Proposed paper for CIRA/CRIMT conference on employee representation (theme 3)

Assessing the impact of the UK’s new regulatory framework for employee consultation

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In response to European Union requirements, recent legislation in the UK has introduced for the first time a general regulatory framework promoting employee consultation. Reflecting the predominant European model of statutory works councils, absent in the UK, the 2002 EU employee consultation Directive had particularly significant implications for UK law and practice, given the UK’s ‘voluntarist’ institutional character and the traditional primacy of trade union-based employee representation. The resulting Information and Consultation of Employees (ICE) Regulations 2004 constitute a highly flexible, light-touch regulatory approach to implementing the new consultation rights in the UK context.

The aim of the proposed paper is to assess the impact to date of the UK’s new regulatory framework for employee consultation. In particular, it will assess how employee representation has evolved in response to the new legislative environment, and whether and to what extent information and consultation (I&C) bodies established in the light of the ICE Regulations provide a vehicle for effective consultation, drawing on empirical data from continuing longitudinal case study research in 25 organisations (Hall et al, 2007; Hall et al, 2008).

Significance of the UK’s legislative approach

The ICE Regulations enable considerable flexibility of response, and are a prime example of ‘reflexive’ employment law whereby ‘the preferred mode of intervention is for the law to underpin and encourage autonomous processes of adjustment’ by the parties to the employment relationship (Barnard and Deakin, 2000: 341). Employers need not act unless 10% of their employees trigger statutory procedures intended to lead to negotiated I&C agreements. Voluntary ‘pre-existing agreements’ may pre-empt the use of the Regulations’ procedures. Under either route, there is considerable latitude to agree organisation-specific I&C arrangements. Only where the Regulations’ procedures are triggered but no agreement is reached are ‘standard’ or default I&C provisions enforceable.

I&C in practice

After four years in operation, the legislation is widely perceived to have been a ‘damp squib’. In part, this reflects the apparent rarity of the statutory procedures being ‘triggered’ by employees or trade unions, leaving employers to take the initiative in introducing or modifying I&C arrangements – or to do nothing (Hall, 2006).

Another dimension – and a central focus of our research – concerns the quality of consultation in organisations that have introduced or reformed I&C bodies in response to the Regulations, and the effectiveness or otherwise of this form of employee representation.

The nature and extent of the I&C processes in the organisations involved in our research varies markedly. The 12 surviving case study organisations in the first wave of our research, covering employers with 150 or more employees, fell into three broad categories:

- Only a minority were ‘active consulters’. This category included two cases where management was pro-active in discussing strategic organisational issues with the I&C body and engaging in consultation leading to agreed outcomes. It also included others where consultation practice was less developed, involving a degree of I&C on strategic decisions but with limited evidence of employee views being influential.

- Elsewhere, management used I&C bodies essentially for ‘communications’ rather than consultation as such. ‘Strategic’ issues rarely featured on the agenda, and then only after decisions had been taken. Instead, I&C bodies were primarily a forum for progressing staff-raised issues, typically HR policies, ‘housekeeping’ matters and social activities.

- In two cases, the I&C bodies became defunct after only two years.
Explaining the differing experiences of consultation

The proposed paper will identify key factors shaping the differing experiences of I&C in our case study organisations. Management is the dominant player and the experience of consultation reflects the role envisaged for the I&C body by senior management. Whether underpinned by formal agreements or not, the I&C bodies in our research were invariably employer-led arrangements – with little or no input to their design from unions/employees. Similarly, management determined whether consultation was in practice ‘active’ or largely limited to ‘communication’. This in turn influenced the effectiveness of the I&C body as a consultative partner. A more active approach to consultation required the development of employee representatives’ competence and cohesion, whereas the ‘communications’ approach promoted little employee-side interaction.

The approach of unions, where they were recognised, was ambivalent and largely reflected their security within the organisation. Where they were the dominant player on the employee side they embraced involvement in consultative activities alongside their collective bargaining remit. In contrast, where they had low membership amongst the workforce and few seats on the I&C body, they sought to preserve their separate bargaining role and played little or no part in the consultation process.

