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**The Information and Consultation of Employees (ICE) Directive:
employer occupation of regulatory space for informing & consulting
workers in liberal market regimes**

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Abstract

This working paper explores the transposing of the EU Information and Consultation of Employees (ICE) Directive in the Liberal Market Economies of the Republic of Ireland (ROI) and Northern Ireland (NI) by considering how employers and employees have responded to national information and consultation regulations. We outline the analytical concept of 'regulatory space' and assess the impact of ICE Regulations in both ROI and NI jurisdictions in 4 cross-border case study organisations. The research concludes that an analytical framework to advance the concept of 'regulatory space' enables a refined assessment of employer and employee responses to employee voice regulation. Employer occupancy of regulatory space for voice is explained in part by a reassessment of the regulatory function of the State, from one of employee to employer protection. The UK and Irish governments both closely circumscribed the parameters of the national ICE Regulations to limit encroachment on the terrain of managerial prerogative. Ambivalence of national unions towards contesting the space opened by the ICE Directive also aids employers in occupying space for voice. The case evidence suggests that, consequently, employers largely dominate regulatory trajectories for workplace voice, and patterns of regulatory space for voice varied across workplaces. Though employees and their representatives were marginalised for the most part, voice remains a contested terrain.

1. Introduction

Major changes have been occurring in the regulation of employment relations in the voluntarist Liberal Market Economies (LMEs) of Ireland and the UK. There are both differences and similarities between the employment relations contexts of Ireland and the UK, details of which are available elsewhere (EIRO, 2011). A similar trend apparent in both jurisdictions is that traditional pluralism based on voluntarist collective negotiations between employers and unions has been unravelling. This is epitomized by declining collective bargaining coverage and union density (Kersley et al., 2006; CSO, 2010). While Ireland differs from Britain by having had a national model of (voluntarist) social partnership for over twenty years, the national social pact contained a paradox in that the State and employers refused to recognize unions on a statutory basis (Teague and Donaghey, 2009). In any case, social partnership collapsed in 2010 during Ireland's deep economic crisis (McDonough and Dundon, 2010). More generally, employment relations regulation in LMEs like the UK and Ireland has been recast due to pressures to free the market (Streeck, 1987; Barry, 2009). In relation to employee voice, this has meant that the agenda has been shifting from indirect (collective) to decentred employer-led direct (individual) regulation and from union to non-union voice. As a result there is increased emphasis on individualized employment relations regulation, buttressed in part by managerial experimentation with HRM, along with globalised pressures on State institutions to conform to neo-liberal ideologies of market regulation. Notwithstanding some nuances in corporate governance in LMEs, a dominant factor in many organizations remains servicing short-term shareholder primacy, rather than developing longer-term collaborative stakeholder approaches; although Armour et al., (2003:550) view the EU Information and Consultation of Employees (ICE) Directive as providing "a major countervailing force to shareholder primacy".

External regulatory changes have important implications for the capacity of both micro and macro-level industrial relations actors to occupy what has been conceptualized as the 'regulatory space' affecting employment relations (Crouch, 1986; Hancher and Moran, 1989; Scott, 2001; Barry, 2009). Using the example of the EU Information and Consultation of Employees (ICE) Directive, the contribution of this article is its analysis of factors influencing occupancy of regulatory space for employee voice within the voluntarist context of LMEs. In doing so the article advances a multi-level, multi-dimensional analytical framework on which the occupancy of regulatory space can be evaluated in comparative national contexts.

The primary research question addressed is: *‘how and to what extent has the EU ICE Directive affected the occupancy of regulatory space for employee voice within the voluntarist IR regimes of the Republic of Ireland and Northern Ireland?’*

The second section considers the concept of ‘regulatory space’ as it relates to industrial relations theory and practice. The third section considers how there has been a legal recasting of regulatory space for employee rights and then, more specifically, explores the European ICE Directive as a regulatory arena. This is followed, in section four, by an outline of research methods used in the four multi-site companies with cross-border operations in both ROI and NI. The case findings are then reported in section five. Finally, the conclusions discuss the empirical findings against the analytical framework for advancing understanding of occupancy of regulatory space for employee voice. Future policy implications are also considered.

2. The ‘regulatory space’ of industrial relations

The concept of ‘regulatory space’ is a very useful and underutilized analytical tool for assessing the impact of employment regulation (Hancher and Moran, 1989; Scott, 2001; Barry, 2009). Regulatory space has been defined as:

“..the range of regulatory issues subject to public decision. Proponents claim that its dimensions and occupants can be understood by examining regulation in any particular national setting, and by analyzing that setting in terms of its specific political, legal and cultural attributes” (Berg et al., 2005:73).

In relation to applicability to industrial relations, regulatory space concerns the range of IR issues subject to decision by various actors – either unilaterally or jointly. Furthermore, Scott (2001:331) observes that:

“The Regulatory space metaphor draws attention to the fact that regulatory authority and responsibility are frequently dispersed between a number of organisations, public and private ... it looks at the interactions of each of the players in the space, and can recognise plural systems of authority”.

A number of distinctive conceptual points are important here. First, space, by definition, is open for occupation. The extent to which either party can occupy

space is dependent on their ability to mobilise resources and their capacity to prevent others from occupying the same space. In this context the occupation of regulatory space is a dynamic relationship shaped and governed by a 'frontier of control' (Goodrich, 1920). This leads to a second related conceptual point: the space can be unequally distributed between actors and there may be major and/or minor participants jostling to advance or retreat their 'frontier'. For example, Donaghey et al (2011) argue how contestable dynamics surrounding employee voice can chart a path of silence rather than voice. Other research points out that trade unions, as traditional labour market actors, are losing space while other competitive institutions are occupying regulatory space and expanding their influence (Barry, 2009). Large multinational employers and their representative associations are notable exemplars of institutions that are colonizing regulatory space for voice and participation (Hancher and Moran, 1989). A third point is that space is likely to be size-specific, depending on national, sector or enterprise level circumstances. The concept of regulatory space is therefore both multi-level and multi-dimensional. In this way we can track developments from EU and national level down to sector and company-level. Fourth, actors may contest regulatory space in defined regulatory arenas: labour market regulations can be viewed as contestable spheres where actors may occupy regulatory space to pursue their own preferences on distinct issues (Hancher and Moran, 1989). The defined regulatory arena for the purpose of this article is the ICE Directive and we assess, for instance, if it has had any impact in encouraging employers to share decision-making power with employees by engaging in new or revised consultation mechanisms arising from the regulatory requirements contained in the Directive and subsequent national legislation. Overlapping these conceptual issues is recognition that regulation can be a highly political process (Martinez-Lucio and MacKenzie, 2004). The greater the space colonized by a party to the employment relationship the higher the probability of achieving desired policy preferences and outcomes. Finally, the analytical approach here enables assessment of regulatory change as a contestable and moving entity, rather than a static depiction of industrial relations.

