. Thirdly, a GB public company wishing to operate in several Member States simultaneously might consider that there were presentational

advantages in adopting the SE name and form. The name of an SE will be preceded or followed by "SE" and only SEs will be permitted to include the abbreviation SE in their name.

12 Companies adopting the SE vehicle will, under the Directive, have to embrace employee involvement. Economists have argued that information and consultation, together with other types of employment relations practices, acts to align better the interests of companies and workers, thus improving a company's performance, through lower employee turnover and higher productivity . By being consulted, employees may feel more committed to the organisation and may feel more secure in their jobs. As the benefits of information and consultation will depend very much on the circumstances of the company, the flexibility of options is likely to mean a greater chance of realising benefits. Companies and employees will be able to agree their employee involvement arrangements, taking into account their unique requirements and existing set of arrangements.

Business sectors affected

13 All business sectors are affected since any company may form or convert to an SE if it fits the criteria set out in Article 2 of the Regulation (referred to in paragraph 3 above). Any two GB companies, public or private, may promote the formation of a holding or subsidiary SE as long as each company has its registered and head offices within the Community and both have had a branch or subsidiary in another Member State for at least two years. In addition, public companies which fit this criteria may convert to an SE. The resulting SE must have a minimum share capital of EUR 120,000. It is estimated that there are less than 5,000 companies registered in GB which fit this criteria . A public company which has its registered and head office within the Community may form an SE by merger as long as the other company involved is governed by the law of a different Member State and the resulting SE has a minimum share capital of EUR 120,000. There are almost 12,000 public companies registered in GB and given that the minimum share capital of a public company in GB is £50,000 all such companies could, potentially, merge with another company in the Community to form an SE.

Equity and fairness

14 The ECS is voluntary and only those companies which perceive that there is an advantage to them will consider forming, or converting to, an SE. In the light of this, the principal issue of equity and fairness, in theory at least, is whether the restriction of some of methods of forming SEs to public companies, together with the requirement to have a minimum share capital of 120,000 euros might be seen as a barrier to small companies operating across EU borders. It is important to note that private companies can form SEs under the Regulation – it is merely that not all the possible methods are available to them. Moreover, companies with operations large enough to warrant the special form of an SE to carry out cross-border activities are likely to be able to meet the minimum share capital requirement. That minimum requirement reflects a general distinction in EU law between the treatment of public and private companies. Nevertheless, comments on whether the

requirements of the Regulation might disadvantage small companies would be welcome. In this context, it is worth noting that the European Commission is considering whether there is justification for the creation of a new form of European Private Company, along the lines of the European Company Statute.

Costs

15 Since adoption of the SE form is voluntary, no costs will be imposed on any company. It is reasonable to assume that, in the event that a company chooses, voluntarily, to become an SE, the resulting benefits to it will outweigh the costs. Such costs would include, where necessary, the setting up of employment involvement structures.

16 The principal costs incurred by a company where there would not be any benefits would be in the case where a company investigated the possibility of, but ultimately decided against, becoming an SE. In respect of those companies that could convert to an SE, there would appear to be three stages in this process. Firstly, it would seem likely that a senior employee would consider whether there was a case for conversion to an SE. If this was thought to be a viable proposition then the issue is likely to be put to the company's board. If the company's board were to be persuaded of the viability of the SE form then it is likely that legal advice would be sought. The cost of such legal advice would clearly vary on a case by case basis and be determined, at least initially, on the type and extent of the advice sought by the company.

17 Any attempt to cost the above exercise is fraught with difficulties. However, in respect of the first stage, the cost of a manager spending two days (sixteen hours) considering whether there was a case for conversion to an SE is estimated to be around £400 . If it is assumed that 20% of the 5,000 companies referred to in paragraph 13 above undertook this exercise the cost to GB business would be £400,000. In respect of the second stage, a company board of 12 members considering the issue for two hours would represent a further 24 hours of costs with an estimated total cost of £600 . If it is assumed that 10% of those 5,000 companies undertook this exercise the cost to GB business would be £300,000. Trying to assess legal costs is even more difficult since, as noted above, they would clearly vary on a case by case basis. However, the cost of a solicitor spending one day (eight hours) considering whether a company might benefit from adopting the SE form is estimated to be £2,400 . If it is assumed that 5% of the 5,000 companies undertook this exercise the cost to GB business would be £600,000.

