

## **Title of Dissertation**

*An exploratory study of the likely cultural impact of the  
Information and Consultation Directive 2002, on Irish-based,  
US multinationals.*

**By: Jeremiah Lynch**

**Supervisor: Prof. Brendan Mac Partlin**

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Ireland, Mayor Street, International Financial Services  
Centre, Dublin 1.

**Friday, June 16, 2006**

## Authorship Declaration

I hereby certify that this material, which I now submit for assessment of the programme of study leading to the award of Master of Arts in Human Resource Management, is entirely my own work and has not been taken from the work of others, save to the extent that such work has been cited and acknowledged herein.

**Signed** \_\_\_\_\_

*Jeremiah Lynch*

**Date:**

16 | 06 | 06

**Student Number:** 03227774

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**N.B.** Every effort has been made to accurately represent the views expressed by the various respondents. If I have inadvertently misrepresented the views of anyone I will be pleased to make the necessary amendment(s) at the first opportunity.

## **Abstract**

The ICD represents the most important innovation in Irish employment law in recent years. For the first time, employers are obliged to I&C with employees on core business issues, following the presentation of a valid request.

This study focused on the likely cultural impact of the ICD on Irish-based, US mncs. The findings show that non-unionised mncs have a preference to engage in information exchange, rather than consultation; whereas, unionised mncs are more likely to engage in consultation, as well as information exchange. There's no evidence to suggest that trades union are actively promoting I&C in US mncs. But the mere fact that there's a trades union presence in unionised mncs ensures management's commitment to consultation.

The study concludes that if the ICD is to be transformative in the real sense there's a requirement for the various actors involved (i.e. trades union, IBEC, the Chamber, various state agencies, and mncs) to cultivate a new approach in IR practices, herein referred to as '*transformed pluralism*'. In sum, this involves cutting the umbilical cord with the industrial past and cultivating a spirit of true enterprise partnership upon which the '*new*' Irish economy should rest. The approach adopted in the Scandinavian countries (particularly Sweden) may prove instructive in this regard.

Moreover, unless a new IR initiative is embraced (such as, *'transformed pluralism'*) it is highly probable that even the more proactive US mncs will engage in *'risk assessment'* followed by *'compliance'* via a series of adjustments to their existing I&C practices; and trades union are likely to become defensive lest I&C threaten union-based arrangements. In other words, in this circumstance, the ICD is unlikely to wield a cultural impact in US mncs. On the other hand, if either side proposes to use the ICD strategically there's a pressing requirement to invest heavily in training and development. Currently, there's no evidence to suggest that any emphasis has been placed on training and development for I&C purposes.

There is also a requirement for NCPP to become more actively involved in the detail of implementing I&C in the workplace. It is time for NCPP to stop writing reports on I&C. By contrast, the LRC should not be tasked to craft the new Code of Practice on I&C. DETE and/or NCPP should do this. There is little point in DETE and NCPP, on the one hand, formulating an I&C strategy, and, on the other hand, delegating the most critical aspect of any strategic plan, that is, the implementation phase, to a third-party.

Finally, there's some evidence to suggest that the ICD has prompted a form of legislative voluntarism among US mncs with employee strength of less than 150 (en site). There is also evidence of interest in the ICD among US mncs with employee strength below *'establishment level'* (i.e. 20 employees) in totem.

# Contents

Title of Dissertation	p.1
Authorship Declaration	p.2
Acknowledgements	p.3
Abstract	p.4
Contents	p.6
Abbreviations	p.11
Figures & Tables	p.13
<b>Chapter 1. Introduction</b>	<b>p.14</b>
<b>Chapter 2. Literature Review</b>	<b>p.20</b>
Context	p.20
Viewpoints pre March 23, 2005 deadline	p.22
Viewpoints post July 19, 2005 publication	p.33
Strategic Management issues	p.38
Information, Consultation & Negotiation	p.46
Change Management issues	p.48
High Performance Work Systems (HPWS)	p.50
The advent of "New Collectivism"	p.57
Developing an Information & Consultation Culture	p.67
Models of Change Management	p.74
Summary of Literature Review	p.78

<b>Chapter 3. Methodology</b>	<b>p.89</b>
Theory of Research Methodology	<b>p.89</b>
Practical aspects of Research Methodology	<b>p.98</b>
<b>Chapter 4. Research Results</b>	<b>p.105</b>
US multinational corporations (mncs):	<b>p.105</b>
CEOs and senior HR professionals on site	<b>p.105</b>
Senior HR professionals on site (only)	<b>p.108</b>
Middle Managers	<b>p.121</b>
Employees	<b>p.129</b>
Senior US HR professional	<b>p.141</b>
Social Partners, State Agencies & Other Opinion:	<b>p.147</b>
The right to Information & Consultation	<b>p.147</b>
Information & Consultation and Collective Bargaining	
Negotiations	<b>p.149</b>
Standard Rules	<b>p.154</b>
Minimalist approach	<b>p.158</b>
Management prerogative	<b>p.160</b>
Direct and/or indirect representation	<b>p.163</b>
‘Locus of Control’ in US mncs	<b>p.165</b>
Giving ‘voice’ to workers in non-unionised mncs	<b>p.169</b>
Use of ‘Experts’	<b>p.170</b>

Single table frameworks	<b>p.172</b>
'Undertakings' versus 'Establishments'	<b>p.174</b>
Enterprise Partnership issues	<b>p.175</b>
Social partnership & related matters	<b>p.182</b>
Traditional voluntarism	<b>p.187</b>
Decline in trades' union density in private sector	<b>p.190</b>
Way forward for trades union	<b>p.192</b>
"New Collectivism" and "Transformed Pluralism"	<b>p.199</b>
Benefits of Information & Consultation	<b>p.208</b>
Obstacles to Information & Consultation	<b>p.211</b>
Other matters	<b>p.215</b>
<b>Chapter 5. Discussion of Findings</b>	<b>p.218</b>
US multinationals (mncs):	<b>p.219</b>
CEOs and senior HR professionals on site	<b>p.219</b>
Senior HR professionals on site (only)	<b>p.220</b>
Middle Managers	<b>p.221</b>
Employees	<b>p.222</b>
Social Partners, State Agencies & Other Opinion:	<b>p.227</b>
Compliance of US mncs with local laws	<b>p.227</b>
Labour Relations Commission's task	<b>p.227</b>
Opportunities for trades union	<b>p.229</b>



A Theory of “Transformed Pluralism”	p.231
What is “Transformed Pluralism”?	p.240
Cramer’s V and chi-squared distribution ( $\chi^2$ )	p.243
Likely cultural impact of Information & Consultation	p.247
Other Matters:	p.249
Training & Development	p.249
‘Legislatively prompted voluntarism’	p.250
<b>Chapter 6. Conclusions</b>	p.251
<b>Author’s Note</b>	p.255
<b>Bibliography</b>	p.256
<b>Appendices:</b>	
1. Main points of Employees (Provision of Information & Consultation) Act, 2006	p.273
2. Provisions of Employees (Provision of Information & Consultation) Act, 2006	p.275
3. Schedule One: The Standard Rules on Information & Consultation	p.283

4. Schedule Two: Election of Employees' Representatives	<b>p.286</b>
5. Schedule Three: Redress for Contravention of Section 13 (1)	<b>p.287</b>
6. Interview Schedules Numbers 1 to 11	<b>p.288</b>
7. List of participating organisations	<b>p.307</b>

## Abbreviations

The following abbreviations are used for the corresponding terms indicated below. Each term is outlined in full first, followed by the corresponding abbreviation, and, thereafter, only the abbreviation is used throughout the remainder of the dissertation.

**CBI** – Confederation of British Industries

**Chamber** – American Chamber of Commerce

**CISC** – Centre for Innovation & Structural Change

**DETE** – Department of Enterprise, Trade & Employment

**DTI** – Department of Trade & Industry

**ER** – Employee relations

**EWC** – European Works Council

**FDI** – Foreign direct investment

**HP** – Hewlett Packard

**HPWS** – High Performance Work Systems

**IBEC** – Irish Business Employers' Confederation

**ICD** – European Employees' Information & Consultation Directive

**ICE (UK)** – Information & Consultation of Employees Regulations (UK)

**ICTU** – Irish Congress of Trade Unions

**IMPACT** – Irish Municipal Public and Civil Trade Union

**IPA** – Involvement & Participation Association

**IR** – Industrial relations

**I&C** – Information & Consultation

**JIT** – Just-in-Time

**LC** – Labour Court

**LRC** – Labour relations Commission

**MNC** – Multinational Corporation

**NCPP** – National Centre for Partnership & Performance

**NIB** - National Implementation Body

**OTJ** – On the job (training)

**PBIRA** – Partnership-based Industrial Relations Agreement

**SIPTU** – Services, Industrial, Professional & Technical Union

**SNB** – Standing Negotiations Body

**SPC** – Statistical Process Control

**TEEU** – Technical Engineering & Electrical Union

**TUC** - Trade Union Congress

**The new Act** – Employees (Provision of Information & Consultation) Act, 2006

**The 2001-04 Acts** – Industrial Relations (Amendment) Act, 2001, as amended by, the Industrial Relations (Miscellaneous Provisions) Act, 2004

**The 1969 Act** – Industrial Relations Act, 1969

**TUPE** – Transfer of Undertakings Protection of Employees

**VP** – Vice President (or Senior HR Director)

**WERS** – Workplace Employees Relations Survey

Where is PEIA?

## Figures & Tables

### Figures

**Figure No1** – Kolb’s experiential learning curve **p.90**

### Tables

**Table No1** – Responses from CEOs and senior HR professionals on site **p.107**

**Table No2** – Responses from senior HR professionals on site only **p.108**

**Table No3** – Responses from middle managers **p.121**

**Table No4** – Responses from front line employees (1) **p.129**

**Table No5** – Responses from front line employees (2) **p.133**

**Table No6** – Responses from front line employees (3) **p.134**

**Table No7** – Responses from front line employees (4) **p.135**

**Table No8** – Responses from front line employees (5) **p.136**

**Table No9** – Extract from Table No1 **p.219**

**Table No10** – Extract from Table No2 **p.221**

**Table No 11** - Extract from Table No3 **p.222**

**Table No12** – Extract from Table No4 **p.223**

**Table No13** – Perceived movement away from voluntarism **p.232**

**Table No14** – Extract from Table No9 **p.239**

**Table No15** – Responses relating to ‘Transformed Pluralism’ **p.243**

**Table No16** – Expected Frequencies **p.245**

**Table No17** – Observed Frequencies **p.245**

**Table No18** -  $\chi^2$  Calculation **p.246**

## **Chapter 1 – Introduction**

*“ ... [The] Directive is likely to represent the single greatest innovation in Irish employment relations in recent times. It will introduce for the first time a comprehensive legal code whereby management will be compelled to inform and consult with employees before making decisions on key business issues”*

(Geary & Roche, IN: Storey 2005, p.170).

### **Introduction**

The primary objective of the European Employee Information and Consultation Directive (2002/14/EC) adopted on March 11, 2002 (hereinafter “the ICD”), and published in the EU Official Journal on March 23, 2002, is to ‘*establish a general framework setting out the minimum requirements for the right to information and consultation of employees.*’ Member states had three (3) years to transpose the Directive into national legislation. Consequently, Ireland ought to have had the legislation transposed into Irish law on or before March 23, 2005, but failed to so do. Ireland is now obliged to implement the Directive fully on or before March 23, 2008.

### **Employees (Provision of Information and Consultation) Act, 2006**

On April 9, 2006, the long-awaited Employees (Provision of Information and Consultation) Act, 2006, (hereinafter “the new Act”) to implement the ICD was enacted and will come into effect on a date yet to be decided by the Minister for Enterprise, Trade and Employment (hereinafter “DETE”); the main points of the

new Act are set out in Appendix No1; while a detailed account of it is provided in Appendix No2, hereto. The new Act applies to all public and private undertakings carrying on an economic activity, and, hence, it applies to private, semi-state and public bodies.

The obligations under the new Act are not automatically effective. There is a trigger mechanism involved i.e. the employer may initiate the process or the employees may request the employer, the Labour Court (hereinafter "the LC") or its nominee to enter into negotiations. At least 10% of employees must request this, subject to a minimum of 15 and a maximum of 100. The information and consultation (hereinafter "I&C") arrangements may be conducted through employee representatives (including a trade union or excepted body where it is the practice of the employer to engage in collective bargaining negotiations) or directly with the employees.

Once a valid request is received the employer must arrange for the election of negotiating representatives, the parties then have six months within which to negotiate an agreement, though this time limit can be extended by agreement. The parties can negotiate one or more I&C agreements (which must be reduced to writing and approved by the employees) or agree to apply the Standard Rules. Standard Rules will also apply where: a) the employer fails to open negotiations within three months of having received a valid written request; or b) the parties fail to reach agreement within six months, and no agreement has been reached

to extend the prescribed time limit. A detailed account of Standard Rules is provided in Appendix No3; the rules relating to the election of employees' representatives are outlined in Appendix No4; and rules relating to 'Redress for Contravention of Section 13(1)' (Protection of Employees' Representatives) are outlined in Appendix No5, hereto.

The employees' representatives, of course, have protection from dismissal or discrimination connected with their involvement in the I&C arrangements. Employee representatives (and any experts assisting them) are not entitled to reveal to third parties any information given in confidence. Employers are entitled to withhold information the release of which would have a serious prejudicial impact on the business or whose revelation would break statutory or regulatory rules. Disputes relating to the establishment and operation of I&C arrangements, including issues of confidentiality are to be dealt with by the LC. Determinations of the LC can be enforced on application to the Circuit Court. The draft legislation also provides for penalties for breaches of its provisions of up to €30,000 or imprisonment for a term not exceeding three years or both.

### **Options open to employers/management**

Essentially there are three options open to employers. The first option is adopt a 'wait and see' approach. Keep a watchful eye over employees and wait until a request is submitted from 10% of the workforce. Second, develop the situation (but only in relation to the March 23, 2007 and 2008 deadlines. The deadline for



undertakings with at least 150 employees is now past) and initiate a “pre-existing” agreement with employees (hereinafter a “PEA”). It should be noted, however, that any PEA concluded must embody the principles enshrined in the ICD, meet the requirements of the new Act and be in place for at least six months. Finally, conclude a post regulation agreement with employees.

### **Importance of the new Act**

The ICD and the new Act are significant in two respects, that is, first, they confer new rights on employees to be informed and consulted, and, second, post March 23, 2008, their coverage will be massive. Consequently, it is one of the most significant pieces of employment legislation for many decades. It will, some have argued, ‘transform’ the nature of employment relations in Ireland (as well as in our neighbour – the UK). For example, Prof. John Storey contends, *“the growing intensity of global economic challenges make the case for greater employee engagement a compelling one ... Information and consultation, it is reasoned, are necessary elements in developing employee involvement, a shared sense of responsibility and participation ...the case for I&C is that it is required for economic survival in the new world order”*, (Storey 2005, p.3).

Prof. Keith Sisson, in the First Warwick Lowry Lecture on March 12, 2002, delivered a riveting critique of the ICD. In his lecture he made a number of basic propositions, inter alia: *“b. ... The implementation of the Directive represents a once in a lifetime opportunity to improve the quality of ... industrial relations with*

*the potential for widespread general gains that have come to be associated with the concept of “partnership”; and c. The opportunity is not going to be realised, however, without a great deal of effort and fresh thinking on the part of government, management and trade unions.” (Sisson 2002, p.3).*

### **Irish-based, US Multinational Corporations (US MNCs)**

For over 40 years US mncs have been described as the ‘sacred cow’ of inward investment. Initially, when the mncs started arriving in Ireland the government, as well as various state agencies, encouraged US parents to associate with trades union; and, accordingly, trades union gained a substantial presence in the mnc sector. Over the past decade or more, however, US mncs have adopted a predominantly union avoidance strategy. This not only relates to US mncs setting up in Ireland de novo, but also in circumstances where mncs of long standing are establishing sister plants in different locations. What is known as the host country effect (see more below) has had a huge influence on this development. In a US context, however, given the strength of anti-union feeling among many sectors of business there this is not surprising.

Moreover, from a human resource management (hereinafter “HRM”) perspective the ‘*universalist paradigm*’ that is predominant in the US is very much at variance with the ‘*contextualist paradigm*’ that is predominant in Europe. The universalist paradigm or viewpoint focuses on high performance work systems. In this regard, HRM is concerned with the aims and actions of management

within the organisation. It is wholly integrated with organisational strategies and objectives. It only works at the organisational/sub-organisational level. All other levels of involvement e.g. national/local government, trades union, etc., impinge on HRM. It is acutely focused on how human resources are managed in organisations. Control systems are the key means of managing and changing patterns of behaviour.

On the other hand, the contextualist paradigm or viewpoint of HRM contends that the universalist viewpoint excludes much of HR work, as well as other issues vital for the proper functioning of the organisation e.g. compliance, trades union, equal opportunities, etc. The contextualist viewpoint contends that these are not external influences, but are part of the topic. For example, HRM can apply at a variety of levels and its scope is not limited to the organisation e.g. the EU or national governments can adopt a HRM policy. In light of this philosophical divide in approaches to HRM it is not surprising to find that US mncs are wary of the ICD and its implications.

Accordingly, in light of the above-mentioned, it is submitted that both the ICD and the new Act mark a watershed in the evolution of Irish employment law, especially in the context of US mncs, and, consequently, are considered to be worthy of close examination and research.

## **Chapter 2 - Literature Review**

### **Context**

The practice of informing and consulting with employees in the workplace is not entirely new in either domestic or European fora. For example, in 1972 the EEC Commission launched the Draft Fifth Directive but it met with a lot of employer resistance and never became law. It was designed to apply to all public limited companies employing 500 or more workers, and it advocated a two-tier board system along German lines, involving the appointment of worker directors to the supervisory boards of companies. In 1975, the EEC Commission produced a Green Paper on Employee Participation and Company Structure, which took a more flexible approach. The first draft of the European Company Statute, 1976, also produced a two-tier system along similar lines. Moreover, it proposed that companies establish works councils and provide for the disclosure of certain types of information. The Vredling Directive, 1980, on employee rights to information disclosure recommended that mncs must inform and consult with employees in relation to strategic issues affecting subsidiaries in which they work. None of the above-mentioned measures came into effect on any widespread basis.