Factors affecting occupancy of regulatory space for employee voice

More specifically, for the purpose of this article, we have identified various external and internal contextual factors that can affect occupancy of regulatory space for employee voice at work, and which can be used to provide a deeper and more informed assessment of how and to what extent occupancy of regulatory space for voice is determined:

External factors:

a. Regulatory impact of ICE Regulations:

A potential factor affecting regulatory space for employee voice is whether the ICE Regulations can constrain managerial prerogative and provide employees with space to counterbalance employer power (Dundon et al., 2006; Dobbins 2010b; Hall and Purcell, 2010).

b. Other external factors shaping the employee voice agenda at enterprise level:

Other external factors affecting regulatory space for employee voice include competitive market pressures; the role of the State (EU-level and Nation State); employer associations; and trade unions. (Hancher and Moran, 1989; Streeck, 1995a; Barnard and Deakin, 2000; Barry, 2009; McDonough and Dundon, 2010).

Internal factors:

c. Impact of workplace union presence on voice:

Union presence has an impact on the nature and outcomes of employee voice (Freeman and Medoff, 1984; Oxenbridge and Brown, 2004).

d. Worker (union) mobilisation to contest the voice agenda:

Workers may collectively mobilize to contest the employer agenda (Kelly, 2005), and this countervailing source of power may impact on occupation of regulatory space for voice.

e. Voice as a form of union avoidance:

Employers may use non-union forms of voice as a means to avoid recognising unions (Gall, 2009).

f. Whether employers are strategic or opportunistic:

The extent to which employer's action are strategically intended, or, alternatively, improvised and pragmatically opportunistic, can affect the nature of occupation of space for voice (Kochan et al., 1986; Allen 2004).

g. Robustness or shallowness of voice in practice:

A review of the literature allows us to suggest that robust forms of voice give employees more opportunities to occupy regulatory space for voice than shallow forms (Oxenbridge and Brown, 2004; Dundon et al., 2006). Robustness or shallowness can be measured by depth, scope, level and form of voice (Marchington et al., 1993):

- Depth – extent to which employees (or their representatives) share in decision-making with management (from information provision to joint decision-making);
- Scope – range of issues on which employees (or their representatives) have a say;
- Level – hierarchical level in an organisation at which voice mechanisms operate;
- Form – type of ‘voice’ mechanism used, which can be direct (individuals or small groups) and/or indirect (via worker representatives).

h. Voice utility:

Voice utility concerns the extent of employee satisfaction or dissatisfaction with voice arrangements, which can influence how successful they are (Freeman et al., 2007; Donaghey et al., 2011).

Importance of power for regulatory space

The balance of power is crucial in assessing how and to what extent parties to the employment relationship can occupy regulatory space for employee voice. The multi-level and multi-dimensional approach adopted in this article means the concept of power is central to the analysis. Lukes’ (2005) ‘three faces of power’ (decision-making power, non-decision-making power, and ideological power) illustrates the power dimension of regulatory space. The first face of power concerns distributable behaviours over which there may be conflicts of interest, or a zero-sum outcome regarding who occupies space for voice regulation. Simultaneously, as Lukes notes, power can also be exercised in less obvious ways. Therefore the second and less explicit face of non decision-making power relates to how actors prevent certain issues being discussed in the first place, or decisions about them from being taken. An example is political lobbying by employers over employment legislation (Dundon et al, 2006), or tactical use of sophisticated non-union voice regimes to stonewall and delay statutory union recognition (Gall, 2009). The third face, ideological power, is the least observable and concerns the power to shape and manipulate peoples’ interests and wishes: even ensure that they accept or desire situations that can be contrary to their own interests. This third face of

power may be evident where management seek to deploy various cultural programmes to win employee hearts and minds as a form of employer control (Willmott, 1993). Above all, the continuous and forceful discourse promulgated by many employers and politicians that employment regulations should not interfere with employer choice over employee voice has gained both an ideological and practical dominance within and across neo-liberal market regimes (McDonough and Dundon, 2010).

3. Employer colonisation of employment rights: jostling for the regulatory space of employee voice

Discourse about the purpose of employment regulation has clearly changed in recent decades. Crucially, the emphasis on market liberalization, a (re)assertion of managerial prerogative, and experimentation with HRM practices, has coincided with partial reassessment by the State (at EU and national level) of the purpose of legal regulation of the employment relationship (Streeck, 1995a; Martinez-Lucio and MacKenzie, 2004; Barry, 2009). Historically, the prime purpose of legal regulation was protecting employees against laissez-faire capitalism and its power asymmetries (Flanders, 1970). Since the 1980s, a partial reassessment of regulatory purpose and function is discernable, especially in LMEs. Importantly, regulation can now be partly interpreted as a means of employer protection against collectively organized employees (Wilkinson et al., 2007; Barry, 2009). This signifies a jostling (or a competitive posturing) between the parties relating to employment regulation premised on the rights of the 'individual' rather than a 'collective'. In practice, EU-led regulations have gravitated from hard or protective laws (such as equal pay and health & safety) towards 'softer' measures allowing Member States greater latitude to transpose arrangements fitting their national culture (Gold, 2009). The EU is facilitating what Streeck (1995a:58) calls neo-voluntarism: 'a move away from hard obligations to soft incentives, from regulation to voluntarism'. 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, 1995a: 45-49). Significantly, employment laws have become more 'reflexive', allowing employers at enterprise-level greater latitude and space in shaping their 'preferred mode of intervention' (Barnard and Deakin 2000: 341).

