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THE STATE OF EMPLOYEE INFORMATION AND CONSULTATION IN IRELAND

Tony Dundon
Department of Management
National University of Ireland, Galway.
+353 91 512115
tony.dundon@nuigalway.ie

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INTRODUCTION

The success of Ireland's knowledge-based economy depends not only on technology and innovation but also on effective people management strategies for organisational change. 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 (Marchington et al, 2001). For the employer, the benefits are often associated with workforce responsiveness, company adaptability as well as customer relations. For the employee, the benefits may be associated with improved security, organisational commitment and skill acquisition from the knowledge transfer arising from having a voice at work (Dundon, 2002).

This article provides a summary to a much broader research project carried out at the Centre for Innovation and Structural Change (CISC) at NUI, Galway that was commissioned by the Department of Enterprise Trade and Employment (DETE). The research uses data from 15 case studies drawn from different sectors of economic activity. These include union and non-union companies, public and private sector organisations, and small and large firms. The research was also conducted within a specific remit of the recent European Directive on Employee Information and Consultation (see box 1). In particular, the aim was to gauge the extent to which Irish enterprises are prepared for and capable to adapt to the requirements of the EU Directive. Notwithstanding the uncertainty about possible government trajectories in terms of the transposition of the legislation, we found that many organisations have systems that fall short of the Directive's requirement. Moreover, many employer schemes are little more than communication systems in which employees have a very shallow say in matters that affect them.

Box 1: Summary features of the EU Employee Information and Consultation Directive

- ◆ The Directive requires member states to establish a framework for the right to information and consultation for employees.
- ◆ The Irish government has to decide whether to apply these rights to all undertakings with 50 or more employees, or at an establishments level with 20 or more employees.
- ◆ Information and consultation are defined as procedures that involve employee representatives according to national laws or practices. This means that Ireland (and the UK) will have to ensure there is a universal right to employee representation at either the undertaking and/or establishment level
- ◆ The Directive states that information and consultation rights must apply to:
 - information on the recent and probable development of the undertaking or the establishment's activities and economic situation
 - information and consultation on the situation, structure and probable development of employment, in particular any threats to employment
 - consultation implies with a view to reaching an agreement on decisions likely to lead to substantial changes in work organisation or in contractual relations.
- ◆ Information must be given with sufficient time and in such fashion to enable employees' representatives to conduct an adequate study of the information and (if necessary) prepare for consultation
- ◆ The arrangements can differ from those in the Directive provided they have been agreed by management and employees' representatives in advance and in congruence with the general principles of the Directive
- ◆ Employee representatives will be required to treat information as confidential
- ◆ The Directive has been drafted in very general and broad terms to allow employers and employee representatives' flexibility in respect of the practical arrangements at either the undertaking or enterprise level
- ◆ Sanctions for non-compliance must be effective, proportionate and dissuasive.
- ◆ The Directive requires implementation by March 2005, However, countries with no "general, permanent and statutory" system of information and consultation (which is only Ireland and the UK) may apply the Directive in three phases:
 - undertakings with at least 150 employees (or establishments with at least 100 employees) must be covered by March 2005
 - undertakings with at least 100 employees (or establishments with at least 50 employees) must be covered by March 2007
 - full application of the Directive (to undertakings with 50 or establishments with at least 20 employees) will be required as from March 2008.
- ◆ Member states will have to ensure there is some form of 'trigger' mechanism for employees to avail of the right

(Source: Hall et al, 2002; Assessing the impact of the EU employee consultation Directive, London: IRS/IRRU)

While we note there are areas of concern, we also report some positive outcomes arising from systems of employee voice. In several of the case studies, some of the more significant benefits include robust managerial decision-making, employee trust, managerial perceptions of improved productivity and customer relations coupled to a more favourable employee relations climate. Thus there appears to be a strong business case for the sort of regulation contained in the EU Directive. What is common among the examples of 'good' practice include some of the following:

- ◆ Consultation is recognised as an exchange of views and much more than simply disseminating information to employees
- ◆ There is clear and unambiguous commitment from the top
- ◆ The more effective structures are those that 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

A NEW COLLECTIVIST DAWN?