Recently, however, more concrete developments have emerged from the EU.

First, was Council Directive 94/45/EC of September 22, 1994, on the

establishment of European Works Councils (hereinafter "EWCs"). The purpose of the Directive set out in Article 1, is *"to improve the right to information and consultation of employees"* in European mncs by establishing *"a European works council or a procedure for informing and consulting employees"* where the employees request it. Consultation is defined as *"the exchange of views and establishment of dialogue between employees' representatives and central management or any more appropriate level of management"*. Second, was the adoption by the EU of Council Directive 2001/86/EC of October 8, 2001, on the European Company Statute in order to enable the establishment of *"a unified management structure and reporting system to be governed by Community law instead of a large number of widely differing laws"*. The Directive came into effect on October 8, 2004. A decision of a company to incorporate itself as a European company is entirely voluntary. Under the Statute, however, should a company decide to become a European company, management and employees jointly agree provision for worker involvement (including workers' participation on the company's supervisory board) or if no agreement can be reached, the standards set in the annex to the Directive must be applied. Third, was the adoption by the EU of the ICD that forms the subject matter of this research study (Wallace et al. 2005, pp. 301-337; Lynch 2005b; Gallagher & Geraghty 1997).

## Viewpoints pre March 23, 2005 deadline

In the period prior to the March 23, 2005 deadline, by which time the government should have transposed the ICD into domestic law, there was much speculation about the stance that would be taken. For example, Geary & Roche's (2004) article (cited in Storey 2005), formed the view that the Irish government would adopt a minimalist approach in comparison to the practice adopted elsewhere in Europe, "such as the level of voice permitted to works council representatives in Germany and the Netherlands" (Storey 2005, p. 195). The authors continued and expressed the view that, "companies will be permitted to develop ... 'privatised' versions of employee voice ... and, given the practical difficulties that are likely to confront employees where they seek to take up their rights ... it is difficult to foresee a radical recasting of Irish employment relations. In other words ... [i]t is our view that robust forms of employee information and consultation such as are envisaged in the Directive are more likely to emerge in strongly unionised companies, but it should be emphasised that the preconditions for this outcome existed prior to the Directive. In the absence of such preconditions, it is difficult to see how the Directive alone might instigate the adoption and diffusion of strong forms of employee voice in significant numbers of Irish workplaces" (Storey 2005, p. 196).

Notwithstanding the above-mentioned, Geary & Roche (2004) also review the opportunities the transposition of the ICD into Irish law presents to the social

partners (in this instance, government, trades union and employers), employees, as well as for moving partnership forward.

### **Social Partners**

First, the DETE initiated preliminary consultations in late 2002 with the social partners on the transposition of the ICD into Irish law. Subsequently, the DETE published a consultation paper (2003) to canvas the views of a wider range of interested parties. For example, viewpoints were requested on the usefulness or otherwise of a nationally agreed framework, given Ireland's extensive experience of social partnership. IBEC is reported to have been positively disposed towards this provided it only applied to unionised companies and that it would be voluntary. ICTU saw little value in pursuing talks on this basis because it would extinguish hopes of colonising the non-union sector on the back of the ICD. IBEC was also concerned that the terms of any nationally agreed framework would be too detailed and prescriptive; and, consequently, could be adopted by the DETE in designing the 'standard framework', (Geary & Roche 2005).

Second, in relation to a trigger mechanism IBEC's viewpoint was that there should be such a mechanism and that the onus should be placed on employees to pull the trigger; the threshold should be set at 35% of the workforce; and in the event of the required proportion of employees not endorsing the proposal, a period of three years should elapse before negotiations may be resumed. ICTU took the viewpoint that there should be no trigger mechanism at all; that the

requirement to inform and consult should operate automatically and should have universal coverage irrespective of the size of the entity involved (Geary & Roche 2005).

Third, IBEC, as well as other opinion blocs, such as American Chamber of Commerce in Ireland (hereinafter “the Chamber”), were of the viewpoint that the legislation should allow the use of direct forms of I&C, and that they should be allowed to obtain employee agreement for such practices without informing or consulting indirectly with employees’ representatives. Moreover, IBEC was insistent that employees nominated to act as employees’ representatives should be employees of the company. ICTU was adamant that employees’ representatives should be defined as union representatives, and that the legislation should provide for trade union representation in all situations, irrespective of whether the company is unionised or not, where the employees wish to be so represented for the purposes of the ICD. ICTU was also of the viewpoint that representatives should be allowed to call on experts of their choice for advice and help, and that the costs of providing such assistance should be borne by employers (Geary & Roche 2005).

Fourth, ICTU was of the viewpoint that in the absence of a national framework agreement the legislation should stipulate that organisations are required to adopt a standard framework; that meetings should take place at least quarterly; that employees should have the right to seek advice from union officials in



preparatory meetings; and to be accompanied by union officials where employees so require. Moreover, ICTU was of the viewpoint that decisions taken by management, without prior I&C, should be declared invalid and unlawful, and that a standard framework should provide for this. IBEC accepted the need for a fall-back model, but stressed that companies should be given as much leeway as possible to develop their own mechanisms. IBEC was fearful that a standard framework would provide employees with a negotiating template. Moreover, IBEC took the viewpoint that while I&C should take place '*with a view to reaching an agreement*', discussions cannot be expected to continue indefinitely, and proposed that a standard framework would adopt a thirty-day deadline. Thereafter, once management has acted in good faith it should be entitled to take a decision (Geary & Roche 2005).

Fifth, in relation to confidentiality and compliance IBEC was insistent that the legislation formalises obligations of confidentiality for employees' representatives, and lays down sanctions in the event of breaches of confidentiality. IBEC also pointed out that in the case of foreign-owned companies, local Irish management may not be in a position to follow I&C procedures; and any subsequent consultations with employees under the ICD would then be based on the implementation and consequences of decisions made elsewhere. Moreover, in relation to dispute resolution IBEC took the viewpoint that any appellate procedures should not be vested within existing industrial relations institutions, but instead the Minister should establish a

panel of independent arbitrators with the appropriate expertise (Geary & Roche 2005).

Finally, both ICTU and IBEC were of the view that the legislation should apply to undertakings; and ICTU was of the view that it should apply to all businesses and institutions in the private and public sectors, irrespective of whether they are operating for gain, as well as to government departments and public services; although it is far from clear if this is the case under the ICD which simply refers to undertakings '*carrying out an economic activity*' (Geary & Roche 2005).

### **Opportunities going forward**

Geary & Roche (2005) form the view that, first, the ICD confers important statutory rights on employees which can be enforced by legal sanction.

Employers' procedures will also be subject to external scrutiny. The authors note some drawbacks to this, however. For example, SMEs, without a dedicated human resource function, might require assistance to meet their obligations under the legislation, as well as the issue of the trigger mechanism. In other words, if the onus is on employees to pull the trigger the diffusion of I&C arrangements across Irish workplaces would be considerably slower than might otherwise be the case. In their view, it is difficult to see management actually informing employees of their rights and in the absence of trades union therefore, employees might remain ignorant of their right to I&C. Moreover, the ten percent

threshold to pull the trigger may present a problem; and in workplaces where there is no tradition of representation it may be difficult for employees to raise their heads above the parapet and organise sufficient support to initiate a valid formal request (Geary & Roche 2005; Dobbins 2005g). On the other hand, employers, and particularly non-unionised employers, faced with the prospect of having to negotiate with an employee forum under standard rules, may act with haste, and be pre-emptive in the introduction of organisation-specific I&C arrangements. Hall (2005) describes this as '*legislatively prompted voluntarism*'.

Second, the ICD may prove to be '*manna from heaven*' for trades unions. For example, it may help to bolster union support and guard against erosion of membership in unionised workplaces; whereas, in non-unionised workplaces it may provide an opportunity for unions to colonise. However, there are difficulties with all of this. For example, I&C is envisaged to involve employee-based rather than union-based bodies; and the ICD is designed to enfranchise all employees, both unionised and non-unionised. This presents an opportunity for the introduction of a new channel of representation even in unionised workplaces, which management can use strategically in order to marginalise unions, if they so wish. In other words, the ICD has the potential to be a double-edged sword (Geary & Roche 2005; Dobbins 2005g).

Third, it would seem from a perusal of the literature e.g. NCPP (2004), that a large number of employers may be failing to reap the substantial benefits that

can flow from actively embracing I&C practices. But the benefits in question are contingent on a number of factors including the structure of control within multi-establishment companies; the level of local autonomy enjoyed by mnc subsidiaries; the types of change programmes being pursued; the extent of union engagement and commitment from union officials; and the degree of senior management support for promoting a participative workplace environment. There are also obstacles involved, such as, the resources required to implement and operate I&C practices properly; and the potential for strengthening union representation in ways that might be perceived by management to be prejudicial (Geary & Roche 2005).

Finally, it might provide a means for protecting the processes of I&C from the more adversarial tendencies associated with negotiation and collective bargaining (Sisson 2002). It might also provide a catalyst for the promotion of better working relationships between management and unions (NCPD 2004). Under the terms of the ICD, the employer and employees' representatives are required to *'work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees'*. In this context, the ICD does present a unique opportunity for the development of a partnership-based approach to management-employee relations (Geary & Roche 2005).

## **The use of works council style arrangements**

Dobbins (2005b) reports that a number of non-unionised firms, especially mncs, are examining the possibility of putting in place indirect consultation structures with employee representatives, and gives Hewlett Packard (hereinafter "HP"), the US technology giant, as an example of this. He also notes that other firms, however, such as HP's competitor Dell, are adamant that they want to preserve a direct approach to communicating with their staff. In addition, he indicates that, other firms will probably combine both direct and indirect consultative arrangements and, therefore, a mixture of approaches to informing and consulting can be expected. Notwithstanding this development, those firms, by and large, retain their opposition to having trade union representation on any fora that may emerge.

Dobbins (2005b) notes that there is always the possibility, where unions have some membership in a firm, that they may seek to challenge these practices and attempt to gain a foothold in it. In his view, "*Much depends on their tactics and organising muscle*" (Dobbins 2005b, p. 3). He takes the view that unions are caught between a rock and a hard place, in the sense that the ICD represents both an opportunity and a threat to them. Also, he indicates that, government would appear to be adopting a rather minimalist interpretation of the ICD, which does not provide a guaranteed role for unions. "*The factor driving this ... is the overriding concern by employers, the State and its development agencies, not to scare off the sacred cow of foreign inward investment*" (Dobbins 2005b, p.3).

## **Wait and See**

Dobbins (2005b) also reports that while some firms are investigating the possibility of introducing indirect mechanisms in advance of the legislation, most firms will probably adopt a *'wait and see'* approach, and not make any move until they know precisely what the rules of the game are. In cases where indirect mechanisms do evolve there is likely to be wide variations in their structures and employee 'voice' provisions; some will be strong, while others will be weak or more *"akin to Japanese company councils with limited input into workplace governance"* (Dobbins 2005b, p.3). On the other hand, he makes the point that, some firms, especially the larger ones, for practical reasons, may find it easier to communicate workplace change issues to large numbers of employees via indirect, rather than direct, channels. In short, it may not be practical, or sufficient, to directly communicate major change issues on a direct basis to large numbers of workers. Additionally, it should be borne in mind that some non-union companies will already have experience of indirect consultation mechanisms, for example, when having to comply with legislation, such as, collective redundancies and transfer of undertakings, etc.

## **American Chamber of Commerce in Ireland**

It should be noted that the Chamber in its submission to the DETE's consultation paper (mentioned earlier) emphasised the need to maintain voluntarism in Irish industrial relations: *"Any implementation of this legislation must take into account the structure and practices of voluntarism in Industrial*

*Relations in Ireland. The existence of such an approach has added to the attractiveness of Ireland as a location for many multinationals. The implementation of this legislation should be designed to support such an approach rather than hamper it in any way”, (Dobbins 2005e).*

In terms of the overall approach to transposing the legislation, The Chamber: “... agrees with the Department of Enterprise, Trade and Employment in its overall flexible and pragmatic approach to this legislation:

- *That it should accommodate voluntary Industrial Relations in Ireland;*
- *That there was no need for an unduly heavy model that does not enhance relations between employers and employees;*
- *That organisations which already have a good relationship should not have to replace their current practice with an untried one;*
- *That direct information and consultation where employees express a clear preference for its continuance has to be allowed;*
- *That they have accepted that management has the final responsibility to make decisions;*
- *And that sometimes information is ‘too’ confidential to be handed over”,*  
(Dobbins 2005e).

On the trigger mechanism the Chamber favoured an “opt-in” as opposed to an “opt-out” trigger mechanism, with the onus on employees to trigger the process, but with flexibility for the employer to start discussions as required. The

submission also called for a minimum trigger level of 25% of the workforce (Dobbins 2005e; Lynch 2005b).

The Chamber in its submission also demanded that employees' representatives should be employees of the 'establishment' or 'undertaking' and that no external members, that is, trade union officials, should be allowed: "*Representatives from outside the workforce should not be invited to be representatives. The purpose of the Directive is to ensure that employees are informed and consulted and this is best done directly. Furthermore there may be difficulties in the areas of confidentiality and corporate governance where non-employees are given access to company information.*"

*Employees should nominate representatives; it is not necessary to have an election. The number of representatives appointed should be based on a ratio of 1:100, with a minimum of 2 to make it fair and effective. All employees should have the right to go forward for nomination and selection", (Dobbins 2005e).*



## Viewpoints post July 19, 2005

On July 19, 2005, the long-awaited draft legislation to implement the ICD was actually published. It received varied responses from the various actors involved.

### Trades Union

The trades' union initial response to the draft legislation (and the new Act) has not been positive, with the ICTU expressing its "*serious disappointment*" at the "*minimalist approach adopted by government*" and stating that, from a partnership perspective, it is "*untenable in its existing form*" (E.I.R.R. 2005a; Dobbins 2006a). In other words, the Government appears to have only transposed into Irish law measures it deemed necessary to comply with the terms of the Directive, and little more. The ICTU has several reservations about the draft legislation (and the new Act), including its criticism of government for its '*pro business sentiment*' (Dobbins 2006a): there is no automatic right to I&C conferred, workers will have to "trigger" negotiations in order to set up the process; there should be an "opt out" instead of an "opt-in" mechanism whereby employees would have a guaranteed 'right' to I&C, otherwise employees could face hurdles when attempting to trigger the mechanism and may have to 'fight' to secure I&C rights; few employers are likely to volunteer to introduce such arrangements; there may be difficulties at non-union or partially unionised sites or at sites where employers want to bypass unions. It has been suggested that non-union consultation fora could end up in competition with trade union structures, particularly in sites where unions are hoping to organise; and

employers will be able to avoid even a minimalist form of representation, where employees agree to continue without change and exercise their right to I&C through “direct involvement” (E.I.R.R. 2005a; Lynch 2005b).

Congress argued that Section 11 of the Bill (now the Act - relating to Direct Involvement) on its own provide employers who wish to avoid even the minimalist form of collective representation with the opportunity to so do; there was insufficient protection afforded to employees’ representatives and no protection afforded to employees who seek to exercise their right to I&C or who are victimised as a result of having sought the establishment of structures for I&C (*Section 13 of the new Act deals with this*); and although the draft legislation provided for time off for employees’ representatives to perform their duties, this was not specified as paid time off, neither was provision made for paid time off for training (*again Section 13 of the new Act deals with those issues*) (E.I.R.R. 2005a; Lynch 2005b).

Indeed, there was mention of: *“[t]he possibility of ICTU mounting a legal challenge to “test” the validity of the transposing legislation has not been ruled out, with some labour lawyers and industrial relations experts having already questioned the validity of the “opt-in” trigger mechanism, [as well as the legality of direct methods of I&C in terms of meeting the criteria implied in the ICD]”* (E.I.R.R. 2005a, p.26).

Higgins (2004a) makes the point that the ICD presents both opportunities and threats for trades union. Larger non-union firms will have to set up consultation fora, many of whose members will have practically no experience with representative structures. Accordingly, in Higgins's view: *"[t]he potential exists for trade unions to provide these [fora] with access to their considerable experience in this area, through advice and other assistance. While it might not be as attractive to the unions as traditional recognition, it would certainly be an improvement on their current status in such companies. However, if such opportunities are not grasped, these new consultative bodies may develop a strength of their own and block off any hope trade unions have had of gaining a foothold in such employments"* (Higgins 2004a, p.23).

At this juncture it is interesting to note that in the UK the Information and Consultation of Employees Regulations, 2004, came into effect on April 6, 2005. In a Warwick Paper in Industrial Relations, Prof. Mark Hall critically reviews how employers and unions in the UK are responding to it. *"A central aspect of the government's legislative strategy has been to maximise organisations' flexibility to respon[d] to the new Regulations and encourage the adoption of agreed, organisation-specific information and consultation arrangements ... Survey data indicate there has been a spread of information and consultation arrangements over recent years but there has been little sign to date of the extensive adoption of formal 'pre-existing agreements' which, under the Regulations, offer employers greater protection from employee pressure for new arrangements to be negotiated*

*via the Regulations' statutory procedures. Even where employers are being proactive, the predominant approach seems to be one of 'risk assessment' rather than 'compliance'. For their part, trade unions have so far tended to take a defensive stance towards the new legislation, reflecting concerns that the Regulations could potentially threaten union-based arrangements."* (Hall 2005, p. 4). Surely the same point can be made in an Irish context!

## **Employers**

On the other hand, employers were fairly content with the draft legislation, and believed that it should curtail the extent to which the implementation of the ICD would impinge on "*traditional*" management prerogatives. Employers were afraid that the Directive could potentially open up the door to de-facto union recognition in previously non-union firms. IBEC's Director of Industrial Relations and Human Resources, Mr. Brendan McGinty had stressed the need for flexible execution in order for the legislation to succeed, saying: "*The government must ensure that the new proposals do not undermine a company's ability to adjust to new market conditions or the right of management to make difficult decisions associated with such a change. Any measures that make Irish business less able to adapt to changing global markets will undermine competitiveness and put jobs at risk*" (E.I.R.R. 2005a, p.26). He continued: "*The aim of the legislation to facilitate local agreements is a welcome acknowledgement of our voluntary tradition. It will give many organisations the confidence to tailor an agreement to the company's and the employees' needs. An overly prescriptive*

*approach would undermine established local procedures, which promote dialogue and trust*", (Dobbins 2005f).