The transposing of the ICE Directive provides an appropriate lens through which to examine the impact of employment regulation on information and consultation

rights; in particular, how labour market actors have occupied and/or vacated the regulatory space for employee voice. Hall and Purcell (2010) highlight that there was a perception that the Directive was introduced with specifically the UK and Ireland in mind, given they were the only two members of the EU at the time lacking legislation mandating enterprise-level social dialogue. Both the UK and Irish governments, along with employer associations, campaigned to block the Directive. Their objective was to preserve flexible labour markets and a voluntarist IR regime with little regulatory interference. Once it was clear that the ICE Directive was becoming law, the agenda of employer associations and governments shifted to one of trying to dilute its impact at a national (enterprise) level. In particular, there was opposition to I&C bodies that mirrored the mandatory and prescriptive nature of German works councils. Consistent with the principle of subsidiarity, the ICE Directive is rather general and open-ended, and gave individual states considerable latitude on the instruments used to enact it. Notwithstanding this generality, the Directive itself is explicit in setting out statutory requirements for representative based I&C rights.

Both the UK and Irish governments transposed national I&C regulations in a minimalist manner (Doherty, 2008; Dobbins, 2010b; Hall and Purcell, 2010). In the Irish context, evidence obtained under Freedom of Information law (Industrial Relations News, 2008) indicates that the Irish government, state development agencies, and large employers and their associations, met at a politically high level to shape the contours of the Irish legislation; with the Irish Congress of Trade Unions (ICTU) being excluded. The overriding concern was to avoid legislation that favoured collective voice systems which might jeopardize inward investment from (non-union) US multinationals (Lavelle et al, 2010). The transposed Information and Consultation of Employees (ICE) Regulations 2004 in the UK and Employees (Provision of Information and Consultation) Act 2006 in Ireland constitute a light-touch regulatory approach. Indeed, the transposed regulations in both jurisdictions' differ significantly from the Directive itself, in that direct (individualised) I&C is encouraged despite the Directive explicitly favouring indirect (collective) voice through employee representatives (Dundon and Rollinson, 2011). In terms of the regulatory detail, the UK and Irish legislation is broadly, but not wholly, similar. In both countries, employers need take no action unless 10% of their employees trigger statutory procedures for negotiated I&C agreements. Voluntary 'pre-existing agreements' are acceptable, unless employees are unhappy and apply to trigger negotiating procedures. In both jurisdictions, there is considerable scope for employers to establish organisation-specific I&C arrangements, including those

entailing direct communication with employees. Even the statutory ‘fallback’ provisions are minimally prescriptive compared to the original Directive (Doherty, 2008); in essence stipulating that employers have to arrange election of employee representatives and inform and consult them on broadly-defined business, employment and restructuring issues. The implication is that in Ireland and the UK, the State has circumscribed the regulatory space for voice in favour of an employer dominated neo-liberalised regime which has institutionalised voluntarist regulation and largely precludes robust employee representative engagement in workplace decisions.

Unions, meanwhile, were not just squeezed out of regulatory space for I&C by the combined actions of State and employers, but also vacated that space themselves to some extent. Historically, unions in ROI and UK have often been sceptical about non-collective bargaining participatory rights. For example, British unions saw the works councils and board representation proposals in the Bullock Report on industrial democracy in the 1970s as a threat to their bargaining power (Kettle, 2010). This has continued today. Both British and Irish unions have been ambivalent about ICE Regulations – uncertain whether to view them as an opportunity (to open up a second front of employee representation in non-union workplaces) or a threat (to the single channel of union representation). Arguably, unions have adopted a defensive rather than proactive posture to the ICE Directive.

Given the apparent jostling among State and other actors towards mandated employee voice rights, the lack of regulatory activity in the aftermath of the Directive’s transposition is not unsurprising. In the UK, 31 cases in 19 organisations were referred to the Central Arbitration Committee between 2005-9. In Northern Ireland, the Industrial Court has had one case. Case study research in the UK (Terry et al., 2009; Hall and Purcell, 2010) examining responses to the UK ICE Regulations in 25 organizations, suggests the outcome has been ‘legislatively-prompted unilateralism’ enabling employers to control I&C arrangements, with the form and impact of I&C largely reflecting their preference. According to these researchers, management determine whether voice is ‘active consultation’ or limited to ‘communication’. Only in a minority of companies were ‘active consulters’ found in terms of inclusion in strategic business issues. In Ireland, the Employees (Provision of Information and Consultation) Act arrived in 2006, a year later than the UK, and the impact has been even more muted (Dobbins, 2010b). The Labour Court has issued two recommendations and is dealing with one case pending of

employees triggering the Act (Industrial Relations News, 2009), and the Rights Commissioner Service has dealt with 8 referrals.

4. Research Methods and Cases

The data in this article is extracted from a larger research project examining the impact of ICE Regulations in sixteen organizations across the island of Ireland. Our rationale for case selection was companies with cross-border jurisdictions in the two national LME contexts of Republic of Ireland and Northern Ireland. The research design is multiple case studies and, for the purpose of this article, four cross-border organisations with operations in both the ROI and NI were selected. The four case organizations operate in four economic sectors: manufacturing (ConcreteCo), services (BritCo), retail (RetailCo), and transport (ServCo). This cross-border, multi-sector approach provides scope for both ‘between’ and ‘within’ sector and jurisdictional comparisons. Further selection criterion was premised on achieving a mix of companies with either union or non-union only practices, or both. Where possible, we strived to gain access to companies that had reacted to the ICE Directive. The research methodology is qualitative and primarily involved semi-structured interviews with senior and middle managers, line managers, employees, employee representatives and union officials. A total of 77 interviews in 12 sites were completed between November 2008 and October 2010 (summarized in Table 1), with the research incorporating a longitudinal element. Interview data were complemented by external and internal documentary material, notably on ICE, to ensure ‘triangulation’ of instruments (Yin, 2008). According to Yin (2008) the strength of qualitative multiple case study research is sensitivity to context, which is germane for reflecting upon workplace voice arrangements invariably shaped by both external regulation and specific organisational circumstances.