The impact of regulatory design

Although the ICE Regulations have to varying extents been the catalyst for the introduction of I&C arrangements and shaped their formal remit, they have not generally influenced managements’ approach to consultation in practice. The wide range of I&C practice is facilitated by the legislation’s emphasis on organisation-specific I&C arrangements and the broad definition of consultation embodied in the Directive/Regulations – ‘the exchange of views and establishment of dialogue’, as distinct from the more traditional notion of managers seeking and taking account of employees’ views before making a decision. As a public policy benchmark, the indirect influence of Directive’s/Regulations’ more stringent ‘default’ provisions appears to have been negligible.

Methodology

Our research uses longitudinal case studies, tracking developments in 25 organisations over a two-year period. Case studies begun in 2006 in 13 private and voluntary sector organisations with over 150 employees have now been completed. These involved research visits to each organisation in the second half of 2006, repeated two years later, and interim telephone updates. Managers, employee representatives and trade unions (where present) were interviewed at each stage, supplemented by documentary analysis and an employee survey at the beginning and the end of the research. This research is being replicated in a second wave of case studies in eight organisations with 100-150 employees, and a third wave in four organisations with 50-100 employees.

References

Bernard C and S Deakin (2000) ‘In search of coherence: social policy, the single market and fundamental rights’, Industrial Relations Journal 31, 4, 331-345


PAPER PROPOSAL:

A case of unlikely complementarity: workers’ direct and representative participation in the Spanish private sector

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The tensions between direct and representative workplace workers’ participation are at the heart of one of the most important debates on participation in recent decades (Wood and Fenton-O’Creevy 2005). A context such as the Spanish, combining employer prerogative on work organisation matters and a young system of representative participation, means that direct participation is an uncertain move for all workplace actors. Yet, against the evidence supporting the existence of substitution processes between works councils and direct participation in Germany (Addison et al 1997; Hübler and Jirjahn 2003; Helfen and Schuessler 2009), several studies based on case study research have found processes of complementarity in Spain (Blyton and Martinez Lucio 1995; Ortiz 1998, 2002; Juan Albalete 2005). Focusing on studying this relationship, the determinants of direct participation are examined through a representative workplace survey administered in a Spanish region in 1999.

Collective voice through workers’ representatives is shown to have a significant positive association with direct participation. A number of propositions relating to human resource policies and managerial attitudes to trade unions are not supported, however, and the skills variable used unexpectedly shows a significant negative association with direct participation. A framework of relatively unsophisticated work organisation environments combined with substantive social dialogue suggests a model of direct participation aimed mostly at workers’ integration within a broadly neo-Tayloristic approach to labour management and pragmatism of unions and managers. These results question dominant perceptions of the determinants of direct participation. Since the extension of forms of work organization based on high discretionality levels in Spain continues to be below the European average (Valeyre et al 2009), creating an economy that delivers jobs of quality constitutes an important challenge.
REFERENCES


Employee Representation in the New World of Work: The Dynamics of Rights, Voice, Performance and Power.

To understand the Employee (Provision of Information and Consultation) Act 2006 and what it could mean for Irish employees, one must first look to the origins of this legislation. The Act is derived from a European Community Directive which hoped to level the playing field within Europe regarding employee rights, create an instrument to allow employees a voice and ensure greater democracy in the workplace.

According to Doherty (2008: 3), “there is a view that increasingly what will differentiate European economies from low-cost competitors is the focus on “knowledge” and on exploiting the comparative advantage of better educated European workforces (human capital).” To be successful in this endeavour a balance must be found between the economic growth of businesses and the quality of life of employees through social policy. Allowing employees a voice to contribute in their workplace is a vital part of this undertaking. Sisson (2002:7) holds the view that “encouraging employee feedback and suggestions is the key to continuous improvement, while collective voice is important in building a climate of trust in which this can take place.” Without allowing employees an active role in their employment, reaching this goal is inconceivable.

