Skating on thin ICE: A critical evaluation of a decade of research on the British Information and Consultation Regulations (2004)

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Abstract

This article critically examines the literature dealing with the British Information and Consultation of Employees (ICE) Regulations (2004). It is argued that notwithstanding significant academic interest, the implications of the legislation for employees, trade unions and managers remain under explored and inadequately theorised. Outlining the principal deficiencies it suggests scholars could derive much inspiration from the voluminous output relating to both the (sister) European Works Council (EWC) directive and the continental works council format. The absence of research dealing with the interconnectedness of the ICE and EWC Regulations is similarly highlighted. It is suggested that researchers might usefully import the concept of 'institutional complementarity' to extend knowledge of the synergies potentially derived from the operation of both pan-European (EWC) and national (ICE) fora in those organisations where such bodies co-exist.

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Introduction

The demise of 'voluntarism' – once a core principle of British industrial relations – has been well documented (cf. e.g. Dickens and Hall, 2006). An important component of this dynamic has been the growth of legally based 'mandated' rights to workplace information and consultation (I&C) driven by the European Union's (EU) social agenda. The European Works Council (EWC) and national level Information and Consultation of Employees (ICE) Regulations afford employees with significant rights to information and dialogue on economic, employment and strategic issues. Significantly, 2014 marks the tenth anniversary of the transposition of the ICE regulations into UK law. Such coincidences naturally incline stakeholders to draw up evaluations and critiques (see Jagodzinski, 2011: 204)

Whilst an immense academic literature now surrounds the EWC directive, scrutiny of the ICE regulations has been far less exacting. As Dundon et al. (2014:26) note, 'the impact of the transposed I&C Directive on employer decision-making powers remains an important and neglected issue'. As a result our empirical and theoretical knowledge of this area is significantly under developed when compared to the EWC directive at a corresponding stage of its evolution and development. As such, the potential costs and benefits of the regulations for the principal stakeholder groups – employees, trade unions and managers, remain largely uncharted. Still more elusive is research identifying the structural conditions (e.g. technology and product markets) that might underpin meaningful consultation. The relatively low level of attention paid to the ICE provisions is surprising given that the directive applies to significantly more British workplaces than its EWC counterpart. Taking these observations as a starting point we argue the need for a greater degree of empirical and theoretical vitality.

In an attempt to inject some much needed theoretical momentum the first part of the commentary highlights those areas where analyses of ICE stakeholder outcomes could usefully borrow from the theoretical maturity of both the sister EWC Regulations and the continental works council format, significantly; the Germanic system of codetermination.

The second half of the article sets out the need for a more holistic research agenda. In recent years parallel, yet wholly discrete streams of EWC (e.g. Waddington 2011a; 2011b and Timming, 2007) and ICE (e.g. Dundon et al. 2014; Koukiadaki, 2010; Taylor, 2009) research have emerged. One important corollary is the absence of data dealing with the institutional interplay of pan European (EWC) and national (ICE) channels of interest representation; specifically, consideration of the various interrelationships e.g. the potential for the cross fertilisation of strategy, ideas and practice. We argue this empirical dualism is untenable, not least because the twin instruments are viewed by the European Commission as *complementary* components of the European social agenda – improvement of living and working conditions, development of human resources and dialogue with the social partners etc. We contend the need for a research strategy that treats 'mandated consultation' as an expansive phenomenon – an interlocking 'regulatory space' (Dundon et al. 2014) – with potentially mutually reinforcing components. Drawing on institutional theory it is suggested researchers could usefully import the concept of 'institutional complementarity' as a theoretical lens to facilitate a deeper understanding of the ICE (and EWC) regulations. Likewise, the potential contribution of a comparative international dimension to ICE research is outlined. Before considering such matters the material commences with a brief overview of the directives.

The regulations

The implementation of the EWC (1994) and ICE (2002) directives represented the realisation of the European Commission's long standing ambition to afford workers with codified rights to organisational participation. The European Works Council directive, transposed into UK law in 1998, following New Labour's adoption of the Maastricht Treaty was aimed at securing information and consultation rights for employees in 'community scale' undertakings i.e. MNCs with at least 1,000 employees and 150 or more in at least two member states. The regulations were seen as a corrective to the creation of the single European market (SEM) in 1987 (Waddington, 2011b: 2) which provided significant possibilities for the international restructuring of operations and the potential for job cuts and social dislocation but afforded no opportunity for employees to influence such decisions (Redfern, 2007: 292). This was an especially significant development for organisations with headquarters in the UK and the Republic of Ireland where one legacy of 'voluntarism' was the absence of a statutory system of information and consultation (I&C) through works council arrangements (see Marginson et al. 2004: 209). The terms of reference of the EWC Regulations include the right to be informed and consulted about transnational decisions including business prospects, employment trends and restructuring initiatives (Marginson et al 2004: 210) as well as investments and the introduction of new working methods and collective redundancies (Eurofound, 2000).

