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THE TRANSPOSITION OF THE EUROPEAN EMPLOYEE INFORMATION AND CONSULTATION DIRECTIVE REGULATIONS IN THE REPUBLIC OF IRELAND

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Abstract

In this report we examine a range of employee information and consultation mechanisms in 15 organisations in the Republic of Ireland. The research was conducted specifically in relation to the European Employee Information and Consultation Directive. While we note that many managerial respondents identified a positive link between employee consultation and organisational performance, the efficacy and interpretations of how these mechanisms operate in practice differed quite substantially according to employees. The evidence suggests that regulations contained in the European Directive provide the opportunities for more effective employee voice systems and the platform to extend representational rights at workplace level.

INTRODUCTION

Research evidence suggests that effective organisational change is linked to a range of people management practices. What is less clear, however, is *how* and *why* these practices impact on organisational performance (Purcell, 2003). The mechanisms to involve and consult with workers can provide new opportunities for employees to exercise a constructive and responsible influence over the future direction of the organisation for which they work. At the same time, employee voice mechanisms can enable employers to make creative choices about future organisational strategies (Marchington et al, 2001). While we demonstrate that employee participation in the process of change can result in positive organisational outcomes, much of the evidence tends to focus on the 'business case' to the neglect of employee rights. These rights, as applied to the workplace, now have a more pressing legal imperative given the recent European Employee Information and Consultation Directive.

The data reported in this article is derived from detailed case study research carried out at the Centre for Innovation and Structural Change (CISC) at National University of Ireland, Galway. The research was conducted with a specific remit of the recent European Directive on Employee Information and Consultation [1]. In particular, the aim was to gauge the extent to which Irish enterprises involve employees in work-related decisions. In total, 15 organisations were selected from different sectors of economic activity. These include retail outlets, hotels, financial services, manufacturing, distribution, hi-tech (medical instruments, computer hardware and software development), engineering consultancy and the public sector. The unit of analysis was the workplace and data was collected using interviews with key stakeholders and employee focus groups. The stakeholders included a senior or human resource manager, union or employee representative and in some cases partnership facilitators. The number of interviews varied depending on company size and union or non-union status. On average, the focus groups included eight employees. In some organisations, we were given access to documentary materials. Further details of this research can be found in Dundon et al (2006).

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[1] see Hall et al, 2002, for details of directive.

Overall, many mechanisms for information and consultation were either poorly integrated with other people management systems or were bolted-on to existing HR practices. Moreover, many employer techniques tended to be little more than a communication channel in which employees receive information, rather than providing the opportunities for workers to engage in change decisions.

Despite these reported limitations, we also note some areas of good practice. In several of the case studies, some of the more significant benefits include better managerial decision-making, perceptions of improved productivity and enhanced customer relations arising from different employee involvement mechanisms. What is common among the examples of good practice include many of the following elements:

♦ Consultation is recognised as an exchange of views and much more than simply disseminating information to employees.
♦ There is clear and unambiguous commitment from senior management for consultation.
♦ The more effective mechanisms provide for and encourage independent systems of employee voice.
♦ In many of the unionised organisations, management value a constructive and critical form of dialogue with unions.

While there appears to be a positive association between a range of employee involvement mechanisms used and organisational performance (as reported by managers), there also remains a discrepancy between the ability to produce the desired effect according to managers on the one hand, and how employee voice is interpretation and understood among workers on the other hand. It thus appears there is a strong case for the sort of regulation contained in the EU Directive in promoting more effective information and consultation arrangements at enterprise level.

Over the last decade the idea that successful change is dependent upon systems of employee consultation has attracted considerable attention, both from those seeking higher levels of organisational performance and from those desiring better systems of employee representation. For the employer, the performance benefits are often associated with workforce responsiveness, company adaptability as well as customer relations. For the employee, the extension of democracy may be associated with improved security, organisational commitment and skill acquisition from the knowledge transfer arising from having a voice at work (Sako, 1998; Benson, 2000; Dundon, 2002).