Moreover, Mr McGinty welcomed the '*window of opportunity*' for undertakings with 150 or more employees to conclude a "pre-existing" agreement under Section 9, which, he pointed out, according to the government's press release, can be "*tailor-made to suit the culture and circumstances*" of individual companies. However, he was critical of the delay in publishing the Bill. "*The [B]ill was due to be effective in Ireland on 23 March [2005] and the delay has created [a] major problem for many businesses. Many employers have wanted to put in place agreements with staff, but were unable due to the lack of clear legislation*", (Dobbins 2005f; ; Lynch 2005b).

### **American Chamber of Commerce in Ireland**

Dobbins (2005e) and Lynch (2005b) note that although the Chamber's submission to the DETE called for a minimum trigger level of 25% of the workforce, the government opted for 10% (subject to a minimum of 15 and a maximum of 100 employees). Moreover, the draft legislation (and the new Act) provides for the election of employees' representatives, and while it confers no entitlement on trades union to act as '*experts*', it does not preclude it.

## **Strategic Management issues**

### **Employee influence mechanisms**

Prior to 2002, when the ICD was still in the EU legislative pipeline, much debate focused on the extent to which employers and/or management would engage in constructive consultation with employees and/or their representatives in relation to strategic and/or change management issues, in contrast to the more traditional approach of discussing issues at the '*individual job*' level.

Gunnigle (2001) identifies three broad ways in which employees can influence decision-making in organisations, namely, industrial democracy (workers exert primary control over decision-making), employee participation (extends employee influence beyond the traditional remit of collective bargaining into areas such as operational and strategic decision-making), and employee involvement (shifts employee influence away from representative forms of participation towards a greater focus on increasing the direct involvement of employees in decisions of immediate work relevance).

Collective bargaining has traditionally been viewed as one of the most effective means through which employees can bring their influence to bear on organisational decision-making. However, in Ireland, collective bargaining is generally adversarial in nature and, as such, has attracted the criticism that it is not an effective means of promoting more co-operative forms of management-worker participation. Moreover, its agenda are often limited in the range of

issues addressed due to its tendency to primarily focus on pay and conditions. However, in recent times the scope of discussions during the negotiation of centralised agreements between the social partners are not just restricted to pay and conditions, but address a range of broader social issues such as employment norms, taxation, and employment creation.

The concept of works councils (or EWCs) has a long established tradition in mainland Europe; but it is a relatively new concept in Ireland. The concept first appeared in Ireland following the transposition of the EWC Directive (cited earlier) into Irish law via the Transnational Information and Consultation Act, 1996, which provides for the establishment of a works council or employee forum in companies that employ 1,000 or more workers across the EU and at least 150 workers in two or more states. Non-unionised firms have also begun to establish works councils as part of a union substitution strategy where management seeks to meet employees' requirements for formal representation while maintaining a firm's non-union status.

Co-determination is possibly the most widely debated form of representative employee participation and involves the election of worker directors to boards' of management. In Ireland, the requirement for the appointment of worker directors is confined to the State sector via the Worker Participation (State Enterprises) Acts, 1977 to 1988, (Wallace et al. 2004, pp. 315-316).

## **Strategic management and partnership**

A number of studies have investigated the issue of management-employee communications in relation to strategic management issues, most notably, The Cranfield-University of Limerick (CUL) studies carried out in 1992, 1995 and 1999; Gunnigle's (1995) study of Greenfield sites in Ireland; the Irish Management Institute's study (1997) of Partnership Based Industrial Relations Agreements (PBIRA); and the UCD/ESRI Workplaces Survey 1998. Overall, these studies provide little evidence of trades' union involvement in strategic decision-making. They also highlight the limited impact of direct involvement. *"It appears that the predominant focus of direct involvement initiatives is on facilitating the involvement of individual employees and small groups on issues of immediate workplace relevance. These initiatives seem to be primarily concerned with encouraging greater employee 'voice' on issues of immediate job related interest rather than employee 'influence' on higher level management decision making"* (Gunnigle 2001, p.16).

Gunnigle (2001) also notes that many trades union harbour distrust about the implications of employee participation and involvement for trades' union role in collective bargaining. Salamon (1998) identifies a number of factors which may explain trades union opposition to employee participation and involvement initiatives, particularly direct participation: *"a. management's tendency to emphasise the intrinsic rewards (such as increased job satisfaction) emanating from organisation change and to 'play down' the significance of extrinsic rewards;*



*b. a suspicion that the primary objective of organisation change initiatives is productivity improvement and cost reduction rather than increasing employee participation and involvement and concern that such moves may lead to downsizing; c. a suspicion that organisational change initiatives may lead to a dilution or removal of traditional demarcation lines between groups of workers; and d. a suspicion that direct participation represents a management desire to undermine existing representative arrangements, with a consequent diminution in the role of trades union in workplace industrial relations” (Gunnigle 2001, pp. 16-17).*

### **Employee participation and involvement**

In spite of the above reservations, recent years have witnessed a change in trades’ union approaches to employee participation and involvement. For example, ICTU’s policy documents, *New Forms of Work Organisation* (1993) and *Managing Change* (1995) both endorse the need for trades unions to take a more proactive approach towards involvement in workforce management strategies. They also highlight key aspects of employee participation and involvement which trades union need to address, *“particularly the joint monitoring of participation in initiatives at workplace level, involvement of trade unions in the internal communications processes of organisations, access to and understanding of business information, and union involvement in high level business decision making”* (Gunnigle 2001, p. 17).

In relation to rank and file or ordinary workers, *Partnership 2000* identified a number of issues which partnership at workplace level might embrace, most notably employee co-operation in organisation change, changing forms of work organisation and financial participation. Indeed, an important argument put forward by union leaders in support of partnership-based industrial relations arrangements at enterprise level is that such initiatives will have beneficial outcomes for rank and file union members in terms of their experience of work and will foster greater partnership between management and employees. It is also argued that partnership will serve to strengthen union organisation in the workplace and give workers a fairer share of a company's economic success. However, the findings of D'Art and Turner's (1999) survey of a large Irish general union concluded that "*the development of a genuine sense of partnership at firm level has not occurred to any significant degree in the companies surveyed*", (Gunnigle 2001, p.19).

It is widely suggested that all parties in industrial relations can benefit from increased employee participation and involvement (Beer et al. 1984; Hackman & Oldham 1980). However, the achievement of real and effective participation within organisations would appear to be as problematic as ever. A particular concern of trades union is the impact of these various participative forms on collective bargaining and the union role at enterprise level (trades' union '*right and ability*' to oppose management). Consequently, initiatives which seek to integrate workers or trades union in the decision making process are often

viewed with suspicion since they may serve to reduce trades union independence and capacity to oppose. Trades union are also keen to ensure that any participative forms complement rather than compete with established collective bargaining institutions and oppose approaches aimed at undermining the union role at the workplace level (Gunnigle 2001). In contrast, employers often view employee participation and involvement as a means of engaging the whole workforce (not just those represented by unions) in organisation change initiatives aimed at improving the firm's competitive position. Salamon has noted this contrast, "*Management favours task-centred, direct forms of 'involvement' based on increasing the commitment of the individual employee; trade unions favour power-centred, indirect forms of 'participation' based on the established representational role of trade unions to increase employee influence in management decision making*" (Salamon 1998, p. 389).

Hyman & Mason (1995) have identified two optional management strategies in seeking increased productivity and performance, that is, a) a '*coercive approach*' (enforced organisational change and improved performance through threats of lay-offs or closure); and b) an '*integrative approach*' (which seeks to foster common interests using direct involvement and, hence, improved performance through employee commitment and support). However, the achievement of direct participation appears to be as problematic as representative participation.

Marchington et al (1993) have identified four common problems associated with direct participation (employee involvement): a) lack of continuity; b) absence of

middle management support and commitment; c) adoption of inappropriate systems; and d) employee scepticism. Salamon (1998) has noted that middle and senior management may sometimes be a greater obstacle to direct participation than employees or trade unions. Nevertheless, Salamon (1998) is equally unambiguous in his contention that the most appropriate approach is one which combines direct and representative participation: *"The most effective structure of employee participation within an organisation is one which combines direct employee involvement in decisions relating to their immediate work situation with indirect participation at the strategic level on major organisation decisions, while not undermining the collective bargaining representational role of established trade unions"* (Salamon 1998, p. 389). However, the imposition of particular models has proved problematic and the current thrust of many national and EU policies is to allow a high degree of flexibility in the modes of participation and involvement to be adopted.

### **Prospects for strategic management and partnership**

Accordingly, Gunnigle (2001) is of the view that the prospects for strategic management-union partnership seem remote for the following well-established reasons: a) management's traditional reluctance to share decision-making power, especially with regard to strategic issues; b) management's view that any sharing in strategic decision-making would inhibit quick and decisive action, as well as reduce an organisation's capacity to deal with competitive challenges and market responsiveness; and c) management's contention that stock markets

tend to favour strong central managerial governance and the development of strategic partnerships would not be viewed positively. *“This is particularly the case among ‘high technology’ stocks. An issue with especial resonance in Ireland is the great difficulty likely to be encountered in developing partnership arrangements in foreign owned companies. In the great majority of such firms strategic decisions are made at corporate level – at a significant remove from the Irish subsidiary. As such it may be particularly difficult for Irish trade unions to develop strategic partnerships in such situations”* (Gunnigle 2001, p. 22).

## **Information, Consultation and Negotiation**

According to Sisson (2002) drawing the boundaries between information, consultation and negotiation is going to be a difficult issue. *"Distinguishing between consultation and negotiation is especially difficult"*, (Sisson 2002, p. 15). In other EU countries this will not prove to be difficult, where it is possible to divide responsibilities on the basis of the structure of collective bargaining, with negotiation being primarily the responsibilities of workers' organisations and trades union; and consultation being the responsibility of a works councils or its equivalent inside. In Ireland the social partnership agreements tend to complicate this matter further because the tenor of the relationships between the parties often reflects the wider economic and political situation. In other words, meetings that can resemble consultation in one time period can more closely resemble negotiation in another and vice versa.

The situation is complicated further by the expectation under the ICD that consultation should be *'with a view to reaching an agreement'* in the case of *'decisions likely to lead to substantial changes in work organisation or in contractual relations'*. The implication of this is that management must not only seek and take into account the viewpoints of employees and their representatives, but also seek to reach agreement. This requirement has existed under Irish law since 1993 in respect of consultation over impending collective

redundancies and transfer of undertakings. The outcome of such consultation has ranged from mutually agreeable arrangements to a feeling by employees that change has been imposed on them from above. Accordingly, in order to minimise any misunderstandings employers and employees or employees' representatives will have to decide where consultation sits on a continuum between formal noting of views (for example, in the case of corporate policy) and joint decision making (for example, in the case of complex changes in work arrangements), and what each party expects from it (Sisson 2002).

## **Change Management issues**

In relation to change management issues, a study carried out in 2003 by The Centre for Innovation and Structural Change (CISC), on behalf of the DETE, looked at I&C arrangements in 15 organisations spanning the private and public sectors, unionised and non-unionised, and small, medium and large firm categories.

The study found that a variety of mechanisms were used to inform and consult, commonly in combination, but methods of direct information consultation were most common. In relation to direct methods, emails, staff briefings, focus groups and appraisal practices were used as one-way and two-way communication mechanisms. Direct consultative techniques included workforce meetings and attitude surveys. Indirect I&C mechanisms included joint committees and works councils. Partnership agreements sometimes provided the medium for I&C in unionised environments (Geary & Roche 2004; Dundon et al. 2003).

Managers frequently understood the process involved in exchanging information and consulting employees as aspects of 'internal communications', 'dialogue' and 'empowerment', and sometimes preferred these terms to 'information and consultation'. Many representatives and employees interviewed seemed more sceptical as to the depth and extent of I&C than did managers. The respondent organisations were positioned, in general, somewhere between practicing



information exchange and practicing consultation (Geary & Roche 2004; Dundon et al. 2003).

With regard to the role of I&C in the management of change, it was concluded that centrally-driven change programmes often left little scope for consultation at the local level. The more 'transformational' the change programme, the less likely that consultation would occur, although information was still generally disseminated to employees. Incremental change initiatives seemed easier to align with consultative practices (Geary & Roche 2004; Dundon et al. 2003).

The study concludes that information and consultation practices were most effective, especially in managing change, where they were integrated; where direct and indirect methods were used in combination; where there was commitment from top management to such practices; and where extensive informal dialogue supported more formal arrangements. (Geary & Roche 2004; Dundon et al. 2003).

## **High Performance Work Systems (HPWS)**

*“The concept of HPWS is very much associated with the new ‘high tech’ companies of the 1980s, and especially those which located at Greenfield sites in attempts to establish a fundamentally different type of organisation and organisation culture. The essence of HPWS appears to lie in the adoption of a culture of continuous improvement and innovation at all levels in the organisation and the implementation of a range of work organisation and human resource practices to sustain and develop this culture, particularly team working, quality consciousness and flexibility. A particular argued characteristic of HPWS is a reliance on high levels of direct employee involvement in decision making” (Gunnigle 2001, p.10).*

### **HPWS – The Irish Experience**

The NCPP’s (2004) study compiled by Dr. Damian Thomas, examined 14 organisations (two of which had been included in the Dundon et al’s study above), again spanning the private and public sectors, unionised and non-unionised, and large and small firms. This study concluded that there was evidence of the *“incremental emergence of a more forward thinking approach to informing and consulting employees [based on the fact] that many of the organisations examined had identified communicating, informing and engaging with staff as an integral part of their business and organisational strategies”* (NCPP 2004, p. 7). This type of *‘pro-active engagement’* was aligned, in particular, with business strategies based on higher value-added activities, and

tapping “*into the collective knowledge, experience and expertise of ... employees*” (NCPP 2004, p. 7).

Direct mechanisms for information sharing, ranging from newsletters and handbooks, email and web-based conferencing to team briefings and breakfast/lunch meetings were again found to be widely prevalent. Indirect information sharing was found to be prevalent in unionised companies and practiced either through established industrial relations channels, through partnership-style arrangements, or through both sets of channels. Only one of the four non-unionised case companies examined was found to have arrangements in place for indirect information sharing. Direct consultation was practiced through such individual mechanisms as performance reviews, attitude surveys and one-to-one meetings, and through a series of group-based mechanisms, including permanent and temporary work groups and various types of meetings with groups of employees (NCPP 2004, pp. 33-34). Indirect consultation occurred through the same representative structures as were employed for indirect information provision, as well as through informal exchanges between management and unions. In the majority of cases both parties assessed I&C practices as ‘*positive and improving*’ (NCPP 2004, p. 36; Geary & Roche 2004).

The two case-based studies of I&C arrangements, examined above (CISC or Dundon et al. 2003; and NCPP), reported positive findings with respect to

business outcomes and the handling of change. Managers reported tangible benefits from I&C mechanisms in improving organisational effectiveness, promoting a willingness to adapt to commercial pressures and fostering a better climate of industrial relations (Dundon et al. 2004; Geary & Roche 2004). In the second study (NCPP), both managers and employee representatives reported that information and consultation fostered a greater acceptance of organisational change (NCPP 2004, p. 46; Geary & Roche 2004). Tangible benefits were also reported in the areas of organisational performance (including competitiveness and customer service), the quality of decision-making, problem-solving, and the climate of employment relations. Benefits were also identified in the areas of direct importance for employees, including the capacity to exercise voice, work satisfaction and work autonomy (NCPP 2004, pp. 42-43; Geary & Roche 2004).

Both studies also suggest that the impact of I&C mechanisms on all these outcomes may be tempered by a series of influences, including degrees of top-level management support for a participatory working environment and managers' degrees of openness towards information disclosure (Dundon et al. pp. 60-61; NCPP 2004, p.47; Geary & Roche 2004; Dobbins 2005d). Incremental change initiatives and circumstances where local managers enjoyed some discretion with respect to changes were also seen to allow more leeway for I&C to impact positively on outcomes of value to managers, employees and unions (Dundon et al. 2003, pp. 54-55; Geary & Roche 2004).

## **HPWS - The UK's experience**

In the UK, the DTI in its report *'Prosperity for All'* advocates the need *"to raise skills levels to produce high value jobs in high performing workplaces [HPWs], where people can realise their full potential whilst maintaining a healthy work-life balance"*, and, in order to support the concept of HPWs as best practice, cites from the CBI/TUC submission to the Productivity Initiative (2001): *"... new forms of work organisation, effective management leadership, a culture that encourages innovation, employee involvement and development tailored to organisational needs are all necessary conditions for adaptable, high performance workplaces"* (DTI 2001, p. 17). It should also be noted that the CBI/TUC in its submission is adamant that, *"Best practice isn't about single off-the-shelf solutions – integrated packages or practices must match organisational circumstances, needs and aspirations; however, companies with higher levels of employee involvement and high commitment practices are more competitive and employees' jobs are more secure and satisfying."* (CBI/TUC 2001, p. 60).

Moreover, amongst the measures identified by the CBI/TUC to enable employees to develop and fulfill their potential is: *"Have effective internal communications & consultation systems to encourage the transfer of knowledge and information vertically and horizontally,"* and it is argued that this is integral to the achievement of HPWS, (CBI/TUC 2001, p. 76.)

The Involvement and Participation Association (IPA) is the UK's leading body focusing on information, consultation, involvement and participation in the workplace. Its members include the UK's best known companies and leading trades union. Its response to the DTI's HPWS consultation paper was directed in particular to the questions dealing with the main issues that the UK government needs to address in putting forward specific proposals to the implementation of the ICD: *"a) I&C arrangements are the main building block to the make up of HPWs; b) most effective I&C arrangements involve a mix of both direct and indirect mechanisms; c) commitment comes out of ownership – I&C arrangements which organisations themselves have worked out are best; d) any Regulations enacted should enshrine the UK's 'voluntarist' tradition; and e) organisations have a great deal to gain from effective I&C arrangements. Accordingly, government should actively promote I&C in SMEs not covered by the Directive [that is, with less than 50 employees ('undertakings') or 20 employees ('establishments'), as the case may be]"* (IPA. 2002, p. 2). By way of concluding remarks the IPA emphasises the importance of the UK government taking a positive approach to I&C in terms of the political, social and economic benefits that can flow from it. It is also emphasises that there is no single mechanism for effective I&C (IPA 2002, p. 29.)