Our four cases vary widely. *BritCo* is a British former public utility that entered the ROI in 1990. It employs over 2000 staff in ROI and 1000 in NI. The company is non-union in the ROI, but union density is over 90% in NI. *RetailCo* is a UK-owned multinational in the home improvement/DIY sector, employing 23,000 people in the UK, with 550 in NI and 520 in ROI. The company do not recognise unions. *ConcreteCo* was founded in 1970 and is a large Irish multinational manufacturing and supplying construction materials. It operates in 35 countries employing about 95,000 people, with around 2,300 on the island of Ireland. In ROI union density is around 50%, but it is non-union in NI. *ServCo* is an Irish-owned former state transport company which was privatised in 2006. The company has been reacting to worldwide industry pressures and has undergone extensive restructuring with

resultant job losses. It currently employs approximately 1,500 in ROI and 70 in NI. Traditional union structures exist in ROI (the site opened in 1936), but there are modified pay and conditions and new IR practices in the NI site, which only opened in 2007.

Table 1: Case Study Organisations and Interviews

Case	Sector	N Sites NI	N Sites ROI	Interviews
BritCo	Services	1	2	Interviews: 6 managers, 3 union reps, 4 non-union reps, 13 employees, n=26
ConcreteCo	Manufacture	1	3	Interviews: 8 managers, 3 union reps, 1 EWC rep, 8 employees, n=20
RetailCo	Retail	1	2	Interviews: 2 HR managers, 6 employee reps, 10 employees, n=18
ServCo	Services	1	1	Interviews: 6 managers, 1 union official, 2 employee reps, 4 union reps, n=13

5. Case Findings

Our empirical findings are structured on a case-by-case basis around our conceptualization of factors affecting regulatory space for employee voice discussed earlier. We found that employers largely dominated regulatory space for information and consultation across all 12 sites in our four cross-border cases, but that there was considerable variety in patterns of occupation of space across our cases, with different factors affecting space occupancy prominent in each case (illustrated in Table 2). There was explicit reference by employers to compliance with the ICE Regulations in two of our four cases (BritCo and RetailCo) when formulating employee voice arrangements, while the other two cases (ConcreteCo and ServCo) felt that their pre-existing agreements fulfilled the criteria of the Regulations. Evidently, the fact that ICE Regulations in the UK and Ireland are ‘light touch’ - with both governments circumscribing the parameters of the Regulations to limit employee representative encroachment on managerial prerogative - meant they had little impact on the ground across our four cases (especially in terms of promoting robust employee voice). Instead, the Regulations basically facilitated a continuation of management dominated voice in voluntarist

work regimes. It was also clear in our cases that there was some awareness of the ICE Regulations among some senior HR managers and union officials, but very little among ‘other’ managers and employees. This appears to be partly attributable to the limited publicizing of the Regulations nationally by government, unions and employers.

Table 2: Factors affecting occupancy of regulatory space for employee voice

Factors affecting regulatory space for employee voice	Prominence by case
External:	
Regulatory impact of ICE Regulations	RetailCo, BritCo (ROI)
Other external factors shaping employee voice (market pressures, the State, employer bodies, unions, etc)	All cases
Internal:	
Impact of workplace union presence	ConcreteCo, BritCo, ServCo,
Workers mobilize to contest mgt. dominated voice	BritCo (ROI), ServCo(ROI)
Non-union voice as union avoidance by mgt.	BritCo (ROI), RetailCo
Whether employer actions are strategic or opportunistic	ServCo(NI), RetailCo, BritCo (ROI)
Robustness or shallowness of employee voice	All cases
Voice utility: employee dis(satisfaction) with voice	All cases

BritCo: employees contest managerial occupation of voice in ROI

The evidence from *BritCo* illustrates the important role of collective mobilisation (in a non-union setting) in shaping the dynamics underpinning the occupancy of regulatory space for employee voice. In particular, a group of union members in the ROI mobilized to contest managements’ system for voice by starting a union recognition campaign. Significantly, BritCo has dual I&C structures that are union-based in NI and non-union in ROI. Its historical background as a former British state utility left a legacy of unionization in the North. In practice, however, the union role in NI is limited to consultation and minor negotiation. I&C occurs principally through a Joint Consultative Committee of bi-monthly meetings. Shop-stewards in NI generally reported positive relations with management, but said management view unions as mere conduits for information rather than an independent vehicle for collective bargaining. Management were similarly

supportive of the union role, with the HR Director remarking ‘there are lots of good relationships’.

A second related factor affecting the occupation of regulatory space at BritCo was the simultaneous union avoidance tactics deployed in the ROI only. BritCo management reported a strong desire to maintain a union-free environment in the South, justified on the grounds of flexibility and cost minimisation pressures. The result was that BritCo employees in ROI believe NI staff enjoy superior conditions due to union bargaining arrangements in the North. A subsequent growing sense of injustice among engineering and craft grades led to a union organising drive in two Dublin facilities, seeking to expose BritCo’s cross-border IR strategy as ‘anti-Irish’. The union’s President remarked:

We now have the ridiculous situation that if you are one inch on one side of the border BritCo will recognise your right to be represented by a union but if you are an inch on the other side of the border it will discriminate against you. (Union Official, ROI)

Management responded to the union organizing campaign in the Republic by re-constituting a previously defunct non-union I&C forum, initially designed to comply with the Employees (Provision of Information and Consultation) Act 2006. The revamped forum (*BritCo Vocal*) was a consequence of management reacting to the pressures for union recognition in ROI along with a desire to be seen as responding to the ICE Regulations. Therefore, compliance with the ICE Regulations was a third factor shaping regulatory space for voice. *BritCo Vocal* was used to promote a set of new voice characteristics: employee representatives were elected; one representative for all grades per 100 employees; the HR Director would outline company developments to *Vocal* representatives, followed by a market update by the Chief Executive; and meeting agendas focused more on employee concerns, with representatives encouraged to raise issues. The hot-bed of union organizing – the Dublin engineering and call centre facilities - were each granted three employee representatives. Importantly, employee representatives achieved some noteworthy initial concessions from management, particularly concerning parity of redundancy terms between North and South. The effect of the revamped non-union employee representative channel was not only compliance with external ICE Regulations, it staved off a union organising drive for recognition. Yet, on balance, such actions by BritCo to avoid unions and revamp the non-union forum were arguably driven more

by emergent ad hoc opportunism than deliberate strategic intent – if anything management reacted to the collective agency of workers.

