



Democracy in the Workplace: strengthening information and consultation

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Section one

Executive summary

This paper argues for a strengthening of the Information and Consultation of Employees (ICE) regulations in the UK. Specifically, it argues that the rule requiring 10 per cent of employees to request information and consultation, the so-called trigger mechanism, should be replaced and information and consultation procedures must be available in law if a minimum of five employees request them, or if requested by a trade union.

It also argues that a basic constitution for works councils and their operation should be established in law and that this constitution should only be amendable in order to strengthen it. It sets out a number of other ways that UK regulations need to be strengthened, including ensuring that part-time workers have equal rights to those contracted to work more hours and that employers who fail to comply with the regulations face substantially increased sanctions.

The case for information and consultation can be made in the name of both economic efficiency and social justice. Information and consultation is one of a range of measures which, taken together, are known as High Performance Work Practices. Evidence shows that such work practices contribute to higher productivity at the company level. However, information and consultation also introduces basic democracy in the workplace. Responsibility for major decisions still rests with management, but a voice for workers not only improves decision-making, it also fosters greater trust between management and employees. This reports sets out that measures which better enable managers to build on the experience and expertise of the workforce lead to better business outcomes, while also arguing that improved employee voice at work is a basic democratic entitlement which should be afforded to more workers across the UK as a good in its own right.

The report looks at case study examples of the use of information and consultation processes across Europe.

- In Sweden, with its long history of social partnership, information and consultation is available even if just one employee requests it. Management must then consult and cannot enact any change in the operation of the company until the consultation process is complete. Interviewed for this report, Swedish trade unionists expressed surprise that managers would not wish to speak to their workforce; why, they reasoned, would the company not wish to understand what their employees were thinking?
- In France, works councils are established by law in companies with more than 50 people. Five trade unions federations are recognised in France for

collective bargaining purposes and although, unlike in Sweden, non trade union members can serve as works council members, in practice most members are trade unionists.

- In Germany, major companies such as Volkswagen and Siemens have strong works councils and senior managers from both those companies told the TUC of the value these arrangements bring.

Information and consultation only works well when both management and workforce are committed to it. The recommendations of this report are, therefore, designed to be as flexible as possible, while bringing both sides to the table. The evidence of continental Europe shows that information and consultation promotes trust, understanding and mutual respect in the workplace, assists managers to make better decisions for the long-term benefit of the company and widens the esteem in which unions are held, underpinning rather than undermining their position. Five years after the economic downturn, at a time when many argue for a better, fairer economic model, improved workers' voice, as expressed through information and consultation, is an idea whose time has come.

Section two

Introduction

With the recovery finally getting underway, many now argue that recent years of recession, stagnation and crisis are behind us. But while the UK is experiencing stronger growth than has been the case for some time, all is not well with our economic model, which is still failing to deliver on the living standards improvements that people at work desperately need.

Real wages have yet to see any significant improvement and only one person in fifty report to have felt any benefit from recent economic gains. Following four years of real pay falls, even if earnings finally start to rise in 2014 (although not for many in the public sector) it will be 2020 before most households regain even the spending power of 2008.

At the same time the UK economy also faces wider challenges. Our investment levels remain far below those of our international competitors, education and training provision remains far behind many other successful economies and, at least in part as a result of these concerning trends, productivity performance remains at its post-crisis low.

The sectorally and regionally rebalanced economy that we have been consistently promised is also failing to emerge. While manufacturing and construction remain far below their pre-recession peaks a housing boom is taking off in the South East, leaving UK growth far too reliant on the easy money of the past than on the better balanced economic model many agree we need.

The TUC has always believed that the free market, left to itself, will not provide a sectorally and regionally balanced, sustainable industrial base. Neither will it provide basic fairness in the distribution of economic rewards. It is for this reason that we believe active government, along with a wider group of stakeholders, including strong trade unions, is necessary for a balanced and sustainable economy.

If we seek a new, fairer economic model, where high performance and improving productivity are the norm (essential pre-conditions for fairer rewards), individual companies need to work differently. The TUC argues that they should. Specifically, we believe there is a new role for improved worker voice at the company level, which should form part of the solution to delivering an economy with higher skills, investment and overall performance as a means to underpin strong and sustainable future growth.

There are a number of measures that could be taken to promote this goal, but this report concerns itself specifically with information and consultation of

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employees. It will revisit the Information and Consultation of Employees (ICE) regulations, which were introduced in the UK in 2005, and will ask if those regulations are fit for purpose. It will explore how workers voice can benefit businesses and their workers, supporting better management and higher productivity and contributing towards building the stronger, fairer and sustainable economic recovery that we all need.

The report seeks to make a new contribution to the debate by examining evidence from two countries that have implemented the ICE regulations in different ways from the UK. One of these countries, Sweden, has a long history of social democracy and has enshrined trade unions as central stakeholders. The second, France, has a much lower level of trade union membership but nevertheless gives trade unions a central role as negotiating partners. The report will also borrow from previously published research from Germany, which appeared in the 2012 TUC report, 'German Lessons'.

In researching this report, the TUC met with members and officials of IF Metall, the Swedish metalworkers union, at the manufacturer of outdoor power equipment Husqvarna and the defence and aerospace manufacturer Saab AB in Jonkoping, Sweden. For comparison, the TUC also spoke to union officials at Husqvarna in Newton Aycliffe, County Durham. The TUC also met with unions and managers at the insurance company, AXA, the electrical systems company Thales and the drinks manufacturer, Pernod Ricard, in France.

After the evidence from these countries and companies is presented, the report draws conclusions and recommendations for the future of ICE in the UK.

What are the information and consultation regulations?

In 2002, the European Union published the Information and Consultation Directive. The ICE regulations that followed have applied since April 2005 to undertakings with at least 150 employees, since April 2007 to those with 100-150 and since April 2008 to those with 50-100. The regulations established for the first time in the UK a general statutory framework giving employees the right to be informed and consulted by their employers on a range of key business, employment and restructuring issues.

The UK Government adopted a social partnership approach to implementing this, which was the TUC's preferred model. Accordingly, the legislation allows employers considerable flexibility of response. Employers need not act unless 10 per cent of their employees trigger statutory procedures intended to lead to negotiated agreements. There is considerable latitude to agree enterprise-specific I&C arrangements. Only if the regulations' procedures are triggered but no agreement is reached are 'standard' or default I&C provisions enforceable.

Why is information and consultation desirable?

There are three main reasons why information and consultation makes sense for both company and workforce.

First, information and consultation is part of a broad range of practices that are pursued by so-called High Performance Workplaces. There is a host of evidence to show that companies engaging in high performance work practices enjoy higher productivity and profitability than those which do not.

