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Employment regulation, game theory, and the lacuna in employee participation in liberal economies

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Abstract

Employee participation is a vital ingredient of what the International Labour Organization (ILO) calls ‘representation security’. This article provides theoretical and empirical insights relating to social policy impact of worker participation, specifically the European Information and Consultation Directive (ICD) for employee voice rights. While existing research on the ICD offers important empirical insights, there is a need for further theoretical analysis to examine the potential effectiveness of the regulations in liberal market economies (LMEs). Drawing on data from 16 case studies, the article uses game theory and the prisoner’s dilemma framework to explain why national implementing legislation is largely ineffective in diffusing mutual gains cooperation in two LMEs: UK and the Republic of Ireland. Three theoretical (metaphorical) propositions advance understanding of the policy impact of national information & consultation regulations in LMEs.

Introduction

This article considers the multi-level institutional governance interface (Jackson and Deeg, 2012) between European public policy, national level legal transposition, and employment relations responses by organizational level actors, regarding the impact of the EU “Information and

Consultation Directive” (2002/14/EC) on employee voice in the Liberal Market Economies (LMEs) of the United Kingdom (UK) and Republic of Ireland (RoI). The impact of the ICD on employer decision-making powers and employee voice rights is an important and under-researched area. Employee voice at work also relates to the extent of what the International Labour Organization (ILO) terms ‘representation security’.

The article advances theory and empirical contributions concerning policy and practice regarding worker participation rights, utilising the prisoner’s dilemma concept in game theory. The few existing studies of the ICD offer substantial empirical insights about diffusion and emerging practice (Taylor et al., 2009; Authors1; Hall et al., 2013, 2015). But extant research does not provide sufficient theoretical conceptualization to explain why the Directive has been largely ineffective in LME contexts in providing employee voice. Important ILO indicators of ‘representation security’ regarding employee voice provision are the effectiveness of the legal and regulatory framework for diffusing voice, as well as the existence at organizational level of collective representative bodies to which workers can belong to and have a say in at work. This article seeks to contribute to knowledge by assessing why the EU ICD and the transposed national employee voice regulations in the UK and Ireland have failed to generate ‘representation security’ and sustainable mutual gains cooperation at the micro level.

The article is structured as follows. Three explanatory theoretical propositions are advanced in a metaphorical sense in the literature review to explain why minimalist macro regulatory design has inhibited mutual gain outcomes at workplace level: (P1) regulatory design faults with the ICD itself and how it has been transposed nationally through employee information and consultation regulations in LME contexts restricts social dialogue and mutual trust regarding voice arrangements; (P2) the extent of mutual gains outcomes is likely to be minimal owing to such

institutional design faults, and game theory is scrutinised to help understand why this is so; and (P3), perceived uncertainty of outcomes means that mutual gains cooperation is likely to be too much of a high risk strategy for management and employees to engage in robust and enduring employee voice regimes. These three propositions are assessed in section 4 with data from sixteen case study organisations, using insights from game theory and the prisoner's dilemma concept in labour economics (Leibenstein, 1982; Trif and Brady, 2013). Finally, the discussion assesses the empirical data against the propositions, and identifies social policy implications for (re)regulation of I&C rights.

Employment regulation of I&C in liberal economies

The Information & Consultation Regulations

The European Commission had three explicit social policy rationales underpinning the ICD: to establish minimum standards of I&C enshrined in legislation across the EU; to strengthen the efficacy of national I&C legislation (stemming from the Renault Vilvoorde case); and finally, to improve synergies with other related Directives, such as European Works Councils and collective redundancies (European Commission, 2013). It was perceived that the ICD would have greatest public policy impact in the UK and RoI as they were the only two European Union (EU) member states at the time of its inception lacking general legislation on employee voice rights (Authors4; Hall et al., 2013, 2015). In comparison, some other EU states like Germany had a history of statutory backing for works councils (Hassel, 2014).

The EU Directive (2002/14/EC) was introduced with the express intention to promote 'social dialogue and mutual trust between management and labour' (European Commission, 2013). It requested member states to introduce permanent general arrangements to encourage management support for workplace dialogue in three broad areas: i) provide '*information*' pertaining to the

economic situation of companies; ii) enable ‘*information and consultation*’ concerning threats to employment; and iii), ‘*inform and consult employees, with a view to reaching agreement*’, on decisions linked to changes in work organisation or contractual arrangements.

But after many years in gestation having being first raised by the European Commission in 1995, the ‘soft’ ‘watered down’ design of the ICD that finally emerged at EU-level in 2002, and its subsequent minimalist transposition through national-level regulations in LMEs (UK and Ireland), has militated against effective social dialogue and mutual trust in organizations (Authors, 2014). In large part, this is because EU-led regulation has gravitated from ‘harder’ laws (such as equal pay and health & safety) towards ‘softer’ lighter touch measures allowing member states greater latitude to transpose arrangements fitting national industrial relations cultures (Streeck, 1995; Gold, 2010). What distinguishes emerging EU social policy is its ‘low capacity to impose binding obligations on market participants, and the high degree to which it depends on various kinds of voluntarism .. in the name of self-regulation’ (Streeck, 1995: 45-49). Regarding the ICD, the ‘soft’ rules adopted at EU-level had already done much to stall any momentum on employee voice rights emerging at national level. In particular, the Directive left it open to national governments to decide whether or not to adopt an ‘opt-in’ or ‘opt-out’ approach to transposition. The ‘opt-in’ option means that an employer only has to set up an IC structure if formally asked to do so by a group of employees. In contrast, choosing an ‘opt-out’ approach would mean that every employer falling under the scope of the Directive would be obliged to put an IC structure in place unless employees made it clear they were not interested. Furthermore, *Article 1* of the Directive (2002/14/EC) gives national governments great scope for variability of IC arrangements: ‘The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual Member States in such a way as to ensure their effectiveness’. Likewise, under *Article 5*, actors in each Member State are free to develop customized arrangements - such as direct communication channels between management and

employees - that differ from the stronger fall-back Standard Rules on elected employee representatives contained in *Article 4*; on the proviso that employees are in agreement with continuation of direct arrangements.

The import of these ‘soft’ EU-level IC regulations has been influenced by extensive behind the scenes lobbying at EU level by governments (notably the UK and Ireland) and employer associations, in order to restrict the potential impact of employment regulations on business decisions. Such lobbying adds an important political narrative which signals the ubiquitous ‘re-regulation’ of employment rights. Within the context of a wider neo-liberal project, attempts to deregulate workplace rights through lobbying involves extensive regulatory rules transposed from transnational to national levels to ensure minimal impact from I&C laws (Authors, 2014).

Consequently, facilitated by the very general and permissive nature of the Directive itself, both the UK and Irish governments transposed the ICD in a ‘light touch’ manner befitting their ‘national customs’ (voluntarism, managerial prerogative). In the UK, while the Confederation of British Industry opposed collective worker rights, transposition was relatively uncomplicated: for the first time, a tripartite agreement was struck between the UK government, CBI and Trades Union Congress (TUC) (Hall et al., 2013, 2015). In the RoI, however, events were more controversial, because employers and government wanted to prevent legislation advancing mandatory collective voice systems perceived to jeopardize inward investment by (non-union) US multinationals, upon which the country is heavily reliant (Lavelle et al., 2010).