According to Sisson (2002) there is a growing body of survey evidence, from mainland Europe, the UK and the USA, to suggest that arrangements for I&C, if implemented together with so-called 'high commitment management' practices are positively associated with improvements in performance outcomes. For

example, although not mentioned by Sisson, Black & Lynch (2000) found that *“[u]nionised plants that have adopted new workplace practices such as incentive-based compensation or greater employee participation in decision-making have substantially higher productivity than similar non-union plants or establishments with more traditional labour management practices. In addition, those plants with more educated workers also have significantly higher productivity, everything else constant”* (Black & Lynch 2000, p. 3). Sisson (2002) cites the Workplace Employee Relations Survey (1998) (WERS) that found ‘*compelling evidence*’ of an association of a range of high commitment management practices (including individual and group forms of consultation) with better organisational performance.

Moreover, Hall (2005) reports that proactive management strategies are rarer in companies without existing consultative arrangements or unionised workforces. Hall (2005) also indicates, in the context of the UK, that there is some suggestion of a lack of awareness of the implications of the ICD on the part of management, and, according to one UK employers’ organisation official, the legislation is ‘*not even on the radar*’ of most companies with under 150 employees. On the other hand, Prof. Storey (2005) is critical of the DTI and others (in the UK) who have chosen to ‘*sell*’ the I&C regulations on the back of the ‘High Performance Workplaces’ concept, and he makes the point that “*it should by now be evident that simply following or installing machinery of the type prescribed in the Standard Provisions will not of course deliver anything*

*approaching a HPW ... [HPW] realisation depends on an integrated array of human resource management and employment system arrangements. Authentic information and consultation practice is one crucial component.” (Storey 2005, p. 274).*

Indeed, using examples from the US and Japan, Klein (1989) argues that increased pressures and constraints on workers are a common by-product of modern manufacturing reforms (e.g. JIT, SPC, etc). While allowing for greater employee involvement and autonomy than traditional assembly line systems, they are not conducive to the high levels of employee empowerment often thought to accompany a shift towards HPWS (Gunnigle 2001). In fact, Klein's (1989) analysis challenges the thesis that HPWS necessarily contribute to an improved work experience for employees. In particular, Klein points to important aspects of the work experience which may regress or be lost as a result of reforms using JIT and SPC, namely, individual autonomy, team autonomy and ability to influence work methods. Klein argues that the key to improving employee involvement and autonomy while instigating HPWS is to provide for greater collaboration between teams and to allow greater opportunity for teams and individuals to propose and evaluate suggestions for change in the work process and in the conduct of different jobs. It would appear that Klein (1989) also confirms the optimal means of facilitating worker influence on the application of new work systems is through some combination of direct and indirect participation (Gunnigle 2001).



## **The advent of “New Collectivism”?**

Hayes (2003) examines the emerging framework for collective employee representation in the UK workplace. He makes the point that, *“UK employee relations used to be described as “voluntarist” or “collective laissez-faire”. The law played little or no role. This is clearly no longer the case. The law increasingly prescribes substantive individual workplace rights. At the same time the law is in the process of creating a new framework for collective employee representation that in many ways goes significantly beyond the old collective bargaining agenda. The “new collectivism” will be based on both UK and EU law rather than on the autonomous strength of trade unions and, to the extent that it is based on EU law, will not be open to repeal by UK governments of changing ideological hues. It will be a major challenge to, and opportunity for, both management and trade unions to adapt to the new circumstance”* (Hayes 2003, p. 2.)

Hayes (2003) looks at a number of legislative items that make up the new UK collective framework: a) The Employment Relations [UK] Act, 1999 – dealing with trade union recognition and the right to be accompanied; b) The Collective Redundancies and the Transfer of Undertakings Directives; c) Workforce Agreements – The Working Time Directive and Parental Leave legislation; d) Health and Safety legislation; e) The European Works Council Directive; and f) The Information and Consultation Directive (the ICD).

The employee information, consultation and participation aspects of the European Company Statute are not examined; but the report does look at the ICD, as well as the steps organisations can take in order to begin to put procedures in place, in compliance with Article 5 of the ICD. In sum, Hayes (2003) heralds the advent of a “New Collectivism” in UK industrial relations.

### **The Irish position**

It is interesting to note that Kerr (2004) in an informative, unpublished paper delivered to a forum of Irish solicitors and barristers forms a similar style view to Hayes (2003), *“[t]here is no doubt that the implementation of the Directive is capable of effecting considerable impact both on industrial relations and on trade unions. Its impact on industrial relations law is less clear. There is no doubt that its implementation will further stimulate the debate as to the extent to which Irish industrial relations still conforms to the voluntarist model. This in turn will further inform the debate on mandatory trade union recognition, particularly if the [DETE] do not apply [a] “trade union priority” principle to workplaces with a sufficient trade union presence unrecognised by the employer. Its implementation should also result in extensive regulation of the employee representation function, which will no longer take place merely through the voluntary recognition of trade unions for collective bargaining purposes ...*

*... It remains to be seen whether the presence of elected employees’ representatives will have the effect of encouraging or discouraging trade union*

*presence in workplaces, or parts thereof, where it is presently absent. Whether it does or not will depend not just on the choices made by the Department in drafting the implementing legislation but also on the imagination and ingenuity of the trade union movement in responding to the challenges posed by the Directive and that legislation whatever its provisions may be” (Kerr 2004, p.11).*

### **Erosion of traditional voluntarism in Ireland**

Dobbins in a number of recent reports (Dobbins 2006b; Dobbins 2006e) looks at the current social partner talks on a new Social Partnership Agreement and suggests that they represent, in effect, a further erosion in the voluntarist nature of Irish industrial relations. For example, the unions want to stop what has become known as an Irish Ferries ‘*on land*’ or the displacement of one set of workers with another group on lesser terms and conditions. In relation to employment ‘*norms and standards*’ ICTU wants the provisions that are available to non-union employees (but who are represented by unions) under the Industrial Relations (Amendment) Act, 2001, as amended by, the Industrial Relations (Miscellaneous Provisions) Act, 2004, (hereinafter “the 2001-04 Acts”) to be extended to employees in unionised firms where collective bargaining fails or is absent. IBEC would appear to understand ICTU’s concerns in this regard, but believes that such a fundamental shift in the voluntarist system could lead to a raft of benchmarking claims by private unions based on sector comparability. In short, IBEC believes that if this were to unfold it would be a disaster. The union argument, however, is why do non-union employees (when

represented by unions) have the ability to legally secure norms and standards under the 2001-04 Acts, but those with collective bargaining rights cannot so do?

In light of this impasse, Dobbins (2006e) forms the view that what the ICTU is looking for, and what IBEC may consider, is some mechanism that would ensure that in cases where collective bargaining exists, the normal industrial disputes system is adhered to. Not only that, *“but at the end of such a dispute the Labour Court could be granted the power to issue a binding decision, like it can at the moment under sections 20 (i) and (ii) of the IR Act, 1969”* (Dobbins 2006e, p. 3). In Dobbins’s view this would not only call for an amendment to the Industrial Relations Act, 1969 (hereinafter “the 1969 Act”), but it would also call for a more central role for the National Implementation Body (hereinafter “the NIB”), the overseer of social partnership. *“In other words; the NIB could decide if bargaining had failed and refer such cases, under an amended 1969 Act, for legally enforceable binding decisions”* (Dobbins 2006e, p. 3). Dobbins, however, proceeds to point out that there are probably constitutional issues involved here. The NIB is a creation of the social partners and, consequently, there would be a requirement to establish it on a statutory basis. A number of questions, therefore, would automatically arise, *“Who would sit on it? The same IBEC, ICTU and Government representatives that currently make it up, and would all of this stack up in legal terms?”* (Dobbins 2006e, p. 4). In this manner Dobbins

marshals his argument that what we are witnessing, in an Irish context, is an erosion of the voluntarist system.

Another argument that can be advanced in support of erosion of voluntarism and, by extension, a probable requirement on the unions' behalf to embrace a form of Hayes's (2003) "New Collectivism" (or something akin to it), is the decline in union density, especially in the private sector, assumed by certain commentators to have arisen in the face of global economic forces. For example, Dobbins (2005h) reports that *"[n]ew CSO data on unionisation levels brings mixed news for unions, because, while union membership has risen to 521, 400 in 2004, on a far less positive note, union density as a proportion of employees has fallen from 45% to 35% in the last ten years, with private sector union density dropping to about 21%"* (Dobbins 2005h, p. 18). He also contends that for the first time, public sector union membership is outstripping private sector membership. This is due to the fact that unions have been gaining members in the public sector as employment in Ireland has expanded, by haemorrhaging members in the private sector.

Dobbins (2005h) advances a number of arguments for this drop in membership in the private sector. First, traditionally heavily unionised, and often labour intensive, manufacturing sectors have witnessed heavy job losses. Second, many new employments, in the new growth areas of manufacturing and services, have

tended to be non-unionised, and unions often find it difficult to organise in the 'new workplace', in many instances facing stiff opposition from employers.

### **Mncs adopting union avoidance strategies**

Moreover, mncs are increasingly adopting a union avoidance strategy. For example, an *Industrial Relations News* survey of new large scale job announcements (of 100 or more jobs) between 2001-2003, found that just one in 17 new mncs setting up in Ireland recognised trades union, a Japanese firm in Drogheda called Ryusyo (Dobbins 2005h). In fact, a similar survey undertaken by the *Industrial Relations News* in 1996, examining 51 new job announcements in 1994-1995, found that two out of 32 new companies recognised unions, while ten out of 18 announcing expansions provided for recognition. This shows that not only are unions finding it hard to organise the larger new mncs, they are also finding it hard to ensure unionisation in new jobs in existing companies that already recognise unions, particularly if the new jobs are in a different plant. Indeed, this practice of mncs has been referred to as a "Twin-Track" approach to union recognition (Dobbins 2005h; Dobbins 2004b); and also as a 'double-breasting' approach (Gunnigle et al. 2004). *not in Bibliography.*

Dobbins (2005h) advances a number of other arguments why unions are finding it difficult to organise. First, there has been a massive growth in atypical workers, in an increasingly diverse workforce. Consequently, unions are faced with the challenge of how to organize and represent these 'new interest groups'.

Second, a general hardening of employer ideological attitudes against trades union and collective bargaining. This has led to '*a patchwork quilt*' of employment relations practices; whereas, traditionally, collective bargaining was the dominant form of '*job regulation*'. Third, the State has disowned IR pluralism. It is no longer accepted practice for the State to encourage incoming mncs or new indigenous companies to recognise trades union. This is illustrated by the reluctance of government to introduce a statutory mechanism for trade union recognition and collective bargaining (such as exists in the UK), much of this apparently attributable to a concern not to scare off foreign direct investment, especially the larger US mncs. Instead, a compromise '*arms-length*' – '*right to bargain*' mechanism was introduced via the 2001-04 Acts. As a result of this legislative initiative the unions now enjoy some success in ensuring that their members secure representation rights, but it does not provide any real impetus for raising density levels (Dobbins 2005h).

Indeed, Dobbins (2004b) refers to this new phenomenon in IR/HRM practices of mncs as '*a country of origin effect*' that is overriding the '*host country effect*'. Mncs, and especially US mncs, now view Ireland as a '*union neutral*' location. Accordingly, rather than encouraging foreign direct investors to recognise unions (as was the practice in the 1960s and 1970s), according to Dobbins, Ireland's industrial development agencies are now promoting Ireland as a union neutral location and, thereby, leaving employers free to make decisions of whether to unionise or not. This enables mncs, including US mncs, to implement IR

practices which align more closely with corporate practices (Dobbins 2004b). This, in turn, has the effect of inhibiting trades' union ability to colonise those workplaces.

### **Opportunities and threats for trades union**

Finally, the ICD represents both opportunities and threats for unions. For example, potential exists for unions to provide new consultative bodies (even those set up in non-unionised firms) with access to their considerable experience in this area, through advice and assistance. Indeed, Hall (2002) suggests *that "non-union representatives are thought likely to look for leadership from experienced union representatives and may join the union for support in carrying out their role ... [But] ... if the new circumstances created by the Regulations are to be exploited effectively by trade unions, they will have to commit the necessary resources in terms of training activists and representatives and providing full-time officer support"* (Hall 2005, p. 14). However, if these opportunities are not grasped or if the unions do not attempt to increase density levels via this mechanism, the new consultative bodies may develop a life form of their own and block off any hope trades union may have had of gaining a foothold in such employments (Dobbins 2005h).

However, Hall (2005) notes that, in the UK context where the Regulations are in place with effect from April 6, 2005, trade unions have so far *"tended to take a defensive stance towards the new legislation, reflecting concern that the*



*regulations could potentially threaten union-based arrangements*” (Hall 2005, p. 4). Of course, in the Irish context, this begs the question: Will the trades union here follow in the footsteps of their UK brethren in this regard?

Accordingly, it can be gleaned that trades union face a formidable challenge in order to retain their existing density levels; not to mention increasing them, as a direct result of the above-mentioned points. However, the unions have endeavoured of late to launch a number of organising initiatives e.g. SIPTU has appointed a national organiser; the Irish Bank Officials Association (IBOA) has also launched a recruitment campaign; while MANDATE has enjoyed some recent successes in boosting its membership base. But the challenges they face are neatly summed up by Dobbins (2005h) “... *the proliferation of smaller more fragmented workplaces, which are more time consuming to organize; the growth in so-called ‘atypical’ transient jobs and employment contracts; lower interest in voluntary efforts outside work, on which unions depend heavily; the lack of contact between younger people and trade unions; and the general drift in society towards greater individualism and consumerism*” (Dobbins 2005h, p. 21).

### **What the future holds in Ireland**

On the above basis, the question can be posed: Is Irish industrial relations moving in the direction of a “New Collectivism” (or something akin to it)? There is no definitive answer to this question. In the interests of prudence, perhaps, it is wise to have recourse once more to the view of Prof. Storey, “*that many of the*

*players – managers, employee representatives and employees alike – expect that a likely outcome, in the medium term at least, is that organisations will introduce a series of adjustments to their current arrangements, but these will in all probability be of a ‘bolt-on’ nature. The expectation that a transformation of employment relations will be triggered is not high. On the other hand, there are some players who, more optimistically, see potential for the regulations to act as a catalyst of change. This interpretation envisages and hopes for a growth in mutual learning. The belief is that, as the parties engage with each other, they will discover the potential to secure mutual advantage through more meaningful consultation and information sharing” (Storey 2005, p. 5).*

## **Developing an Information and Consultation Culture**

Organisations are composed of formal elements, such as, structure, strategy and technology, and so forth; but organisational life is not quite as this implies (Senior 2002). French and Bell (1990) use the concept of the '*informal organisation*' and the metaphor of the '*organisational iceberg*' to depict two contrasting aspects of organisational life. First, visible aspects above the water or the formal organisation comprising goals, strategy, structure, etc; and, second, the hidden part which comprises the more covert aspects of organisational life, that is, values, attitudes, beliefs, behaviour, leadership style, power, politics, conflicts, etc. The culture of an organisation, of course, is mostly associated with the hidden, below the surface elements just referred to.

Bowditch and Buono (2005) defines organisational culture as "*the shared pattern of beliefs, assumptions, and expectations held by organisational members, and their characteristic way of perceiving the organisation's artifacts and environment, and its norms, roles, and values as they exist outside of the individual*" (Bowditch & Buono 2005, p. 304). The authors take the view that, in essence, "*an organisation's culture is the repository of what its members agree about ... In contrast to organisational structure, culture reflects the expressive, rather than the mechanistic and pragmatic, dimension of organisational life*" (Bowditch & Buono 2005, p. 305).

Schein (1992) refers to organisational culture as: *"The deeper level of basic assumptions and beliefs that are shared by organisational members of an organisation, that operate unconsciously and define in a basic 'taken for granted' fashion an organisation's view of itself and its environment"* (Schein 1992, p.6).

This definition reinforces the metaphor of the hidden part of the iceberg. Of course, what is implicit in the use of the metaphor is that culture is 'deep-seated' and, therefore, is likely to be resistant to change.

Ogbonna & Harris (1998) contend that three perspectives on culture can be discerned: a) culture can be managed; b) culture can be manipulated; and c) culture cannot be consciously changed. Consequently, in order to plan cultural change, there is general agreement that there is a need to: a) assess the current situation; b) have some idea of what the aimed for situation looks like; and c) work out the 'what' and the 'how' of moving the organisation, or a section of it, away from its current culture to what is perceived to be a more desirable one.

Johnson & Scholes (1993) refer to a 'cultural web' and contend, *"It would be a mistake to conceive of the paradigm as merely a set of beliefs and assumptions removed from organisational action. They lie within a cultural web which bonds them to the day-to-day action of organisational life"* (Johnson & Scholes 1993, p. 61). The components of the cultural web are: routines; rituals; stories; symbols; control systems; power structures; and organisation structures.

Handy (1993) refers to organisation culture as '*atmosphere*', ways of doing things, levels of energy and levels of individual freedom, or collectively, the set of values and norms and beliefs – reflected in different structures and systems. On this basis Handy identifies four organisational types: a) power culture; b) role culture; c) task culture; and d) person culture. By contrast, Deal and Kennedy's (1982) four cultural types link more closely to the external environment: a) tough guy, macho culture; b) work hard, play hard culture; c) bet-your-company culture; and d) process culture. Senior (2002) notes that while the above cultural types may still be relevant and can be found in today's organisations, it is arguable whether the examples given by Deal and Kennedy still hold.

Hofstede (1981) contends that, "*The subculture of an organisation reflects national culture, professional subculture, and the organisation's own history*" (Hofstede 1981, p. 27). Indeed, Hofstede (1994) identified four dimensions which were found to differentiate national cultural groups. A fifth based on the philosophy of Confucianism was identified by Bond (1987): a) power/distance; b) individualism/collectivism; c) masculinity/femininity; d) uncertainty/avoidance; and e) long-term/short-term orientation. In contrast, Laurent's (1983) research focused on the views of upper- and middle-level managers in a large number of different organisations, spread across nine European countries and the US. He identified four dimensions which he labeled: a) political systems; b) authority systems; c) role-formalisation systems; and d) hierarchical-relationship systems.