18 Companies will not merge with others simply to become an SE. What may happen is that where, say, a GB registered company intended to merge with a German company both companies would consider whether the resulting company should be an SE. In other words, the possibility of forming an SE would be considered as part of the merger process and if this additional option was considered to be the cheapest option, or would result in greater flexibility, it is likely that it would be adopted. The only costs incurred by the companies concerned would be similar to those identified in paragraph

17 above, ie where adoption of the SE form was considered (in this case by a minimum of two companies) but ultimately rejected.

Employee involvement

19 In the event that companies decided to use an SE as the vehicle for a merger it is likely that the principal additional costs would come from the employee involvement arrangements. However, the voluntary nature of becoming an SE, as well as the many different circumstances of the companies involved make it very difficult to come up with an estimate of the overall costs. Some illustrative costs are set out below which are based on the merger of two companies of a similar size, one in GB and the other in another EU country, intending to register as an SE in GB. Costs may be higher if there are more than two companies involved. The examples used below assume that there are no subsidiaries and all the employees of each company are located in each of their two respective Member States.

20 For the purpose of agreeing arrangements for employee involvement, a Special Negotiating Body (SNB), made up of employee representatives from the participating companies and any “concerned” subsidiaries, must be established. Any expenses relating to the functioning of the SNB, and to the negotiations in general, must be borne by the participating companies (this may include the cost of up to one “expert” to assist the SNB). The SNB and management have 6 months, extendable to 12 months, in which to reach a voluntary agreement on employee involvement under Article 4 of the Directive. There are three possible outcomes:-

i) the SNB and the management draw up a voluntary agreement for employee involvement under Article 4; or

ii) the SNB takes the two-thirds majority decision under Article 3.6 of the Directive to rely on the national Information and Consultation rules already in force in the Member State in which the SE has employees (this option is not available where the SE is to be formed by transformation or the company previously had employee participation); or

iii) no voluntary agreement is reached by the end of the negotiating period and the Article 3.6 decision is not taken but the participating companies still wish to go ahead and register the SE. In such a case, the standard “fallback” rules of the Member State in which the SE wishes to register will apply.

Ballots to elect SNB members and number of SNB representatives

21 A ballot must be conducted to elect SNB representatives for the GB employees. Separate ballots may need to be conducted in each Member State where the participating companies or subsidiaries have employees although this will not always be the case. In some Member States (such as Germany), existing works council members may simply be appointed as SNB members and no ballots would be held.

22 The cost of conducting a ballot to elect the GB SNB members is estimated to be around £13,650 . There would be no additional balloting cost in the other Member States where the works council is used to nominate its SNB members.

23 The rules for the composition of the Special Negotiating Body (SNB) depend on a variety of factors including the number of participating companies or “concerned” subsidiaries and in how many Member States the employees are located and in what proportion etc. The method of determining the number of SNB members in the Directive implies that there will always be a minimum of 10 SNB members and currently, with the 18 countries of the EEA covered by the Directive, an absolute maximum of 27 .

Costs of a special negotiating body meeting

24 Assuming that the participating companies have a total of 50,000 employees, an SNB might have 10 employee representatives and 6 management representatives. The costs of this meeting would include the opportunity cost of the workers’ and employers’ time, travel costs, the cost of the venue and interpreter costs. It is estimated that the costs for one meeting would be about £24,000 .

Illustrative costs:

25 Three cases, where both companies have information and consultation processes in place, are set out below:-

i) case 1 - the two merging companies are satisfied with their respective information and consultation arrangements and do not choose to have a transnational body (in effect, an European Works Council (EWC)) in addition to their existing national information and consultation structures;

ii) case 2 - the two merging companies want a transnational body in addition to their existing national information and consultation structures and they can reach a voluntary agreement to this effect;

iii) case 3 - the two merging companies want a transnational body in addition to their existing national information and consultation structures but they cannot reach a voluntary agreement and so go down the fallback route.

26 Case 1. It is assumed that it takes two SNB meetings for the representatives to take the decision under Article 3.6 of the Directive to rely on the national information and consultation rules already in place in their own countries (ie to agree not to supplement their existing agreements). This would cost about £48,000.

27 Case 2. It is assumed that it takes 4 SNB meetings to come to a voluntary agreement, at a cost of £88,000. The voluntary agreement is such that each company in the merger has to make some changes to its existing information and consultation agreements, equivalent to having one or more

meetings of a transnational consultative committee a year. This will cost about £64,000 each year.