The UK and RoI legislation is similar but not identical. The ICE Regulations (2004) in the UK, and the Employees (Provision of Information and Consultation) Act (2006) in RoI, are both minimalist procedures, for two main reasons. First, both provide significant scope for employers to implement their own customised direct (individualised) I&C, instead of, or alongside indirect (collective) dialogue via ‘employee representatives’. Second, the transposed legislation adopts the ‘opt-in’ route

permitted by the Directive - defining employee rights to I&C as an elective and not automatic right available to all workers. Thus, management do not need to take action or change policy unless 10% of their employees actively 'trigger' statutory procedures (in Ireland this is capped at 100 employees and 2500 in the UK). The 'opt-in' process is in practice a hurdle many employees will find difficult to jump, especially for those already denied union representation, and/or fearing employer reprisals (Authors3). In reality, therefore, it appears easy for employers to customize their own preferred organisation-specific direct communications practices, and avoid the stronger fall back rules on employee representation.

The themes of *degree*, *level* and *scope* of employee information and consultation are validated instruments that will be drawn upon to test Proposition 1 below (Marchington and Suter, 2013).

Degree of I&C considers the extent to which employees and/or their representatives influence and share management decisions, ranging from basic one-way information provision and two-way communication at one end to codetermination at the other end of an escalating scale. Most I&C gravitates towards the bottom of the escalator; often a mix of information dissemination, two-way communication, and possibly elements of informal consultation (Authors5). *Level* refers to where I&C occurs: task, team, workplace, establishment, division, headquarters. Marchington and Suter (2013) note that while I&C can exist at corporate headquarters level in multinationals – worker directors on boards, for instance – it mostly occurs at lower levels. *Scope* refers to the range of issues over which employees have some say (Authors5). This may vary considerably from quite trivial 'tea and toilet' type issues (canteen menus, office layout), up to sharing power over strategy at board level.

Research assessing the design and transposition of I&C regulation is still not widespread.

Comparative research on employee participation across Europe found that flexibilities built into the ICD varied according to national legislation and particular customs (Hall and Purcell, 2011).

Further, using international comparative data, Brewster et al., (2014) express concern about the functionality of liberal varieties of capitalism to generate effective workplace collaboration. This liberal regulatory approach, coupled with narrow *scope*, low *level* and shallow *depth* of I&C practices, means the Directive's impact is likely to fall short of its proclaimed transnational (European) public policy intent to diffuse social dialogue and mutual trust in organizations. This is potentially most evident in the UK and RoI, where there is little uptake of I&C arrangements, legal rights for workers have to be triggered, and there is great scope for enterprise-variable direct communication, as opposed to deeper forms of representative participation. Hall and Purcell (2011) note that countries with higher coverage of I&C bodies - Austria, Belgium, Denmark, France, Germany, Netherlands - tend to have mature embedded I&C systems that can be technically mandatory.

Much existing literature suggests that minimalist institutional design of implementing legislation at European and national level has limited functionality of I&C at micro-level in liberal economies, in terms of capacity to diffuse power-sharing voice (Taylor et al., 2009; Koukiadaki, 2010; Hall et al., 2013, 2015; Brewster et al., 2014). However, such studies do not offer theoretical explanations of why regulations fail to generate mutual gains. Hall et al., (2013) show that, following implementation of the UK's ICE Regulations, employee voice in British firms has been designed primarily on managements' terms: while a minority of cases were categorized as 'active consulters', most were 'communicators'. Beyond providing a catalyst for managerial moves to introduce I&C, impact of the UK ICE Regulations was deemed largely peripheral and diluted. Elsewhere, Taylor et al., (2009) question the capacity of the ICE Regulations to influence redundancy outcomes, while Koukiadaki (2010:366) concludes that 'much work remains to be done on the ways in which such information and consultation arrangements can evolve as effective mechanisms for the exercise of the 'voice' rights that the Directive confers'. Proposition 1 has been formulated from the discussion above:

P1: The intent of the EU ICD is to diffuse social dialogue and mutual trust at work. However, the 'degree, level and scope' of employee voice falls short of this intent because of the permissive design of the Directive itself and minimalist transposition of national I&C laws in LMEs, in particular.

Game theory and asymmetric outcomes

The discussion now considers how regulatory design faults with the Directive and transposed national laws in LMEs may inhibit mutual gains outcomes, and how this can be conceptualized. When considered in the LME contexts of the UK and RoI, the prisoner's dilemma problem in game theory shows why two parties might not cooperate in pursuit of mutual gains outcomes, even if it actually might be mutually beneficial to do so (Leibenstein, 1982; Aoki, 1984; Freeman and Lazear, 1995; Trif and Brady, 2013). Albert Tucker 'officially' coined the term 'prisoner's dilemma', with the following example of prison sentence outcomes (see Poundstone, 1992): two suspects from a criminal gang are imprisoned on a bank robbery charge. The police do not have enough evidence to convict the pair on the principal charge, but plan to sentence both to one year in prison on a lesser charge. However, the police offer each prisoner a deal simultaneously: if they testify against their partner, they will go free, but the partner will get ten years in prison on the main charge. But there is a catch. If both prisoners decide to testify against each other, both will receive a five year sentence. The crux of the theory is whether cooperation and trust between the partners in crime can generate more mutually beneficial win-win outcomes collectively (e.g. one year sentence each). However, if there is mistrust of the others' perceived intentions, then pursuing individual self-interest will prevail, causing both prisoners to betray the other, the result being a lose-lose outcome (e.g. five year sentence each).

Applying the prisoner's dilemma concept to employment relations, the combination of decisions by the two parties as to whether to cooperate or not by sharing power and information can influence perceived outcomes and expected benefits for both parties – in terms of the degree to which their material interests are realized. Management decisions tend to be linked to the desired outcome of efficiently maximizing profit, while employee decisions are linked to more multi-faceted outcomes like pay, work conditions and voice (Leibenstein, 1982; Aoki, 1984; Trif and Brady, 2013).

Leibenstein (1982) applied game theory and the prisoner's dilemma concept to cooperative workplace relations, identifying frequent adversarial outcomes in liberal market regimes due to problems of mistrust with regard to dominant choices of employer-employee non-cooperation; at the expense of reducing mutual gains. According to Leibenstein, sharing information and productivity gains would generally seem to be an area of mutual benefit. Yet in reality it often involves a prisoner's dilemma, due to uncertainty about the other parties' intentions. In LME contexts particularly, either or both individual parties may pursue maximization of their own short-term self-interest rather than choose collective longer-term mutually beneficial options; especially where there are power imbalances. For example, regarding voice, employees may be reluctant to share discretionary knowledge with employers if they believe there would be no gain in doing so, or even that to do so might harm their interests. Employee withholding of knowledge can damage productivity because employment contracts are incomplete and indeterminate: employers cannot precisely specify all employee contributions (Baldamus, 1961). Employers, meanwhile, are unlikely to share sufficient information and power to provide optimum employee voice unless compelled to do so, choosing to preserve managerial prerogative. Leibenstein (1982) observes that a prisoner's dilemma is a zero-sum game (one parties' gain equals the other's loss) if the equilibrium falls where all individual players (employers and workers) are worse off than they would be if they cooperate collectively for mutual gains purposes.