The Information and Consultation directive provides analogous national level rights to I&C for employees in undertakings of 50 or more workers. The directive thus requires employers to inform and consult employees or their representatives about employment prospects and decisions likely to result in substantial change to work organisation or contractual relations, including decisions covered by the legislation on collective redundancies and transfers of undertakings (Eurofound, 2009). Mirroring the EWC Regulations, consultation is concerned

with the exchange of views but stops short of bargaining, the responsibility for decision making hence remains with management (Gollan and Wilkinson, 2007).

Both directives are examples of reflexive or 'soft' law (O'Hagan, 2005:389) and as such impose a fairly modest set of minimum standards (Waddington, 2011b: 2). Organisations are afforded significant flexibility in terms of their strategies of response. There is, for example, no outright obligation on companies to establish I&C arrangements at the two institutional levels - the process has to be 'triggered' by the managers, employees or their representatives. Where the process is initiated by either of the latter two minimum thresholds of support apply. In the discussion that follows we seek to systematically evaluate the stock of knowledge regarding the implications of the ICE directive for workers, trade unions and managers. Given the technical similarities EWC output is used as a benchmark to assess the extant theoretical and empirical limitations of the ICE literature.

ICE: Stakeholder outcomes

Employee influence

While the theme of organisational democracy has been significantly explored within the EWC literature (e.g. Wills, 1998; Stirling and Fitzgerald, 2000) any similar evaluation of the ICE Regulations has been far less exacting. A detailed overview of the now voluminous EWC literature is beyond the scope of this article (see here Jagodinski, 2011) but at a general level of analysis it is possible to track an evolving sophistication within the field. Early accounts of EWC procedures noted they tended to be management led with restrictions placed on the consultative apparatus (e.g. Wills 1998). A more subtle tranche of inputs (e.g.

Quintana Fernandez, 2003) highlighted the potential for ‘institutional conversion’ (Streeck and Thelan, 2005), suggesting these ostensibly pluralist structures were prone to be ‘captured’ (Muller and Hoffman, 2001:86) i.e. reconfigured along unitary lines for the furtherance of aspects of HR policy e.g. the promotion of commitment and awareness of corporate culture. Developing the theme of intentional managerial strategising commentators highlighted a more explicitly ‘Machiavellian’ (Timming, 2007: 251) approach where EWCs were utilised as a mode of labour control via a strategy of ‘proactive fragmentation’ (Timming, 2007: 251) encouraging divisiveness and competition between international plants (see Tuckman and Whitall, 2002). More theoretically ambitious comparative studies drew on comparative institutionalism to relate variations in practice (e.g. restrictive managerial attitudes) to contextual variables including *inter alia* country of origin (Marginson et al 2013), country of location (Marginson et al 2004: Hall et al. 2003) and structural company specific considerations (see Redfern, 2007: 29).

Our knowledge of the workings of the ICE Regulations is more restricted. There was much early conjecture on the implications for voice and the likely employer response. Gollan and Wilkinson (2007: 11) suggested the implementation of the directive had the potential, at least, to ‘transform the UK industrial relations environment’. Hall (2005: 122) extrapolating from the EWC experience, speculated a more realistic outcome was ‘legislatively prompted voluntarism’; that is, the spread of organisationally specific I&C arrangements leaving systems of governance largely intact. Recent years have witnessed the emergence of more empirically based accounts that have usefully served to move debate beyond supposition. Thus, Hall et al’s (2011; see also Hall and Purcell 2012) broad conclusion, based on an analysis of consultation in twenty five organisations, is the directive has had only ‘limited

significance' (p. 22). Such sentiments are echoed in other comparative case study research (see e.g. Cullinane et al. 2013: Dundon et al. 2014; Koukiadaki, 2010 and Taylor et al. 2009).

Useful as the emergent data are an important challenge facing researchers remains the development of (a) typologies that might further the systematic categorisation of ICE structures vis-à-vis the efficacy of voice, particularly important in comparative work, and (b) the creation of analytically exacting models that might explain differences in functionality and outcome.