Evidently, the jostling for such an outcome was far from smooth. Indeed, the recast I&C forum was only partially successful, as many employees felt that the forum developed over time into an ineffective ‘talking-shop’, more appropriate to ‘tea and toilet’ issues than substantive consultation with a view to reaching agreement. *BritCo Vocal* was unfavourably compared by ROI employees with unionised arrangements in NI. Significantly, forum reps found that once the union recognition drive had subsided, the range of issues on which employees could engage with management waned. Therefore, in terms of voice utility, there was considerable employee dissatisfaction with non-union voice in the ROI. Evidently, regulation of employment relations has not been as straightforward as management perhaps envisaged and the co-existence of union voice (in NI) and non-union representation (in ROI) has not quelled demand for unionization in the Republic:

Some employees see it (non-union forum) as management paying lip service. Because we have no union, we have no power...There is a whole culture amongst employees that we should be unionised. (Employee Representative, ROI)

Retail Co.: managerial occupation of regulatory space through shallow voice

RetailCo does not recognise unions anywhere in Ireland or UK and operates the exact same non-union I&C structures in both jurisdictions. All decisions on pay and conditions are made at UK Head Office. The company has a long history of internal representative I&C mechanisms, the centrepiece of which is known as a ‘*Bottom-Up*’ structure. This signifies a paternalist-type of HR strategy, with a subtle union substitution approach in which unions are viewed as unnecessary. For example:

From its inception it has never been really explicit...we don’t deal with trade unions ... We engaging with employees and we operate a culture where we hope employees would not feel the need for joining unions (Manager).

Therefore, the first key factor affecting regulatory space for employee voice at *RetailCo* was a subtle union avoidance/substitution approach, manifested in the employer’s desire to remain non-union. The non-union voice system operates through a sequence of meetings at store, regional, divisional and national levels. These all conform to a uniform format throughout the company. Meetings are

supposed to occur at each level on a quarterly basis, starting at store level and followed by meetings at progressively higher levels so that, where necessary, issues can be passed up the pyramid to national level.

The *Bottom-Up* forum was revised in 2002 with a view to complying with the then recently concluded EU ICE Directive. Accordingly, employer actions to comply with ICE Regulations were a second factor affecting space for employee voice. Revised arrangements introduced on the back of the Directive included formal elections for employee representatives, with a stated consultative role in respect of business change. At store level, each retail site has one rep for every fifty employees, and site meetings normally consist of 5 people: site manager, HR executive, another manager and 2 employee representatives. In the two stores we visited, the *Bottom-Up* meetings were meant to occur four times a year but were only held twice. Agenda items can be put forward by staff or management. Regional forums cover between five and twelve stores. Chaired by regional managers, they consist of one employee representative from each store, plus one management representative from the region. *Bottom-Up* regional meetings typically discuss company and regional performance, and any issues referred from store level fora. Above this, divisional *Bottom-Up* meetings between divisional managers and employee representatives are chaired by Directors, supported by HR managers. Divisional forums provide an update on company and division performance and discuss issues unresolved at regional level. Finally, there are national level meetings comprised of one employee representative from each divisional forum, plus two management reps. RetailCo. staff are also represented on the company's European Works Council.

The 'shallow' nature of I&C was a third factor shaping occupancy of space for voice at RetailCo. To a large extent, management occupied the regulatory space for I&C owing to the hierarchical structure of the *Bottom-Up* voice system. The multi-level structure meant that the depth and scope of issues available to employees was limited and, moreover, the agenda and outcome of decisions was mostly controlled by management. The senior HR team were satisfied that the *Bottom-Up* structure fulfilled the requirements of the ICE Regulations. Senior management generally evaluated the system in positive terms, although tended to describe the system as part of the company's broader HR strategy of striving towards high-commitment HRM, rather than regulatory compliance with I&C requirements per se.

Management evaluations were not wholly uncritical however and HR managers expressed some concern about capacity of staff representatives to seriously engage in the forums and effectively communicate, both at forum meetings and with their constituents. Reservations were also expressed by line managers: '*Bottom-Up* is not utilised properly...and it has become negative...a venting exercise'. Employees, whilst appreciating the idea of having a voice, tended to see forums as toothless and shallow: 'something that's not really taken seriously by management', as one representative remarked. Other employee representatives reported that their capacity to conduct representative roles is limited by competing pressures from line managers and customer service obligations. One *Bottom-Up* representative criticized regional meetings, describing them as 'a farce...the manager just reads out a reply to your item, which he has known of for ages...a waste of time!' Another representative in the Republic described a problem with excess heat in their site which had been raised at all levels, although nothing was done until the Health and Safety Inspectorate issued the company with an enforcement notice. Concern was often expressed about the limited training provided for *Bottom-Up* representatives. Consequently, with regard to voice utility, there was considerable evidence of employee dissatisfaction with 'shallow' non-union voice.

ConcreteCo: dual voice in cross-border jurisdictional space

ConcreteCo is characterized by significant differences in occupation of regulatory space between the two jurisdictions of ROI and NI. Unions occupy elements of regulatory space in ROI, but in NI non-union employees exert very little influence (management unilaterally dominate workplace regulation). *ConcreteCo* use a variety of employee voice mechanisms across the island of Ireland, with outcomes depending on union presence. Therefore, union presence was a prominent factor shaping differences in occupation of space for employee voice in ROI and NI. In ROI, long-standing multi-union recognition was centred on 'traditionally defensive IR-based collective bargaining' (ROI Shop Steward). Collective bargaining and joint consultation occur at national and local levels, which a senior HR manager called a 'good system of information and consultation nationally'. National meetings are on 'big ticket' issues like pay and pensions. Outside of annual national meetings, however, consultative meetings occur only 'when something arises' (HR manager). Local site-level negotiations and consultations occur in the Republic, typically over working time, health and safety, and redundancy. Most issues are resolved locally rather than at national company level. Parallel to collective voice arrangements in ROI are direct communication mechanisms like team briefings, suggestion

schemes and annual workforce meetings. Employees saw their union as the best channel for information. Employees and shop stewards disagree with management about depth of consultation, claiming management often present issues as a fait accompli:

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. There is no real participation.
(Union Steward, ROI)

None of ConcreteCo's facilities in NI are unionised, and the 'shallow' strength of voice relative to the South was a factor affecting occupation of regulatory space. NI employees have very little power over space for work participation. There is a combination of non-union direct and indirect I&C mechanisms in the North, especially those of a communicative rather than consultative nature. The most prevalent voice arrangement is informal one-to-one communications. The HR Manager explained that employees are encouraged to first take an issue to their own direct manager, rather than utilise non-union works committee structures (normally covering health and safety or new work practices). Union (ROI) and non-union (NI) employee representatives occasionally interact through the European Works Council (EWC), known as '*EuroForum*'. Interestingly, the NI non-union 'employee' rep was an administration manager.