Given the limitations of applying positivist scientific personnel economic approaches to labour relations (see Spencer, 2012), it is important to note that the prisoner's dilemma concept cannot exhaustively predict that complex social relations in organizations will definitively produce particular (and consistent) choices and outcomes, because there are a multitude of causal contextual variables shaping outcomes. Nevertheless, it offers a useful metaphorical analytical tool for understanding *tendencies* towards or away from cooperative choices of actors under particular contextual conditions, and provides a benchmark against which real practice can be assessed (cf. Edwards, 2003:22, 2012). Accordingly, Table 1 below is intended to illustrate ideal-type patterns or tendencies towards cooperative and non-cooperative outcomes for employers (E) and workers (W), while recognizing that in reality patterns may be mixed and changeable given the complexities of managing the contradictions of conflict and cooperation in organizations (Edwards, 2003, 2012; Spencer, 2012). Table 1 draws on Leibenstein's (1982) prisoner's dilemma pay-off matrix, adapting it for this article. Pay-offs from all four general patterns/tendencies are indicated below and in the table boxes, with gains and losses for employers (E) and workers (W). Exemplar empirical cases are listed below to illustrate each.

Box 1-mutual gains cooperation: Both employers and workers have chosen to cooperate collectively for mutual gains. Employers behave in a 'golden rule' cooperative manner, provide robust employee voice and good pay and employment conditions, and do not pursue profit maximization to its extreme. Employees also behave reciprocally in a 'golden rule' manner, being committed to the firm and willing to release discretionary information to management. A classic case fitting in box 1 could be Rubinstein and Kochan (2000), Learning from Saturn.

Box 2-employer adversarialism: Employers choose to pursue their individual utility of cost minimization and/or profit maximization at the expense of workers, who follow the golden rule in the (mistaken) belief management will reciprocate with cooperation. Here employers choose an individualist adversarial approach to maximize power advantage, emphasize effort intensification,

provide weak voice and drive down pay and conditions. Management gains at workers' expense. A classic case fitting in box 2 could be Grainger's (1988) account of 'management control and labour quiescence: shopfloor politics at Alfred Herbert's, 1945-1980'.

Box 3-worker adversarialism: Workers choose to maximize their interests at the expense of employers who follow the golden rule. Here, workers may see little point in sharing information or cooperating with management. Thus workers gain at management's expense. A classic case fitting box 3 could be Melman's (1958) account of worker job controls in 'Decision Making and Productivity'.

Box 4-mutual losses: Both employers and workers choose to maximize their own separate interests, and neither follow the golden rule of mutual cooperation, in the belief the other side will fail to reciprocate and instead will seek individual gain. This is the prisoner's dilemma zero-sum outcome, because if both parties choose to maximize their own interests, mutual losses often result from reciprocal non-cooperation. A classic case fitting box 4 could be Alhstrand's (1990) case study of the quest for productivity at the Fawley oil refinery.

Box 1 is the only possible route to Pareto optimal cooperative mutuality. Given it is a zero-sum game no one can be made better off without making the other worse off by moving to boxes 2, 3 or 4. Proposition 2 below advances the idea that the permissive design of the ICD and minimalist transposition of national I&C regulations in LMEs will tend to encourage maximization of employer gains (box 2) or mutual losses (box 4), rather than mutual cooperative gains (box 1). In other words, the dominant options in the direction of adversarial individual self-maximizing behaviours reduce scope for win-win mutual cooperation (Leibenstein, 1982).

TABLE 1 HERE

P2: Game theory and the concept of the prisoner's dilemma is useful for explaining why 'light touch' design of the both the ICD at EU level and minimalist national level I&C laws in LMEs continues tendencies at workplace level towards employer gains or mutual losses, more than mutual gains.

Uncertainty, risk and sustainability

Proposition three relates to how uncertainty of outcomes associated with game theory/the prisoners dilemma in LME contexts often renders I&C as high risk and unsustainable. Some scholars have correctly cautioned against drawing overly sharp 'ideal type' distinctions between Liberal Market Economies and Coordinated Market Economies (Wood et al., 2014). Within CMEs, for instance, not all countries are characterised by hard statutory voice regulation, with Swedish and Danish employment relations characterised by high levels of voluntarism, but with high trade union and collective bargaining coverage encouraging high levels of bargained cooperation between trade unions and employer associations (Gallie, 2009). Meanwhile, adversarial traditions in CMEs like France raise some doubts about the effectiveness of stronger state imposed rules for ensuring cooperation at firm level (Goetschy and Jobert, 2011). With regard to LMEs there are institutional differences. For example, Ireland had centralized social pacts between 1987 and 2009, whereas the UK has had no history of such pacts apart from the failed 'Social Contract' in the 1970s (McDonough and Dundon, 2010). Further, even light touch legally-backed consultative employee voice structures remain unpalatable to many in other LME contexts like the USA, where there is vehement opposition to collectivism (Patmore, 2010).

Notwithstanding these observations, outcomes in the four boxes in Table 1 above are clearly influenced by different national institutional contexts, and various scholars question the capacity of liberalized market-driven economies with voluntarist systems like the UK and Ireland to nurture and sustain cooperative workplace coalitions in the long-run (Authors2; Brewster et al., 2014). In the contemporary voluntarist systems of the UK and Ireland, employees are reliant on managerial goodwill to both develop and sustain cooperative arrangements, and this will only continue as long as employer interests are met. Voluntarist cooperation entails risk for both parties to the employment relationship: risk to employees of being weakened organisationally and offering concessions in pursuit of partnership with management, and risk for employers due to the requirement to accommodate the encroachment of mutual gains on the traditional terrain of managerial prerogative (Martinez Lucio and Stuart, 2005).

In comparison, notwithstanding debate about destabilizing pressures and dualities confronting coordinated market economies like Germany (Hassel 2014), some CMEs still institutionalize robust voice rights for many workers, provide more symmetrical access to information sharing between management and labour and more supportive conditions for insulating against risk and preserving cooperation over long-term time horizons relative to LMEs (Streeck, 1997; Authors2; Goergen et al., 2012; McLaughlin, 2013). For example, Leibenstein (1982:96-97) argues that in CMEs (say Germany) adversarial prisoner's dilemma tendencies are reduced, because the institutional framework 'shocks' parties into repeatedly cooperating in longer-term productivity coalitions:

... the latent prisoners' dilemma possibilities are held in abeyance by conventions, institutions, and laws If the adversarial options are absent, then the mutual choice is the optimal position...an effective low-cost system of laws which enforces contracts may minimize the inducement to use other types of adversarial behavior.

However, workplace cooperation in LMEs (say the UK or RoI) entails higher risk of uncertainty because it is easier for parties to exit cooperative bargains, especially in an era of unstable

financialized capitalism (Martinez-Lucio and Stuart, 2005; Brewster et al., 2014; Thompson, 2013). Streeck (1997:201) warns that employer defections, even temporarily, from cooperative bargains with employees can lead to mistrust as workers question managements' credibility: 'the mere possibility of defection, as is by definition inherent in any voluntary arrangement, can dilute the positive effects of workplace cooperation'. Such perceptions of uncertainty of outcomes is exacerbated by the fact that access to information in LMEs for one side (employees) is often more limited and asymmetrical than for the other (employers) (Broome, 1989). Therefore, institutional context matters greatly for distributing gains and losses, and shaping the risks and lifespan associated with cooperation. Given the balance of power in LMEs typically favours employers, boxes 2 or 4 will be common (short-term) outcomes, with box 1 (long-term outcomes) being uncommon and unsustainable.