The most empirically encompassing research to date is the study undertaken by Hall and colleagues (Hall et al. 2011; Hall and Purcell, 2012: 137-159). This ambitious work tracks the four year (2006-10) evolution of consultation under the regulations in a variety of sectors. The study provides much useful information locating the establishment of ICE arrangements within their economic and business context. A classificatory distinction is drawn between 'active consulters', 'communicators' and 'defunct bodies' (p.10). Eight of the fora are categorised within the former category with I&C occurring on strategic, business and organisational issues. Hall et al's three fold typology has the virtue of a broad empirical base and represents a useful point of entry. However, the overly capacious 'activist' classification requires further disaggregation. One prerequisite for an 'active' classification is the exertion of '*a degree* of influence over outcomes' (p. 10, emphasis added) — a potentially expansive gateway. Accordingly, the 'scope' of competence is deemed by the managerial respondents to range from 'effectively negotiation' in one organisation (Hall and Purcell, 2012:139) through to 'dialogue, *not* decision making' (Hall and Purcell, 2012:146) in another (emphasis added). As such no distinction is drawn between satisfactory consultation and what Lecher et al. (2001:48; see below) term 'consultation plus'. Similarly, in terms of the gravity of

discussions, in some organisations this extends to strategic issues which lie at the very outer reaches of the 'range' of issues that could be affected (e.g. decisions on restructuring and redundancies) while in other cases it is seemingly restricted to operational matters and HR policy e.g. pay and staff benefits (Hall et al. 2011: 11). As such a broad range of experiences and outcomes are compressed into a single categorisation.

A more theoretically exacting contribution is the work of Dundon et al. (2014). Drawing on Luke's (1974) multiple faces of power model it is demonstrated how both employers and the state shaped the transposition of the directive to reinforce a preference for voluntarism (p. 34). Macro level analysis of government documents is intelligently linked to micro level case study data to demonstrate how employers in the three case studies were able to dominate the new 'regulatory space' imposing a weak form of consultation. Power similarly figures in Cullinane et al's. (2013) case study analysis of three non union systems of employee representation (NER) revamped under the ICE provisions. The I&C Regulations are seen to do little to enhance the 'latent power' resources of the fora, an outcome manifest in an absence of substantial employee gains. An interesting issue however is whether such outcomes are inevitable in *all* situations. As Cullinane et al. (2013: 828) observe with respect to two of their case study organisations, 'unitary anti-unionism was hardly propitious for the emergence of non-union partnership: the potential for mutual gains might have been different in a more receptive managerial climate…'. Certainly, structures do exert pressures and constraints imposing path dependencies which will shape the power resources of the relevant actors. Nonetheless, there is still scope for purposive managerial action and it is far from inconceivable – especially given the potential linkages to corporate efficiency – (see below) that ICE could be operationalized in a subtle and sensitive way to afford workers with 'option based' (Sisson cited in Dundon et al. 2014: 24) or meaningful consultation.

Knowledge of the factors that could potentially drive the latter scenario remains significantly underdeveloped.

Given the longer period of gestation EWC modelling is inevitably more refined. The work of Lecher et al. (1999) is regarded as seminal in being the first framework for the analysis of EWCs that considers how a variety of internal and external factors impinge on their development and success. A four-fold classification is derived from the interplay of four 'fields of interaction': (i) amongst EWC members, (ii) between EWC and management, (iii) EWC vis-a-vis trade unions, (iv) EWC vis-a-vis existing national employee representative institutions. The four idealised EWC structure delineated range from 'symbolic' EWCs, which merely exist on paper, through to 'participative' EWCs that are autonomous of management and seek to articulate employee interests through both consultation and negotiation (Lecher et al 2001: 57). Significantly, the modelling has a dynamic component, these categories are deemed to capture different stages of EWC development.

Koukiadaki's (2010) multiple case study research draws on Lecher's modelling to identify four types of ICE structures, symbolic, participative, pragmatic and dynamic. While the former two are directly transposed from Lecher, the distinction drawn between the 'pragmatic' and 'dynamic' categories requires conceptual refinement. The former are deemed to provide 'average' information', while the latter are designated 'satisfactory' in this respect. Given one is an objective assessment, the other a normative judgement, the precise contrast to be drawn is somewhat amorphous. Similarly, in terms of nomenclature, does 'pragmatic' refer to managerial strategy vis-à-vis legal compliance, attitudes towards trade unions or both? Such issues are not directly confronted.

The modelling of ICE structures clearly remains 'work in progress'. Scholars might do well to look to the German works council prototype for inspiration where Kotthoff (1994) was the first to develop a sociologically robust typology capturing gradations of effectiveness based on a large data set - sixty three case studies in six industries. This resultant modelling, followed by amended typologies (see Frege, 2002:226), was based on a range of actor focussed variables including management perceptions of the function of the works council, works councillors' perception of their role and communication between management and works council. This approach yields seven ideal types of works council. Interestingly, no less than four of these potentially map onto Hall et al's (2011; see also Hall and Purcell, 2012) expansive 'active consulters' categorisation (see Figure 1 below) highlighting the need here for the further refinement of British modelling.