The idea that consultation can improve performance has remained the 'holy grail' of employment relations. In the 'high commitment' literature, information and consultation occupies a pivotal role. In the 1999 Employee Participation and Organisational Change (EPOC) survey, a range of different mechanisms to inform and consult employees were deemed attributable to positive improvements in organisational performance (Coriat, 2002). Studies that have evaluated the impact of employee involvement in areas such as redundancy report a positive effect in relation to managerial objectives as well as satisfying employee concerns (Guest & Peccei, 1992; Redman & Wilkinson, 1999). More recent research has identified that it is not so much the number of people management practices that are important, but rather the *way* these are implemented (Purcell, 2003). In this sense informing and consulting workers can improve decision-making processes and encourage more positive discretionary behaviour among workers, especially when it is apparent that managerial actions can be questioned. Arguably, employee input at the operational level can add to management's knowledge of markets, products and competitors. It thus appears that including workers in change plans may facilitate greater acceptance of change, even if these require additional effort or sacrifice on the part of employees (and managers).

In contrast to these so-called business benefits arising from employee voice, there remains a more conceptual and philosophical argument concerning the rights of workers to have a say in matters that affect them (Towers, 1997). For the majority of people, work is the single biggest influence on their lives. Yet over the last 20 years,

experimentation with information and consultation schemes has largely occurred at the discretion of management (Marchington et al, 1992; Gunnigle et al, 2002). There is a danger that the use of information and consultation is portrayed in an upbeat manner that ignores the contested nature of employment relations and broader, rights-based arguments for employee participation (Ackers & Wilkinson, 2000). For example, in 1996 the UK (61%) and Ireland (58%) had the highest number of establishments without employee representation of any kind after Portugal (77%) (Sisson, 2003). Similarly, in a University College Dublin (UCD) survey, only 13% of Irish workplaces reported some form of joint consultation (Roche & Geary, 2000). This would suggest that the impact of the European Information and Consultation Directive cannot be overstated. Indeed, Sisson (2002) argues that this new legal right to information and consultation at work is as fundamental as the right not to be unfairly dismissed or to be discriminated against. In effect, employers will now be under an obligation to consult employees on a broad range of strategic, operational and work related issues. If controlling information is a source of managerial power, then these new rights to information-sharing can lead to a realignment of the institutional arrangements within those organisations, potentially leading to a revitalised role for organised labour.

It is arguable that previous studies seek to rationalise people management practices as performance enhancing to the neglect of employee rights (Huselid, 1995; Pfeffer, 1998). In contrast, the evidence in this study demonstrates that the extension of democracy at the workplace and the drive for improved competitiveness need not be mutually exclusive. Indeed, there is a misleading (if not dangerous) normative assumption that employee voice has to be justified in commercial terms (Wilkinson et al, 2007). In the following section the balance of both direct and indirect information and consultation mechanisms, the meaning ascribed to these techniques and the relevance to performance will be assessed from the 15 case study organisations.

DIRECT AND INDIRECT MECHANISMS: A QUESTION OF BALANCE

While a wide range of mechanisms were found among the sample of case studies in the Republic of Ireland, many of these varied significantly in substance, scope and level. Given the remit of the EU Directive on Employee Information and Consultation, we

categorise these in a number of ways. One way is to distinguish between *informative* and *consultative* mechanisms on the one hand, and between *direct* and *indirect* methods on the other (see box 1).

Direct methods included both one-way and two-way communication channels such as emails, notice boards and newsletters. *Newsletters* and *bulletin boards* were common in all the companies, although these differed in terms of quality, scope and type. In most organisations one-way communication channels were less significant than two-way mechanisms for informing employees. *Staff briefings* (typically at departmental or team level) and *appraisals* featured as the main individualised methods to inform employees, with a very low take-up for employee *suggestion schemes*. Interestingly, *employee focus groups* appeared to be a more recent development among half the organisations. In several of these situations, groups of employees were invited by managers to consider key change initiatives and provide recommendations. In one organisation, employee focus groups evaluated several substantive employment conditions, such as pension harmonisation and flexible working arrangements.