Eileen Applebaum, Jody Hoffer Gittell and Carrie Leana summarise the evidence of a link between workers' voice and productivity in their paper, 'High Performance Work Practices and Sustainable Economic Growth'¹. The authors note the Obama Administration's plan for supporting long-term, sustainable growth, which requires significant investments in various industries. However, according to the authors, a large body of evidence demonstrates that achieving a return on these investments requires a matching workforce development and workplace innovation strategy. In short, companies should adopt high performance work practices to secure sustainable growth rates.

High performance work practices operate in three different ways, according to this paper:

- They foster development in human capital, including increased employee skill development
- They enhance the motivation and commitment of employees
- They build organisational social capital, which facilitates knowledge sharing and the co-ordination of work.

The authors go on to say that labour-management partnerships based on mutual respect for worker, union and employer rights and responsibilities have been shown to achieve high performance by facilitating employee participation and related high-performance work practices and by creating social networks within and across organisations. Applebaum, Gittell and Leana say: "In particular, the presence of a union is positively associated with a greater number and greater effectiveness of high performance work practices."

Dr Heinz Josef Tuselmann of Manchester Metropolitan University has reached similar conclusions. Dr Tuselmann studied worker representation, employee participation and employment relations in German subsidiaries in the UK and their associated impact on firm performance.² Tuselmann has found that German subsidiaries are more likely than their US counterparts to use participative systems that afford independent worker structures, taking the

¹ http://www.employmentpolicy.org/sites/www.employmentpolicy.org/files/field-content-file/pdf/Mike%20Lillich/High%20Performance%20Work%20Practices%203-20-11_0.pdf

² 'Employee Relations in Foreign Owned Subsidiaries: German Multinational Companies in the UK', Tuselmann et al, 2007.

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form of trade unions in the UK, a role in the decision-making in the introduction and operation of comprehensive direct employee participation schemes. Tusemann argues that this is because a majority of German multinational companies use a German works council model, which alongside sectoral collective bargaining, promotes trust, co-operation and long-term perspective in management-works council relations in Germany. Tusemann finds that German subsidiaries with trade union recognition exhibit above-average productivity performance.

The second argument in favour of information and consultation is that it encourages managers to understand what employees are thinking. It also allows managers to use the experience and expertise of the workforce to benefit the development of the company and to be appropriately challenged, where necessary. We will explore this concept in greater detail in the case studies below. However, this idea has been discussed by the TUC before. For example, in the 2012 report, *German Lessons*, we quoted Martin Rosik, the Human Resources Manager at Volkswagen, Wolfsburg, who told us: “If you have a conversation on a matter of importance, and you have a partner and you discuss with this partner, if he only gives you the answers you expect to hear, you wouldn’t ask him anymore.”

Third, improved information and consultation would increase democracy in the workplace which, we believe, is an intrinsic good in itself. The principle that those affected by decisions should have some say in the making of those decisions – less a veto, more a voice – is taken for granted in most areas of our lives. For example, we elect people to represent us in local, national and European government. It is reflected in the governance arrangements of many institutions, including schools, where it is well-established that teachers and parents should be represented on governing bodies, and pupils selected by their peers feed in views through school councils.

Yet on entering the workplace, this basic tenet of democracy is left at the door. Despite the fact that those in full-time employment spend a significant proportion of their waking hours at work, workers have no automatic right to influence the decisions that are taken there. In the UK, many workers are not even informed and consulted in advance about changes to workplace strategy or organisation. This is in contrast to the situation in other European countries, where workers voice is considered to be a basic right, over and above its value in company decision-making.

What is wrong with current arrangements?

There are various good examples of information and consultation arrangements working well in the UK. Despite this, the impact of ICE has been disappointing overall. There are a number of reasons for this.

First, employers have been lukewarm, at best, to the whole idea. The culture and tradition of the UK has given managers control of the way workplaces are organised and, even in the face of evidence that shows the success of employee engagement, many managers have been reluctant to give up that control. Furthermore, in those companies with little or no tradition of trade unionism, managers have tended to express a preference for dealing with workers on an individual basis. This is in spite of – or because of – the fact that individual employees have less power than a workforce acting collectively. Either way, it results in a mismatch of power between the company and the individual workers. This means that employees may be given a polite hearing, but there is no requirement and little incentive for managers to give serious consideration to the views or arguments that the workforce may express.

Second, and equally important, some trade unionists also had doubts about the opportunities provided by the ICE regulations. This is due to the fact that ICE provisions did not guarantee a role for unions. On the contrary, it raised a very real fear that where a union was present but was not particularly strong, an unscrupulous employer could use ICE arrangements to bypass the union and, in doing so, question the relevance of the union in general. After 25 years in which the role of unions was undermined by politicians and much of the media, it is perhaps no surprise that some unions were defensive in this situation.

But times have changed. Post economic downturn, progressive politicians are seeking an economic model that is both stronger and fairer, and recognise that improved worker voice will need to play an important part in any new settlement. Furthermore, evidence from Europe has shown that, where unions engage with ICE, it has a tendency to strengthen their position and underpin collective bargaining, providing a means to strengthen union organisation and the fairer distribution of the rewards of growth this brings. For very good reasons, then, workers voice and economic democracy are ideas whose time has come.

Section three

Evidence from Sweden

The Swedish law on information and consultation

According to Swedish law, employee involvement is understood to mean any mechanism, including information, consultation and participation, through which employees representatives can exercise influence on decisions to be taken within the company. The contemporary system of worker involvement in Sweden is a result of legislative reforms carried out in the 1970s. Sweden is characterised by a high level of trade union and employer organisation and a high level of collective agreement coverage in both public and private sectors. Trade union density is around 71 per cent and collective agreement coverage around 90 per cent.

Worker involvement in Sweden goes hand in hand with collective bargaining. Workers express their voice through trade unions that have reached collective agreements with employers. The workers right to involvement is dependent on the existence of a collective agreement. Furthermore, social partners may conclude collective agreements that deviate from some provisions found in law and these deviations can be less as well as more favourable to the workers. There need only be one employee for entitlement to worker involvement to be activated. The employer must also have a member of the trade union employed.

The Swedish co-determination act presupposes that trade unions are organised on a local and central level. Trade unions themselves decide how workers representatives are chosen.

Workplaces with more than five employees have a safety representative, appointed by the trade union. In a workplace with more than fifty employees, a safety committee is appointed. In non health and safety matters, the trade union with a collective agreement can request consultations with the employer if they have concerns about a particular decision. The employer cannot then execute the decision before the consultations are finished. In the case of final disagreement, however, the employer has the prerogative to take action as necessary.

In companies with more than 25 employees, the relevant trade union may appoint two members of the board. In companies with more than 1,000 employees, the workers may appoint three employee representatives. However, the number of employee representatives may never exceed the number of directors appointed by the shareholders. Where trade unionists need training to develop the skills to understand economic information, this training is

provided by the union but paid for by the company. Time off for this training is also provided.

Regarding collective bargaining, Swedish law recognises industry-level pay negotiations. Certain variations are permissible relating to the structure of the company, but the norm is for industry wide negotiations.

