Britain’s reluctant accommodation of EU-driven universal consultation rights

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Focus on ICE Regulations

- driven by EU law not domestic policy
- general statutory framework for employee consultation for first time in Britain
- right for employees to trigger establishment of consultation arrangements, irrespective of union representation
- radical departure from
  - voluntarist approach to consultation
  - ‘single channel’ trade union representation
Key EU employee consultation Directives

- issue-specific – collective redundancies (1975), transfers of undertakings (1977)
- general statutory framework covering national undertakings (2002)
Guaranteed union involvement?

- British law originally restricted EU-driven consultation rights to recognised unions
- ‘single channel’ approach overturned by 1994 ECJ rulings
- two subsequent policies
  - ‘union priority’ or ‘supplemented single channel’ (redundancies and transfers)
  - direct election of employee representatives (EWCs and ICE Regulations)
Legislative design of ICE Regulations

- maximum flexibility of response
- ‘reflexive’ law
- 10% of workforce may trigger process to reach organization-specific ‘negotiated agreements’
- protection for ‘pre-existing agreements’
- minimalist default provisions
Impact of ICE Regulations

- ‘legislatively-prompted voluntarism’?
- WERS 2004: continued decline of consultative committees
- later surveys suggest increase in consultation bodies and reform of existing arrangements
- no figures on ‘pre-existing’ or ‘negotiated agreements’
- little reported use of 10% trigger by employees
- process largely employer-led
Union abstention

- ICE Regulations a threat or opportunity for unions?
- formal TUC support but union ambivalence
- mixed messages from key legal cases
  - Moray Council
  - Macmillan Publishers
- few union attempts to use Regulations
- defensive union attitudes towards employer moves to set up consultation bodies
IRRU-based research on organisational responses to ICE Regulations

- introduction of consultation bodies management-led in all 25 cases
- no case of employee trigger or union pressure
- set up unilaterally by management in 11 cases
- formally-agreed arrangements also decisively shaped by management
IRRU-based research on organisational responses to ICE Regulations

- ‘hybrid’ union/non-union bodies typical in unionized organizations
- initially viewed with caution by recognized unions but pragmatic adaptation over time
- little tension reported between consultation and collective bargaining
- no significant decline in union membership or threat to union recognition
Summing up

- full impact of Regulations yet to emerge
- significant activity in terms of new or modified consultation arrangements, largely employer-led
- union avoidance of Regulations; very little uptake by employees
- ‘legislatively-promoted unilateralism’?
- key barriers to effective implementation include
  - absence of guaranteed union role
  - 10% trigger
- but early reform unlikely