28 Case 3. It is assumed that failure to reach a voluntary agreement is time consuming and could take 6 to 8 SNB meetings, with a cost of about £143,000 to £190,000. The information and consultation structure set up under the fallback arrangements is likely to be quite similar to that in case 2.

Participation at board level

29 If one of the merging companies already has worker participation on the company board, there will need to be at least the same level of participation on the SE board (unless the SNB take a two-thirds majority decision to reduce, or even abolish, employee participation in the new SE). Since there is no tradition of employee participation in GB, the possible costs involved have been estimated using the German model as an example.

30 The maximum percentage of representatives is likely to be 50% of the board as this is the maximum that applies in Germany; it is doubtful that this percentage would be exceeded. In this example it is assumed that there are two worker representatives on the board of the company in the non-GB company and that the SNB decides that there should be four – two from each country. This would mean an extra two worker representatives attending maybe 12 meetings per year, which take up one day of each representative's time. The cost of travel has been included, but not interpreter and venue costs (since these costs will already have been included). It is estimated that this will cost about £15,000 per year.

31 In Germany, a proportion of the employee representatives on the boards of companies may be full time union representatives who are paid by the company for this purpose. If this model were followed for SE boards, there would be no opportunity costs to companies of employee time for these representatives.

32 It is sometimes argued that worker participation on boards can slow down decision-making and hence reduce companies' competitive edge. However, evidence from Japanese companies with works councils in Germany does not show this to be the case. Accordingly, no costs have been factored in for longer decision-making processes.

33 Once the employee involvement arrangements have been put into place, compliance is likely to follow similar rules and procedures to those set out in the Transnational Information and Consultation of Employees (TICE) Regulations, which implement the European Works Council Directive. There will therefore be costs to employers if a complaint is brought before the Central Arbitration Committee (CAC) or an Employment Tribunal.

34 The costs of appearing at the CAC is estimated to be £11,900 and consists of the average cost of a CAC case together with the cost of 2 days of management time and 1 day of employee representative time. The costs of

appearing at an Employment Tribunal are £2,540 and consist of £2,000 for the employer and £540 for the Employment Tribunal Service.

Small firms' impact test

35 The key point is that adoption of the SE form will be voluntary and no costs will be imposed on small firms. Although the minimum share capital of an SE will be EUR 120,000, it will nevertheless be open to smaller companies to form an SE if the other companies involved have sufficient share capital.

Competition assessment

36 The new domestic legislation will affect all markets since formation of an SE is not restricted to any particular sector. This legislation will not impose additional costs - either set-up or ongoing - on any companies nor restrict the ability of companies to choose the price, quality, range or location of their products. It is anticipated that the legislation will not affect competition, either positively or negatively. However, it is possible that the legislation will have an effect on market structure since the formation of SEs by merger could (but not necessarily would) lead to a smaller number of GB registered companies although this could be off set by the creation of subsidiary or holding SEs registered in GB. The number of companies registered in GB would not, of course, be affected by the ability of public companies to convert to SEs.

Enforcement and sanctions

37 Enforcement of existing company law and legislation dealing with the involvement of employees (such as European Works Councils) - which are both subject to criminal penalties for non-compliance - is the responsibility of the Department of Trade and Industry. The Department will be responsible for enforcing the ECS other than certain provisions in the Regulation that fall to the Court. The principal role for the Court will be to issue a certificate certifying that the pre-merger acts and formalities have been properly completed where an SE is being formed by merger and, subsequently, for it to scrutinise that the merger has been properly completed and the SE correctly formed.

Consultation

38 The consultation document will be placed on the Department's website and will also be sent to all organisations that have responded to the Department's previous consultations on this issue (both the Regulation and the Directive) and other organisations known to have an interest in the ECS. The Department has consulted the Department for Constitutional Affairs, the Office of the Lord President, the Inland Revenue and, in Northern Ireland, the Department of Employment and Learning and the Department for Enterprise, Trade and Investment. It also held meetings prior to the publication of the consultative document with the Law Society, Confederation of British Industry, Trades Union Congress and Takeover Panel.

Monitoring and review

39 The Department will keep the ECS under review. If, in the light of experience, it proves necessary to amend the domestic legislation this could be done by making further regulations under section 2(2) of the European Communities Act 1972. However, the consultation exercise will give interested parties the opportunity to comment on the draft legislation.

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