The role of trade unions in Sweden

As we have seen, trade unions are central to the operation of Swedish industrial relations, so much so that in international activities, the law prohibits the provision of information and consultation to non-trade unionists. This affects European Works Councils on which non-trade union members from outside Sweden may be represented.

Swedish culture also supports the concept of joint problem-sharing. Roger Nilsson from the bargaining unit at IF Metall, told the TUC: “You have a problem and if you have a problem, it belongs to me, it’s our problem and we need to solve it. We need a negotiation, we need an agreement.” Nilsson adds: “If you know what’s going on, then you reach a kind of an understanding, even if it sometimes hurts...You have more information than even perhaps the stockholders have. You are better informed about the performance in the company on a daily or weekly or monthly basis.”

Nilsson is perplexed by the idea that managers may not wish to discuss problems with their workers: “I think, what’s the main question? The labour cost in every business is the highest cost you have as a company and you’re not interested to discuss matters of interest within your company and your workers?” Nilsson adds, from the perspective of an employee: “I want [there to be] good performance within the company and also a good working environment. And I need my salary every month, but for having that I need also to have a developing company and a good performance. I also need that my supervisor and middle management give some respect for me in my position as a worker, because I have my skills, they have their skills, and we work together. So that’s the main core in the information and consultation.”

Information and consultation in action: Husqvarna in Sweden and the UK

Husqvarna is the world’s largest producer of outdoor power products, including robotic lawnmowers, garden tractors, chainsaws and trimmers. Net sales in 2013 amounted to 30bn Swedish Krona (£2.72bn). Husqvarna, headquartered in Sweden, has almost 14,000 employees in more than 40 countries, including the UK. The company built motor cycles in the early part of the twentieth century and for 18 years was owned by Electrolux.

Evidence from Sweden

The examples below show how information and consultation regulations are making a positive contribution in both countries, albeit in a more comprehensive way in Sweden than in the UK.

Husqvarna in Sweden

In both Sweden and the UK, a major challenge facing Husqvarna is the use of temporary workers.

In Sweden (where around 30 per cent of the workforce are temporary workers), the decision to move towards more temporary workers was the subject of a negotiation between management and the union. The process ended without agreement but, as noted above, under Swedish law the management had the right to implement their proposals. Many of those permanent employees who were made redundant were re-employed on temporary contracts, but the company pursued this strategy to allow it to respond more flexibly to peaks and troughs in demand.

Following this change in company strategy, the works council in Sweden meets weekly to discuss human resources issues with management. It also meets either weekly or every two weeks to discuss short and long-term company issues with the production manager. Whether or not the management simply inform the works council, or consult and negotiate with it, depends on the issues at hand, following a protocol. The failure to agree on company strategy was unusual; normally, an agreement would be achieved.

In Sweden, the information and consultation agreement was negotiated between the unions and management. On the whole, it works well. According to Annika Ogren of IF Metall, “it’s the only way for us to have some check on what’s happening”. Annika believes the factory manager benefits because it gives him an alternative perspective: “he wants to hear, not our opinion, but our members’ opinion on things, because he understands that things he hears from his manager, its one side, and we can give him more information he will never hear about if we don’t tell him.” She adds: “the manager doesn’t have [a long history in the company], so we can tell him what wasn’t good before.”

Ironically, whilst the strategy of using more temporary workers makes it harder for the union to recruit, it also gives its importance a new dimension. According to Annika, temporary workers “still talk to us and inform us of their problems, [in spite of the fact that] the company can kick them out tomorrow... the union has an organisation with maybe fifty shop stewards and they work out in the factory, talk to people every day and they also have a lot of information...”

Husqvarna in the UK

In the UK, arrangements are more ad hoc. As in Sweden, the increase in temporary workers (which is far more extensive than in Sweden, with only 15% of employees at the UK Newton Aycliffe plant permanent full-time employees) makes it harder for the union to recruit: the union, Unite, asked the relevant employment agency for recognition for temporary workers, but was refused. Steve Crooks, a Unite rep at Husqvarna, told us that knowledge and experience was lost, along with permanent contracts. Before the change, “you could have over 100 years experience just between four or five people... to me that’s invaluable.”

Works council members became members as a result of being shop stewards. They were invited to become works council members by management, who initiated the works council and who established the rules. The works council in the UK serves a similar purpose to that in Sweden. One Unite rep, Karen Colly, said: “It’s more about the company as a whole. It’s about this site and issues relating to this site: who’s left, who’s joined the company. New products that are coming in, how the business has done over the year, over a period, over a quarter, that sort of thing.”

Unite at Husqvarna in the UK do not believe the works council is used for either information or consultation, however. Steve Crooks of Unite said: “they just call us in if they’ve got a major change...” Karen Colly added: “if it’s something really serious, I think they have called emergency Works Council meetings, but that is very, very rare.” In November 2011, the closure of the research and development centre at Husqvarna in the UK was announced. This prompted a normal 90 day consultation period, but the union felt the decision had already been taken and there was little to discuss.

Ironically, whilst there is a lot of emphasis on relationships between management and workforce when industrial relations are discussed, a falling out between the two sides can be less problematic than the sense that the workforce has not been heard. Managers and unions often have respect for each other, even when they disagree, and this helps to forge and maintain relationships. Describing the Head of Human Resources at Husqvarna in the UK, Steve Crooks says: “you could go in there and have a good barney, a strong discussion, debate, whatever you want to call it, and she may not agree at all. But she will listen to you.”

Through his involvement in Husqvarna’s European Works Council Steve Crooks recognises the limitations of the UK approach, telling this report that: “I think the union base in Germany and Sweden is a lot stronger and the unions are heard and adhered to a lot more than the United Kingdom do... in my opinion, the Swedes and the Germans, they have a lot of dialogue... they’ll talk to the management and if they [i.e. the unions] have a strong argument, they [i.e. the management] won’t force the issue through.”

Evidence from Sweden

In Husqvarna in the UK, there is no equivalent of the Swedish system, whereby employers pay for employee training to support their role as works council members. Steve says: "... the guy from Germany, Norbert, they have been well educated in union skills. Norbert is part of the site works council, he's part of the area works council, and he's part of the European works council for Germany, and he's got a lot of knowledge. In Sweden, Annika is a full time union official, so she's more ... everything. She's got a lot of learning, she's on the board of directors... she's in there as well, so she's getting to learn a lot more."

Steve Crooks argued stronger unions would result in better information and consultation: "the stronger the union, the harder it is for the management team to oppress and make changes." Karen Colley agreed: "There's a lot of companies in England that do not recognise unions, they don't allow unions. But there are people that want to be in a union and I think that's [their] right, they should have access to a union whether the company recognises them or not... the union's there, it backs you up... it's what the people want, it's the people's way of [saying] to the company, 'you're doing something wrong, this is not right'".