Take in Figure 1 about here (p. 33)

This bespoke model of course reflects the strong powers imposed on German Works councils under the codeterminations laws and the maturity of the institutions. The challenge facing UK researchers is the development of a correspondingly discriminating bespoke categorisation which might similarly explain how structural factors and social relations influence the efficacy of the voice process under the ICE Regulations. Mirroring Lecher et al's (Lecher et al. 1999: Lecher et al. 2001) EWC research, an evolutionary dimension cataloguing different stages of development and maturity would be a welcome addition.

The trade union dimension - beyond the 'Trojan Horse' hypothesis

As Brewster et al. (2007: 69) note, 'changes in regulatory forms open up both challenges and opportunities'. Accordingly, consideration of the potential implications of mandated

consultation for trade unions received much speculation. Certainly the EWC Regulations attracted significant comment vis-a-vis the pan European implications for organised labour. British industrial relations scholars have similarly enjoyed the opportunities for conjecture afforded by the ICE directive. Turning firstly to EWCs, Banyulus et al. (2008: 532) have usefully highlighted the nub of the issue, referring to the 'tensions of micro corporatism caught between inter-national solidarity and regime competition'. At an optimistic level it is suggested EWCs hold out the potential for 'horizontal integration' i.e. cross national collaboration of the labour movement. From this perspective EWCs are viewed a potential precursors for innovative modes of workplace solidarity, European level collective bargaining, and by inference, trade union renewal (Taylor and Mathers, cited in Banyuls 2008:534). A more pessimistic interpretation, highly prominent within the early literature, cautioned representatives might become parochial defenders of national interests (Schulten, cited in Weston and Martinez Lucio 1998), engaging in 'productivity coalitions' with local management, actually undermining labour solidarity.

This important theoretical dichotomy remains under explored. Certainly it is well accepted that EWCs have not acted as engines for pan European collective bargaining and that trade unions in general have been unable to define a clear strategy for EWCs (Hann, 2010). There *is* some evidence of management utilising EWCs as a mode of 'proactive fragmentation' (Timming, 2007: 251) to disorientate and disunite representatives (Timming, 2007). Equally, there is evidence, albeit limited, (e.g. Banyuls et al. 2008) of EWCs being used to attenuate the consequences of regime competition with international delegates acting in unison with a sense of international solidarity. The antecedent factors that might underpin the emergence of these very differing scenarios have not been significantly explored.

Consideration of the opportunities and challenges posed to trade unions by the ICE Regulations similarly received much initial speculation (see e.g. Gollan and Wilkinson, 2007:1153-1155). There are early references to unions adopting a 'wait and see' approach (Doherty, 2008: 616) but little evidence of an evolving strategy. Mirroring early EWC output, interpretations of the consequences for trade unions had a tendency towards polarisation. One early proposition was the ICE provisions might enable trade unions to mount a recovery (see Storey, 2005: 14) – the 'Trojan Horse' (Gollan and Wilkinson, 2007: 1154) hypothesis. Simply put, unions open up a second front actively colonising the consultative apparatus in non-union and partially unionised organisations, and is so doing, demonstrate the value of independent representation. The alternative prognosis is that of trade union 'marginalisation'. Under this interpretation the provisions are used to 'dilute' (Storey, 2005: 14) union influence where it exists e.g. into a dual channel format or to dissipate potential recognition drives (Storey, 2005: 14).

Hitherto the salience of these competing predictions has received scant empirical scrutiny. Hall et al's (2011) aforementioned analysis of the operation of ICE in twenty five organisations - fourteen of which were unionised - points to unions reacting 'cautiously' with limited evidence of colonisation (Hall et al. 2011: 21). Equally, in Cullinane's et al's (2014:828) study of *Britco* the union was 'disinterested in utilising the potentials afforded' by the ICE legislation. In terms of managerial strategy Koukiadaki's (2010) study in five financial and business service companies indicates a fairly neutral, if unsupportive managerial approach to union involvement. In two of the organisations the ICE structures were developed 'indirectly' to 'discourage' employee commitment to union based arrangements (Koukiadaki, 2010: 19; see also Dundon et al 2014: 31-32), while one union was able nonetheless to utilise the structure for intelligence and to expand the remit of

consultation. Taylor et al's (2009) research does point strongly, however, towards marginalisation with consultative arrangements over redundancies being used to constrain union ability to contest restructuring.