P3: Perceived uncertainties of outcome associated with the prisoner's dilemma mean that in LME contexts I&C arrangements will often be too high risk over the long-term for management and employees to sustain genuine mutual gains.

Theorising around these propositions offers a useful new schematic metaphorical benchmark against which to analyse empirical data, summarised in Table 2.

TABLE 2 HERE

Research Methodology

The empirical data is derived from a multiple case study design. Sixteen organizations located in different economic sectors that utilised a variety of employee voice mechanisms and displayed awareness of changes arising from European regulations for employee information and consultation were studied over a two year period. Sectors of the economy covered manufacturing, retail,

hospitality, and services. Of the 16 organizations, 8 had operations in both the Republic of Ireland and Northern Ireland, which allowed institutional comparability. A further 4 had operations in the RoI exclusively, and the same sectors were matched with 4 cases that had NI-only operations. This provided for regulatory jurisdictional variability across two LMEs. A total of 33 sites were visited across the 16 cases (see Figure 1). Only organizations which employ over 50 workers were selected as this was the threshold application of the ICD. The cases are a mix of union and non-union, multinational and indigenous firms. Countries of ownership origin were as follows for the 16 case organizations: Ireland (6), UK (6), USA (2), Germany (1), Belgium (1).

FIGURE 1 HERE

Case study findings were based largely on semi-structured interviews with management, union representatives, non-union representatives, and employees at each site. In all 33 sites, a minimum threshold of one senior manager, one HR manager, one line manager, two employee representatives and six employees were interviewed. In many organizations, a higher level of access was granted, and a total of 334 interviews were completed. The research involved multiple visits to companies during a two-year period. Documentary sources were also collected at each organization, notably data on I&C practices and general HR policies.

The interview schedules were designed to collect empirical data relating to the three propositions. Questions about ‘level, scope and perceived depth’ of workforce consultation provided data in relation to proposition 1. For proposition 2 several questions sought respondent ‘knowledge and awareness of the ICE regulations’. In particular, multiple respondents were probed concerning the degree of possible mutuality from company arrangements for information-sharing and workforce consultation. Finally, for proposition 3, several questions explored respondent ‘experiences of related issues that affected I&C diffusion’, including external market pressures and internal issues concerned with employee trust and levels of participation. Taken together, the research design

provided qualitative data to capture possible degrees of risk associated with I&C arrangements over a sustained period of time - from the perspectives of local managers, union and non-union representatives, and employees themselves.

Findings

This section presents examples of empirical data to assess earlier propositions.

Minimalist design of I&C

P1: The intent of the EU ICD is to diffuse social dialogue and mutual trust at work. However, the 'degree, level and scope' of employee voice falls short of this intent because of minimalist design of both the Directive itself and the transposed national I&C laws in LMEs, in particular.

Influenced by the permissive design of both the EU ICD and minimalist national I&C provisions, the generalised finding for P1 is that in most cases efficacy of regulations to support social dialogue and mutual trust (as proclaimed in the Directive) at micro level was limited. In most workplaces, it was clear that management were intent on managing unilaterally and restricted employee voice.

This general finding is evidenced across the jurisdictions of the UK (NI) and RoI, and in different sectors. However, relatively robust consultation rights were more likely to exist at the most strongly unionised sites (*TransportCo* in RoI and *InsuranceCo* in RoI), and less so in non-union sites.

Regarding country of ownership origin, enduring employee voice arrangements were present at *InsuranceCo*, a German (CME) owned subsidiary – yet even here there were limits to consultative voice. Findings are elaborated from case examples below in relation to *degree, level and scope* of voice provision.

i) Degree of I&C voice

Degree of I&C voice across the sixteen cases mainly amounts to either ‘one-way’ and/or ‘two-way’ information-sharing. Robust consultation, with a view to reaching agreement, was evident in a minority of cases with long-standing/strong union presence. For example, at *TransportCo* in RoI, there was a long history of strong trade unions, joint consultation committees and collective bargaining, which was reflected in union representatives being consulted about workplace change programmes. However, the degree and quality of I&C at *TransportCo* has evidently diminished somewhat as a result of serious competitiveness problems facing the company in recent years. At *InsuranceCo*, union and employee representatives were informed and consulted by management through a Group Enterprise Forum (GEF), dating back to 1998. The GEF (whose membership comprised three senior managers, including the CEO, and eight employee representatives) displayed characteristics of robustness in the sense that it was the product of negotiations with employee representatives, was underpinned by an agreed written constitution outlining its functions and scope, and had an elected membership. A big factor was that the Irish subsidiary was German-owned, so there was a culture of information and consultation in the parent organization, a factor mentioned by union representatives as being very important. But even at *InsuranceCo*, union representatives did suggest that information sharing and listening to feedback from representatives tended to be more common than formalised consultation with a view to reaching agreement, and they expressed a wish to be involved at earlier stages of decision-making processes.

Such relatively robust arrangements were untypical across the other case organizations. *BookCo*, a long-established family-owned unionized company did not respond to the I&C legislation, preferring to rely on pre-existing collective bargaining and direct informal information-sharing channels, with very little consultation over workplace change. *BritCo*, a large employer in the services sector, operates on an all-island basis, but its depth of voice regimes differed across the two jurisdictions. In NI there is a history of unionised collective bargaining and joint consultation arrangements, whereas in ROI, where it acquired a non-union firm in 2000, a new non-union

employee representative (NER) forum was created in 2005, partly in response to the ICD. This NER forum offered ad hoc consultation, but was mostly an information sharing channel. In interviews, *BritCo* senior management admitted the NER forum was essentially a ‘tick the box exercise’ to be seen to comply with regulatory requirements. The forum was largely defunct by 2006 as no meetings were held subsequently. From early 2007, unrest amongst *BritCo* employees in the Republic arose over corporate restructuring, culminating in a union organizing campaign. Management responded by re-calibrating and strengthening the previously defunct NER forum (rebranding it *Vocal*), while opposing union recognition.

At a large multinational, *ConcreteCo*, there was clear duality in degree of voice regimes between ROI (unionised and elements of joint consultation) and NI (non-union and limited top-down information sharing). In NI, management simply did not consult workers:

I think the word ‘consultation’ is a misnomer, it is very much communication.... Consultation implies there is a party with information, there is opportunity to give feedback on that information, feedback is listened to, and as a result decisions are taken. That does not happen here (*ConcreteCo* HR Manager, NI).

In the ROI, compared to *ConcreteCo*’s NI operations, unions had more influence over power-sharing owing to pre-existing multi-union bargaining and consultation: something the senior HR manager called a ‘good system of information and consultation’.