Information and consultation in action: Saab Group in Sweden

Saab is a Swedish aerospace and defence company. The company has 13,000 employees worldwide and annual sales amounting to 24bn Swedish Krona (£2.2bn), with research and development accounting for about 20 per cent of sales. In 2013, markets outside Sweden accounted for 59 per cent of sales.

Saab has a presence in other European countries, including Denmark, Germany and the UK, as well as in the United States, South Africa and Australia. In Sweden, the company recognises two blue collar and two white collar unions. Conny Holm, President of IF Metall at Saab in Jonkoping, puts union density at about 80 per cent. The factory in Jonkoping manufactures electronic systems for the aerospace sector, including for the Boeing 787.

Conny has been elected to the works council. After annual meetings with trade union members, the union informs the company the names of the people with whom it must consult. Information and consultation occurs at the company level, separate from collective bargaining, which takes place at industry level. The works council has four regular meetings per year with the company, at which it is informed about the company's performance. It will also meet separately in circumstances in which the company wish to make significant changes to the way the business operates. Works council meetings are attended by senior managers, from human resources, finance etc, depending on the agenda.

Conny believes the legal underpinning of information and consultation is important: it is possible that management would not wish to talk to unions if the law did not require them to. However, with the law backing up the system,

it is important that rules agreed in the company reflect local needs. Management were nervous that too many works council members may attend meetings, so a company level agreement was established to govern this.

Whether or not information and consultation works well depends on the quality of management. Conny reports that poor managers inform the works council of plans, as they are required to do by law, but then go ahead without meaningful consultation. Other managers can not inform the works council of decisions routinely, but suggest the union contacts them for information, a system that the union is resisting.

Conny believes the works council actually provides value for money for managers: “of course it costs a lot of money for the company to have this organisation, but I always say to them, we are very cheap. If you don’t have this, how many people do you have on human resources do this? ... the CEO and people in that area understand...”

Furthermore, the unions are constructive: “The Swedish unions have never been against rationalisation of the company. We never say no. Even if they say ... that will mean that 20 per cent of the people have to leave, we were never against that. We know that if we don’t do that, we are in a bad situation, because of the [company’s] competitiveness ... But then we have an agreement to help these people get a new job. ... “ Those losing their jobs are placed with a company that will either help them to find a new job or support their further development, preparing them for a new career.

A summary of lessons from Sweden

Sweden is characterised by high levels of trade union density and a strong history of collective bargaining and what is now called ‘social partnership’. The different attitudes in Sweden, compared to the UK, can be clearly seen at Husqvarna. In Sweden, the unions were involved in the design of the works council, whereas in the UK this was imposed by management. Swedish trade unionists think it odd that management would be hostile to information and consultation, seeing this as an effective (and even inexpensive) way of learning from the workforce. At the same time UK trade unionists look with envy at the level of training available to works council reps in Sweden.

Swedish trade unionists are in no doubt about the value of legally underpinning the role of unions if managers are to come to the table. High quality management and constructive trade unions are both important in making information and consultation work in Sweden.

Section four

Evidence from France

The French law on information and consultation

In France, works councils are required by law in companies employing more than 50 people. Individual workers representatives and health and safety representatives are legally required in companies employing more than 10 people. As in the UK (but not in Sweden), worker and health and safety representatives are not necessarily trade unionists, although the unions campaign to ensure that union members hold these positions. One trade unionist told this report: “the fact that the unions can assemble capacity and expertise means that, in practice, the majority of workers reps are trade union reps, or linked to the trade unions.”

Five trade unions confederations are recognised in law as social partners. The largest is the communist CGT which was founded in 1895 and describes itself as “the mother organisation out of which all the other modern trade unions were born”. The more moderate CFDT was formed in 1919 as a Christian organisation but secularised in 1964. Force Ouvriere is very strong in the public sector, with the CGC representing managers and the CFTC being a very small remnant of the original, Christian CFDT. As legally recognised social partners, these trade union confederations are able to negotiate industry level collective agreements.

Speaking to the TUC, An Le Nouail of the CGT described the issue of information and consultation in the wider context of democracy: “The starting point... is that the workplace is not a democratic place, because the relationship between the worker and the employer is based on an employment contract, where the worker... in exchange for loss of freedom, receives a remuneration.” An Le says that the employer “retains the legislative power, because it determines the rules of the engagement. It holds judicial power, because it can apply disciplinary [action], including sanctions... and executive power, because it establishes the directives.” However, “there are some legal limitations to the power that the employer exercises, and these limitations are embodied by three countervailing bodies. The works council, worker representatives and the Health and Safety Committee...”

The works council has two functions. One is to act as a social club, subsidising cultural activities. The CFDT argues that, in small companies, too often the work of the works council is restricted to this function. The second function is described by An Le Nouail of the CGT as like a parliament in a constitutional democracy: “It’s presided over by the employer, supported by an elected secretary, so there’s a workers representative that is elected and acts as the

secretary... It is principally a space of dialogue to discuss issues around training, gender and quality, the life of the company. Employers, for a certain number of issues, have to ask the opinion of the works council, but...they're not obliged to follow that advice”.

Jean-Luc Helfter of CGT told us: “the peculiarity of the French system is that if one organisation signs [a collective agreement], regardless of how many [members] they have, the collective agreement in question applies to everyone.” However, so-called ‘social elections’ legitimise the process. These take place at company level, every four years according to the law, but frequently more often in practice (French law at company level can only be amended in order to improve it). Social elections elect workers reps, but they also act as a kind of referendum on agreements negotiated. They involve all employees at the company, whether or not they are union members. Unions that have obtained 10 per cent of votes in social elections can sign national collective agreements. If they have obtained eight per cent of votes, they can sign sector agreements. Those agreements are only valid if they are accepted by 30 per cent of the votes in the company. They extend to companies where the employer is not a member of the employer organisation that has negotiated the agreement, a mechanism that has existed since 1913 to avoid unfair competition from those employers who are outside the system.

Trade union density is low in France, but the fact that large percentages of employees vote in social elections is seen as legitimising the trade union role. Indeed, some argue that the fact that non-union members benefit from the same terms and conditions as members is the reason that union density is low and that in France, trade unions are seen as servants of the general interest, rather than just their members. They are seen, therefore, as providing a valuable social function, by members and non-members alike.

Indeed, Jean-Luc Helfter told us: “It’s important to bear in mind the history of the country that produced so many trade union organisations, which is a different experience to what you had in the UK, but we consider trade union pluralism as a healthy aspect because it allows for the presentation of different interests, different layers.”

Echoing the evidence from Sweden, Valerie Chartier, Technical Advisor in the Collective Bargaining Department of Force Ouvriere told the TUC that positive employers recognise the value of dialogue: “Employers that support social dialogue in the company usually do so because they feel that social dialogue...can appease tensions and achieve negotiated solutions, which is better than when relations between the parties simply degenerate into conflict... It is where you often don’t have misrepresentation that there is mistrust of the trade unions...”