The theme of union strategy requires careful, multi-layered consideration. Dundon et al. (2014) touch on this theme concluding the ambivalence of national union officials towards the ICE directive has aided the ability of employers to occupy and dominate this space. It is important nonetheless not to ascribe strategic intent solely to full time officials (FTOs). It has long been accepted that the FTO-lay activist interface constitutes a fundamental cleavage within the trade union movement (see Heery and Kelly, 1990: 76). Inertia at national (FTO) level need not preclude a more inspired local response from lay activists, especially those eager to extend their own jurisdictional claims — voice is a political and contested process, no less in intra union terms. A full contextual understanding is again necessary.

'***Serving different masters'* — *managerial considerations***

The principal purpose of mandated consultation is to provide institutional adjustments that will afford employee representatives with influence over decision making, – equity and industrial democracy considerations dominate evaluations of effectiveness. The European Commission however has long championed employee voice as a component of organisational efficiency. As the Commission noted in 1998, 'Information and Consultation are factors for productivity as they contribute to the creation of a highly skilled and committed workforce (CEC, 1998: 2). As such there is a need to redefine 'effectiveness' beyond employee interests and the democratisation of the workplace and consider the implications of mandated consultation for the managerial and practitioner constituency. Certainly, within the UK, the legitimising rhetoric surrounding the transposition of the ICE Regulations in 2004 was

couched in terms of the latter ‘business case’ (Gollan and Wilkinson, 2007: 1148) narrative. Indeed, the regulation of consultation was a core component of New Labour’s Third Way discourse on the compatibility of workplace fairness and economic efficiency (see Tucker, 2010:112 and 120).

The ‘black box’ issue of precisely how consultation might enhance corporate efficiency and serve a ‘market creating’ (Tucker, 2010: 121) function is typically ill specified. According to Storey (2005:3) the path to ‘high performance’ is to be steered by ‘high commitment’ and this in turn requires an informed, knowledgeable and fully consulted workforce. Approached from the perspective of HRM, mandated structures of consultation thus represent new platforms for communication (Muller and Hoffman, 2001: 92), the study of which dovetails into important HR issues including empowerment, employee involvement and the promotion of organisational culture (Muller and Hoffman, 2001: 92).

The relationship between consultative voice and corporate efficiency is a well-trodden theme within the German works council literature (e.g. Frege 2002: 234-236). Simply put, the principal justification for voice rests on the argument that communication fosters trust because employee representatives are able to judge whether the information from the managerial team is reliable (Freeman and Lazear, 1995). This may in turn serve an important legitimising function e.g. during the introduction of new technology, reducing resistance to change (Frege, 2002:236) enhancing discretionary effort. The reduction of information asymmetries invoked by micro-corporatist arrangements gives rise furthermore to more informed decision making, fostering new and better solutions (Frege, 2002:235). The impact of German works councils on a range of performance indicators e.g. profit, capital investment, product innovation and ‘quit rates’ has been subject to a fair degree of

econometric assessment (for a summary see Frege, 2002: 236-240) the results of which are however largely equivocal (Frege 2002:239).

Normatively speaking EWC and ICE institutions are more propitious contexts for 'optimistic pluralism' (Tucker 2010). As Frege (2002: 239) reminds us, [German] works councils were never introduced to enhance the performance of the firm. A comparable strand of econometric research exploring the impact of ICE (and indeed EWC) structures on organisational efficiency has nonetheless failed to emerge. As such it is not known if the consolidation of existing power asymmetries has implications for efficiency as well as equity. Returning to the German works council experience, Frege (2002: 239) has argued there is a need to blend sociological insights into economic analysis — this applies no less to ICE (and EWC) structures.

To summarise the argument thus far, ICE research remains significantly underdeveloped. There has been some consideration of the implications for employee voice but the overall limitations of this line of research are reflected in the unambitious and inexact nature of the typologies abstracted. Our knowledge of the implications for the other stakeholders is, if anything, more impoverished. As indicated, ICE scholars can draw much inspiration from the theoretical platform provided by the greater maturity of European and national works council research and we have sought to delineate some potentially fruitful avenues of investigation. More broadly, it is essential that the research community takes a more holistic methodological approach and considers (a) the synergies and complementarities that exist between the two (EWC and ICE) modes of regulation, and (b); the potential contribution of international comparative research. These lines of argument are developed below.