Underpinning these formalised mechanisms is a high degree of informality that facilitates information sharing. As might be expected, at the smaller enterprises informal relations between employee and employer featured more strongly. Among the small companies, day-to-day interaction in the office or even via social activities outside of work was an important channel for sharing information. To this end social networks appear to be a significant though less well documented source for tapping into employee ideas.

Box 1 below also shows that two particular **direct consultative** mechanisms were prominent in about two-third of all companies. In some of the multinational organisations, *attitude surveys* were controlled and administered by the corporate headquarters. In these situations employee focus groups often analysed corporate data by site and occupational category, providing feedback to local management. However, it was also clear that in most of these larger and multinational organisations, managers based at global headquarters maintain control over the surveys, in particular the design of the questionnaires used. In this regard, employee contributions remained confined to those areas deemed appropriate by management.

Box 1: Information and Consultation Mechanisms Used

CASE STUDY COMPANIES	Information (direct)						Consultation						
	One-way communication		Two-way communication				Indirect (representative) consultation					Direct	
	Electronic Media (e.g. intranet)	Newsletters / bulleting boards	Staff briefings	Employee focus groups	Suggestion schemes	Individual appraisal	JCC	Negotiation / Collective Bargaining	EWC	Use of 3rd party intervention	Formalised partnership forums / committees	Attitude surveys (annual or bi-annual)	Workforce / site wide meetings
AXA	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Abbott Vascular Devices	✓	✓	✓			✓	✓					✓	✓
Bord Gais	✓	✓	✓	✓			✓	✓		✓	✓		
Guinness	✓	✓	✓			✓	✓	✓	✓	✓		✓	✓
Hewlett Packard	✓	✓	✓	✓		✓			✓			✓	✓
Medtronic AVE		✓	✓	✓		✓	✓	✓	✓			✓	✓
Multis	✓	✓	✓	✓									✓
Musgraves		✓	✓	✓				✓				✓	✓
Radisson SAS		✓	✓									✓	
Tesco (Ireland)		✓	✓				✓	✓		✓	✓	✓	✓
Thermoking		✓	✓		✓	✓	✓	✓	✓				
Tobin Ltd	✓	✓				✓							
Waterford Crystal	✓	✓	✓	✓	✓		✓	✓					✓
Western Health Board	✓	✓	✓	✓			✓	✓		✓	✓	✓	✓
Woodlands House Hotel		✓	✓		✓	✓						✓	

JCC – Joint Consultative Committee (e.g. union and management)

HEA
Higher Education Authority
An tÚdarás um Ard-Oideachas

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Indirect consultation methods listed in box 1 are generally more consistent with the definition of consultation in the EU Directive. Again, a variety of methods were used, with some significant differences between organisations. Over half the sample used *joint consultative committees* and *collective bargaining (or negotiating)* bodies. As might be expected, collective bargaining and consultation was much more common in the larger and unionised organisations, with just one non-union company having a joint consultative forum. It was also apparent that the way these systems operated varied considerably. In some companies, the consultative and negotiating bodies operated at multiple management and union levels. Some included full-time union officials, local shop stewards and senior management; others were much more parochial in nature. What also varied quite substantially is the frequency of dialogue, ranging from weekly or quarterly meetings with a standard agenda. In several organisations, meetings were convened on an *ad hoc* basis with little managerial guidance over the range of agenda items.

Box 2: Multiple levels of collective consultation at Waterford Crystal

Waterford Crystal is a company with a long and publicised history. With a series of well-known strikes, recent staff reductions and changes in ownership, the company has transformed itself from an almost bankrupt organisation to a pioneer of change and innovation amidst market adversity. One of the key ingredients in this change process is the effectiveness of a joint problem solving approach. Four main collective management-union tiers exist. The main bargaining agent is a Joint Negotiating Committee (JNC), which meets on a weekly basis. This includes the site union representatives, full-time union official, senior management team and directors. Underpinning this is a high level Monitoring Group, which also meets on a weekly basis. The objective of this group is significant in relation to the implementation of change. Senior union representatives and directors consult over a wide range of issues, including commercially sensitive information. This helps to build trust and the informal exchange of views acts as a sounding board prior to formal joint negotiating meetings. Stakeholders believe that this process facilitates 'open, genuine and constructive' dialogue. A series of collective Task Groups also exist, comprised of union and management members. These meet on a regular basis and consider information such as production schedules, shipping quantities, quality issues or costs. All these bodies are then supported by Sectional Consultative Committees made up of union and management representatives from different parts of the plant. Taken together, each level supports the next with the voice of each stakeholder - from the shop floor to the board room – an integral component of a robust decision-making process.