In 2013, the CFDT reached an agreement on an issue known as ‘employment secularisation’, which aims to turn precarious employment into stable employment in large companies. In order to try to achieve this, it has been

Evidence from France

agreed that data about the economic state of the company would be produced covering six years of activity. Data for the previous two years of economic performance, together with as much information and planning as possible for the next three years, will be presented to the works council. From 2015, this law will apply to all companies employing more than 300 people. Information includes how value added is built: if this is not presented, the works council has the legal right to appeal. The CFDT told this report that some companies already provide such comprehensive levels of data, but it was not an obligation and many did not do it, as they did not want to talk strategy with workers representatives. The aspiration in the future is that as the provision of data will become mandatory, wider discussion will take place particularly as in France the union is able to advise the board of the company on the strategy and the board is required to respond.

What is particularly important in France is that the legal position of the union to reach collective agreements means it does not fear being made irrelevant by non-union works council structures. As they are legally established as social partners means it is not in employers interests to bypass trade unions. That does not mean that unions are complacent about their low levels of density and Joelle Delair, the CDFT Confederal Secretary for social dialogue, says her union is trying to use build its success in information and consultation to highlight the importance of trade unionism, thereby giving non-union members a reason to join.

Information and consultation in action: Thales in France

Thales is a French company specialising in transportation, including air and rail traffic management, along with defence and security. Employing 65,000 people worldwide, 34,000 of whom work in France and 7,800 of whom are based in the UK, Thales produces the traffic systems for rail networks, including signalling, security, safety, tracks and the machinery that allows trains access to stations. The Paris Metro Oyster Card system is produced by Thales. In addition to the countries listed above, the company has a presence in various other countries, including Germany, Italy, Spain and Portugal, as well as in China, South Korea, Singapore, the US, Canada, Mexico and South Africa. Thales in France recognises four unions for negotiating purposes, the CDFT being the largest. 70 per cent of Thales workers voted in the most recent social elections.

According to David Tournadre, Senior Executive Vice President for Human Resources at Thales, information and consultation works very well at the company, for two reasons. The first is that 80 per cent of Thales employees are educated to degree level. This means, as David told us: “the quality of the people who are involved in management positions or involved in programme management, involved in engineering and research, involved in financial control, they’re really more exposed to what drives the business than in an organisation where this population would be much smaller. Therefore the

maturity of the discussions and the engagement has been greater in Thales than in some other organisations.” The second reason, David says, is that management at Thales has seen “engagement and the social dialogue as something strategic. My CEO spends some time with European councils, he comes and sits on the councils itself. As a result of that I’m asking the people from research operations to come. Usually they are the bosses of those organisations as well because the [CEO] is coming, so the quality of the interactions and the presentation underneath is there.”

Thales’ management and unions have negotiated an agreement for the anticipation and management of change. The first chapter of this agreement accepts that not all change can be anticipated and sometimes a change itself has to be addressed, which in practice means a company restructuring. A central committee for anticipation deals with, and only with, situations of anticipating change, and in particular adapting the number of employees.

This committee has ten management and ten trade union representatives. The group management will convene a meeting, informing the committee of its intention to introduce changes in the number of employees in a given company in the group. A programme of works council meetings is established, to which experts, mandated by the workers representatives, will be invited to suggest an alternative plan. The members of the committee for anticipation on the basis of the expert advice and the opinion of members of the works council, have to decide how to proceed. Neither side has a veto and the committee has what Didier Gladieu, the CFDT secretary at Thales describes as a “pedagogical” function, in that “the trade union reps learn to understand the reasons of management, and vice versa”.

David Tournadre describes this anticipation agreement thus: “ Here the rule of the game is very simple. Instead of launching restructuring at the time we actually face trouble, two or three years ahead of time we just launch studies about competency, management study where we need to invest, where we need to maybe reduce our existing headcount... We are pretty lucky to be on a long-term programme and long-term platforms so we have reasonably good visibility on our level of activities... [We] tend to go first to the unions and say well here is the problem and here is the challenge and how we are going to face it and how we are going to fix it together rather than again waiting until the last moment and just exposing employees to restructuring and such. So, it’s basically based on will from the management to use union as the privileged way of running transformation in the organisation ...”

Tournadre is clear, however, about lines of responsibility: “I’m not actually advocating a kind of shared responsibility in terms of the decision-making process as such. By the way, I don’t feel that our union is actually asking for it. What they want is to have access to the information. They want to be taken seriously and like grown-ups and what they want is to have an influence as

Evidence from France

early as they can to be able to indeed make sure that the actual transformation of the organisation is actually done with the people dimension built into it.”

According to Didier Gladieu, a core issue is building mutual trust, for which greater transparency is necessary. Trade unions offer training to works council members, including knowledge of the Thales group and legal expertise. Didier says that, historically, a culture of mobilising the workforce has developed in France and the CDFT is trying to “come out of the activist mentality and develop the negotiating side of things”. Didier describes this as a “long term project”, representing “a real cultural shift”. However, “for this to happen, it’s necessary that management, too, shift their cultural perceptions”.

To improve information and consultation, the CDFT supports improved corporate governance, by which they mean worker representatives on company boards, as happens in Germany. However, other French unions disagree with this approach. The CDFT also believes that the board and not just management should respond to the expertise and opinions offered by the works council. On some key issues, they would like to see a veto power of workers representatives, whilst accepting that for this to work, it is key that trade unions improve their economic expertise.

David Tournadre agrees that the German system has a lot to offer: “I’m a fan of the German system because I think Germany over the years actually managed to get a nation-wide consensus of where the country should go. I think it’s one, it’s not the only reason, but it’s one of the reasons why Germany as a country has been so successful. And it’s also successful today because when they had to make tough decisions, they actually took everybody on board and who were very honest about the reasons why they should do so and it was easier”

David is also keen that the unions look to the future: “Where I think there is a little bit of a gap... the ones who are unionised today and are representing employees at the negotiation table... they are usually of an age that is actually greater than the average age that we have in the organisations. I can hear some comments from the younger generation asking themselves, is it really just theatre, are you just making that up or do you really have an impact? Here there is maybe a little bit of a risk for union members and union organisations. I think that if you look at the mobilisation of the younger generations it is even less than 6%. That is a concern and it’s a concern for me as well because if you are engaged in such a relationship, you want your union representation to be actually representative...”

Information and consultation in action: AXA SA in France

AXA SA is a global investment, retirement and insurance group, headquartered in Paris. The company employs about 23,000 people in France and about 70,000 worldwide. It operates in many European countries, including the UK, Germany, Spain, Portugal, the Netherlands, Switzerland, as well as in Russia

and the Ukraine, China, Indonesia, South Korea, Australia, the USA and Canada. About 20 per cent of the company's turnover is earned in France. The CFDT and CGT are recognised at AXA, but union density, once again is low: the company described its union membership as "better than the national average, but not by much". However, again as is common in other countries, about 65 per cent of AXA employees voted in social elections. There are 46 members of the company's central works council.