The evidence points to close relationships between national culture and organisational culture.

## **Culture and Change**

There are a number of different views on the relationship between culture and change. Burns and Stalker's (1961) typology of mechanistic and organic structures is in point. Within this framework organic types of organisations are much more likely to be able to respond to the need for change than are mechanistic ones. However, the authors would not advocate that mechanistic types are resistant to change, because all organisations change, to some extent, incrementally all of the time. That said, they are unlikely to support change without trauma, the frame-breaking (Tushman, Newman & Romanelli 1988) or revolutionary (Johnson 1987) or transformational (Dunphy and Stace 1993) styles of change.

Argyris (1964) identified two kinds of learning: single-loop learning, that is, individual learning which seldom passes throughout the organisation in any coherent way; and double-loop learning, that is, where questions are asked not only about the means by which goals can be achieved, but about the ends, that is, the goals themselves. Johnson (1990) refers to double-loop learning as '*organisational relearning*' or where the organisation paradigm is re-formulated, which implies change throughout the organisation in all aspects of its behaviour. Individual or single-loop learning is most likely to be the dominant

type of learning to take place within a defensive culture. It is suitable for the types of change which Dunphy and Stace (1993) define as '*fine-tuning*' and '*incremental adjustment*', but it will be blind to the need for the kind of radical thinking required to bring about change in the organisation's direction, that is, strategic change (Senior 2002).

Payne (1990) has suggested that the strength of an organisation's culture can be measured by: a) the degree to which it is shared by members; and b) the intensity with which organisation members believe in it. The greater the intensity of an organisation's culture the greater the degree to which it pervades all levels at which culture manifests itself, that is, in influencing not only people's attitudes, but also their values, assumptions and beliefs.

The strength or weakness of an organisation's culture is important in that it performs a number of functions for the organisation. A popular view is that it is the glue that binds an organisation together. Brown (1995) suggests the following functions at the organisation level: a) conflict resolution; b) co-ordination and control; c) reduction of uncertainty; d) motivation; and e) competitive advantage.

Assessing cultural risk helps management pinpoint where they are likely to meet resistance to change because of compatibility between strategy and culture. This further allows them to make choices regarding whether to: a) ignore the culture;

b) manage around the culture; c) try to change the culture to fit the strategy; or d) change the strategy to fit the culture, perhaps by reducing performance expectations (Senior 2002).

Beer, Eisenstat & Spector (1993) argue that trying to change attitudes and values directly is futile; the way to bring about organisation change is to first change behaviours. The behavioural change will bring about the desired changes in values and attitudes. The authors identify six steps to effective change: a) mobilise commitment; b) develop a shared vision; c) foster consensus; d) spread revitalisation to all departments; e) institutionalise revitalisation; and f) monitor and adjust.

### **Culture in an I&C context**

To reap the full potential of the ICD, in particular, the benefits of enterprise partnership, different kinds of behaviours will be required. I&C structures, no matter how sophisticated they may look on paper, will be ineffective in a directive environment where there is little respect for employees or no belief in a consensus approach to decision making.

Sisson (2002) takes the view that several wider considerations are important in helping to create and maintain an I&C culture: a) commitment from the top (no less important, where trades union are recognised, is commitment from senior shop stewards and full time officials); b) training and development (training in



how to work together and understanding each other's point of view. Managers will need to be trained how to I&C.); and c) the management of managers (research indicates that it is the way managers are managed that has a critical bearing on people management more generally). For example, it is important to ensure that managers do not view I&C as a 'bolt-on' which only adds to workload and counts for very little in the overall scheme of things.

Sisson (2002) also make the point that *"[j]ust as there remains a strong resistance to collectivism in general and trades union in particular on the part of many managers in the UK, many within trades union see partnership as a threat. In particular they are worried that it will compromise the traditional role of unions, which is to defend their members' rights. The increasing involvement of employee representatives in the management process that effective information and consultation arrangements imply will need a great deal of trade union encouragement and support"* (Sisson 2002, p. 17).

## **Models of Change Management**

### **The Lewin-Schein change process model**

Any change process can be conceptualised as consisting of three stages: unfreezing the present level, moving to the new level, and refreezing the new level. *“No change will occur unless the system is unfrozen and no change will last unless the system is refrozen sufficiently”*. The unfreezing stage is about creating motivation and readiness to change through a) disconfirmation or lack of confirmation b) induction of guilt or anxiety and c) the creation of psychological safety. The moving stage involves changing through cognitive restructuring i.e. helping members to see the need for change through a) identifying with a new role model, mentor, etc, and b) scanning the environment for new relevant information. *“In short, it is about looking for new solutions that will bring things back into equilibrium”*. The refreezing stage involves helping members to integrate the new point of view into a) the total personality and self-concept and b) significant relationships. *“The stage is more about ensuring the change survives than about creating stability”*, (Rashford & Coughlan 1994, pp. 63-72).

### **Tichy & Devanna’s Three Act Drama**

Tichy & Devanna note that, *“[p]eople in organisations going through quantum change must come to grips with some unpleasant realities. As they change their behaviour they must struggle to get some closure on the old way of doing things and learn to establish new routines. ... Transformational leaders must understand*

*how people deal with change. Overcoming resistance by people used to the old ways is more complex than merely issuing orders that a new era now exists. People must be given a way to work out the psychodynamics of closing off what has been ("endings"), working through a transition period, and taking up new beginnings. ... People have a tendency to play old tapes or to repeat old scripts they have learned earlier in life, especially if they've been successful. Not all people have the capacity for adjusting the tapes or rewriting the scripts to meet the new conditions. However, transformational leaders must do their best to provide the conditions for testing whether an individual can unhook from the past. Thus the first step in dealing with resistance is creating the appropriate climate for people to make use of their abilities. An important challenge is to find ways to get people to let go of the past and to develop innovative new solutions for organisational problems" (Tichy & Devanna 1990, pp. 60-62).*

In relation to individual dynamics, Tichy & Devanna (1990) cite (Bridges 1980) with approval in relation to people going through a difficult life transition. Bridges argues that there are four basic processes that need to occur in a transition: a) disengagement; b) disidentification; c) disenchantment; and d) disorientation. *"The critical point for companies trying to figure out their future is the transitional state. This is the time when there is a need to leave the past productively – 'a process of death and rebirth'... organisations whose challenge is transformation and revitalisation face a process of change similar to that of the phoenix, which must immolate itself so that it can rise from the ashes with*

*renewed vigour ... Bridges calls this time the neutral zone and equates it to standing in the middle of a busy highway with traffic going in both directions. This is a frightening experience, but psychologically that is what people involved in change must do – simultaneously experience the forces from the past and those pulling us towards the future ... The final phase is the period of revitalisation. At this point the individual has made the necessary adjustment to changing circumstances and is able to release the energy needed to deal with the situation. People are truly excited about the possibilities. They have managed to unhook themselves from the behaviours, patterns and attitudes that need to be left behind, and they have started to write new scripts that contain certain behaviours and attitudes. Like the phoenix, they are emerging from the ashes of the past to face the future with enthusiasm and energy” (Tichy & Devanna 1990, pp. 62-71).*

In relation to organisational resistance to change, Tichy & Devanna (1990) contend that “*since people make up organisations, leaders need to be attuned to the psychodynamics of change which Bridges (1980) frames for us. It is this understanding that provides the way to deal with resistance”... The transformational leader must understand these resistant forces and mobilise the energy needed to overcome them in order to transform the organisation ... The transformational leader must deal with the resistance to change without resorting to the pitfalls of one minute fixes” (Tichy & Devanna 1990, pp. 72-74).*

Tichy & Devanna (1990) analyse the reasons why resistance to change exists in organisations through the TPC framework i.e. technical, political and cultural, respectively. Next, they assert that “[o]ne of the first things a transformational leader must do is to determine which members of the management team can adjust to the changing demands and which members cannot. It is helpful to provide the opportunity to examine values, talk about them, and discuss what needs to be changed. Managers in workshop settings, can analyse which aspects of the current culture prevent them from changing the organisation and devise methods of implementing new values to facilitate the change” (Tichy & Devanna 1990, p.83). Additionally, the authors provide some general guidelines for transformational leaders which can help them avoid being seduced by processes that are not focused on organisational problems: a) have an agenda; b) prohibit attempts to implement panaceas; and c) avoid the over-advocacy trap.

The above considerations relating to change, change management, and cultural change are most pertinent in the event that the various actors in an I&C initiative, either at enterprise or national level, wish to effect the necessary shift in mind-set required for that purpose.

## Summary to Literature Review

### **Introduction**

Roche & Geary (2004) form the view that the ICD is likely to represent most important innovation in Irish employment relations in recent years. It will introduce for the first time an obligation on employers to I&C with employees on core business issues. However, the authors point out that if the onus is on employees to pull the trigger the diffusion of I&C arrangements across Irish workplaces may be inhibited. On the other hand, employers, and particularly non-unionised employers, faced with the prospect of having to I&C with an employee forum under standard rules, may act with haste, and be pre-emptive in the introduction of organisation-specific I&C arrangements. Hall (2005) describes this as '*legislatively prompted voluntarism*'.

Prior to the publication of the draft Irish legislation on July 19, 2005, trades union in their submissions to the DETE strongly contended, *inter alia*, that there should be no trigger mechanism imposed; rather employees should have an automatic right to I&C; that I&C meetings should be held quarterly; that employees should have the right to seek advice from unions; as well as to be accompanied by union officials, as and when required.

IBEC and the Chamber, on the other hand, in their submissions to DETE strongly contended, *inter alia*, that there should be a trigger mechanism; and

that I&C should not interfere with either the voluntarist nature of Irish IR or management's right to make decisions.

When the draft legislation was published, at the time, as expected trades union were deeply critical of its '*minimalist approach*', indicating that it's '*untenable in its existing form*'; whereas, both IBEC and the Chamber were complimentary of government's pragmatic approach to the transposition of the ICD into domestic law.

Other commentators formed the view that trades union haven't altogether lost the day. Higgins (2004a) contends that potential exists for trades union to provide I&C fora, especially in non-unionised companies, with access to their considerable experience in this area, through advice and other assistance. Higgins suggests that while this might not be as attractive to unions as traditional recognition, it would certainly be an improvement on their current status. Higgins also points out that if trades union do not grasp this opportunity, the new I&C fora will develop strength of their own and block off any hope that trades union have of gaining a foothold in such companies.

Dobbins (2005e) suggests that while the legislation does not confer an entitlement on trades union to act as 'experts', it does not preclude it; and he implies that potential exists for trades union to gain recognition through this mechanism.

## **Partnership**

In relation to participation and involvement in the workplace, Gunnigle (2001) notes a number of areas that trades union can endeavour to address, for example: joint monitoring of participation in initiatives at workplace level; involvement in the internal communications processes of organisations; as well as involvement in high level business decision-making. In this way, he suggests that trades union can attempt to support partnership-based industrial relations arrangements at enterprise level; that this will have beneficial outcomes for rank and file union members in terms of their experience of work; and will foster greater partnership between employers and employees. It may also serve to strengthen union organisation at workplace level and give worker's a fairer share of a company's success.

However, Gunnigle (2001) also points out that initiatives which seek to integrate workers or trades union in the decision-making process are often viewed with suspicion by trades union, since they may reduce independence and the capacity to oppose. Moreover, trades union are keen to ensure that any participative forms complement rather than compete with established collective bargaining negotiations (hereinafter "cbn") mechanisms and oppose initiatives which they perceive are aimed at undermining the union role at the workplace level.



By contrast, Gunnigle (2001) notes that employers often view employee participation and involvement as a means of engaging the whole workforce, and not just those who are represented by unions, in organisation change initiatives aimed at improving a firm's competitive position. In fact, Salamon (1998) is unambiguous in his contention that the most appropriate approach is one which combines both direct and representative participation.

In the final analysis, Gunnigle (2001) is dubious about the prospects for strategic management-union partnership arrangements at the enterprise level for a number of well-established reasons: a) management's tendency to jealously guard their decision-making prerogative; b) management's perception that any sharing of decision-making would inhibit flexibility, as well as market responsiveness; and c) management's contention that stock markets favour strong central managerial governance and the development of strategic partnerships would not be viewed positively.

### **Two Irish case-based studies of I&C arrangements**

Dundon et al. (2003) completed a study on behalf of the CISC in relation to '*Change and Employee I&C in a Changing Economy*'. The study found, *inter alia*, that many of the employees and employees' representatives interviewed seemed more sceptical about the extent and depth of I&C than were managers. The organisations surveyed were positioned somewhere between practicing information exchange and practicing consultation. The study also found that

centrally driven change programmes often left little scope for consultation at the local level. Moreover, the more transformational the change programme, the less likely that consultation would occur, although information was still exchanged with employees. Incremental change programmes seemed easier to align with consultative practices.

The study concludes that I&C practices were most effective, especially in managing change, where they were integrated; where they involved a mix of direct and indirect methods; where there was commitment from senior management for I&C; and where extensive informal dialogue lubricated more formal arrangements.

NCPP's (2004) study concluded that there was evidence of the incremental emergence of a more forward thinking approach to I&C based on the fact that many of the organisations examined had identified communicating, informing and engaging with staff as an integral part of their business and organisational strategies. This type of '*pro-active engagement*' was aligned, in particular, with business strategies based on higher value-added activities, tapping "*into the collective knowledge, experience and expertise of ... employees*" and led to HPWS.

Both case-based studies reported positive findings with respect to business outcomes and change management when I&C initiatives were fully embraced.

## **I&C arrangements in the UK**

In the UK, the CBI/DTI/TUC collectively would agree that best practice is not about off-the-shelf solutions; integrated practices must match organisational circumstances, requirements and strategies; however, firms with higher levels of employee engagement (involvement and commitment) are more competitive and employees' jobs are more secure and rewarding.

According to the IPA, the UK government should actively promote I&C in SMEs not covered by the Directive, that is, SMEs with less than 50 (undertakings) or 20 employees (establishments), as the case may be. Hall (2005) reports that proactive management strategies are rarer in companies without existing consultative arrangements or unionised workforces. Moreover, Hall (2005) reports that, in the UK, in early 2005, I&C is '*not even on the radar*' of most companies with less than 150 employees. (The Information & Consultation of Employees (UK) Regulations came into force on April 6, 2005).

On the other hand, Storey (2005) is critical of the DTI and others (in the UK) who have chosen to sell the I&C regulations on the back of HPWS, and he makes the point that it should be evident by now that simply implementing I&C arrangements like those provided in the standard rules will not deliver anything approaching HPWS. In his view, the realisation of HPWS depends on an integrated array of HRM and employment system arrangements; and authentic I&C practice is one, but only one, crucial ingredient in this regard.

Indeed, Klein (1989) argues that the key to improving employee involvement and autonomy while instigating HPWS is to provide for greater collaboration between teams and to allow greater opportunity for teams and individuals to propose and evaluate suggestions for change in the work process and in the conduct of different jobs. In his view, it would appear that the optimal means of facilitating worker influence on the application of new work systems is through some combination of direct and indirect participation.

### **“New Collectivism”**

Hayes (2003) argues that a movement has taken place in UK IR from traditional voluntarism toward “new collectivism”. He contends that “new collectivism” will be based on both UK and EU law rather than on the autonomous strength of trades union and, to the extent that it is based on EU law, will not be open to repeal by UK governments of changing ideological hues. While Kerr (2004) contends that the implementation of I&C in Ireland will further stimulate the debate as to the extent to which Irish IR still conforms to the voluntarist model.

By contrast, Dobbins (2005h) points out that for the first time, public sector union membership is outstripping private sector membership. This is due to the fact that unions have been gaining members in the public sector as employment in Ireland has expanded, by haemorrhaging members in the private sector. He contends there are a number of reasons why this is happening, that is, the proliferation of smaller more fragmented workplaces, which are more time

consuming to organise; the growth in so-called '*atypical*' transient jobs and employment contracts; lower interest in voluntary efforts outside work, on which unions depend heavily; the lack of contact between younger people and trade unions; and the general drift in society towards greater individualism and consumerism.

Dobbins (2004b) also highlights a new phenomenon in the IR/HRM practices of mncs (including US mncs), as '*a country of origin effect*' that is overriding the '*host country effect*'. Mncs, and especially US mncs, now view Ireland as a '*union neutral*' location in which to do business. Moreover, Dobbins (2004b) suggests that Irish state agencies rather than encouraging mncs to recognise trades union, are now promoting Ireland as union neutral and, thereby, leaving employers free to make decisions of whether to unionise or not. This enables mncs to implement IR practices which align more closely with corporate practices and this, in turn, has the effect of inhibiting trades' union ability to colonise those workplaces. In sum, Dobbins (204b) implies that the future for trades union in the mnc sector, unless proactive actions are taken, does not look good.

### **Culture Management**

Sisson (2002) takes the view that in order to reap the full potential of the ICD, in particular, the benefits of enterprise partnership, different kinds of behaviours will be required. I&C structures, no matter how sophisticated they may look on

paper, will be ineffective in a directive environment where there is little respect for employees or no belief in a consensus approach to decision-making.

Sisson (2002) takes the view that several wider considerations are important in helping to create and maintain an I&C culture: a) commitment from the top (no less important, where trades union are recognised, is commitment from senior shop stewards and full time officials); b) training and development (training in how to work together and understanding each other's points of view. Managers will need to be trained how to I&C.); and c) the management of managers (research indicates that it is the way managers are managed that has a critical bearing on people management more generally). For example, it is important to ensure that managers do not view I&C as a '*bolt-on*' which only adds to workload and counts for very little in the overall scheme of things.

Argyris (1964) identified two kinds of learning: single loop learning, that is, individual learning which seldom passes throughout the organisation in any coherent way; and double loop learning, that is, where questions are asked not only about the means by which goals are achieved, but about the ends, that is, the goals themselves. Johnson (1990) refers to double-loop learning as '*organisational relearning*'.

Individual or single-loop learning is most likely to be the dominant type of learning to take place within a defensive culture. It is suitable for the types of

change which Dunphy and Stace (1993) define as '*fine-tuning*' and '*incremental adjustment*', but it will be blind to the need for the kind of radical thinking required to bring about change in the organisation's direction, that is, strategic change.