It is arguable that the traditional voluntarist system of industrial relations has failed to deliver genuine consultation. For example, "in 1996 Ireland (58%) and the UK (61%) had the highest proportions of workplaces without employee representation of any kind after Portugal (77%)", and "Ireland (44%) and the UK (64%) had the highest proportions of workplaces not covered by collective agreements" (EPOC, 1997, in Sisson, 2003). Similarly, in a University College Dublin (UCD) survey only 13% of Irish workplaces reported some form of joint consultative committee (Roche & Geary, 2000). In a similar survey conducted by the CISC at NUI Galway, only 39% of respondents reported a joint consultative committee for the enterprises as a whole (Dundon & Morgan, 2003). In short, employers are not consulting with workers or their representatives to any significant extent.

Given this trend, the impact of the EU Information and Consultation Directive on the Irish industrial relations landscape cannot be over-stated. Ireland and the UK are the only two European countries without a statutory or general framework for employee information and consultation. The Directive stipulates that member states of the EU

are required to “establish a general framework setting out the minimum requirements for the right to information and consultation of employees in undertakings or establishments within the European Community” (EU Directive, Article 1.1). The Directive is quite explicit in that information and consultation is to be channelled through “employees’ representatives”. The implication here is that the legislation is pointing towards a new form of collective-based participation, which is evidently missing to any great extent in Ireland. This is clear from the brief statistics mentioned above.

What are also important are other on-going European legislative initiatives that reinforce this new collectivist agenda. While there is no explicit definition of an employee representative in the Information and Consultation Directive, there are other European initiatives which confirm that representatives should be ‘elected by employees’ or ‘designated by employee organisations’, such as trade unions. This suggests that non-union companies, or those where union membership is low, may have considerable difficulty in establishing systems that ensure both effective and independent representation.

On the whole, Irish employers appear to be ambivalent towards the growing collectivist tide of legislation for employee consultation. For instance the 1994 European Works Council Directive, transposed into Irish law through the Transnational Information & Consultation Act (1996), is currently under review at a European level with revisions expected in autumn 2003. Further, compliance regulations for the European Company Statute (ECS) are also expected by October 2004. These will require systems of employee information and consultation through two channels: a works council type structure and board-level representation for employees in a company that decides to be incorporated at the EU level. Other European examples are the draft Directives on temporary agency workers and company takeovers, all of which stipulate certain consultation rights for workers and worker representatives.

DIRECT AND INDIRECT MECHANISMS

With the above considerations in mind, we now turn to report on some of the research evidence from the CISC study on managing change through information and consultation. Overall, a wide range of voice mechanisms were found among the

sample of case studies, although these vary in substance, scope and level. Given the remit of the EU Directive on Employee Information and Consultation, we categorise the schemes in a number of ways. One way is to distinguish between information and consultation on the one hand, and between direct (individualised) and indirect (collectivist) methods on the other (see box 2).

Direct information schemes are reported both as 'one-way' and 'two-way' communications, including a variety of techniques such as emails, notice boards and newsletters. *Newsletters* and *bulletin boards* were common in all companies studied, although these differed in terms of quality, scope and type. These one-way communication channels were less significant than two-way systems for informing employees. *Staff briefings* (typically at departmental or team level) and *individual 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 case studies. In several of these situations, employee focus groups were asked to consider key change initiatives and provide recommendations to management. In one organisation, employee focus groups evaluated new human resource policy areas, such as pension harmonisation and flexible working arrangements. The point here is that employee focus groups appear to be examining, at least at a surface level, issues that would normally be the preserve of management or management-union bargaining.

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 were important channels for sharing information. To this end social networks are important though less well documented source for exchanging information.