Ireland has one of the highest levels of Foreign Direct Investment (FDI) in the world. One third of all Irish jobs are now sourced through FDI with 460 American companies in Ireland employing 100,000 people alone. FDI companies brought new Human Resource Management (HRM) practices to Ireland and during the transposition of the 2006 Act, both employers and the Government were concerned that nothing should “cut across the HRM practices of the Irish operations of US multinationals and thus damage FDI” (DETE :1998). Ireland has seen a stark transition from bargaining based employment relations systems to an individual rights based system, over the last twenty years. The Industrial Development Agency (IDA) no longer promotes employers to recognise Unions. Union density in the private sector is approximately 20% (Sheehan: 2005) The European Directive would have revolutionised Irish Industrial Relations, and was clearly a step in the direction of a modern bargaining based employment relations system.
The controversy surrounding the final terms of the Act was due to revelations that the American Chamber of Commerce furiously lobbied the government on behalf of Multinational Corporations. It is also claimed that the American Chamber of Commerce members threatened to restrict investment and move elsewhere if the directive was not opposed or amended (IRN: 42-18). The final terms of the legislation are a clear example of the influence that Multinational Corporations have in deciding Irish social policy.

Contents of the Act.

Consultation is defined as ‘Consultation with a view to reaching an agreement’ between the employer and employee representatives. Both parties must come to the forum in good faith with the intention of reaching an agreement. It bestows on employees in a non union multinational the legal right to elect representatives. The Act stipulates that employees must be consulted on matters which are likely to affect them. This includes changes in organisational structure and changes in contractual terms and the future economic development of the company.

The most controversial part of the Act is that it requires employees to trigger a mechanism which allows them to claim their right to information and consultation. Ireland and the UK differ from other European Countries, in this regard, as these are automatic rights in every other member state. The trigger mechanism requires a group of employees to sign a petition which must be submitted to either the employer or the Labour Court. The Irish congress of trade unions have been critical of this mechanism for triggering the rights contained within the act, stating ‘how can there be a plebiscite on a right?”

Research.

On the 12th June 2009 a group of employees in an American non union multinational, (based in Ireland), which is hostile to any for of collective action, triggered the mechanism and in doing so became the first group of non union employees to do so.
I have worked for this company as a production operator for the last 6 years. My masters thesis titled “Is it as easy as pulling the trigger?” discusses the difficulties that employees face in claiming their right to have a voice in their workplace.

My proposal for the upcoming conference on Employee Representation in the New World of Work, is a paper which will reveal the details of the continuing process of creating a voice for Irish employees under the terms set down in the Employee (Provision of Information and Consultation) Act 2006. The methodology used will consist mainly of participant observation of both the negotiations with my employer, the resultant agreement creating a voice for employees and analysis of the benefits of such a voice from the factory floor. This is currently a live issue in Irish Industrial Relations, and our endeavour to date has been documented in a recent article in the Industrial Relations News Journal which stated:

“It is clearly an important test case under the Act, which has been little used since being passed in 2006. If this group of workers do manage to secure a robust legally backed works council in a non-union multinational, it could constitute something of a milestone for employee voice in Ireland.” (IRN 37 – 14/10/2009)

(for full article, please see attachment)
Employee Representation in the New World of Work: The Dynamics of Rights, Voice, Performance and Power

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Paper proposal for
Thematic 1 “Assessing different representation systems: their construction, their core principles and their evolution”
Corporate Governance and the Voice of Labour: Board-Level Employee Representation in Europe
Aline Conchon, Jeremy Waddington

At a time when the world of work is facing tremendous challenges and transformations, one topic is of increasingly acute relevance. The term ‘industrial democracy’, long widespread within the field of industrial relations, was first coined by Beatrice and Sidney Webb in 1897, since when this concept – also referred to, in EU terminology, as ‘employee involvement’ – has found concrete form in numerous different shapes. At company level, for instance, works councils, shop stewards or health and safety committees represent illustrations in this respect. Scholars and practitioners, meanwhile, whether focussing on the simple provision of information, or on the more complex matter of consultation and/or negotiation, have devised and studied numerous sophisticated models of interaction between industrial relations actors within the framework of industrial democracy (Blumberg, 1968; Bernstein, 1976; Salamon, 1998; Marchington, 2005, Carley and Hall, 2008; Carley et al., 2005; ETUI-REHS, 2005). One particular aspect of this subject, namely, workers’ participation, remains, however, much less investigated. This term refers to employee participation in company-level decision-making processes relating to matters of finance, strategy and investments. The most advanced form of such participation is the representation of the workforce in boardrooms by means of employee representatives with the right to vote.