The purpose of the works council is similar to those described above. Sibylle Quere-Becker, Director of Human Resources at AXA France said: "It's important to share with the works council all the general policies of the firm and share all the main projects we have which are related to the strategy of the organisation of the enterprise, of the company."

The unions at AXA said that "in practice when the organisation projects for the company are communicated to the works council, they are already formed. And it's very difficult to change it, modify it." But, the unions said they could "work a little bit in the margin of the project". Sibylle gave a different take on this situation: "trade unions will complain that the margin is too narrow and management would contend that actually it's too wide". Sibylle is also philosophical about the role of information and consultation: "We have got a regulatory environment, it's a fact, so now either you think it's a threat or you can think it's an opportunity. We think in AXA that this can be an opportunity... with a strong social dialogue and having, I would say, good relationships with the union."

One trade unionist at AXA gave a powerful description of the value of information and consultation: "The United Kingdom reported a loss of jobs around 2,000 head count. It's not even conceivable that the same thing could ever happen in France in the same way. Why? Because the labour market is different. Because the labour market is a bit more complicated in France. And in France there is a preference for a longer term approach and staff reductions happen over [a] longer term and in a softer way. We don't have a stop and go society where you wind down activity one day and start again. We are lucky that in France we are not faced with the same situation where you have to do such important staff reduction[s], but the culture is different and therefore the approach is different. It doesn't mean that the French trade unions are better or more protective of the workforce than the UK, but it's just the situation is entirely different."

Information and consultation in action: Pernod Ricard in France

Pernod Ricard is most famous for the production of anise and pastis. In fact, Pernod Ricard is a holding company, employing 19,000 people, in France and overseas. Pernod, headquartered in Paris, has 700 employees in four plants across France, producing pastis and armagnac. Other Pernod Ricard companies include Mumm champagne, while the company distributes other

Evidence from France

products, including Ballentines whisky. Just over half of the company's total headcount work in France, while the company also has operations in the UK, Germany, Italy, Spain, Greece, Poland, Ireland, the Czech Republic, Russia and South Africa.

Pernod Ricard recognises Force Ouvriere, along with a separate union representing managerial staff. As in the examples above, union density in Pernod is very low and active trade union members in Pernod tend to be elected workers reps. As elsewhere, union reps at Pernod believe trust-building to be every bit as important as formal entitlements in the fostering of good employment relations.

Social elections take place every four years in Pernod. Turnout is high among the commercial staff represented by Force Ouvriere, less so by those from management. There are no works council members who are not trade unionists and, in fact, the company seems to have effectively merged the two roles. Corinne Gosselin, who is both a shop steward and works council rep at Pernod, told this report that she sees her role on the works council as preparing her for negotiation, in her trade union capacity. Corinne sees this development as positive, allowing those negotiating access to wider information, but it does seem to have undermined the distinct role of information and consultation. In the past, works council reps received company plans for the next three to five years, whereas they now receive only a vague indication of where the company is going.

The trade union response to this is to try to use the information and consultation process to influence the negotiation process. Corinne distinguishes between a discussion about, say, company strategy, where the ensuing exchange is “not really meaningful, because in any event we're not in a situation of core determination” and a discussion about lifelong learning, where “the exchange can be more meaningful because there are clear advantages to the workforce”. In an echo of the comments of David Tournadre of Thales, quoted above, trade unions do not want to be seen as accomplices to management decisions, for which “the company is ultimately responsible”. So the company may set out the budget of the company and this offers the unions the opportunity to, in Corinne's words, “single out areas where there could be a problem, to put the fiscal questions to management and receive answers, then that lays the ground for the negotiations.” However, the union reps are “not economists, they're not experts and therefore it's difficult to take the responsibility of taking decisions that are bigger than them, basically”. Force Ouvriere offers support to their reps, helping them to understand economic issues, but they will never become specialists.

A summary of lessons from France

The fact that unions are legally entitled to collectively bargain in France, even with a low density, brings employers to the table. Criticisms of union power, even if their membership levels are low, are blunted both by social elections, which endorse agreements negotiated by unions, and by a wider culture that values a power balance in the workplace. David Tournadre of Thales speaks of a “privileged” position of unions in a positive way. He argues that his company’s attitude towards information and consultation provokes loyalty among Thales employees and AXA take a philosophical approach to French labour law, believing that as it is there, they may as well use it constructively.

Section five

Evidence from Germany

The German law on information and consultation

A distinguishing feature of Germany is its famed ‘social market model’ of capitalism. This model enshrines important rights for stakeholders, including trade unions, in employment law³.

A works council can be set up in any private sector company employing at least five people. In practice, large companies are much more likely to have works councils than smaller ones. Figures compiled by the European Trade Union Institute (ETUI) show that, in 2011, only 10 per cent of eligible workplaces had a works council in the former West Germany (the figure was nine per cent for the former East Germany), but those works councils covered 44 per cent of all employees in the West and 36 per cent in the East. In workplaces with more than 500 employees, 88 per cent had works councils in West Germany and 92 per cent in East Germany.⁴

As in France, unions have a major influence on the operation of works councils in Germany. According to the Hans Bockler Foundation, in the works council election results in 2010, 77.3 per cent of members elected were members of DGB (the German trade union confederation) unions.

As in both France and Sweden, collective bargaining is the central arena for setting pay and conditions in Germany. In 2011, 61 per cent of employees in the former West Germany were covered by collective agreements; the corresponding figure for the former East Germany was 49 per cent. However, half of the employees not directly covered by collective agreements work in companies which say they take account of these agreements in setting terms and conditions for their staff. According to the ETUI, this means that 59 per cent of all German employees are covered by collective agreements. And with pay and conditions covered by negotiations between unions and employers, works councils are free to develop more co-operative relations.

The number of works council members increases with the size of the company. In companies with more than 1,000 employees, there are 15 works council members. All employees are covered by the works council except senior managers. There are no members representing the employer. Since 2001, the gender which is in the minority in the workforce must be represented in proportion to its presence in the workforce on all works councils with more

³ For a fuller discussion of Germany, see *German Lessons*, TUC, 2012.

⁴ <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Germany/Collective-Bargaining>

than one member. The legal basis of the works council is to work together with the employer “in a spirit of mutual trust ... for the good of the employees and of the establishment”. Members cannot, in other words, simply consider the interests of the employees.

Germany’s co-determination system also gives employee representatives the right to seats on the supervisory board of larger companies. One third of supervisory board members are employee representatives in companies employing 500-2,000 employees. This proportion rises to a half in companies with more than 2,000 employees. The Chair of the supervisory board, however, represents the shareholders and can cast a second vote in the event of a tied vote, meaning that the shareholders have the final say in company decisions.