What has been of particular interest in recent year is the utility of *European Works Councils* (EWC) as a method to inform and consult employee representatives. In Ireland this is

especially important given the pace of foreign direct investment and the establishment of translational operations in the Republic. As with joint consultative committees, the dynamics of EWCs as a consultative mechanism varied. In one company, the employee representative was in fact a line manager, while in other companies designated union and non-union employee representative seats were reserved. Surprisingly, union representatives reported a strong willingness to work with and alongside their non-union counterpart on the same EWC.

The use of *third-party intervention* as a consultation tool was valued by four of the larger organisations in our sample, two of which were in the public sector. These public sector organisations placed considerable value on the services of the Labour Relations Commission and/or Labour Court in mediating change, dialogue and consultation between management and union representatives. Even in the private sector organisations, it was explained that the value of consulting over change is heightened when dealing with external advisory bodies who can deliver a different perspective on the issues.

Many of the organisations we visited emphasised partnership arrangements between management and unions, although only four had a formalised *partnership forum* at workplace level. On this topic much of the academic literature seems preoccupied with the merits (or not) of partnership as a new system of collaborative industrial relations. What appears to be significant here, however, is that partnership schemes sit alongside and compliment the main bargaining and industrial relations machinery. Indeed, respondents frequently referred to 'partnership' and 'industrial relations' as two distinct and separate systems. Significantly, this separates partnership items from traditional adversarial industrial relations, rather than trying to merge and integrate the two as one new model. This notion of a twin track system of dialogue was particularly valued amongst those organisations in which partnership is a more recent development. For example:

> *"We haven't gone with all the 'bells and whistles' of the partnership stuff. Partnership is almost a talking shop when we know we will have full-blown fall-outs. No one is fooling*

each other. We take the time to have agreements. They paint the road ahead. They help get the support of staff because they have something that tells them what's involved" (Manager)

INFORMATION AND CONSULTATION AND BUSINESS PERFORMANCE

Assessing cause and effect is difficult in any study. To begin with, it is difficult to compare different organisations because information and consultation mechanisms vary significantly. Also, in every organisation, there are other HR policies that mediate the implementation of change in different ways. Further, change can fail for circumstances that are beyond the organisation's control. Many of the changes encountered at our case study organisations included mergers, company acquisitions, changed working practices and the outsourcing of jobs. In many of these situations, management did not consult with workers prior to making the substantive decision. Generally, the more transformational a change outcome, the less it was likely that consultation would occur. When polices were derived centrally, it was evident that both managers and employees found it difficult to take ownership because the change was effectively imposed 'from above'. In one organisation, employees heard about financial cuts from the media with no information from their employer.

However, when a change initiative was of an incremental nature and directly related to the employee's job, or it would change an existing union-management agreement, then management valued the contribution of employees and/or their representatives in making a decision. For managers the idea of employee voice was essentially wrapped up with notions of business efficiency, rather than any moral belief that workers ought to have a say in matters that affect them. In many of the larger organisations, the way employees were informed and consulted had changed quite significantly in recent years. In most organisations, the mechanisms used to inform and consult with employee representatives appear to be dynamic both in scope and level. Existing mechanisms are adapted, added or dropped to suit evolving needs. Also, different mechanisms are used with different categories of employees. In some cases this was due to access to technology (some employees worked with PCs and therefore had access to the organisation's intranet and e-mail). In other cases, it was because management placed

greater value on consultation with certain categories of workers and/or their representatives (see box 2).