HolidayCo is a public sector organization in the hospitality industry that is partially unionized in ROI and non-union in NI. Informal direct communications dominate voice provision in NI. In ROI, there is a union Joint Consultative Council (JCC) meeting four times a year. HR management said pre-existing arrangements conformed with I&C legislation. *HomeCo*, a British-owned retail chain, has a long history of internal NER voice forums known as *Bottom-Up*, influenced by the company’s

non-union paternalism. Whilst senior management said *Bottom-Up* was designed to stimulate consultation, employee representatives believed that voice was restricted:

You have an opportunity to voice an opinion, but whether any heed will be taken of that is another thing altogether. (HomeCo Employee representative, NI)

Evidently, NER forums were also a means of union avoidance/substitution:

With the Forum, it was never explicit, but the company is not a unionised company . . . The Forum is a way of saying that we operate the type of culture that we would never want people to think they'd need a union. (HomeCo HRM Director, ROI).

WindowsCo is a medium-sized family-owned firm in Northern Ireland, manufacturing window blinds. A non-union company, it initially had no formal voice system aside from individual grievance procedures. When seeking accreditation from Investors in People (IiP), the Northern Ireland Labour Relations Agency (LRA) helped the company establish a non-union 'Employee Forum' in 2005/6. However, the 'Employee Forum' did not develop a consultative depth.

ii) *Level of I&C voice*

In terms of *level*, data indicates that I&C exchanges mainly occur at lower organizational levels, typically mainly at task level, but with some examples of higher level worksite and company-wide communications. Employee representatives at *InsuranceCo* had access to I&C at company level through meetings with senior management. A similar situation applied at *TransportCo*, and (until the organization was privatized in 2006) there were worker directors on the board. At *BookCo* most information disseminated to employees occurred informally and directly in 'walk and talk' type situations on the shopfloor, with union representatives having little consultative influence at corporate headquarters level. In comparison, NER *Vocal* representatives at *BritCo* RoI experienced some higher company level voice through meetings with the Chief Executive and HR Director, as did unionised counterparts in NI. In *ConcreteCo*, the limited information sharing in the non-union

NI locale was mainly restricted to individual task level, whereas union representatives in ROI experienced periodic consultation at company level. Meanwhile, at *HolidayCo*, presence of the union JCC in RoI meant union representatives were periodically consulted at company level. In the non-union NI site, informal direct communications overwhelmingly occurred at task level. At *HomeCo*, there were supposed to be quarterly sequences of *Bottom-Up* NER forum meetings at multi-levels (store, regional, divisional, national): so that, where necessary, issues can be passed up the pyramid to national company level. In reality meetings were sporadic.

iii) Scope of I&C voice

Finally, *scope* of decision-making is mainly restricted to basic operational issues (like canteen menus, workplace layout), rather than ‘bigger’ strategic or employment contract related issues. Exceptions to this included *InsuranceCo* and *TransportCo* in RoI, where employee representatives were informed and consulted about key business and strategic issues by senior management on a regular basis. This was uncommon across the other cases. In *BookCo*, informal ‘walk and talk’ information exchange by managers mostly concerned day-to-day operational matters like book promotions. Confirming lack of scope for power-sharing, a shop manager was dismissive about company I&C provision, commenting that ‘no such systems exist’. Instead he described ‘The BookCo Way’, whereby senior management communicate informally on a ‘need to know basis’. Sometimes he felt Directors leaked proposals to see if they would ‘fly’. This manager felt there were downsides to ‘The BookCo Way’, notably lack of openness in senior managerial circles about big issues like budgets, strategy, and trading difficulties. Meanwhile, at *BritCo*, for a time the revamped NER forum in the Republic appeared to offer potential scope for more power sharing than hitherto: NER representatives were elected, monthly meetings occurred, and Vocal representatives received business updates from the HR Director and Chief Executive. However, the reality was that management provided better information updates to representatives for a short time, but did not imbue power sharing in any meaningful sense.

In *ConcreteCo*, there is little scope for I&C at the non-union NI operations. In contrast, I&C in the unionized ROI periodically focuses on employment issues like redundancies, working time, and working conditions in specific sites. But meetings are ad hoc and issue-driven: they ‘only occur when something arises’ (manager, ROI). Further, union representatives said management often presented decisions as a *fait accompli*, restricting scope of consultative power-sharing:

You get the sense that decisions are already made at a higher level, then the unions are told. Unions don’t have real influence, say if new machinery or work practices come in. (ConcreteCo Union Steward, ROI)

It was suggested that the ‘Employee Forum’ at *WindowsCo* was based on the standard provisions of the UK ICE Regulations. The HRM team admitted that, in its early years, the NER Forum played a negligible role in company governance, limited to health and safety considerations. The NER was later reinvigorated, influenced by what the Chief Executive called an ‘aggressive’ union recognition campaign, and management acknowledged that underlying grievances existed. Yet scope for consultative power-sharing remained shallow.

Game theory and unequal outcomes

P2: Game theory and the concept of the prisoner’s dilemma is useful for explaining why ‘light touch’ design of the ICD and minimalist national I&C laws in LMEs continues tendencies at workplace level towards employer gains or mutual losses, more than mutual gains.

Confirming proposition two, the selected case examples below illustrate that micro-level I&C arrangements tended to generate adversarial non-cooperative outcomes (as in Table 1 earlier): usually gains only for management (box 2), or mutual losses (box 4). In the few instances where mutuality occurred (box 1), it was constrained mutuality, and was usually restricted to strongly unionized workplaces where workers were collectively organized, including *InsuranceCo* and

TransportCo in RoI. At *InsuranceCo*, a sophisticated knowledge-based organization, both parties indicated that effective I&C had generating some mutual gains through enabling a positive contribution to increased employee commitment, improving employee awareness of business objectives, more flexible working practices, encouraging a more participatory approach to decision-making, enhancing employee voice and supporting a cooperative industrial relations climate. At *TransportCo*, while there has been a history of mutual gains, this has been in sharp abeyance in recent years as the company encountered serious competitive difficulties, which sparked adversarial industrial relations and a number of industrial disputes.

At *HolidayCo*, a constrained form of mutual gains occurred through the unionized JCC in RoI. Indeed, both management and union representatives recognized the value of proactive consultation with a view to reaching agreement. JCC union representatives were consulted and had real influence designing mutually beneficial new flexible work practices (flexi-time, time off in lieu), subsequently implemented across the organization:

People can end up working long hours, so we put in place, in full consultation, measures to manage working hours. We did that through a whole range of working time arrangements ..flexi hours, time off in lieu..Policies were drawn up in consultation with the JCC and wider staff. (HR manager, ROI)

At *BritCo*, there was initially partial evidence of cooperative mutual gains through the reconfigured NER *Vocal* forum; albeit a constrained mutuality distributing limited independent power to employee representatives. Partial harmonization of company redundancy terms in RoI relative to NI was the main mutual gain; namely that aspects of Northern Irish redundancy terms were replicated in the Republic: including parity of redundancy payments, and a redundancy pool wherein employees at risk of losing their jobs were given opportunities to secure new positions within BritCo. Management benefited insofar as it enabled them to draw the sting from a contentious issue

behind union organising, thereby facilitating union avoidance. For employees, articulating concerns over redundancy and being afforded a consultative role, improved redundancy outcomes.