The rationale for divergent cross-border I&C practices at ConcreteCo seemed to be business model pragmatism and the flexibility afforded to managers by union absence in the North. Management's approach to I&C in NI was noticeably ad hoc and opportunistic, rather than constituting strategic or conscious intent to control the voice agenda. Nevertheless, issues like redundancy and working time were seen as easier for management to process in the North than the unionised South. Indeed, NI management considered the idea of consulting workers to be at best irksome, at worse an intrusion on managers' right to manage:

There is not highly developed consultation in our business....Personally I think the word 'consultation' is a misnomer, it is very much communication....Expectation for consultation isn't there from employees. Consultation implies there is a party with information, there is an opportunity to give feedback on that information, the feedback is listened to,

and as a result decisions are taken. That does not happen here (HR Manager, NI).

The unilateralism of management was confirmed by employees and managers themselves. Some NI employees expressed dissatisfaction with the 'shallow' nature of voice and wanted more opportunity to 'have a say and get feedback' and one stated that 'while on H&S matters we do influence things...on all else foremen and managers tell us things on a take it or leave it basis...not consultation really!' An administration manager, who is also the 'nominated' employee member of EuroForum, articulated the view that consulting employees can be dangerous from a management perspective:

You need to ask yourself, what do they need to know? Lots of information is highly confidential. We must be careful of what is portrayed to staff (Admin. Manager, NI)

With regard to the ICE Regulations, ConcreteCo and its unions in ROI agreed that the Irish ICE Regulations would require no change in pre-existing agreements. A ROI union official said the ICE Regulations 'offered us nothing...best to ignore it'. One ROI manager, very critical of the hype surrounding the ICD from employers' bodies, said:

Going back to what IBEC did when this was coming in....everyone was thinking Armageddon is on the way. But I don't think Armageddon has come. It hasn't had a major effect on us here because we were doing it anyway.

In NI, meanwhile, a manager claimed there was awareness of the Regulations: 'We were aware of it, but felt we didn't need to do anything. (The) legal side of things is a difficulty, because speed of decision making is affected by excessive consultation'.

ServCo.: 'old' and 'new' cross-border industrial relations regimes

ServCo also has very different I&C practices in ROI and NI, and we identify a clear distinction between 'old' (ROI-dating back to 1936) and 'new' (NI-2007) industrial relations regimes. *ServCo* has experienced considerable competitive turbulence in recent years. Even prior to privatisation in 2006, the company was seeking more flexible working conditions, changes in contracts of employment, and voluntary redundancies in ROI. Successive company restructuring plans in ROI have encountered frequent resistance from unions, who have mobilised members to

contest management's interpretation of workplace reform. Consequently, there has been significant industrial relations strife and restructuring plans have only been agreed after tortuous negotiations and extensive intervention by state dispute resolution institutions.

In the context of a former state-owned entity, ServCo unions in the ROI have traditionally had long-standing power and influence over regulatory space for I&C, and union density remains very high. Therefore, union power and readiness to mobilize it collectively to contest management's agenda were prominent factors affecting regulatory space for voice in ROI. ServCo has multi-union collective bargaining and consultative arrangements in ROI covering all employees. Therefore, compared to our other cases, the union consultative structures in ServCo ROI are robust (but have been diluted somewhat since privatisation). Before privatisation worker directors were elected onto the board, and possessed elements of German style co-determination. But employees no longer have influence at board level, apart from 'employee interest' directors relating to the Employee Share Ownership Plan. Also, sub-board corporate level meetings between union representatives and the company chairman no longer occur (the present chairman saw no need for it). Today, the main I&C structure consists of a *Central Representative Council (CRC)* which is a union business issues forum involving 20 representatives from all unions (SIPTU, IMPACT/IALPA, and 7 craft unions); with a full-time Secretary co-ordinating company-union consultation. The main management attendees at monthly CRC meetings are the CEO, Head of HR, Head of Operations. Union reps can voice opinions and raise business-related (non-IR) issues on the CRC, including staffing matters, future plans, sales, working hours, etc. Sub-groups of the CRC are set-up when important issues arise. The unions value the CRC because it provides one voice and one platform for the Group of Unions to raise business issues. But there was a perception among some union reps that management follow-up could be better. Since the company became a PLC, CRC union representatives have to sign confidentiality clauses: 'since its gone PLC they would say there are a lot of things we can't tell you' (CRC Representative). The second smaller consultative forum (an adjunct to the larger CRC), is a *Business Review Committee (BRC)* comprised of union representatives and senior management for the purpose of reviewing company operations, exchanging ideas and seeking 'consensus' solutions. But it appears the BRC does not meet often (1 meeting in the past year). One representative said the BRC is too much a case of management saying 'this is what we are going to do' and emphasizing 'cost reduction rather than innovation'. There are also direct I&C practices, including

new two-way ‘town hall meetings’ where all staff can directly raise issues with the CEO (which union reps saw as a good idea).

In ServCo Northern Ireland, the small new ‘Greenfield’ site which opened in 2007 has less robust employee voice arrangements than in ROI because management basically had a clean slate to implement new industrial relations arrangements and strategically control regulatory space for employee voice – a task that began before the site had even opened. Therefore, of all sites in this article, deliberate strategic intent by management was most apparent at ServCo (NI), in terms of conscious effort to limit employee influence on regulatory space for voice. Further, the matter of employee voice utility in ServCo (NI) is multifaceted because employees were dissatisfied with their ROI-based union (IMPACT) and most communication in NI now occurs directly and informally between local managers and staff, who are seemingly satisfied dealing directly with local management.