Examples of the (perceived) link between informing and consulting employees and specific commercial improvements tended to focus on local issues and change initiatives, such as workforce flexibility, improved market responsiveness, adoption of new technologies, improved product quality and work scheduling. Interestingly, the claim that systems of employee voice can improve business efficiency was also important among the smaller organisations in our sample. At one small family-owned company, for example, civil engineers had a high degree of discretion in their work roles that allowed them to change client project details. Similarly, at one of the smaller hotels, the regular dissemination of information to employees was regarded as crucial to customer (guest) satisfaction.

There was also a degree of informality about *how* and *why* these methods seemed to work well in the smaller firms. In one of the small firm's, general conversation around the office and in the company canteen was an important way to share information. At another small high-tech company, the MD periodically held informal breakfast meetings with staff where they could discuss issues and contribute towards business plans. Although employee recommendations were not always adopted, employee satisfaction appeared to be strong when their ideas were sought and taken seriously by management.

Thus while precise quantifiable impacts are both difficult to evaluate and validate in a study of this nature, managers were confident that informing and consulting with employees generally improves the effectiveness of the business. At times managers were vague in supporting this ideal, yet there is a high degree of general confidence to this finding given the identification of a range of similar benefits from among managerial respondents across the sample of organisations. This data also points to a number of contradictory and uneven set of tensions at workplace level, reported below.

In addition to the range of mechanisms and potential business benefits reported above, we also asked respondents to comment on the meaning, level and depth of these mechanisms in actual practice. Almost all managers equated the terms information and consultation with some corporate communication strategy. In contrast, the majority of employees and shop stewards explicitly distinguished between information and consultation. When we probed informants to explain the value of having a say in matters that affect employees at work, considerable disagreement emerged, even in the same company. For the most part, management felt that employee voice was valued and legitimised only with corporate objectives, while employees and union representatives saw the information and consultation processes as management-led and controlled. The following quotes are taken from the same organisation in response to the same set of questions, and are indicative of the level of disagreement found amongst respondents elsewhere:

> *Employee voice is critical for this business. In order to perform you have to have your people on board … Consultation feeds in to the challenge aspect of the job.* (Manager)

> *No!* [Information and consultation] *used to be important but not now. Employees don't have an input. They might say something but they're not going to change anything in the company. No way!* (Union Steward)

It is clear that the meaning of consultation for many workers did not really equate to contributing to the processes of change. In many organisations, workers found it hard to identify specific examples of a change initiative arising from their input or contribution. Union stewards also felt that consultation systems appeared to ratify decisions already taken by management elsewhere in the organisation, which for the most part equated to senior management, corporate or global headquarters. For these respondents consultation meant responding to issues arising from the implementation of change, rather than a consideration of the initiative itself:

"mechanisms to obtain information are not consultation … information tends to be disseminated selectively" (Employee)

"We have consultation but it's consultation after management decide what they're doing" (Union Steward)

In addition, in several companies when change was implemented it tended to be either *ad hoc* or, at worst, overlapped with old systems and practices. In practical terms, change plans and systems to inform employees simply added another work burden to middle and supervisor managers. This 'bolt-on' of new and old information and consultation mechanisms also pointed to areas of integration failure. In terms of the *how* and *why*, many systems to inform and consult employees tended to sit alongside rather than be fully integrated with other key HR policies and practices. With a few noticeable exceptions, such as the attempt to integrate related practices at AXA (see box 3), the knock-on effect of lack of integration was significant in those companies where the existence of old and new employee voice arrangements remained separate from one another. In a public sector organisation, for example, a history of disputes and grievances around changes to work practices had become submerged into a multi-layered partnership structure. This resulted in an overly bureaucratic system that hindered the flow of information. In this particular case, employees were distressed to learn of cutbacks and job losses through the media rather than through the partnership forum, or from management.

Overall, for managers, these different terms had a meaning only in the context of performance improvements. In contrast, for workers and union representatives, a number of concerns were expressed about what consultation actually meant in practice. In many examples, consultation was little more than information, and many of the newer methods tended to be 'bolted-on' rather than integrated with existing human resource policies (such as partnership forums or employee focus groups for instance).