More generally across the case organizations, outcomes tend to be asymmetrical and unequal, with employees often experiencing limited gains. At *BookCo*, there was a mix of management only gains (box 2) focused on profit maximization, as well as mutual losses (box 4), which were starkly evident when senior management introduced new technology (a picking and dispatch machine) in a warehouse without consulting or seeking input from employees or unions. Senior management believed that new technology would improve efficiency. Yet it was a disaster on introduction with numerous teething problems and external technicians had to be brought on site for 6 months 'tweaking' the machine, at considerable cost. At *ConcreteCo* NI, employees experienced losses, bemoaning the lack of say, but employers gained because the lack of I&C saved costs. Management had negative opinions of I&C:

We know about the kinds of structures you could have but from an employer's point of view, what is the benefit? I know the cost that would arise from them. The structures that we have are negligible.
(HR Manager, Concrete Co NI)

At *HomeCo*, management only gains in terms of profit maximization, or mutual losses for management and employees, were more evident than mutual gains. For instance, a RoI HRM Director felt Bottom-up generated few business gains:

Does Bottom-Up improve the business? I don't think in its current format it truly does. If you look at improving the business as not having problems, then it does in some way do that. It prevents something else from being created that could hinder the business. But it is quite downloady, business-led and almost management having responses in advance of what the questions are.

Although *HomeCo* senior management did evince aspirations that NER forums might become a space where employees could contribute ideas on sales or customer service, in reality, they were

largely used for conflict displacement rather than collaborative problem-solving. Store level managers complained that employees mainly used forums ‘negatively’ to advance grievances on issues like store-level heating. Yet, employee representatives at HomeCo were sceptical of the NER scheme’s utility for even resolving grievances, describing, in particular, problems with excess heat in stores that had been raised repeatedly at all forum levels. But management reportedly refrained from acting until employees referred the matter externally to the Health and Safety Authority (HSA), which issued the company with an enforcement notice.

At *WindowsCo*, the NER amounted to management acting on grievances rather than parties collaborating to improve quality of joint solutions. Indeed the CEO and HRM team complained that employees saw the forum as a ‘dumping ground’ for grievances and articulated a desire that employees would contribute ideas to ‘add value’ to the business, such as improving product quality. On balance, outcomes at *WindowsCo* were characterized by employer only gains (box 2) and mutual losses (box 4).

Risk, uncertainty and sustainability

P3: Perceived uncertainties of outcome associated with the prisoner’s dilemma mean that in LME contexts I&C arrangements will be too high risk over the long-term for management and employees to sustain genuine mutual gains.

In line with proposition three, rare instances of mutual gains cooperation (box 1) like those at *BritCo* and *HolidayCo* were not sustained in voluntarist contexts, while mutual gains at *TransportCo* had been decimated by serious competitive problems. *InsuranceCo*, a German-owned knowledge intensive company was perhaps the only one of our sixteen case organizations where elements of mutual gains had endured. A crucial distinguishing factor at *InsuranceCo* was a managerial mind-set that increasingly recognized the need to articulate to employees the rationale

behind key organizational decisions to secure workforce consent and reduce uncertainties of outcome. Elsewhere, at *BritCo*, the union was adamant that the NER Vocal forum in the Republic was driven by ‘a tried and tested union avoidance formula’. Given this industrial relations climate, cooperative mutuality did not endure, with cooperation soon dissipating into reciprocated mistrust and adversarialism. Indeed, once the momentum of the union campaign subsided, mutual gains arising from Vocal narrowed after a brief time-span. Many employee respondents felt Vocal degenerated into an ineffective ‘talking-shop’, dealing with trivial ‘tea and toilet’ type decisions rather than offering consultation over more substantive issues. Three employee representatives subsequently resigned from Vocal, believing it had become ‘toothless’. As proposition 3 theorises, this union avoidance strategy meant that mutual adversarialism supplanted mutual cooperation.

In *BookCo*, significant levels of risk and adversarial mistrust militated against information sharing and cooperation in the long-run, exemplified by fall-out from failure to consult about new technology. It was clear that the company management had little interest in developing a more cooperative type of employment relations and the workforce seemed relatively powerless to change this. In *HomeCo*, growing dissatisfaction meant many employees bypassed NER forums, instead raising grievances with line managers, or external institutions. At *WindowsCo*, competitive pressures and associated uncertainties of outcome after the 2008 recession explained why I&C arrangements delivered insufficient gains for management, and particularly employees, and its functionality eroded over time. This sharply impacted on shopfloor I&C practice:

Horrible pressure, loads of stress, targets. It feels that management couldn’t care less about their workforce or their views or opinions, just as long as their targets are being met. (Production employee, WindowsCo)

Aside perhaps from German-owned, knowledge-intensive *InsuranceCo*, these examples confirm proposition three and illustrate that uncertainties of outcome linked to low trust prisoner’s dilemma tendencies in LMEs means that cooperative I&C arrangements are high risk and hard to sustain in

voluntarist contexts, with reversion to adversarialism a common occurrence. In summary, the evidence depicts the important interplay between multi-level macro and micro factors affecting I&C arrangements. Confronted with minimal regulatory constraints from State apparatuses, management generally tended to opt to consolidate their power position rather than share it with other workplace stakeholders. Yet there were some important micro-level contextual differences in voice provision across the cases, which were variously influenced by whether operations were located in the RoI or NI, the sector or industry, competitive strategy (quality knowledge intensive versus low cost), whether they were strongly unionised or non-union (which influences how independent I&C provisions are from management), management style, industrial relations climate, and country of origin. Therefore, even within a generally 'hostile' external regulatory context for I&C, different plant-level factors play a role in shaping organizational voice arrangements. This is illustrated by examples of empirical case findings summarized in Table 3.

TABLE 3 HERE

Discussion and conclusion

This article examined the multi-level institutional governance interface (Jackson and Deeg, 2012) between EU social policy (the Information & Consultation Directive, ICD), transposition by the nation state, and implications for employee voice rights at organizational level. The ICD has been largely ineffective in enhancing what the ILO calls 'representation security' in the liberal market economies of the UK and RoI, evidenced, in particular, by minimalist design of the transposed national-level legal and regulatory frameworks for diffusing I&C voice, as well as employer domination at organizational level of collective representative bodies in our cases.

While offering important empirical insights, previous studies assessing impacts of the European I&C Directive in liberal economies (Taylor et al., 2009; Hall et al., 2013, 2015) have lacked a

theoretical perspective to explain regulatory ineffectiveness. This article fills that gap by offering important theoretical and empirical contributions, including using game theory to explain why the implementing legislations have been largely ineffective in diffusing employee voice, ‘representative security’ and mutual gains cooperation at workplaces in the UK (Northern Ireland) and Republic of Ireland. Three explanatory theoretical propositions have been advanced, and related implications are now discussed.