Although the industrial relations terms for the new Northern site were agreed with the Irish IMPACT union in ROI (recognized in the North under UK union recognition law), the collective agreement was premised on not importing ‘legacy’ pay and conditions from ROI to Belfast. A HR manager explained: ‘we only pay the local rates to make the operation economically viable’. The company has a restricted form of collective bargaining allowing unions to make representations on specified issues only (pay, leave, hours of work). Outside of this narrow sphere, terms and conditions in NI are unilaterally set by the company. This has enabled management to strategically consolidate occupation of regulatory space for voice in NI. Of the approximately 70 employees in NI, at least 50% are union members. But an inter-union dispute has been simmering between IMPACT and the UK GMB union. Most staff have defected from IMPACT (there are only a handful of IMPACT members left) and joined GMB, due to dissatisfaction with IMPACT and a perception that Belfast staff are being neglected because IMPACT prioritizes the bigger Dublin site. This unionization issue remains unresolved because the company still has a recognition agreement with IMPACT.

A new internal employee representative forum was established prior to the opening of the new Belfast site, known as the *Employee Liaison Forum (ELF)*, which covers all staff. It is not a union forum and is separate from union structures. The ELF was brought in by the site manager from past experience. A HR manager

remarked: 'it was important to have all employees represented on this forum and we insisted that non-union employees should be there'. An employee rep said: 'although I was in the union I wasn't going in as a union rep I was going in as employee rep'. The ELF consists of four employee representatives, a HR mgr, and head of operations. An employee pointed to some overlap between issues the ELF and union dealt with. The ELF had an early collective bargaining type role, albeit a restricted one, as both ELF employee representatives and IMPACT union representatives were involved in negotiating a three-year pay deal. The ongoing idea was for the ELF to meet every two months to discuss issues of concern to employees, like better meals, business performance, staffing changes. But the ELF met infrequently, has no real formal structure, and an employee said it has 'dwindled off a bit and gone quiet'. The site manager attributed this 'stagnation' to fewer issues arising after things bedded in at the new site – adding that he might 'regenerate it'. It appears to be mainly a communications tool rather than consulting with a view to reaching agreement. A HR manager described it as an 'information giving and getting exercise'. No training is provided for representative roles by the company or union, and there is little institutional support.

In summary, influenced by the small size of the NI site, good local management-employee relations, and employee dissatisfaction with the IMPACT union, most I&C currently occurs through informal direct face-to-face communication between managers and employees rather than via representatives:

Direct communications is where it's at in Belfast. Management doesn't necessarily seek out reps to give them the heads up..there is no advance notice (for reps) (HR manager).

There was little overall awareness of ICE Regulations in ServCo ROI or NI. The exceptions were a HR manager in ROI, who said the company reaction was: are existing arrangements in compliance? There was also awareness among union officials.

6. Discussion and conclusions

Using the regulatory example of the EU Information and Consultation of Employees (ICE) Directive, the contribution of this working paper is its analysis of factors that influence occupancy of regulatory space for employee voice at work in the Liberal Market Economies (LMEs) of the Republic of Ireland and Northern

Ireland. The article has advanced a multi-level, multi-dimensional analytical framework to evaluate occupancy of regulatory space for employee voice in comparative national contexts.

We conclude that the analytical framework for regulatory space provides a more refined assessment of employer and employee responses to employee voice regulation – specifically, the ICE Regulations. Applied to industrial relations, regulatory space concerns the range of issues subject to decision by the main actors (employers, employees, representatives), with some actors capturing more space than others (Barry, 2009). For the purpose of this article, we identified various *external* and *internal* contextual factors that can affect occupancy of regulatory space for employee voice, and which can provide a deeper and more informed assessment of how and to what extent occupancy of regulatory space for voice is determined and how much influence employers and employees have respectively over workplace decisions. The external factors are: the regulatory impact of the ICE Regulations; and other more general external influences shaping employee voice at enterprise level (including market pressures, the role of the EU and Nation State, employer associations, and trade unions). Internal factors identified are: impact of union presence on voice; worker (union) mobilisation to contest the voice agenda; employer use of enterprise-specific non-union voice practices to avoid unions; whether employer actions to control space for voice are strategic or opportunistic; robustness or shallowness of voice in practice; voice utility: whether employees are satisfied or dissatisfied with voice.

We also emphasized that Lukes' (2005) three faces of power is an analytically useful tool for understanding how and to what extent parties to the employment relationship capture regulatory space for employee voice in a given regulatory arena. Above all, we observed that the continuous and seemingly omnipresent, but not necessarily explicit and directly observable, discourse promulgated by many employers and politicians that employment regulations should not interfere with employer freedom to decide employee voice has gained both an ideological and practical dominance within and across neo-liberal market regimes (McDonough and Dundon, 2010). In Ireland, for example, US multinational companies and their representative associations exerted considerable ideological power over the contours of the ICE Regulations (Lavelle et al., 2010).

Given this neo-liberal ideological assault on the contested terrain of employment regulation (especially in LMEs), we agree with other observers that employer occupancy of regulatory space for employee voice is influenced in part by a reassessment of the regulatory function of the State (at EU and Nation State level) (Barry, 2009). We argue that employment regulation can now be partly reinterpreted as a means of protecting employers against worker collectivism, whereas in the past the emphasis was on protecting employees against exploitation (Flanders, 1970). In line with this State reinterpretation of legal purpose, and consistent with the principle of EU subsidiarity and neo-voluntarism (Streeck, 1995a), the ICE Directive is rather general and open-ended, and gave individual Member States significant latitude on the instruments used to enact it. Consequently, both the UK and Irish governments transposed national ICE Regulations in a light touch minimalist manner (Doherty, 2008; Dobbins, 2010b; Hall and Purcell, 2010). In particular, ICE Regulations in these two jurisdictions do not bestow automatic I&C rights on employees and are permissive of enterprise specific individualised direct communication. The implication is that in Ireland and the UK, the State has effectively circumscribed regulatory space for employee I&C rights in favour of an employer dominated neo-liberalised regime which has institutionalised voluntarist regulation and evidently provides employees with few counterbalancing powers to constrain employers to provide more robust voice over key issues. We also conclude that ambivalence of national unions in Ireland and the UK towards contesting the space opened by the ICE Directive has aided employers in occupying space for voice. The upshot is that employer experimentation with highly variable non-union forms of enterprise-based regulation (HRM, employee consultative forums, and direct employee involvement) is a challenge to unions as they struggle to retain receding regulatory space (Barry, 2009). In short, the light touch regulatory context in LMEs gives employers great scope to occupy this space and experiment with variable voice regimes: influencing what Allen (2004) identifies as the 'varieties of firms' approach.