Opportunities for theory building

(a) ICE and institutional complementarity

Scholars seeking to probe the EWC-ICE nexus might do well to look to elements of contemporary institutional theory for theoretical insight. The theme of 'institutional complementarity', famously explored within the field of comparative political economy (e.g. Hall and Soskice, 2001) has been overlooked by ICE (and EWC) analysts. This is surprising given reference to the EU polity's multi-level governance system as a 'jigsaw', the potential impact of one element of which cannot be assessed properly without linking it to the other pieces making up the whole (see Jagodzinski et al. 2007: 1-2). The phenomenon of institutional complementarity occurs when the functional performance of an institution is conditioned by the presence of another and vice versa (Höpner, 2005:383). It is especially pertinent to the theme of European regulation given this is 'composed of several interconnected elements' (Jagodzinski et al. 2007:11).

A number of opportunities for theory building follow. The literature recognises the need for EWCs to establish links with other institutions (e.g. Lecher et al, 1999: 81-82) as a precursor for effective representation. Lecher et al. (1999:3) thus refer to the 'critical link' between EWCs and 'national structures of interest representation. The necessity for networking and capacity building is similarly a requirement the European Commission has long been sensitive to:

> In order to exchange information and be consulted effectively at Community level, it is necessary for efficient information and consultation systems to exist at national level and for the different levels of worker representation within undertakings or groups of undertakings to be linked with each other (Commission of the European Communities cited in O'Hagan, 2004: 399).

Articulation between the European and national level is less problematic (see Lecher et al 1999:225-228) within countries where complementary national works council channels of representation operate (e.g. German works councils and the French *comité d'enterprise*). However, within a predominantly non union systems of industrial relations, such as the UK, where there is no tradition of regulated employee representation, there may well be an 'institutional gap' (Hall et al. 2003). One corollary is the potential for EWCs to become isolated and detached from their constituencies where this institutional form is crudely superimposed onto extant systems of corporate governance. Given the ICE corrective – and the recasting of national level representation – there is potential for I&C structures to become a key component of a broader network of interconnections (see Martinez Lucio and Weston (2000: 21-212). Researchers could usefully explore the degree of articulation and interest aggregation between the two institutional levels. Do ICE structures act as conduits through which EWC representatives cascade matters downstream as widely used in continental Europe (see Lecher at al. 1999)? Might ICE structures act as 'signaling mechanisms' (Marginson et al. 2004: 211) alerting European works councilors to local decisions that may have a transnational dimension? Do delegates at the two levels network and share intelligence and a common strategy vis-à-vis the pursuit of joint interests or is this stifled by jurisdictional claims, competition and tensions?

A closely related issue concerns the potential for 'institutional isomorphism' (Meyer and Rowan, 1977) i.e. consistency of practice between organisational EWC and ICE systems of representation. At a general level of analysis, data on the operation of EWCs indicates their contribution to industrial relations is limited (e.g. Redfern, 2007). An important analytical question concerns whether such inefficiencies at pan European level are replicated within national (ICE) structures of consultation – a wholly plausible scenario.

A variety of factors might conspire to circumvent the effective operation of EWC voice at transnational level (see Marginson et al. 2004) e.g. a lack of cohesiveness amongst employee delegates and a minimalist managerial approach to the regulations, perhaps driven by (neo liberal) country of origin factors and so on. At national level the latter feature could again be a significant driver invoking a highly restrictive and minimalist interpretation of the ICE Regulations within British MNC subsidiaries. There are however different permutations in the potential patterning of voice at the two levels. MNCs headquartered in the 'insider' economies of continental Europe, where there is a tradition of mandated voice - as in the German codetermination archetype - are more likely to provide EWC delegates with useful information and engage in consultation than those of British and American origin (Waddington 2001; see also Marginson et al. 2004:231). However, there could be an element of institutional 'incoherence' at work that restricts the potential for 'cross national isomorphism' (Ferner, 1997:26) i.e. the ability to introduce country of origin patterns into host country [ICE] governance systems. The supportive predisposition towards mandated voice, effecting perhaps a 'participative' (Lecher, 2001: 57-58) EWC, could conceivably come up against pressures for 'local isomorphism' and the 'not invented here syndrome' (Kostova. 1999: 318), invoking a wholly defensive and restrictive interpretation of the ICE Regulations by British subsidiary management. It goes without saying there are numerous alternative scenarios. National I&C arrangements might be implemented by the subsidiary in a manner that is isomorphic or 'consistent' with the democratic ideals of the parent as a means of gaining favorable judgments and intra organisational legitimacy (see Kostova, 1999: 319). Future research should explore the nature of voice at the two institutional levels and identify the factors driving differential patterns and outcomes.