In terms of change management models, two well-known approaches are: a) The Lewin-Schein change process model; and b) Tichy and Devanna's Three Act Drama. Lewin-Schein suggest that the change process comprises three stages, that is, unfreezing the present level, moving to the new level, and refreezing the new level. While Tichy & Devanna contend that the first step in dealing with resistance to change is creating the appropriate climate for people to make use of their abilities. An important challenge is to find ways to get people to let go of the past and to develop innovative new solutions for organisational problems. Next, there is a transition stage, or what Bridges (1980) calls the '*neutral zone*'. This is the time when there is a need to leave the past productively, '*a process of death and rebirth*'. And, finally, there are the new beginnings. At this point the individual has made the necessary adjustment to changing circumstances and is able to release the energy needed to deal with the new situation.

## **Conclusions**

In the final analysis, however, it is prudent to reflect on the counsel of Roche & Geary (2004) delivered prior to the publication of the initial draft Irish legislation, that is, in their view robust forms of I&C such as are envisaged in the

ICD are more likely to emerge in strongly unionised companies, but the authors emphasise that the preconditions for this outcome existed prior to the ICD. In the absence of such preconditions it is difficult to see how the ICD alone might instigate the adoption and diffusion of strong forms of I&C in significant numbers of Irish workplaces.

Insofar as the UK experience with I&C is concerned, Hall (2005) characterises the approach of the more proactive employers as one of '*risk assessment*' rather than '*compliance*'; whereas, union attitudes towards I&C are primarily defensive, reflecting concern that the regulations could potentially threaten union-based arrangements.

Finally, Storey (2005) suggests that many of the players, that is, managers, employee representatives and employees alike, expect that a likely outcome, in the medium-term at least, is that organisations will introduce a series of adjustments to their current arrangements, but these will in all probability be of a '*bolt-on*' nature. "*The expectation that a transformation of employment relations will be triggered is not high. On the other hand, there are some players who, more optimistically, see potential for the regulations to act as a catalyst of change. This interpretation envisages and hopes for a growth in mutual learning. The belief is that, as the parties engage with each other, they will discover the potential to secure mutual advantage through more meaningful consultation and information sharing*" (Storey 2005, p.5).



## **Chapter 3 – Methodology**

### **Theory of research methodology**

According to Gill & Johnson (2005) *“a deductive research method entails the development of a conceptual and theoretical structure prior to its testing through empirical observation. Deduction in this sense corresponds to the left-hand side of Kolb’s experiential learning cycle [Figure No1] since it begins with abstract conceptualisation and then moves on to testing through the application of theory so as to create new experiences or observations”* (Gill & Johnson 2005, p.34).

Whereas, in inductive research, *“[t]he logical ordering of induction is the reverse of deduction as it involves moving from the ‘plane’ of observation of the empirical world to the construction of explanations and theories about what has been observed. In this sense, induction relates to the right-hand side of Kolb’s learning cycle, i.e. learning by reflecting upon particular past experiences and through the formulation of abstract concepts, theories and generalisations that explain past, and predict future, experience. In sharp contrast to the deductive tradition, in which a conceptual and theoretical structure is developed prior to empirical research, theory is the outcome of the induction”* (Gill & Johnson 2005, p. 40).

The deductive approach is as follows: a) theory/hypothesis formulation; b) operationalisation – translation of abstract concepts into indicators or measures that enable observations to be made; c) testing of theory through observation of the empirical world; d) falsification and discarding theory; and e) creation of as



knowledge produced and the explanations used in social science should be the same as those used by the natural sciences – e.g. that A causes B; and c) that social scientists should treat their subject-matter, the social world, as if it were the same as the natural world of the natural scientist. It is from objections to the implications and assumptions of the above-mentioned that particular inductive approaches to research in social science arise (Gill & Johnson 2005).

The modern justification for taking an inductive approach in the social sciences tends to revolve around two related arguments: first, explanations of social phenomena are relatively worthless unless they are grounded in observation and experience. Second, due to criticism of some of the philosophical assumptions embraced in positivism: a) social scientists consider that this kind of explanation is inappropriate. This is because there are fundamental differences between the subject-matter of the social sciences (human beings) and the subject-matter of the natural sciences (animals and physical objects) from which the covering-law model ('etic') came; b) human action has an internal logic of its own which must be understood in order to make action intelligible. It is the aim of social science to understand this internal logic; c) the subject-matter of the natural sciences does not have this subjective comprehension of its own; d) therefore, human action is only explainable by understanding this subjective quality; and e) it follows that research in the social sciences must entail '*emic*' analyses, where the phenomena in question have subjective capabilities – it is this internal dimension that is the key to explanation in the social sciences.

Inductivists therefore reject the stimulus-response model of human behaviour that is built into the methodological arguments of positivism. 'Stimulus causes response' is rejected in favour of: a) stimulus = experience and interpretation = response (Gill & Johnson 2005).

### **Qualitative and Quantitative research analysis**

When the researcher has collected some, or all, of the data, it is important to understand them. Data come in all sorts and sizes. Many of them fall neatly into two categories, that is, words and numbers. Or they can be turned into words or numbers. And some features of the words can be captured in numbers.

A quantitative (or statistical) study collects facts and studies the relationship of one set of facts to another. It measures the facts using scientific techniques that are likely to produce quantified and, if possible, generalisable conclusions. A qualitative study is more concerned to understand individuals' perceptions of the world. It seeks insight rather than statistical analysis. Yet there are occasions when quantitative research draws on qualitative research and *vice versa*. Each approach has its strengths and weaknesses and each is particularly suitable for a particular context. The approach adopted and the methods of data collection selected will depend on the nature of the enquiry and the type of information required. The Census of Population of Ireland, Sunday, April 23, 2006, is an example of a quantitative approach; whereas an open or semi-structured interview is an example of a qualitative approach.

## **Quantitative research**

Quantitative data can be categorised into four subsets or kinds, that is, a) '*ratio data*' where not only are intervals meaningful, but there is a real zero as well, so that ratios also make sense. 40 people out of work is twice as many as 20. b) '*interval data*' where it is possible to assume that differences between numbers mean something. The difference between 25 degrees centigrade and 35 degrees is the same as the difference between 45 degrees and 55. But there is no real zero on this scale. So 40 degrees is not twice as hot as 20 degrees; c) '*ordinal or ranked data*' where it is possible to make some comparisons between different categories. Interviewers might, for example, categorise applicants into highly suitable, probably good, acceptable, would need significant training, and non-appointable. If highly suitable was given a value of 5, and non-appointable a value of 1, then showing the distribution between the rankings at different appointment panels would carry some information. But you could not suggest that the difference between a '5' candidate and a '4' candidate was in any sense equal to the difference between a '1' and a '2', nor that '4' was twice as good as '2'; and d) '*nominal or categorical data*' where some classification has been made e.g. into country of origin, or the type of degree held by graduate managers (Cameron 1991).

Some qualitative information can be categorised in a nominal fashion. For example, Cramer's V (chi-squared distribution -  $\chi^2$ ) can be used for this purpose (Silver 1992, p. 93). The  $\chi^2$  test is an important extension of hypothesis testing

and is used when it is wished to compare an actual, that is to say observed distribution with a hypothesised or expected distribution. It is often referred to as a “goodness of fit” test.

The formula for the calculation of  $\chi^2$  is as follows:

$$\chi^2 = \sum \frac{(O-E)^2}{E}$$

Where:

O = the observed frequency of any value and,

E = the expected frequency of any value.

The  $\chi^2$  value obtained from the formula is compared with the value from a  $\chi^2$  Distribution Table for a given significance level and the number of degrees of freedom, i.e. the usual hypothesis testing procedures.

## **Qualitative research**

There are different approaches to the commencement of this process. This depends on the research perspective involved, that is, a deductive or an inductive approach. Where you commence from a deductive perspective, existing theory will be used to shape the approach; whereas, in the case of an inductive perspective you will build up a theory which is adequately grounded in a number of relevant cases. The design of qualitative research requires the recognition of this, as well as the formulation of an appropriate strategy to guide the research process (Saunders, Lewis & Thornhill 1997).

Yin (1994) suggests that, where existing theory is used to formulate research questions and objectives, theoretical propositions should be used as a means to help organise and direct data analysis. This approach has a distinct preference for commencing with and utilising theory in qualitative research, rather than allowing it to develop for the research work.

An alternative analytical strategy is to start to collect the data and then explore them to see which themes or issues to follow up and concentrate on (Yin 1994). This strategy is referred to as a '*grounded theory*' approach because "*of the nature of the theory or exploration which emerges as a result of the research process*" (Saunders, Lewis & Thornhill 1997, p. 349).

Strauss & Corbin (1990) emphasise the following aspects of a grounded theory approach: a) that grounded theory is an inductive approach; b) theory emerges from the process of data collection and analysis; c) a study is not commenced with a defined theoretical framework; and d) instead, relationships between the data and questions, as well as hypotheses to test these, are identified. However, Saunders, Lewis & Thornhill (1997) warn that there is a requirement to commence this strategy with a clear research purpose.

Saunders, Lewis & Thornhill (1997) also suggest there are a number of good reasons to adopt this approach: a) to generate a direction for further work (e.g. a doctoral thesis); b) not to constrain the scope of the work by adopting restrictive

theoretical propositions; c) to suggest subsequent, appropriate action to be taken because it is specifically derived from the events and circumstances of the setting in which the research was conducted; and d) the theory's generalisability may also be tested in other contexts.

In the grounded theory approach propounded by Strauss & Corbin (1990), the disaggregation of data into units is called '*open coding*'; the process of recognising relationships between categories is referred to as '*axial coding*'; and the integration of categories to produce a theory is labeled '*selective coding*'.

Clearly the process is time consuming, intensive and reflective. There is also the concern that little of significance will emerge at the end of the research process (Saunders, Lewis & Thornhill 1997).

### **Multimethods, Linking Methods and Triangulation**

The above terms can be used interchangeably; some researchers, however, attach special meaning to them. Denzin (1970) defines '*triangulation*', a term derived from surveying, as '*the combination of methodologies in the study of the same phenomenon*' (Denzin 1970, p. 297). Multiple and independent methods, especially if undertaken by different research workers investigating the same problem, should (Denzin argues), if reaching the same conclusions, have greater validity and reliability than a single methodological approach to a problem (Gill & Johnson 2005).



Triangulation is also described as multimethod/multitrait or convergent validation, and for the most part shares the notion of complementary qualitative and quantitative methodologies rather than competing approaches (Campbell & Fiske 1959).

In other works triangulation is given a more limited role in, for example, strengthening qualitative research findings by combining participant observation, interviewing and documentary sources (Hammerlsey & Atkinson, 1983). Gill & Johnson (2005) tend to use the terms '*triangulation*' and '*multimethods*' interchangeably. Brewer & Hunter (1989), however, differentiate triangulation from multimethods by regarding the former as an aspect of the multimethod approach, to which they give much wider usage and implications. As they suggest, '*theorising and theory testing, problem formulation and data collection, sampling and generalisation, hypothesis testing and causal analysis, social problems and policy analysis, and even the writing and publication of results may benefit from bringing a multimethod perspective to bear on social research*', (Brewer & Hunter 1989, pp. 11-12). Gill and Johnson (2005) believe this is also true for management research. Clearly, grounded theory approach is a 'multimethod, linking method or triangulation' approach to research.

## Practical aspects of research methodology

The research approach adopted in this dissertation can best be described as a grounded theory approach, using semi structured interviews as the main collection instrument; although a survey style element is included in the interview structure. The main reasons for this are: a) theory should be the outcome of the inductive process adopted; b) to propose a number of research questions rather than present an hypothesis; and c) this is an exploratory study to generate a direction for further research work (i.e. a doctoral thesis).

It is interesting to note that Mintzberg's (1973) research study on managers' jobs to see how in reality managers behave is as '*purely inductive*' as possible, the first step in induction being what Mintzberg calls '*detective work*' (when the researcher looks for order and patterns) and the second the '*creative leap*' which entails generalising beyond one's data. This does not of course imply that such research is unsystematic or unfocused; rather that the categories identified are not abstract and have a close relationship with an organisation's functioning, often supported with anecdotal evidence (Gill & Johnson 2005).

The '*Mintzberg approach*' is precisely the methodological style adopted in this research study. At the outset there are no hypothesis; <sup>theses according to Oxford Dict.</sup> the semi-structured interviews are the '*detective work*'; and the '*creative leap*' ensues after generalising beyond the data in order to propound hypothesis.

## **Research themes**

The next step is build on the review of relevant literature, the ICD, the new Act, and to explore the key issues of interest to US mncs, trades union, and other parties, such as, IBEC. To do this I developed a detailed set of critical factors for each of ten areas of enquiry and these are detailed in Appendix No 6.

It can be gleaned from the various schedules that while many of the factors are common it is the perspective of the organisation that is crucial. For US mncs flexibility in arrangements and structures are important. The issues of direct involvement, confidentiality and functioning of decision making with relationship to consultation and negotiations are key factors that must be assessed. The trades' union perspectives centre, *inter alia*, on the movement away from traditional voluntarism (e.g. is it towards Hayes's "New Collectivism"?) and how this might undermine the core function of unions. IBEC's perspectives centre on employee participation and involvement issues, particularly direct participation, such as strategic decision making, as well as on the move away from voluntarism. With regard to other agencies, such as, NCPP, IDA, DETE etc., the focus is on the extent to which the new Act heralds a new framework in Irish IR; the challenges that the new Act pose to the social partners; and the extent which, if any, the state agencies market Ireland as a union neutral country in order to attract foreign direct investment; as well as the extent which the Irish government has adopted a '*minimalist approach*' in the transposition of the ICD into domestic law.

At the US mnc subsidiary level itself, four separate interview schedules are used. The CEOs' perspective, *inter alia*, centres on the extent which the requirement to conduct early I&C with employees on core business issues will impact on prevailing management culture, as well as the extent, if any, that I&C will shift the locus of decision making away from central management. The senior HR professionals' perspective primarily centres on the alignment of HR policies and practices with I&C mechanisms. The middle-managers' perspective, *inter alia*, is to see in terms of consultation where the final decision rests, as well as to judge if I&C is viewed as a 'dirty word' or a 'bolt on' to existing workloads counting for very little in the overall scheme of things. Finally, the employees' perspective, *inter alia*, centres on the extent to which they are aware of their rights to I&C or if they perceive any difficulty or hostility in the exercise of those rights.

Employees' views on top management's commitment towards I&C, as well as the extent to which they receive I&C on core business issues. The transparency and timeliness of I&C received is also of critical concern.

At US corporate level, VPs' perspectives, *inter alia*, centre on the extent which, if any, corporate US would be prepared to associate (or associate more closely) with trades union in circumstances where trades union became more flexible and were prepared to fully embrace individual business models.

Once again, the reader is referred to Appendix No6 where the full interview schedule for each category of respondent is outlined.

## **Case study organisations**

A key issue was to gain access to trades union and US mncs, non-unionised, unionised and partly unionised. With regard to the US mncs it was also a key issue to obtain information from different sectors of economic activity.

In relation to trades union it was considered crucial to interview senior full-time union officials in ICTU, SIPTU, and IMPACT. No attempt was made to interview officials in any other trade union e.g. MANDATE, due to the US mnc focus of the research study. All targeted unions participated in the study.

In relation to other entities, as indicated above, a number were chosen and all participated willingly, *inter alia*: a) American Chamber of Commerce; b) IBEC; c) IDA (Dublin & NYC); d) NCPP; e) DETE; and f) LRC. It is interesting to note that a number of high profile, professional organisations, as well as experienced IR consultants, agreed to make an input into the study. Those inputs were warmly accepted.

In relation to US mncs a broad range of selection criteria were devised and included: a) size (150 or more employees; and less than 150); b) structure (single and multi-site operations); c) unionised, partly unionised and non-unionised mncs; d) geographical spread across the Republic of Ireland; and e) different sectors of economic activity (pharmaceuticals, hi-tech, manufacturing, and finance). A total of seven US mncs participated in the study.

The US mncs were selected as follows: a) the Operations Manager of the American Chamber of Commerce emailed all 620 Irish-based, US mncs about the research project and requested volunteers to participate in it; b) in excess of 90 mncs replied but only one mnc actually volunteered to participate. The remaining mncs apologised due to business pressures and the sensitivity of the research topic in the current industrial relations climate; c) the volunteer mnc was included in the research, while the remaining six mncs were identified by way of 'snowball' samples, that is, via recommendations from other participant organisations, including the Operations Manager of the American Chamber of Commerce. Actually, one snowball interview led to another, and so forth.

Three of the US mncs are unionised or partly unionised, and four are non-unionised. One mnc is from the engineering sector, three from pharmaceuticals, two from medical devices, and one from finance. The following enticements were given to the various participants: a) absolute confidentiality is guaranteed; b) no interview to exceed 55 minutes in duration (the average interview lasted 29 minutes); c) all questions posed to be provided at least 48 hours in advance of interview; d) no direct quotes to be made without the prior permission of the respondent; e) a bound copy of the dissertation to be given to each participant organisation; f) an in-house presentation on the findings of the study to be delivered, on request; and g) a day's consultancy on the ICD to be provided by the researcher, free of charge, on request.

Five of the mncs have 150 or more employees; one has less than 150 but more than 100 employees; and one has less than 20 employees in total (a single site company).

### **Interview schedules**

The interviews were conducted with a number of key informants at each of the mncs. These included the CEO, a senior HR manager (or the most senior manager responsible for HR if no specific HR function exists), a middle manager, two members of front line staff ( both union or employees' representatives where available). The number of interviews at each organisation varied depending on company size, union or non-union status, and availability of respondents. The unit of analysis was the workplace visited; notwithstanding the fact that some of the mncs are multi-site locations.

Three separate semi-structured interview schedules were designed in line with the research themes mentioned earlier; one for each of the three respondent groups (CEO and/or senior HR professional, middle manager, and front line employee). Each interview schedule covered a set of questions under various themes. Senior [US] HR Directors, in two partly unionised mncs, were also interviewed. The various schedules are appended hereto – see Appendix No6.