Our empirical findings display similarities to those of Hall and colleagues in the UK that the regulatory outcome of the ICE Regulations has been 'legislatively-prompted unilateralism', with management dominating I&C arrangements, and employees having little influence (Terry et al., 2009; Hall and Purcell, 2010). This trajectory of employer dominated regulatory space for employee voice is generally supported by the empirical evidence in our four cross-border case studies, where the common tendency was for employees to remain marginalised. However, we would insert the caveat that employer colonization of regulatory space for I&C was

more complete in some of our workplaces than others – groups of workers in two of our cases mobilized to contest space for voice. Therefore, we point to the importance of the collective agency of workers themselves: employee voice remains a contested terrain even where the space for contest is narrowly circumscribed by employers and the State.

There was substantial variability across our four cases relating to context-specific factors affecting regulatory space for voice. Starting with *external* factors, there was explicit reference by employers to compliance with the ICE Regulations in two of our four cases (BritCo and RetailCo) when formulating employee voice arrangements, while the other two cases (ConcreteCo and ServCo) felt their pre-existing agreements fulfilled the criteria of the Regulations. Evidently, the ICE Regulations had relatively little impact on the ground across our four cases in expanding employee voice powers. Rather, the Regulations underpinned a continuation of management dominated voice in voluntarist work regimes. It was also evident in our cases that there was some awareness of the ICE Regulations among some senior HR managers and union officials, but very little among ‘other’ managers and employees.

Turning to *internal* factors affecting regulatory space for voice, the presence or not of unions had a significant impact on robustness of employee voice. The most robust forms of I&C were evident in highly unionized workplaces (notably ServCo ROI), and the most shallow were evident in non-union workplaces (notable ConcreteCo NI). In relation to this, whether I&C arrangements were robust or shallow clearly affected how much space for voice employers or employees occupied across our four cases. Also, worker (union) willingness and power to mobilize collectively to contest management control of the voice agenda was a prominent factor affecting space for voice in two instances: BritCo (ROI) and ServCo (ROI). At BritCo (ROI) union members mobilized collectively to pursue union recognition rights for collective bargaining purposes and, in so doing, opposed a management sponsored non-union employee representative Forum. Meanwhile, union members at ServCo (ROI) contested successive management restructuring plans that they feared could erode their regulatory space for voice. While such collective power mobilizations did not mean that employees achieved all they wanted, it did mean that they set certain boundaries to employer capture of regulatory space. In some sites, employers used non-union voice mechanisms as a means of union avoidance. This was explicitly so at BritCo (ROI), and more subtly at RetailCo.

Furthermore, across the cases, employer actions to control the space for voice tended on balance to be more reactionary and opportunistic than constituting strategic intent and planning. It is helpful to frame this in terms of degrees of strategic intent or opportunism. There was some evidence that employer actions were guided by elements of strategic intent and planning to control the space for voice: this applied particularly at ServCo (NI) - where management explicitly sought to define the space for employee voice prior to the actual opening of a new Greenfield site – rolling out new industrial relations policies and setting limits on the union role. For the most part though (notably at ConcreteCo NI, and BritCo ROI), management actions to control the voice agenda were ad hoc and opportunistic. Finally, voice utility was found to be important. In many of the workplaces we visited, employees expressed dissatisfaction with the limited say they had over workplace decisions. This was most acute where voice was perceived to be especially shallow, management dominated, and not sufficiently independent – such as ConcreteCo (NI), BritCo (ROI) and RetailCo. The matter of voice utility was quite complex at one workplace in particular, ServCo (NI). Here, voice was ostensibly shallow, but ServCo (NI) employees were satisfied dealing directly and informally with local management, having become dissatisfied with their ROI-based union (IMPACT) and revoking membership of this union. Yet many employees still wanted a union as an insurance policy in case something did go wrong and subsequently applied to join the UK GMB union.

There are important policy and practice implications arising from our case findings relating to distribution of power in LMEs. While our article illustrates that employers have generally colonized regulatory space for I&C, it is what they do with this power that matters. And the evidence from our cases and elsewhere would suggest that employer experimentalism with unilateral power may not necessarily produce optimal performance outcomes at workplace or national level (Streeck, 1997; Coats, 2004). A key point is that power imbalances at the workplace in voluntarist LME regimes can restrict the potential of I&C structures to create enduring mutual gains (Dobbins, 2010a). In LMEs, employers tend to limit the requisite space to employees required to enable a distribution of power necessary for genuine participation, as they seek to preserve managerial prerogative. On the other hand, employees may want more influence than employers find acceptable (Freeman and Lazear, 1995).

In short, it is difficult for voluntarist I&C practices to gravitate towards the requisite power equilibrium that could facilitate more expansive high productivity coalitions (Freeman and Medoff, 1984; Kaufmann, 2009). This power imbalance renders most I&C structures unstable and short-term. Extensive individual employer experimentation with voice structures in LMEs may also incur substantial economic transaction costs (Williamson, 1985). These issues were evident in our case organizations. Without strong external ‘beneficial constraints’ (like German works councils), most employers when left to their own choices will introduce sub-optimal voice systems that may not meet their own or their employees mutual interests (Streeck, 1997). In terms of voice utility, workers may express dissatisfaction with employer dominated fora, which occurred in our cases. In the absence of regulatory constraints (which employers may find beneficial once enacted), it is difficult to balance the ‘risks’ underpinning a stable equilibrium between management’s right to manage and employee demands for meaningful voice (Martinez-Lucio and Stuart, 2005). Following Streeck (1995b), legal intervention can ‘take the main parameters of workplace participation out of contention between management and labor, as well as out of competition between individual firms’. This points to a need to revisit the ICE Regulations and the legal embedding of industrial democracy measures that the UK Bullock Report envisaged in the 1970’s to bring greater equilibrium to regulatory space for employee voice.

Finally, in terms of avenues for future research, the analytical framework for regulatory space could be adapted to assess other labour market institutions and contemporary industrial relations issues, such as union recognition, temporary agency regulation, and so forth.

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