Institutional design matters

The first proposition raises implications concerning the importance of institutional design. Negligible impact of I&C legislation in the UK and RoI is not an accident. As the ICD has been designed in a light touch way at EU level and subsequently transposed in a minimalist manner at national level, efficacy of I&C legislation to support social dialogue and mutual cooperation through democratic employee voice rights falls short of the original spirit of the Directive. Light touch design of the final Directive that emerged in 2002 and transposed national regulations in the two LMEs was influenced by repeated employer lobbying, and governments’ in both the UK and Ireland were receptive to upholding managerial choice given explicit political endorsements of flexible deregulated labour markets. National unions in the UK and RoI, meanwhile, largely vacated the regulatory space, partly because they saw I&C regulations as potentially being used to undermine collective bargaining. The upshot was that employers ‘captured’ the I&C legislative agenda and ensured their preferences were not unduly endangered by what they saw as alien regulatory interference and collectivism. Hall et al., (2015) also observe that the UK ICE regulations have not really altered employer I&C arrangements and union engagement is limited. In our cases, the transposed regulations were for the most part too weak to pressure employers to change their behaviour. The case examples show that while in some instances employers were

cognizant of complying with the ICD (e.g. *InsuranceCo*, *BritCo*, *HomeCo*, *HolidayCo*), they were able to carve their own preferred organizational-specific I&C bodies given the minimal mandatory reach of national implementing laws. Further, presence of I&C legislation was apparently often a secondary factor driving redesign of workplace I&C, with union avoidance considerations prominent in some cases (e.g. *BritCo*, *WindowsCo*, *HomeCo*). Various case organizations claimed to have pre-existing arrangements which management felt did not require modification in response to the ICD (e.g. *ConcreteCo (RoI)*, *HolidayCo*), and others simply ignored the regulations (e.g. *BookCo*). Overall, the efficacy of national regulations to support social dialogue and mutual trust was limited across most cases, as measured by the themes of *degree*, *level*, and *scope* of I&C voice. Firstly, aside from isolated ad hoc examples of issue-based consultation (e.g. *BritCo*, *HolidayCo*), the *degree* of employee voice mainly consisted of managerial controlled information-sharing. Secondly, I&C mainly occurred at lower organizational levels, although there were exceptions at companies like *InsuranceCo* and *TransportCo* in RoI, where extensive company-level I&C occurred. Finally, apart from some cases where there was some consultation over business and employment-related issues (e.g. *InsuranceCo*, key business and financial issues; *BritCo*, redundancy; *HolidayCo*, flexible working), the *scope* of issues on which employees could articulate interests was largely confined to basic operational matters like canteen menus or workplace layout. There was limited robust consultation with a view to reaching agreement over ‘big ticket’ strategic issues across all the case organizations.

Game theory and non-cooperative outcomes

In advancing the second proposition, we illustrated theoretically and empirically that light touch design of the ICD and implementing I&C legislation in the permissive voluntarist economies of the UK and RoI facilitated adversarial employer gains and/or mutual losses, much more than cooperative mutual gains outcomes, across the case organizations (see tables 1, 2 and 3). The main

exception was *InsuranceCo*, a German-owned knowledge intensive firm, where there were elements of cooperative mutual gains; supported by the consensual industrial relations culture of the German parent multinational. Game theory/the prisoner's dilemma concept shows why two parties might not cooperate in pursuit of mutual gains choices and outcomes, even if it *actually* might be mutually beneficial to do so. This article illustrates why prisoner's dilemma tendencies are common in LME contexts, which results in adversarialism and mistrust dominating over mutuality (Leibenstein, 1982; Trif and Brady, 2013). When combined with sociological and industrial relations analysis, game theory/PD can provide a benchmark to illustrate key processes shaping choices that may encourage *tendencies* towards particular outcomes (employer gains/mutual losses/non-cooperation/adversarialism) more than others (mutual gains/cooperation).

Confirming proposition two, therefore, aside from *InsuranceCo*, the selected case examples illustrated that micro-level I&C arrangements tended to generate adversarial non-cooperative outcomes: either gains for managers at the expense of losses for employees (box 2), or mutual losses for both parties (box 4). The prisoner's dilemma problem was most clearly exemplified in case organizations by instances when mutual losses resulted from mutually reciprocated adversarialism. Serious lose-lose outcomes resulting from senior management's unilateral introduction of new technology at *BookCo* without consulting or informing workers was a stark example.

The data is also illustrative of weaknesses in labour or personnel economics' application of ideas like game theory, which seek to quantify and reduce complex human agency choices to so-called scientific measures or econometric models (Lazear, 2000a&b; Edwards, 2012; Spencer, 2012). In contrast, we advance a more sociological industrial relations strain of analysis to game theorising processes capturing actor choice over voice, reflecting ambiguities of power, tensions between conflict and cooperation, and the many dimensions of employee participation. We therefore contextualise game theory/the prisoner's dilemma in a more nuanced qualitative way to illustrate

why low trust lose-lose outcomes, and/or employer only gains, tend to be much more common in reality in LME contexts than idealised win-win mutual trust relations between management and labour based on robust social dialogue – the stated objective in the EU IC Directive.

Voluntary mutuality is high risk and unsustainable

Proposition three argues that in LME contexts where there is perceived uncertainty about future outcomes, there is high probability that I&C arrangements will be very risky for employers and/or employees, and unsustainable over the long-term (Martinez-Lucio and Stuart, 2005). That is to say, in voluntarist contexts, either or both parties will eventually be encouraged to pursue maximum (individual) short-term self-interest rather than (collectivist) longer-term mutuality. Rare instances of mutual gains cooperation (box 1 in table 1) evident in our cases (e.g. *BritCo*, *HolidayCo*) were isolated examples of ‘constrained mutuality’ that were not repeated and/or sustained over time. The notable exception was *InsuranceCo*, where management explicitly recognized the need to engage employee representatives in dialogue to articulate the rationale behind key business decisions and thereby reduce uncertainty of outcomes. Again, this may be partly attributable to the subsidiary being German-owned, a fact which employee representatives mentioned frequently.

In summary, the evidence from our case organizations shows that a light touch macro-level regulatory framework governing I&C rights at work did not have sufficient ‘legal bite’ to ‘shock’ employers to invoke stronger consultation arrangements. However, we can pinpoint some significant micro-level contextual differences affecting voice provision across the case organizations, including: country location (RoI or NI/UK), sector or industry, competitive strategy (value-added knowledge intensive or low price), intensity of competitive pressures, strong unionisation or non-union (impacts on robustness/independence from management), management

style (participative or coercive), industrial relations climate (cooperative or adversarial), and parent company country of origin (LME or CME). Therefore, while the external regulatory environment is clearly unfavourable for embedding effective and enduring I&C arrangements, this does not totally determine organizational level employee voice because there remains an element of strategic choice, evidenced by variation within and between our case organizations.

Social policy implications

What are the social policy implications for the ICD and national implementing legislation? Labour is too weak and the ICD is clearly too ineffective in LME contexts for diffusing employee voice rights and ‘representation security’ at work as a widely applicable framework of European labour law. Therefore, re-regulation of I&C laws at European and nation state levels would be a necessary (albeit partial) solution to the prisoner’s dilemma through external institutionalization of hard ‘beneficial constraints’ by the state to absorb the risks of collaborating and compel parties to share information and cooperate over longer-term time horizons (Streeck, 1992, 1997; McLaughlin, 2013). Streeck (1992:323-328) is clear that a voluntary political and industrial order by definition lacks capacity to ‘sustain equitable cooperation between capital and labor’. Rather, sustainable cooperation requires the state to impose non-voluntary legally binding constraints and publically enforceable obligations on parties for the democratic good of society, while constraining freedom of private choice to some extent. Otherwise there is insufficient trust and cooperation often unravels, especially if employers, like some of our case organizations (e.g. *WindowsCo*, *TransportCo*, *EngineerCo*), can easily defect in response to short-term market fluctuations and competitive pressures that are acute under disconnected financialized capitalism (Thompson, 2013). In a recent ‘fitness check’ on EU information and consultation laws, the European Commission (2013) acknowledged some shortcomings with regard to effectiveness (including lack of coverage of I&C bodies and limited consultation, notably where employees have to ‘opt-in’ to apply for I&C rights),

yet stopped short of proposing ‘harder’ re-regulation that might make employee I&C rights more accessible, robust and enduring, especially in LMEs. In fact, as noted in this journal, the recent period has been associated with a dramatic marginalization of EU social policy, with neo-liberalized macroeconomic and financial issues increasingly in the ascendancy (Barbier, 2012).