Information and consultation in action: Volkswagen in Germany

Volkswagen AG is one of the largest automotive manufacturers in the world. It has a total of 65 plants, 13 of which are in Germany. As of 31st December 2010, it employed 168,000 people in Germany and 215,000 elsewhere in the world. In 2010, it had a turnover of 126.9bn euros and made a profit of 7.1bn euros. In September 2010, the number of employees in vocational training across the Volkswagen Group exceeded 10,000 for the first time. Its brands, apart from Volkswagen itself, include Audi, Skoda, Seat and Bentley. Examples of Volkswagen cars include the Polo, Golf, Passat and the iconic Beetle.

The Works Council and Supervisory Board at Volkswagen are both very important, even by the standards of German industrial relations. Because of its size, there are 65 Works Council reps (62 of which are IG Metall members) and 20 members of the Supervisory Board, 10 from management and 10 employee representatives. Any decision needs a majority, meaning that there must be at least one Works Council member to vote for it. Major decisions like the opening of new plants or the delocation of plants require two thirds majorities, so can be blocked by trade unions.

In practice, this changes the way both management and trade unions operate. If management want to make changes to increase the success of the company, they have to ensure that they convince the Works Council that this is their intention and the changes proposed are likely to be successful. From a union perspective, the power to say no may be there, but it must be exercised judiciously, otherwise the company may simply end up being unproductive and unprofitable. The outcome is that major decisions affecting the fortunes of the company are discussed and major decisions taken before votes come to pass.

Volkswagen’s Human Resource Manager, Martin Rosik told the TUCs ‘German Lessons’ report: “From my point of view, co-determination does not make it more difficult to take important decisions, but it depends on the way this kind of influence is used by the labour representatives and the company.

Evidence from Germany

There is a big common sense that competitiveness and labour welfare are directly linked to each other.”

Mr Rosik added: “Labour representatives expect the company to be competitive, they force the company to be competitive, and take care of the interests of their members. Here you don’t have the classic understanding of what is whose role in this game. It’s a question of how the unions use their influence. They use it in a way that is not combative, it is handled in an aggressive way if necessary, but it is co-operative. If you have a conversation on a matter of importance, and you have a partner and you discuss with this partner, if he only gives you the answers you expect to hear, you wouldn’t ask him anymore.”

Information and consultation in action: Siemens in Germany

Siemens is an integrated technology company and is one of the best-known engineering companies in the world. It has a presence in 190 countries across the globe. 336,000 Siemens employees work in 1,640 locations around the world, including 176 Research and Development facilities. One of the largest private sector companies in Germany, Siemens employed 128,400 people there in November 2010. Siemens in Germany had revenue of 11.4bn euros during the fiscal year 2010. New orders totalled 11.9bn.

Harald Kern of Siemens Works Council and Gunter Drindle, the Head of the Factory, both spoke favourably of industrial relations at Siemens in Nuremberg, when they spoke to the TUC for ‘German Lessons’. Drindle, like Martin Rosik at Volkswagen, saw the works council as a route to meaningful dialogue which, ultimately, strengthens the company: “You have to know what your team are thinking. There are always some situations that your team members are discussing on the shop floor and with the works councils they can discuss these with members of management. It is important to share these opinions, to share thinking.”

Paradoxically, both management and unions recognise that there is a “conflict of interest” between their two positions, but it is this recognition, and the understanding of the legitimate interests of the other, that makes the relationship work. Harald Kern told us: “Someone has to deal with the interests of the company, in terms of the management, and on the other side in terms of the employees. This is a conflict; the question is how do you handle the conflict. If you have respect you resolve in personal ways, these are basics, the question is do you have a language in common? I think when I look over the other side of the Channel, this is the beginning of your problem, because you don’t have a language with each other. If you have a conflict, you have to speak about the same thing, mean the same thing when you talk about it. You have to be crystal clear. You have to be at eye-level with each other and say, OK, this is our point of view, this is your point of view.”

A summary of lessons from Germany

Germany's famed 'social market model' of capitalism has reaped economic dividends for that country for decades. Important companies like Volkswagen and Siemens welcome the contribution of unions, so long as they use their influence constructively. A conflict of interest is not seen as a negative: it promotes honesty and a shared ownership of problems that is ultimately viewed as positive for the long term development of the company.

Conclusions

There are clear differences between the information and consultation systems in France, Sweden and Germany, but there are also common themes. As the table below shows, all countries considered in this research have substantially stronger information and consultation regulations than those that operate in the UK.

Fig. 1: Information and consultation arrangements in Sweden, France, Germany and the UK

	Sweden	France	Germany	UK
No. of employees required for ICE	1	50	5	50
No. of employee reps in company with 50 employees	n/a	3	5	1
No. of employee reps in company with 200 employees	n/a	5	9	4
Are employee reps required to be trade union members?	y	n	n	n
Does the legal right to representation depend on a minimum number of workers requesting the procedures are triggered?⁵	y	n	y	y

Source: www.worker-participation.eu

Importantly, while Sweden and Germany share the UK’s approach of a trigger threshold (where a certain number of workers need to request the regulations are activated before they become legally binding upon a company) both of these former countries have thresholds far lower than the UK’s: in Sweden only one person needs to make a request, while in Germany it’s only five. In contrast, the UK regulations can only be activated once 10 per cent of the workforce have requested them in a ballot.

In Sweden, Germany and France it is also widely accepted that a workers voice provides a range of benefits. For the company, it can promote loyalty among the workforce, allow management to understand key concerns (and learn from the experience) of company employees and even act as a kind of human

⁵ Only in France is a company legally required to establish information and consultation procedures. However, in Sweden and Germany, these are legally required if one or five people respectively request them. In the UK, they are only legally required in companies of more than 50 people, after 10% of employees have requested them in a ballot.

resources function. One Swedish trade unionist wondered: Why wouldn't managers want to speak to their workforce? For the workforce, information and consultation can provide real protection. It is surely no coincidence that a Swedish multinational has a much lower proportion of agency workers in the plant with strong information and consultation than in the plant which doesn't. In France, it is reported that a company simply couldn't hire and fire in the way that could happen in the UK. And aside from the views of both management and workforce, the cultures of Sweden, France and Germany support a better balance between the needs of the company and those of the workforce than in Britain.

In all the interviews carried out by the TUC for this report, it was put to unions that a cynical company might try to marginalise their influence by putting into place information and consultation procedures that do not guarantee a place for unions and then promoting non-union candidates. No-one denied the possibility of this in theory, although it would not be possible under Swedish law, but there was little evidence of this trend in practice. At Pernod, it was thought to be simply not credible that managers might work in this way. At Ricard, which is part of the same holding company, a non-union staff association is present, but its independence is already questioned. German managers valued the expertise of their workforce, as expressed by trade union members of works councils, and highlighted multiple benefits of strong union relationships.