Box 2: 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 3 rd party intervention	Formalised partnership forums / committees	Attitude surveys (annual or bi-annual)	Workforce / site wide meetings
AXA	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Abbotts	✓	✓	✓			✓	✓					✓	✓
Bord Gais	✓	✓	✓	✓			✓	✓		✓	✓		
Guinness	✓	✓	✓			✓	✓	✓	✓	✓		✓	✓
Hewlett Packard	✓	✓	✓	✓		✓			✓			✓	✓
Medtronic AVE		✓	✓	✓		✓	✓	✓	✓			✓	✓
Multis	✓	✓	✓	✓									✓
Musgraves		✓	✓	✓				✓				✓	✓
Radison SAS		✓	✓									✓	
Tesco		✓	✓				✓	✓		✓	✓	✓	✓
Thermoking		✓	✓		✓	✓	✓	✓	✓				
Tobin Ltd	✓	✓				✓							✓
Waterford Crystal	✓	✓	✓	✓	✓		✓	✓					✓
Western Health Board	✓	✓	✓	✓			✓	✓		✓	✓	✓	✓
Woodlands		✓	✓		✓	✓						✓	

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

Box 2 also shows that two particular **direct consultative** (as opposed to direct information) schemes were prominent in about two-third of all companies. Of these, *attitude surveys* and *workforce meetings* are identified, although again these differ in terms of their scope, range and level. In some of the multinational organisations, for instance, *attitude surveys* were controlled and administered by the corporate headquarters. Significantly, in these situations local focus groups often analysed corporate data by site and occupational category, providing feedback to management. However, it was also clear that centralised management 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.

Indirect consultation methods listed in box 2 are generally more consistent with the definition of consultation in the EU Directive. Again, a variety of methods were employed among our case studies, with some significant differences between organisations.

Over half the sample used *joint consultative committees* and *collective bargaining (or negotiating)* bodies of some sort. As might be expected, collective bargaining and consultation was much more common in the larger, unionised and multi-site 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, while in other organisations meetings were convened on an *ad hoc* basis with little guidance over the range of agenda items.

The use of *European Works Councils* has been of particular interest in recent years, not least because of the pace of foreign direct investment in the Republic. As with joint 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 cast 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 system* 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 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 by both union and management participants. 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)

Of course these schemes are not problem free, and shop stewards and employees expressed a number of concerns about the practice of partnership:

To date it (the partnership structure) seems to be used to solve management issues and the union side don't seem to be bringing much to it or getting much out of it. (Union Steward)

While each of these systems for collective consultation and representation are unique and complex in their own right, a key factor in assessing the extent of consultation is the existence of strong and independent systems of representation. The types of unions differed, as did membership levels, closed shop arrangements as well as the extent of union effectiveness in change. However what remains constant is that examples of consultation, as defined in accordance with EU Directive, are to be found among those organisations that displayed robust systems of independent and collective representation.

INFORMATION AND CONSULTATION: A QUESTION OF MEANING AND LEVEL

In addition to the range of mechanisms reported above, we also asked respondents to comment on the meaning, level and depth of these schemes in actual practice. In essence, our research sought to capture what the terms 'information' and 'consultation' meant to respondents in each organisation.

Almost all managers equated the terms 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 employees 'having a say in matters that affect them at work', considerable disagreement emerged, even in the same company and in response to the same set of questions. For the most part management felt that employee voice was valued and legitimised with corporate objectives, while employees and union representatives saw the

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 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. Workers found it hard to identify specific examples of a change issue 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)

Overall, for managers these different terms had a meaning only in the context of communication and direct methods to inform employees. For workers and union representatives, a number of concerns were expressed about what consultation actually meant in practice. In many examples, consultation was a *de facto* information scheme rather than a *de jure* consultative mechanism.

SUMMARY AND FUTURE DIRECTIONS

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. This is a worrying finding, as many Irish organisations appear to be a considerable way from the new collectivist industrial relations agenda emanating through European social policy and legislation.

These issues pose a number of significant challenges. The Irish government has 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 (eg 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 (see box 1). 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.

Our conclusion is that the EU Directive represents a 'once only opportunity' to define more precisely the principles of partnership and modernise Irish workplaces. From our research data, we would argue there is a strong business case for doing so. Organisations (and the government) can chose 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. At this current juncture, Ireland's knowledge-based economy stands at a crossroads, and all is up for grabs.

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