## **Triangulation**

The interview notes from each interview conducted were typed up and grouped as follows: a) US mncs; b) trades union; and c) other entities. The US mncs were further grouped as follows: a) unionised and non-unionised; and b) CEO/HR professional, middle manager, and employee, in each sub-category. A separate section is provided on the responses received from the senior [US] VPs.

Next, the responses to the survey type questions were extracted from the data for compilation and analysis purposes. The analyses are provided in the following chapter. The remaining responses, as applicable, were coded using: a) open (IN VIVO); b) axial; and c) selective coding methods. The analyses are provided in the following chapters, too. Cramer's V (chi-squared distribution -  $\chi^2$ ) is also used in order to compare the actual, that is to say observed distribution, with a hypothesised or expected distribution. Finally, an empirical residue is available for use in future research work.

There now follows in Chapter 4 a summary of the research results; while Chapter 5 comprises a discussion of the findings; and Chapter 6 outlines my conclusions.



## Chapter 4 – Research Results

This is an exploratory. Consequently, its findings must be viewed as such.

### US mncs

As has already been mentioned above, seven Irish-based, US mncs were surveyed. Four of the mncs are non-unionised, and three are unionised. Three mnc are from pharmaceuticals, two from medical devices, one from financial services and one from engineering. There now follows a summary of the research findings, the product of which can be describes as analogous to Mintzberg's (1973) '*detective work*'.

### CEOs and senior HR professionals on site

A mix of CEOs and senior HR professionals were interviewed. In some cases the senior HR professional responded on behalf of the CEO and *vice versa*.

#### CEOs

Table No1 indicates a number of similarities and dissimilarities between the responses of CEOs and senior HR professionals in unionised mncs and those in non-unionised mncs.

First, all unionised mncs surveyed have an EWC in place; whereas, none of the non-unionised have; a majority of both unionised and non-unionised mncs have conducted some risk assessment of existing arrangements; unionised mncs have conducted some forward planning; whereas, a majority of the non-unionised have not; none of the unionised or non-unionised mncs have a PEA in place;

Not in list  
of abbreviations

and, only one of the unionised and none of the non-unionised mncs anticipate a request from employees to engage in I&C.

Second, the locus of strategic decision making in unionised mncs is perceived to be either in the USA or a mix between the Ireland and the USA; whereas, in the non-unionised it is perceived to be either in Ireland or a mix between Ireland and the USA. In unionised mncs the requirement to conduct I&C will probably impact on the prevailing culture; whereas, in the non-unionised it will probably not. I&C will not shift the locus of strategic decision making in either unionised or non-unionised mncs; however, the perceived challenge that I&C represents to management prerogative is more pronounced in non-unionised mncs.

Third, only in unionised mncs is there some evidence of a mix of direct and indirect I&C mechanisms; unionised mncs communicate with manual grades on both strategic and financial issues; whereas, in a minority of the non-unionised mncs this does not happen. There is little evidence in either unionised or non-unionised mncs that CEOs view any benefit setting up a '*Standing Consultative Committee*' to deal with all I&C issues. There are mixed views in both unionised and non-unionised mncs that I&C will lead to competitive advantage. There are also mixed views in both unionised and non-unionised mncs that I&C have the potential to replace cbn.

**Table No1: Responses - CEOs and senior HR professionals on site**

Table indicates the number of weighted responses received in each category.  
There are 7 mncs involved: 3 x unionised mncs; and 4 x non-unionised mncs.

Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. EWC in place	3			4
2. PEA in place		3		4
3. Anticipate request for I&C	1	2		4
4. Some risk assessment completed	2	1	3	1
5. Some forward planning completed	3		1	3
6. Locus of decision-making:				
a. Ireland			1	
b. USA	2			
c. Mix of both	1		3	
7. Impact of early I&C on culture	3			4
8. I&C challenge to management prerogative	1	2	3	1
9. I&C will shift locus of decision making		3		4
10. Mix of direct/indirect I&C mechanisms employed	2	1		4
11. Communications with manual grades on:				
a. Strategy	3		3	1
b. Finance	3		3	1
12. Set up Standing Consultative Committee		3	1	3
13. I&C will lead to competitive advantage	1	2	3	1
14. Will I&C replace collective bargaining negotiations	1	2	1	3

## Senior HR professional on site

Table No2 also indicates a number of broad similarities between the responses of senior HR professionals in unionised mncs and those in non-unionised mncs.

### **Table No2: Responses from senior HR Professionals on site only**

Table indicates the number of weighted responses received in each category. There are 6 HR professionals involved: 3 x unionised; 3 x non-unionised mncs.				
Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Alignment of HR strategies:				
a. Collaboration/participation	3		2	1
b. Change management	2	1	2	1
c. Adaptability/flexibility	3		2	1
d. Commitment/involvement	3		2	1
e. Culture management	3		2	1
f. Training & development:				
(1). Economic literacy	1	2		3
(2). Managers on how to I&C	2	1		3
2. Support provided for employees with extra workload	2	1		3
3. Apathy amongst employees for I&C		3		3

First, both unionised and non-unionised mncs have attempted to align HR policies and practices with I&C mechanisms (albeit in a partial manner); however, in one non-unionised mnc there has been no attempt at alignment.

Second, in non-unionised mncs no training and development initiatives related to I&C have been undertaken; whereas, in one unionised mnc employees receive on the job training (OTJ) in financial modelling practices, while in two unionised mncs management is undergoing training in: a) finance for non-financial managers; b) managing performance excellence (including coaching skills); and c) supervisory management. In two of the unionised mncs adequate provision is being made to support employees' representatives with the extra workload that I&C entails. In both unionised and non-unionised mncs, it is the view of senior HR professionals that few, if any, employees are aware of the right to I&C.

## **Other matters**

### **General approach towards I&C**

In non-unionised mncs, CEOs are well disposed toward I&C and recognise its benefits. The CEOs also perceive themselves to be quite effective at I&C. In a majority of cases much emphasis is placed on the quarterly brief where information on the business is disseminated and employees at all levels are given the opportunity to provide feedback during the briefs. In one non-unionised mnc, explosive growth in employee numbers has taken place over the past 18 months. This has resulted in the division of the workforce into discrete departments and a committee of departmental representatives has been formed in order to help address business issues. The committee meets quarterly and, *inter alia*, it is used as a supplemental line of communications with employees.

Overall, CEOs in non-unionised mncs report no *'them versus us'* syndrome. CEOs are committed to giving employees an equal say during briefing sessions. The mantra, in general, appears to be: *'Our people are our company. Employee involvement and customer focus is emphasised at all levels.'* In one specific case, however, a HR professional, speaking on behalf of the CEO, indicates there is much in-house resistance amongst managers towards I&C and its implications.

In unionised mncs, CEOs emphasise the good relations that exist between management and workers. But there's a tendency to exercise caution in relation to I&C. In one instance the point is stressed that while the mnc concentrates on direct communications with employees, excellent relations continue to exist with the various trades union involved, and every effort is made to ensure there's no dilution of the unions' machinery. In another instance, the point is made that while I&C may make the leadership team a little uncomfortable at first, this is expected to change when it's realised that *"we do this anyway"*. Overall, the mantra appears to be: *'Communications are good around here; there's no reason to rock the boat.'* Although in one unionised mncs, a HR professional, speaking on behalf of the CEO, indicates a preference for a *'single table'* framework. When in a previous employment she had positive first-hand experience of this type of arrangement, but doubts if trades union in the respondent mnc would embrace the concept. The view is taken that trades union would prefer no dilution of existing structures; nevertheless, an attempt to introduce a *'single table'* framework in that mnc will be made, presently.

### **Information exchange – consultation continuum**

In non-unionised mncs, CEOs, in general, stress the requirement to engage in informal dialogue with staff as a lubricant for introducing change. One CEO views informal dialogue as a means of shaping the finer points of change.

Another CEO views informal I&C as critical to the implementation of major change programmes, such as, where changes are made to sales territories or decisions relating to the transfer of production operations abroad. On the other hand, one CEO is adamant that, irrespective of the requirement to I&C, there will be no change to or substitution for existing direct involvement mechanisms.

Another CEO contends that the US parent will continue to introduce strategic change regardless of the requirement to I&C. All CEOs form the view that there will be no change in the locus of strategic decision making as a result of I&C.

There will be no change in culture. In one instance a CEO notes: *'Not an iota'*.

In unionised mncs, CEOs are more inclined to engage in detailed consultation with employees or their representatives regarding major change issues; but, in general, are less inclined to do so in relation to incremental change issues. All CEOs form the view that there will be no change in the locus of strategic decision making as a result of I&C; although one CEO posits that this could happen in circumstances where an Irish subsidiary lacks the vision to deal with the strategic imperatives of a situation, and, as a result, corporate decides to get involved. Finally, CEOs, in general, agree that there may be a change in the prevailing management culture.

## **Challenge to management prerogative**

In non-unionised mncs, CEOs, in general, are of the view that I&C represents no challenge to management prerogative or, at least, not in Ireland. One CEO contends there might be a problem with this in the US parent, but stresses that the *'onus is on Irish subsidiaries to sell I&C to parent companies in the US'*.

Another CEO forms the view that I&C may make it more difficult for managers to navigate and, consequently, there may be a requirement to be more disciplined or more strategic in approach towards employees, and especially towards change issues. In one case, however, an HR professional, speaking for a CEO, contends that I&C represents a definite challenge to management prerogative and advocates that a culture of minimum compliance will prevail. The HR professional in question contends that this opinion is representative of CEOs' views across the specific industry sector involved.

In unionised mncs, one CEO forms the view that I&C represents a challenge to management prerogative here in Ireland, but in the US parent, considerations of this nature aren't *'even on the radar; not even with the best will in the world'*; in the US, the CEO contends, *'it's business as usual'*. A senior HR professional, speaking for a CEO, contends that at corporate level in the USA there's little or no understanding about Irish IR issues and matters of this nature tend to be left to the discretion of the local management team. He also stresses that at site level in Ireland there's little or no emphasis placed on *"shop tactics"*; management realises the importance of doing what's right and necessary, and in order to



achieve this there's a requirement to consult with employees anyway. There's no drama about I&C, in his view. In another case, a senior HR professional, speaking for a CEO, is adamant that I&C represent no challenge to management prerogative, *'provided I&C only relates to I&C and does not relate to negotiations. If this is the case, management here is prepared to embrace partnership in its true sense.'*

### **Use of Experts**

In non-unionised mncs, when questioned on the issue of *'experts'*, CEOs, in general, are quite alarmed that employees may seek to avail of the services of experts. One CEO notes extreme caution in this regard; it would be *'tantamount to the tail wagging the dog'*; and *'a power of veto'* would be required by management. Another CEO is receptive towards the idea, but would like to know the issues to be addressed beforehand. The CEO in question would be open to the feedback and responses received. While another HR professional, speaking for a CEO, takes the view that any attempt by employees to use experts would be *'viewed with abhorrence, fury, and distaste. It would be feared by management.'*

In unionised mncs, CEOs are sensitive about the potential for the use of experts by employees; notwithstanding the fact that they perceive their cultures are open. They would not like to see *'externals'* getting involved in I&C. However, in two separate unionised mnc, a senior HR professional, speaking for the CEO, indicates that recently a situation arose where a trade union and its experts

were given the opportunity to ask questions about a certain change initiative and the processes went well. But both HR professionals also make the point that if a change initiative involves a work issue and an *'expert'* has no expert knowledge about the specific matter under review, in that circumstance the use of an *'expert'* would be frowned upon. The overriding criterion is: *"Is it good for the organisation?"* Another CEO is concerned that the use of *'experts'* might be viewed by employees as a panacea to all issues.

### **Partnership-based approach**

In non-unionised mncs, CEOs, in general, view I&C as an opportunity for the development of a partnership-based approach to management-employee relations. But the CEOs stress that ultimately there is a requirement for one person to take the final decision. One CEO makes the point that consultation is *'not a process of debate'*. And, in one industry specific case an HR professional, speaking on behalf of a CEO, contends there would be *'grave opposition to this'*.

In unionised mncs, CEOs, in general, take the view that I&C provides an opportunity for the development of a partnership-based approach to management-employee relations; and they stress the non-adversarial and positive IR climates their mncs enjoy. However, a senior HR professional, speaking on behalf of a CEO, indicates a preference not to increase the amount of indirect involvement that takes place. In his view, *"a partnership-based approach does not represent a huge number of positives for us"*. He also questions

if, in reality, trades union view partnership as a positive: *“Certainly not if it interferes with their negotiations processes. The jury is out on this one”*. While another senior HR professional, speaking on behalf of a CEO, indicates, *“we have at least two partnership meetings annually, and we’d like to see more of it”*. The view is taken that it would help to give voice to non-union employees; ideally in the context of a *‘single table’* framework. Once again, the senior HR professional is fearful that trades union, *“might be against it”*. Moreover, when interviewed afterwards, the CEO in that mncs stresses, *“it all comes back to the mind-set of the employees’ representatives. Do employees have a mature approach towards partnership? If I&C are viewed through an adversarial lens a disaster may follow; but management on this site look forward to the process being as open as possible”*.

### **Employee Voice**

In non-unionised mncs, CEOs contend that their respective *‘employee voice’* strategies are based on *‘direct communications’*. In two of the mncs regular surveys are carried out on staff in order to monitor engagement levels (or as a CEO contends, *‘to gauge the temperature’*); and in one of those mncs the *‘survey system’* is actually linked into both the performance management system and the employees’ incentives system. In unionised mncs, the *‘employee voice’* strategy is largely based on *‘direct communications’*; notwithstanding the excellent relations that are currently enjoyed with trades union. The point is made that none of the unions involved are *‘knocking the door down about I&C’*.

### **Competitiveness, confidentiality and flexibility**

In relation to competitiveness and confidentiality, CEOs in non-unionised mncs, in general, contend that I&C can lead to competitive advantage. There is a recognition that engaged staff not only are more productive, but are also more amenable to change. One CEO contends '*when you are open and honest with people you'll get better results*'. Another CEO recognises the fact that a firm with good I&C practices will '*enjoy a good name in the marketplace*'. The same CEO is of the view that Irish indigenous firms lack openness; their management practices are based on '*the feudal barony system*'; and '*they'll experience much difficulty with I&C*'. On the other hand, confidentiality is viewed as a tricky area. One CEO indicates there's no problem with staff having access to sensitive information provided it doesn't interfere with flexibility. In another instance, on account of the regulated nature of the specific industry sector involved, some CEOs are gravely concerned about the sharing of sensitive information. All CEOs are concerned that I&C will negatively impact on flexibility.

CEOs in unionised mncs, in general, take the view that there will be no real impact on competitiveness (although one CEO contends, "*There's great potential for a negative here. It depends on the attitude of the employees' representatives*"); nor will there be a huge impact on confidentiality; but, once again, flexibility could be impeded somewhat (one CEO posits, "*the old adversarial approach will do this no good*"). On the other hand, they perceive that some difficulties may arise in relation to the distinction between I&C and existing IR structures, for

example, between negotiation and consultation. In fact, one CEO contends that I&C have the potential to replace cbn, but the mnc has no plans to actually do this. A senior HR professional, speaking on behalf of a CEO, about the relationship between I&C and existing IR practices, indicates that the unions will watch this space carefully in order to ensure there's no dilution of their interests. He takes the view that unions will accept I&C only to the extent that it enhances their position. Another senior HR professional, speaking on behalf of a CEO, indicates that the mnc *'is not worried about the confidentiality piece. We trust our employees'*. Once again, in that mnc, concerning the relationship between I&C and existing IR practices, there would be a preference to introduce a *'single table'* framework but, it is perceived that trades union *'do not want the table to be diluted'*. Moreover, the senior HR professional stresses that *'I&C should not interfere with management prerogative. I&C and negotiations are different issues'*. Indeed, when interviewed afterwards, the CEO in that mnc contends, *"we'll have to continually reinforce that it's I&C and not negotiations that's involved. Some of the unionised employees may hold the view that it's all about negotiations"*. He also suggests, *"A 'single table' framework would be good. It broadens the basis of discussion and tends to dilute adversarialism"*.

### **Senior HR professionals on site – Other matters**

Senior HR professionals in both unionised and non-unionised mncs have partially aligned HR policies with I&C; but in-house communications on I&C, thus far, have been largely confined to board presentations. They report no

sense of urgency from employees to embrace I&C. They contend, overall, that a lot of employees, excluding HR staff, do not know about I&C. In fact, one respondent admits getting involved now and then in '*a little arm wrestling*' in order to coax employees' interest in I&C. In another case (a unionised mnc) the senior HR professional remarks, '*There's complete apathy about I&C. Nobody ever mentions it*'.

Moreover, in general, they contend that I&C will impact more significantly on indigenous Irish firms. The point is made that US mncs operate differently to most Irish firms. For example, in US mncs there are manuals and procedures for everything. In sum, US mncs are prepared for I&C; indigenous Irish companies are not. On the other hand, one senior HR professional in a non-unionised mnc is concerned about the alignment of HR culture management with I&C. There's a concern that I&C has the potential to move the mnc towards a unionised environment. There's no room for a '*middleman*'; not even for an employees' representative, in that mnc.

### **Benefits**

In non-unionised mncs, the benefits of I&C are perceived to be an opportunity for: a) management to educate employees about the operation of the business; b) employees to engage in honest discussion, as well as an exchange of views about the business that will lead to more representative decision-making; c) creating a mechanism for sharing news, both good and bad, as well as for building trust

and management credibility; d) formalising what already exists in US mncs, for example, as one MD notes, *‘in this firm, income is earned, not owned’*; and e) creating a strong voice for employees in the running of the business.

In unionised mncs the benefits of I&C are perceived to be, *inter alia*: a) the potential to remove resistance to change; b) to facilitate buy-in, input and ownership from staff (or *“associate engagement”* as indicated in one instance); c) the opportunity for management to deliver the business message and ensure that it is understood; as one senior HR professional remarks, *‘we need to be one team to be successful’*; d) a more informed workforce; e) a high degree of shared ownership; and f) better communications all round.