But harder regulation and state imposed rules alone are unlikely to be sufficient to reduce adversarial mistrust and uncertainty about employer and employee behaviours at work. France is an example of a CME with stronger state backed regulations for works councils, but its deep-rooted adversarial traditions apparently limit potential for cooperation at workplace level (Goetschy and Jobert, 2011). The upshot is that there would need to be (unlikely) major cultural and ideological shifts in historically enduring management attitudes away from unilateral managerial prerogative towards cooperation with employee representatives and recognizing the benefits of good industrial relations and mutual trust. Yet it will be very difficult to break free from historically and culturally embedded pathways of low trust work orientations (Purcell, 1981; Fox, 1985).

Conclusion

Existing social policy regarding I&C legislation in LMEs is too weak to prompt employers to embed ‘representation security’, enduring cooperative mutuality, and support more stable and equitable risk sharing relationships between capital and labour, as our case data shows.

Adversarialism and non-cooperative outcomes will probably continue to dominate local choices over employee I&C in voluntarist economies. Given the grip of neo-liberal orthodoxy, few politicians or employers in LMEs appear receptive to any re-regulation of industrial democracy interpreted as challenging managerial prerogative (Wright, 2004). Moreover, re-regulation of the ICD is likely to be ineffective as a standalone intervention given the dominant ideology of

managerial prerogative and a hostile wider political economy context of short-term financialized capitalism, which is not conducive to enduring cooperative mutuality (Thompson, 2013). To compete in liberalized political economies like the UK, cost reduction is often the default profit accumulation approach of many employers, who simply may not require high levels of sustained cooperative mutuality and pluralism to achieve this (Godard, 2004).

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Table 1 – Game theory and the prisoner’s dilemma: losses & gains from I&C

	<i>Employer: Golden Rule</i>	<i>Employer: Individual Maximization</i>
<i>Worker: Golden Rule</i>	Box 1: Mutual gains cooperation. Win (E) Win (W)	Box 2: Non-cooperation - gains for employer, workers lose. Win (E) Lose (W)
<i>Worker: Individual Maximization</i>	Box 3: Non-cooperation - gains for workers, employers lose. Win (W) Lose (E)	Box 4: Non-cooperation - Mutual losses for all. Prisoner’s dilemma. Lose (E) Lose (W)

(adapted from Leibenstein, 1982)

Table 2 – Framework to assess impacts of I&C regulations on workplace I&C

Design of I&C	Outcomes	Timeframe (durability) and risk	Contextual and regulatory supports or barriers
Power sharing elements of I&C Degree Level Scope	Mutual losses to mutual gains (boxes 1-4 in table 1)	Short to longer-term Low to high risk	<i>Internal</i> voluntarist employer initiated voice versus <i>external</i> regulated beneficial constraints. Competitive factors: extent of uncertainty/turbulence, cost competition or quality competition. Sector General IR climate/ union presence/ management style. Country of origin

Table 3 – Empirical examples from case studies

Design of I&C	Outcomes	Timeframe and risk	Contextual & regulatory supports or barriers
Power sharing elements of I&C Degree, Level Scope	Mutual losses to mutual gains	Short to longer-term Low to high risk	Voluntarism versus regulated beneficial constraints, Competitive factors Sector IR climate Country of origin
Case examples	Case examples	Case examples	Case examples
<i>InsuranceCo</i> : enduring support for I&C by mgt.	Elements of mutual gains	Longer-term. Explicit care to reduce uncertainty	German-owned firm. Cooperative IR climate/culture. Strong union.
<i>TransportCo</i> : long history of robust I&C, but under threat/attack.	Historical mutual gains, but decimated by competitive pressures, employer only gains.	High risk: competitive pressures	Severe competitive pressures undermining historically robust I&C = adversarial IR, frequent disputes.
<i>BookCo</i> : Ignored I&C laws, informal information-sharing on ‘need to know basis’ (‘The BookCo Way’)	Employer gains, employees lose. Also lose-lose outcomes when introducing new technology.	High risk, no cooperation to sustain.	Voluntarism. Severe competitive pressures/cost competition. Union weak.
<i>BritCo</i> : reacted to I&C laws, unionised I&C in NI, non-union in South (Vocal NER forum)	Employer gains, employees lose. One-off episode of mutual gains	High risk. Cooperation not sustainable. Mutual gains narrowed over short time-span.	Voluntarism. NER forum: employer response to union campaign in ROI (union avoidance).
<i>ConcreteCo</i> : pre-existing I&C: traditional union I&C in ROI, weak non-union direct communications in NI.	No benefits associated with I&C in NI. Employer gain from low cost of I&C, employees lose.	High risk, no cooperation to sustain in NI.	Voluntarism. Competitive pressures in construction. Union in ROI gave stronger voice than NI.
<i>HolidayCo</i> : partially unionized JCC in ROI, non-union informal direct communications in NI.	Some mutual gains in ROI: union reps helped design new flexible work arrangements. Both parties saw benefit to good I&C. But ad hoc ‘constrained mutuality’	JCC sustained over quite long time, but consultation intermittent.	Voluntarism. Positive IR climate. Union legacy in ROI.
<i>HomeCo</i> : multi-level NER forums. Reacted to I&C laws but not robust consultation/ power-sharing. Mainly information provision.	Mix of employer win-employees lose, and mutual lose-lose	High risk. NER sustained for a long time, but was waning because not delivering for employees, or employer.	Voluntarism. Paternalist history. Union avoidance.
<i>WindowsCo</i> : non-union NER, downward communication, not consultation.	Mainly employer win, employees lose, or lose-lose.	High risk. Not sustainable – forum apparently displaced by employee recourse to line managers.	Family firm. Severe competitive pressures, work intensification. Union avoidance.

Figure 1

SECTORS	RoI	NI	ALL ISLAND	ALL ISLAND	SITES VISITED	TOTAL
Retail	ShopCo (x1)	Department Store (x1)	BookCo (x3)	HomeCo (x2)	7	4
Manufacturing	EngineerCo (x1)	WindowsCo (x1)	ConcreteCo (x3)	TechnologyCo(x2)	7	4
Services	InsuranceCo(x1)	Financial Services Inc (x1)	BritCo (x3)	TransportCo (x2)	7	4
Hospitality	South Hotel (x1)	North Hotel (x1)	HolidayCo (x2)	CateringCo (x8)	12	4
TOTALS					33	16