A further issue concerns managerial strategy vis-à-vis the navigation of the two sets of 'soft style' (O'Hagan. 2005) regulation. Little is known about how the pan European experience of the EWC directive colours attitudes towards the ICE Regulations. The EWC directive has been characterised as a managerial tool to consolidate strategies of control over labour (Weston and Martinez Lucio, 1998: 556). This function is aided by the 'neo voluntarist' (Streeck, 1994: 165) nature of the regulations which afford employers significant strategic choice and flexibility in terms of the precise nature of implementation. Prior to September 1996 so called Article 13 EWC negotiations took place 'in the shadow of the law' (Bercusson cited in Waddington, 2011b: 12). They were, in other words, exempted from the provisions of the EWC directive and as such the competence of the bodies was a matter for management-representative negotiation. Adopting this 'voluntary' approach allowed organisations to assert control over the process and ensure consultative procedures were 'tailored to the circumstances of the enterprise' (Carley and Hall, 2000:105) and consistent with extant HR practice (Redfern, 2007: 302-303). Organisations eschewing the Article 13 route (open until 1996) ran the risk of having more demanding centrally imposed 'subsidiary requirements' imposed on them by default under Article 6.

This proactive approach has its counterpart under the ICE Regulations. So called 'pre existing agreements' (PEAs) 'allow a wide margin of flexibility concerning the structural and operational aspects of I&C arrangements, such as the definition of the subject matter and the timing of information and consultation' (Koukiadiki, 2010: 4). Researchers might usefully cross tabulate whether the use of Article 13 agreements in MNCs similarly spawned the cautious utilisation of PEAs. Do managerial experiences of the EWC directive shape strategies towards ICE? That is, are the voluntarist clauses used defensively in both instances to 'undercut' the standards set out in the default provisions?

A final intriguing development in this ‘still unfinished jigsaw’ (Worker-Participation.EU: 2014) is the impact of the European Company Statute (SE) (2004). The main purpose of the SE statue (EC2157/2001) is to enable companies to operate their businesses on a cross-border basis in Europe under the same corporate regime (Worker-Participation.EU: 2014). The SE represents a potentially important building block in the Europeanization of industrial relations (Müller and Hoffmann 2001:87) because it provides for employee board level representation (EBLR). As such board level representation has been indirectly spread to countries, including the UK, in which such representation does not exist in the domestic corporate governance system (Worker-Participation.EU: 2014) opening up an additional channel for interest representation. Consider here, for example, Jagodzinski et al’s (2007) discussion of Allianz, a German multinational financial services company, where board level representatives come not only from Germany but also the UK (and France). As has been forcefully argued by the ETUI however – absent strong linkages to representational bodies at the workplace (e.g. ICE structures) EBLR could remain a ‘loose head without legs’ unable to exert any influence on company policies (Worker-Participation.EU: 2014). Once again researchers need to understand and critically evaluate the interrelationships between ex ante involvement in board level strategic decision making and ex post ICE (and indeed EWC) influence over implementation.

(b) The need for international comparative research

Our understanding of the British experience of the ICE Regulations – and the opportunities and challenges posed for the main stakeholders – would also benefit from a broader analysis of international political economy. Such an approach has long informed EWC research where much work has been undertaken exploring the contingencies that influence diversity in

practice. Drawing inspiration from broader business system analysis (e.g. Hall and Soskice, 2001) it is well accepted that practice will be driven (at least in part) by the interplay of 'country of origin' and 'country of location' factors (Hall et al. 2003). As noted, research infers the impact of EWCs on the decision making process is less in MNCs headquartered in 'liberal market' (Hall and Soskice, 2001) economies when compared to their 'co-ordinated' counterparts in Western Europe (Marginson et al. 2013).

Comparative international research examining the workings of the ICE directive is as yet undeveloped. An obvious area of inquiry concerns the operation and embededness of the regulations in liberal market versus coordinated market economies in view of the clear differences that exist between these national business systems – specifically the organisation of cooperate governance (Hall and Soskice 2001). Drawing on the scrutiny of EWCs it might be hypothesised the ICE directive will simply beget more or less linear extensions of national systems of voice — the provision of useful information and meaningful consultation is less evidenced in UK MNCS compared to those based in continental Europe (Waddington cited in Hall et al. 2003: 77). A more intriguing, if less theoretically orthodox approach, might be for ICE scholars to undertake a narrower 'within system' (see Lamare et al. 2013) 'varieties of neo liberalism' analysis. That is, for all intents and purposes, an evaluation of the Anglo-Irish experience. As Lamare et al. (2013) convincingly argue, host economies differ, not just as suggested by the varieties of capitalism approach, between types of coordination in capitalist economies, but also *within* these types.

There has been significant speculation on the potential implications of the ICE Regulations for the UK (e.g. Gollan and Wilkinson , 2007; Hall, 2005) and to a lesser degree Ireland (see e.g. Doherty 2008), but minimal *comparative* analysis has emerged thus far (Cullinane et al.