Nevertheless, if the UK were to strengthen information and consultation, the risk of marginalisation of unions would exist. But the evidence from this report suggests that strengthened information and consultation regulations would support unions and underpin their role in collective bargaining, rather than undermine them. If information and consultation were the norm, rather than the exception, unions would react accordingly, training their reps to use the provisions and taking the opportunity of improved consultation to work with employers to secure and strengthen collective agreements.

A strengthened UK information and consultation framework would also have the added benefit of supporting wider workplace change, moving the UK's workplace culture towards a position where worker consultation was the norm, as well as providing a regulatory framework which could facilitate the election of worker representatives on remuneration committees and company boards.

There are a number of factors that need to be in place for information and consultation to work well. One is constructive unions. Another is constructive management. As Martin Rosik of Volkswagen said, the issue is not giving influence to unions, it is how unions use their influence. Sibylle Quere-Becker of AXA would like the law to provide the minimum, with maximum flexibility for companies and unions to establish their own procedures. Unions in the UK would agree with a flexible approach, so long as there was enough law to

Conclusions

ensure that companies engage constructively. The UK needs a regulatory environment that will bring companies to the table. Encouraging best practice alone, as attempted by, for example, the MacLeod Review under the last Labour Government, will not provide the step-change required.

One or two more observations from this report will be of particular interest to those with little experience of industrial relations. It is interesting that in Germany unions and employers recognise that while there may always be inevitable conflicts of interest points of disagreement also point to the need for joint problem solving. There is perhaps much the UK can learn from an approach to industrial relations which recognises that even when unions and employers take different perspectives on a dispute sensible negotiations, with give and take on both sides, help to build trust in the longer term.

Finally, this report sets out the extent to which workers' representatives want to be heard, and are willing and able to engage constructively and collaboratively with employers – when they are able to do so in a culture of trust and mutual respect. Worker representatives can live with differences, even with setbacks as long as they are not ignored and their concerns and views are taken seriously.

This report shows how information and consultation works in Sweden, France and Germany, comparing systems in those companies with that in the UK. It sets out the benefits that have accrued to workplace practices across Europe from strengthened information and consultation arrangements, and shows that it is time for the UK to learn from their success.

Europe has various traditions of informing and consulting employees, reflecting the histories and cultures of different countries. This makes it difficult to compare one with another, but it is fair to say that the UK system is one of the weakest. More employees must be in post before the right to information and consultation becomes available than in either Sweden or Germany, but even then there is no legal right to information and consultation, as exists in France. It is easier to fire workers in the UK. Intelligent managers are not challenged to build relationships with their workforce; instead they can fall back on lazy thinking about “the right to manage”. Evidence shows that levels of productivity, trust and respect will all be lower in the UK as a result. If we are to build the stronger and fairer economy that we need, government will need to take a lead in setting out the path to change.

Section seven

Recommendations

The UK's approach to implementation of the ICE regulations must be refreshed to make meaningful information and consultation of employees a widespread reality. Such an approach would increase workers' voice in UK workplaces. It would help lead to a stronger, fairer capitalism, where the power of the employer and the rights of shareholders were better balanced by the perspective of another major stakeholder, the workforce. Evidence suggests such an approach would be strongly positive for productivity, allowing management to benefit from the experience of their employees.

The UK's ten per cent trigger mechanism to establish a works council must be scrapped. Workers must have the right to a works council, for information and consultation purposes, if a minimum of five employees request one, irrespective of the size of the company. This is a higher threshold than the Swedish system, where only one worker need request a works council, but is the same as Germany. Employers should also be obliged to negotiate and agree information and consultation arrangements if requested to do so by a recognised trade union(s). Where agreement cannot be reached the standard provisions should apply.

In the medium term it might also be appropriate for the UK to consider requiring all companies by law to establish a works council once a specified number of workers are employed by the business, without the need for a workforce trigger. While some evidence from France suggests that this approach can lead to employers being required to establish arrangements where neither management nor workforce desire one, such a move could also provide a means to secure a powerful shift in the UK towards a workplace culture where consultation with the workforce became the norm rather than the exception. There may well be workplaces where, even with a lower trigger, UK workers fear the consequences of attempting to trigger a consultation arrangement, or where they are simply not aware of their rights. A new universal requirement to consult could be a powerful lever shifting the UK towards a new democratic workplace culture.

Increasing the effectiveness of the UK regulations will also depend upon imposing tougher sanctions on employers who fail to comply; those who ignore their duties under the current regulations can do so with relative impunity. The TUC believes that employers who refuse to establish information and consultation arrangements or who fail to provide information or consult worker representatives should be required to pay protective awards, similar to those which apply to consultation on collective redundancies. The

Recommendations

awards should be paid to all affected employees. The courts and tribunals should also have the power to impose status quo orders which prevent employers from acting or which require employers to reverse decisions or actions until meaningful consultation with a view to reaching agreement has taken place with worker representatives.

A further necessary change is that information and consultation arrangements in the UK should be based not on ‘undertakings’ (as at present) but upon ‘establishments’. The current situation means that in many companies and public services, information and consultation arrangements have to span many different worksites. This makes it difficult for unions to organise around the staff councils. Changing the regulations so that rights to information and consultation arrangements are based on establishments rather than in undertakings would both make them more effective and easier to activate.

Finally, the regulations need to recognise that all workers are equal, regardless of the number hours they are contracted to work each week. The current UK rules mean that part-time employees only count as ‘half a person’ for the purposes of calculating whether information and consultation rights apply or whether a request for such arrangements has been made. This loophole should be abolished, in particular so that workplaces with a predominantly part-time workforce are not disadvantaged when seeking the introduction of consultation arrangements.

The right to a works council must also be widely publicised, including through government advertising campaigns akin to those which inform workers of their right to a pension or of their right to be paid the National Minimum Wage. Works council members must also be entitled to paid time off to attend training courses and, especially, courses in how to understand economic and financial information. Unions could also run such courses for works council members who are also trade unionists and consideration should be given to government funding for such training.

A basic constitution for a works council, stipulating how often it should meet, the range of issues it should discuss, how companies present their information, how far in advance it should be presented and what rights unions have to respond, should be developed by the Department for Business, Innovation and Skills, in discussion with the TUC and CBI. The works council’s size should reflect the size of the company: 15 worker reps in a company of 1,000 people, as in Germany, is not unreasonable. Worker representatives should be able to call in experts to examine and provide alternatives to company proposals, as well as to delay decisions until alternative plans have been considered, as in France. This should be the default constitution for all works councils. Deviations from this constitution should only be possible to improve its provisions, as in France, with the agreement of management and works council representatives.

The UK needs a new deal at work. The last Labour Government took the first, important steps around the creation of a National Minimum Wage and rights to union recognition. It is now time to finish the job. Employees should no longer be asked to leave democracy at the door as they enter their workplaces. The recommendations in this report will make Britain's economy stronger and fairer. They should be implemented as soon as possible.

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