And yet this issue deserves specific attention, insofar as it is of fundamental relevance to two inter-related matters, namely, the debate on corporate governance and the development of a system of employee participation within the European Union.

At issue in the debate on corporate governance is the fundamental choice between two different conceptions of the firm: the shareholder model (Jensen, Meckling, 1976), where the purpose of the firm is to maximise value in the interest of shareholders, and the stakeholder model (Freeman, 1984), where the firm has responsibility to a broader range of stakeholders such as suppliers, environmental actors and employees. Although the stakeholder model prevails in much of Western Europe, the disappointing economic performance of leading countries in this area during recent years has provided political opportunities for proponents of the shareholder model to advance their opposition to stakeholder systems. In contrast, the fostering of long-term profitability and employment, mechanisms to prevent mismanagement, and the benefits of transparency and accountability, are aspects highlighted by advocates of systems of corporate governance that embrace board-level employee representation.

At the European level, meanwhile, from the European Coal and Steel Community down to the present, there is an unbroken tradition in support of employee participation in general and board-level employee representation within systems of corporate governance in particular. This tradition comprises both policy statements and legal measures, most recently illustrated by the adoption of the European Company Statute in 2001. Underpinning this approach is the assumption that employee participation is a prerequisite for ensuring ‘high-road’ production systems throughout the European Union. In spite of a range of initiatives intended to establish a uniform system of employee representation and of corporate governance, a key current omission at European level is a measure to ensure greater uniformity in approaches to employee representation at board-level within member states.

One of the main reasons for this omission is the fact that this specific type of employee representation is not so well known. Indeed, it is possible to count on one hand the number of

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3 See Béthoux et al. (2008) for the first translation into French of the Webbs’ chapter entitled “Trade Unionism and Democracy”.
5 The most significant outcomes are the 2002/14 Directive of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and the 94/45 Directive of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (a recent recast was adopted in May 2009, see Directive 2009/38).
6 Directive 2006/46/EC amending other Council Directives on the annual accounts and consolidated accounts of certain types of companies, requires companies to comply with a national code of corporate governance or to provide explanation in the event of non-compliance.
studies devoted to this subject (EIRR, 1991; Schulten and Zagelmeyer, 1998; Kluge and Stollt, 2005), while observing that mentions of legal provisions for employee representation in boardrooms are only occasionally to be found in European reports dealing with industrial democracy (the latest example of a report mentioning this type of worker participation is Calvo et al., 2008).

This paper thus aims to draw a detailed and wide-ranging picture of board-level employee participation in order to contribute to a more complete understanding of the overall construction of employee involvement. A first part will take a deeper look at the historical roots of workers’ participation in Europe, describing the waves of legislation that have set up this form of employee representation in EU countries as well as the emergence of this issue in European debate. This historical description will be linked up with the economic and political aspects and with more topical events and controversies such as those dealing with corporate governance and the regulation of the current economic crisis. The actual phenomenon of board-level employee representation will be presented in a second part. By means of a literature review and a census of board-level employee representatives in EU Member States plus Norway, we will offer a comparative description of the distinctive country-based legal features as well as the numbers of employee representatives holding mandates as worker directors. A third part, finally, will present a profile of the worker directors. Thanks to the preliminary results of a large-scale questionnaire-based survey that we are currently conducting in Europe among this population of board-level employee representatives, it will be possible to flesh out the abstract figures of worker directors by means of demographic elements (age, gender, occupation) as well as trade-union related elements (trade unionisation, other employee representative mandates held, relationship with trade unions and/or employee representative bodies). In conclusion we will discuss whether and why worker participation in the boardroom might be considered a relevant space for collective action.

References

Bernstein P. (1976) " Necessary Elements for Effective Worker Participation in Decision Making", *Journal of Economic Issues*, vol. 10, n°2, pp. 490-522