2013 and Dundon et al. 2014 remain exceptions). Conventional analysis brackets the two countries as exemplars of a voluntarist approach to organising the employment relationship (e.g. Hall et al 2011: 1). Closer scrutiny of the Anglo-Irish context, however, cautions against a parallel set of outcomes. Dobbins (2010: 515) draws attention to the 'hybrid' nature of Irish industrial relations, where until recently 'permissive voluntarism' (Dobbins, 2010:499) operated in tandem with a corporatist peak level partnership (Dobbins and Gunnigle, 2009). The Irish legitimisation of collectivism and the institutionalisation of voice suggests the Irish context is a potentially more propitious host for the ICE Regulations than the UK where government hostility to trade unionism (and by implication pluralism) is more entrenched.

The legitimacy enjoyed by the Irish trade union movement was reflected in the transposition of the ICE legislation. While within the UK the unions 'were written out of the script' (Taylor et al. 2009:32) of the standard I&C provisions it is 'significant' (www.eurofound.europa) that under the Irish legislation where a trade union represents 10 per cent or more of the workforce the union is afforded pro rata representation rights (Doherty, 2008: 615). In contrast to the UK the legislation hence puts trade unions in a 'privileged position' (Doherty, 2008: 617). One consequence is employers are afforded far less opportunity for trade union marginalisation. Taken together, such contingencies point at the very least towards a potentially indeterminate set of outcomes. The scope for variation within a broader neo liberal approach to the operationalisation of mandated consultation may be wider than is commonly assumed.

Concluding comments

The ICE Regulations were originally lauded as a significant development, one that had 'the potential to transform the UK industrial relations environment' (Gollan and Wilkinson, 2007:

1145). Exactly a decade on, as the first wave of the fora so constituted move into a relatively mature phase, there remains a significant disjuncture between the original 'hype' and our knowledge of the dynamics of these institutions. Two sets of theoretical implications follow. First, the sociological modeling of ICE institutions remains severely undeveloped. This is a significant theoretical shortcoming; not only does such modelling have considerable heuristic purchase in its own right, it is also an essential precursor for the advancement of future bivariate analysis e.g. the relationship between differing ICE regimes and the degree of employee trust in management and related organisational outcomes (e.g. performance). We similarly know virtually nothing about the strategic response of the trade union movement — the Trojan horse/colonisation hypothesis patiently awaits empirical scrutiny. Still more obscure are data on the principal practitioner issue – linkages to HRM and the purported business value to be accrued from enlightened and knowledgeable workers.

The second theoretical implication is the need to arrest the division of EWC and ICE fields of inquiry. Müller and Hoffman (2001:47) have bemoaned the fact that the central components of the European industrial relations model are generally discussed independently of one another. Developing this theme it has been suggested that, researchers 'should try to overcome the ontological divide between macro and micro analysis' (Müller and Hoffman (2001:129). Waddington (2011b: 24) has stressed EWCs are 'located within a *multilevel* web of institutions that is in is state of flux' (emphasis added). Hitherto, however, linkages to the ICE component of this institutional network and the resultant tensions and complementaries have remained unexplored. This is untenable within the context of an emergent multi-level governance system (Marginson and Sisson, 2004) where within MNCs both sets of institutions are increasingly likely to be operational. As has been argued by the ETUI, 'it is advisable to understand the pieces as part of a puzzle and to examine how they might be

fitted together' (Worker-Participation.EU: 2014). The importance of multilevel level analysis in MNCs has similarly been stressed by intuitionalists such as Kostova (1999) but hitherto scholars of both EWC and ICE structures have remained skeptical, operating within their respective research domains. Managerial strategy, and that of the other stakeholders for that matter, will be informed by experiences at both institutional levels. There is, accordingly, a need to build national (ICE) and pan European (EWC) analyses into explanatory models to further our understanding of the complexities of mandated consultation. Comparative international research on the workings of the I&C provisions would help to complete the picture.

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Figure 1: 'Active' Modes of German Works Councils

- The respected works council as regulator (in large share holding firms). The works council is respected as an autonomous interest representative; its focus is on interest compromise; it is mainly reactive rather than proactive.
- The respected, steady works council (in firms with a high density of highly skilled workers). Management and works councils want to ensure that the law is practiced; the works council is co-operative but can also be conflictual.
- The works council as a cooperative counterpower (in large firms). The works councilors are highly skilled; the council has a strong relationship to the union.
- The class conflictual works council: here there is distrust on both sides, strong solidarity between workers, works council and union.

Source: Frege, 2002: 236-237