Box 3: Integrating employee voice at AXA

AXA, a French-owned multinational firm in the financial service sector, actively seeks to integrate nineteen separate mechanisms to inform and consult employees. These include individual communication channels; partnership forums with an 'open agenda' comprised of union representatives, management and the CEO; separate 'inter-locking' meetings (HR and employee reps) to thrash out any issues before formal meetings take place; biannual road shows to explain the company's strategy; team briefings; CEO tri-annual letters addressed to individual employees to explain business performance; and a system known as VOICE (Visible, On-going, Internal Communications for Everyone) that covers the whole organisation. At its core is a system of team meetings with information transmitted to the most senior levels. Team members can discuss and raise issues with line management that are of interest to them. The minutes of all meetings are then circulated to senior management and made available to other consultative forums. Comments, criticisms and suggestions are encouraged and "owned by the team" rather than being associated with any individual. Above all, commitment from the top is considered paramount and all proposals are acknowledged and considered by senior managers. Stakeholders believed that the integration of mechanisms of information and consultation improved the transparency and quality of decisions. They also provided a constant source of new and constructive ideas.

SUMMARY

This short summary of our research has identified some of the different meanings ascribed to information and consultation according to practitioners, along with the range of mechanisms used in the case study organisations. Managers tend to guard their decision-making prerogative from the influence of employees or unions, while at the same time articulating a discourse of the need to tap into employee ideas for successful change. Notwithstanding differences in degree among the sample organisations, the agenda for information and consultation appears to be very much management-led. In practice, consultation is often equated with variants of communication and information, which are quite different in both style and substance to systems of representative consultation.

These issues pose a number of significant challenges. The Irish and UK governments have a number of key decisions to make within a relatively short space of time. These include, *inter alia*, whether the Directive will apply to undertakings with 50 or establishments with 20 or more employees. This is not an easy decision. On the one hand, the undertaking (e.g. above 50 employees) may be more appropriate as it will

provide employees with the right to engage with senior level management who are more than likely to be the key change agents and decision-makers. Yet on the other hand, this could effectively disenfranchise thousands of employees who work in small-to-medium sized establishments below the 50 threshold. Other important issues for transposition include: how an employee representative will be defined in law; whether there should be a permanent or statutory works councils (as in other EU countries); and whether certain information must be guarded as commercially confidential. It is also important to specify the timing and manner of consultation, what penalties will be imposed for non-compliance and what support will be provided to smaller organisations during the transposition phase (Wilkinson et al, 2007).

Our conclusion is that the EU Directive represents an opportunity to define more precisely the principles of partnership and provide a platform to develop more effective employee representational rights that already receive macro level support among the social partners in Ireland. From our research, it appears there is a strong business case for doing so. Organisations (and the government) can choose a 'high' or 'low' road strategy. The 'high road' would include systems of genuine representation. This can improve managerial decision-making, improve employee relations and even enhance productivity through training and education. In short, the objective would be to move from a rights/compliance-based culture to one in which Ireland seeks to raise the standards of organisational participation, innovation and effectiveness. In contrast, the 'low' road strategy will in all probability meet the legal requirements for information and consultation, but encourage little else. Arguably, the 'low road' approach will engender a 'winner-takes-all' regime with comparatively lower levels of productivity, a lack of innovation, poor training and a disincentive for managerial creativity.

Furthermore, it is a mistake to assume that the EU legislative initiative to increase information and consultation between managers and employees has to be based solely on the often un-tested premise that it will improve organisational outcomes. It is equally valid to argue that workers have a right to participate in decision-making processes that affect their working lives. To rely exclusively on the organisational performance link can simply reinforce managerial legitimacy at the expense of employee and human rights, especially if the relationship between voice and performance is found wanting. The

evidence reported in this article suggests that workers have to believe that they have a say in matters that affect them for the outcome to be regarded as genuine and positive. Given that developments in the area of information and consultation have at times been found lacking under a voluntarist industrial relations system, it appears there is a strong case for the sort of regulation contained in the EU Directive in promoting more effective employee voice arrangements at enterprise level. In that sense, such tensions between high performance and industrial democracy hark back to a well-respected (although often forgotten) adage that management have found so difficult to accept, that they can only regain control by first learning how to share it (Flanders, 1970).

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