### **Obstacles**

In non-unionised mncs the obstacles to I&C are perceived to be: a) management’s reservations about it; b) fear of its impact on competitiveness, confidentiality and flexibility; c) the practical time management issues involved. One HR professional asserts, *“It requires thought, preparation and resources. It shouldn’t be shoehorned in. It must form part of core strategy and allow people to become part of the business”*; d) the structures that will have to be put in place, including the nominations for elections; and e) its potential as a vehicle to air unrelated issues. For example, vocal staff might use it to camouflage ulterior agendae.

In unionised mncs the obstacles to I&C are perceived to be: a) putting people together without a natural constituency; b) a '*single table*' framework is an alien concept in Irish IR; c) its potential to interrupt the flow of US foreign direct investment into Ireland; d) the struggle to get a partnership agreement in place. On senior HR professional notes, '*We'll have to trawl to get the right balance in place*'; e) its potential to be viewed as a talking shop with the real business done elsewhere – as one senior HR professional notes, "*Just going through the motions*"; and f) the potential there exists for employees' representatives to use I&C for the wrong reasons, that is, as one CEO suggests, "*to improve the lot of the workforce at the expense of everything else e.g. comps & bens*".



## Middle Managers

Table No3 indicates a number of similarities and dissimilarities between the responses of middle managers in unionised mncs and those in non-unionised mncs.

**Table No3: Responses from middle managers**

Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Communications received on:				
a. Strategy	3		1.5	1.5
b. Finance	1	2	1.5	1.5
2. Commitment from top for I&C	3		1.5	1.5
3. Commitment from bottom for I&C	2	1	1.5	1.5
4. I&C viewed as bolt-on to work	1	2	1	2
5. I&C will lead to competitive advantage	2	1	2	1
6. Training received on:				
a. How to work with managers	2	1	1	2
b. How to I&C	2	1		3
c. Economic literacy		3	0.5	2.5
7. Exchange of sensitive information	2	1	1.5	1.5
8. I&C viewed as dirty word in mnc		3	1	2
9. Emphasis from top managers:				
a. Soft measures				
b. Hard measures	1.5		1.5	

c. Mix of both	1.5		1.5	
10. Approaches to change management:				
a. Managerial prerogative			1	
b. Direct involvement	1		1	
c. Mix of both	2		1	

First, in unionised mncs middle managers report that they are communicated with on strategy, but responses are mixed relating to financial issues; whereas, in non-unionised mncs middle managers report varied opinions on both issues. In unionised mncs managers responses indicate a positive commitment from senior management, but mixed views about subordinates' commitment for I&C; whereas, in non-unionised mncs they report mixed views relating to commitment from both senior management and subordinates for I&C. In both unionised and non-unionised mncs managers report mixed views relating to the 'bolt-on' nature of I&C to their existing duties and responsibilities; however, in both unionised and non-unionised mncs the preponderance of managers responses indicate that I&C can lead to competitive advantage.

Second, in unionised mncs middle managers report mixed views about the emphasis that's placed on training and development for I&C, and indicate that no training at all takes place on economic literacy; whereas, in non-unionised mncs, overall, they report that little or no training and development takes place in most areas relating to I&C. In both unionised and non-unionised mncs managers report mixed views about exchanges of sensitive information with

them. In unionised mncs managers report that I&C is not a *'dirty word'*; whereas, in one non-unionised mnc managers feel that it is.

Third, in both unionised and non-unionised mncs middle managers report that the emphasis from senior managers is placed on *'hard'* operational matters or on a mix of both *'soft'* and *'hard'* operational matter, but that there is no sole emphasis placed on *'soft'* operational matters. In unionised mncs managers report a mix of both management prerogative and direct employee involvement in senior managers' approaches towards change; whereas, in the non-unionised they report mixed views along this spectrum.

## **Other matters**

### **Communications on strategy and finance**

In relation to the dissemination of communications about strategy and financial performance issues to front-line subordinates or employees, in unionised mncs this is more likely to happen than in non-unionised mncs. In unionised mncs the middle managers indicate a deep commitment to communicate with employees. In one unionised mnc this activity is referred to as *'line of sight'* and it is executed via posters, power point presentations and area departmental briefs. In another unionised mnc extensive negotiations have just been completed with unions relating to *'strategy over the next couple of years'*. In all unionised mncs middle managers stress how important it is that employees know about corporate strategy and understand their individual contribution

towards its achievement. However, the emphasis that's placed on employees' knowledge about financial performance is less pronounced.

In non-unionised mncs, overall, the tendency to communicate with employees about strategy and financial performance issues is less of a priority in comparison to the position in unionised mncs. In non-unionised mncs the main emphasis is placed on the '*annual brief*', or on monthly or quarterly reviews, or on performance related issues. There is little or no evidence of communication on strategy and/or financial issues with employees in non-unionised mncs. The evidence suggests that the emphasis is placed on the dissemination of fairly scant information only, and some respondents indicate that '*even this doesn't happen*'.

### **Future for effective I&C mechanisms**

In unionised mncs middle managers are quite positive about the future for effective I&C mechanisms in their firms. They stress the importance to be brave and realistic about it; as well as to ensure that trades union do not feel threatened and view it positively. Indeed, one middle manager earnestly stresses the importance of implementing good communication channels that can reach all levels of employees in a reliable, structured, two-way format both upwards and downwards in the firm; and in a way that managers are perceived by employees as leaders, as well as to act on any feedback received. Another middle manager stresses how the '*GM's State of the Business Address*', together with an

effective *'open door policy'* help to ensue that robust informal dialogue with subordinates takes place.

In non-unionised mncs, middle managers, overall, are not as positive about the future for effective I&C mechanisms. One manager envisages no real change in methods and refers to *'occasional staff presentations but nothing seems to differ'*. Another manager takes the view that its effectiveness will depend on who champions the initiative. If the right senior manager gets involved it will become a strategic issue; otherwise it will not. In yet another mnc, HR is described as reactive; NYC decides on new initiatives; and individual managers implement those initiatives, sometimes in teams. While in another mnc middle managers criticise upper level management for lack of integration and consultation, especially relating to expansionary plans. It would appear in that specific mnc the emphasis is placed on customer care and better product issues, only.

### **Challenge to management prerogative**

In both unionised and non-unionised mncs middle managers, in general, view I&C as an integral part of their job; there's no challenge to management prerogative involved; although in one instance a manager reports that I&C has the potential to *'intrude on sensitive issues'*. Equally managers are of the view that the final decision in a consultation matter should rest with senior management; based on corporate instructions and incorporating the opinions of employees. One middle manager stresses the importance that is placed in the

value system in order to *'do what's right'*. While another middle manager stresses that *'there's no room for window dressing in I&C'*; if management doesn't act bona fides (sincerely) the employees will see through this; the decision to I&C must be taken in a spirit of co-operation otherwise it will fail, but the final decision should rest at the top. In the final analysis matters cannot be decided by a committee; managers must reserve the right to take decisions; managers are paid to take decisions and to manage.

By contrast, one middle manager in a non-unionised mncs is quite sceptical about the extent to which senior managers would engage in any form of meaningful consultation with staff, and even if this were to happen, the extent which feedback received from staff would be taken on board, in that manager's view, *'is questionable'*. On the other hand, in a unionised mnc, a middle manager comments, *'I&C could be a disadvantage, that is, it could be totally unproductive. It could turn into a talking shop when we should be working productively elsewhere'*.

### **Benefits**

In unionised mncs middle managers perceive the benefits of I&C to be: a) the potential to engage staff on key business issues which will ultimately lead to a happier and more controlled workforce; b) more formalised and holistic communications processes; c) a reduction in the perception that top

management is trying to hide something; and d) a stronger context within which to wield change.

In non-unionised mncs middle managers perceive the benefits of I&C to be: a) better direction from the top about performance and where the firm is going; b) increased loyalty in the workplace; c) engagement, via improved motivation and high morale; and d) increased efficiency.

### **Obstacles**

In unionised mncs middle managers perceive the main obstacles to I&C to be: a) how to deal with trades union in the mix; b) the potential there exists for senior management apathy; c) the time requirements involved; d) the timing issues involved, that is, when does one communicate about an issue: early on or when all of the information is available?; and e) US parents' dislike of I&C.

In non-unionised mncs middle managers perceive the main obstacles to I&C to be: a) the geographic remove of the US parent. This makes it difficult for upper levels of management in the US to engage with staff; b) the potential there exists for lack of uniformity and consistency in approach amongst senior managers. The MD must take I&C seriously; c) senior management's fear that I&C may lead to a unionised environment; and d) lack of interest from front line employees.

It should be noted that in one instance a middle manager (non-unionised), after careful consideration, couldn't think of an obstacle to I&C. While in another instance a middle manager (non-unionised) adopts the view that the whole exercise is pointless: *'the mnc will do the minimum acceptable in order to adhere to the legislation and, thereafter, it'll be business as usual'*.



## Employees

Table No4 indicates a number of similarities and dissimilarities between the responses of employees in unionised mncs and those in non-unionised mncs.

**Table No4: Responses from front line employees (1)**

Table indicates the number of weighted responses received in each category. There are 10 employees involved: Four from 2 x unionised mnc; and Six from 3 x non-unionised mncs. Responses in both unionised and non-unionised mncs are disaggregated into sub-units.

Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Awareness of I&C rights		2	3	
2. Perceived difficulty of exercise of I&C rights		2	0.3	2.7
3. Envisage employer hostility		2	0.3	2.7
4. Perceived commitment from top management for I&C	1.5	0.5	2.7	0.3
5. I&C a dirty word in mnc	0.5	1.5		3
6. Worker directors in mnc		2		3
7. Exercise of primary control over own work area	0.5	1.5	1.7	1.3
8. Use joint problem solving approaches to work	2		1.7	1.3
9. Receive I&C relating to immediate work area	2		2.7	0.3
10. Final decision - consultation:				
a. Rests with management	2		2.7	
b. Rests employee			0.3	
11. Receive I&C on:				

a. Strategic issues	1	1		3
b. Financial issues	1	1		3
12. Forms of I&C used				
a. Direct	0.5		2.7	
b. Indirect				
c. Mix of both	1.5		0.3	
13. Emphasis of employer employee relations:				
a. Direct verbal	2		3	
b. Direct written	1.5	0.5	2	1
c. Through representatives	1.5	0.5		3
d. Other				3
14. Employers' desire to communicate with employees				
a. Commercial imperatives	0.5			
b. Employee involvement	1		1.3	
c. Mix of both	0.5		1.7	
15. Locus of decision-making:				
a. Ireland			1	
b. USA	1		0.3	
c. Mix of both	1		1.7	
16. Training received on I&C:				
a. Working with managers		2	1	2
b. Economic literacy		2	1	2

First, in unionised mncs employees responses indicate that they are not aware of the right to I&C; whereas, in non-unionised mncs they are aware. In both unionised and non-unionised mncs employees indicate neither a perceived

difficulty nor any form of hostility from employers in the exercise of I&C rights. There is, however, a tinge of concern expressed by one employee on both issues in one non-unionised mnc. In both unionised and non-unionised mncs a majority of employees perceive that top management is committed to I&C. In unionised mncs employees have mixed views about the perception of I&C as a '*dirty word*' in the firm; whereas, in non-unionised mncs this is definitely not the case, I&C is not considered to be a '*dirty word*'.

Second, in both unionised and non-unionised mncs the employees' responses indicate that there are no worker directors in the firms; and there are mixed views expressed about the extent to which employees are allowed exert primary control over their own work area. In unionised mncs all employees report that there exists both joint problem solving approaches, as well as I&C in relation to immediate work role issues; whereas, in non-unionised mncs there are mixed views expressed on both issues. In both unionised and non-unionised mncs employees responses indicate that the final decision in relation to consultation rests with management. In non-unionised mncs employees are adamant that there's no I&C with them in relation to either strategic or financial issues; whereas, in unionised mncs mixed views are expressed on both of those counts.

Third, in unionised mncs employees report a mix of direct and indirect forms of I&C; whereas, in non-unionised mncs the main emphasis is placed on the direct method. In unionised mncs there is an even mix of direct verbal, direct written

and indirect representation methods used; whereas, in non-unionised mncs the main emphasis is placed on direct verbal methods and no indirect methods would appear to be employed.

Fourth, in unionised mncs employees responses indicate that employers' desire to communicate arises due to a mix of commercial imperatives and the requirement to promote employee involvement; whereas, in non-unionised mncs responses indicate that this issue is driven by either a desire to advance employee involvement or a mix of both commercial imperatives and employee involvement; but no sole emphasis is placed on commercial imperatives in this regard. In unionised mncs employees take the view that the locus of strategic decision making is in the US or a mix between the US and the Irish subsidiary; whereas, in non-unionised mncs mixed views are expressed with regard to this, but the preponderance of opinion is in favour of a mix between the US and the Irish subsidiary.

Fifth, in both unionised and non-unionised mncs employees responses clearly indicate that no emphasis is being place on training and development for I&C purposes; although there is evidence of some forms of indirect training taking place in non-unionised mncs, but, on balance, it is insubstantial in nature.

Table Nos 5 to 8 also indicates a number of similarities and dissimilarities between the responses of employees in unionised and non-unionised mncs.

Table No5 indicates that in relation to the way managers involve employees in the workplace, in unionised mncs employees express mixed views between very good and good; whereas, in non-unionised mncs the views expressed indicate a mix between very good or good and poor.

**Table No5: Responses from front line employees (2)**

Table indicates the number of weighted responses received in each category. There are 10 employees involved: Four from 2 x unionised mnc; and Six from 3 x non-unionised mncs. Responses in both unionised and non-unionised mncs are disaggregated into sub-units.

<b>Details</b>	<b>Unionised</b>	<b>Non-unionised</b>
<u>Assess the way managers involve employees:</u>		
Very good	1.5	1.0
Good	1.5	1.2
Poor		0.8
Very poor		

Table No 6, indicates that in relation to an assessment of current I&C practices, in unionised mncs employees' responses indicate an even mix between very good and good; whereas, in non-unionised mncs there's a mix between very good and good, but with an overall preference of very good.

**Table No6: Responses from front line employees (3)**

Table indicates the number of weighted responses received in each category. There are 10 employees involved: Four from 2 x unionised mncs; and Six from 3 x non-unionised mncs. Responses in both unionised and non-unionised mncs are disaggregated into sub-units.

<b>Details</b>	<b>Unionised</b>	<b>Non-unionised</b>
<u>Assess current I&amp;C practices:</u>		
Very good	1.5	2.1
Good	1.5	0.9
Poor		
Very poor		

Table No7, indicates that in relation to an assessment of the quality of I&C received, in terms of both transparency and timeliness, in unionised mncs employees' responses indicate an even mix between very good and good in relation to transparency, with the preponderance of responses indicating good in terms of timeliness; whereas, in non-unionised mncs in relation to transparency the responses indicate a mix between very good or good and very poor, and in relation to timeliness, the responses indicate a fairly even mix between very good, good and poor, while in a limited number of cases the responses indicate very poor.

**Table No7: Responses from front line employees (4)**

Table indicates the number of weighted responses received in each category. There are 10 employees involved: Four from 2 x unionised mnics; and Six from 3 x non-unionised mnics. Responses in both unionised and non-unionised mnics are disaggregated into sub-units.

Details	Unionised		Non-Unionised	
	Transparency	Timeliness	Transparency	Timeliness
<u>Assess the quality of I&amp;C received:</u>				
Very good	1	0.5	1.3	1
Good	1	1.5	1.4	0.8
Poor				0.9
Very poor			0.3	0.3

Table No8, indicates that in relation to the focus of management-employees communications, in unionised mnics employees responses indicate it is primarily directed at product market, market realities and the requirement for quality. There are mixed views expressed about focus on market volatility, intensity of competition and the requirement for low cost; whereas in non-unionised mnics the preponderance of responses indicate that the focus is on product market, market realities, market volatility, intensity of competition and the requirement for quality. There is less of an emphasis placed on the requirement for low cost. In relation to other issues, in unionised mnics some responses indicate an emphasis on production improvements, as well as corporate social responsibility; whereas, in non-unionised mnics emphasis is placed, *inter alia*, on

the requirement for internal organisational change, the need for community focus, as well as the promotion of corporate social responsibility.

**Table No8: Responses from front line employees (5)**

Table indicates the number of weighted responses received in each category. There are 10 employees involved: Four from 2 x unionised mncs; and Six from 3 x non-unionised mncs. Responses in both unionised and non-unionised mncs are disaggregated into sub-units.

Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
<u>The focus of management employees' communications:</u>				
1. Product market	2		2.5	0.5
2. Market realities	2		2.4	0.6
3. Market volatility	1	1	2.4	0.6
4. Intensity of competition	1	1	2.4	0.6
5. Requirement for quality	2		2.4	0.6
6. Requirement for low-cost	1	1	1	2
7. Other items:				
a. Production improvements	0.5			
b. Internal organisational change			0.4	
c. CSR & Community	1		0.7	



## **Other matters**

### **Perceived management commitment to I&C**

In unionised mncs employees report that management do engage a lot in informal dialogue, as well as consult with them on a team by team basis; some of the older school of employees, however, still prefer management to use the formal approach; but there's no evidence to suggest that a '*them versus us*' mentality exists; whereas, in non-unionised mncs employees report that management do engage with them in informal dialogue, but a lot of emails are used for this purpose. In one non-unionised mnc the employees report that management makes no attempt to engage in informal dialogue, except in the case of HR; the employees report severe restrictions in this regard; but this would appear to be a specific industry sector issue.

### **Consultation on major and incremental change issues**

In unionised mncs employees report that they are '*consulted*' in relation to major corporate change issues via either bulletins or emails or, in one mnc, the '*GM's State of the Business Address*', but, while they are allowed to ask questions, no input is ever requested from them; whereas, in non-unionised mncs employees report that managements' sole emphasis is on providing information in relation to major corporate change issues; unless the issues relate to an employee's immediate work area or function, no two-way consultation takes place. Overall, employees in non-unionised mncs report that major corporate change issues are announced rather than discussed with them; the matter is a fait accompli.

In unionised mncs employees report, in general, that they are consulted in relation to incremental change issues and are requested by management to make an input. The unionised employees contend this is a valuable exercise. In non-unionised mncs employees give mixed responses in relation to consultation on incremental change issues: a) one employee contends there's much consultation in relation to customers' needs and requirements; b) another employee contends there's no consultation at all on incremental change issues; and c) yet another employee reports there's plenty of group consultation on incremental change issues, but the full picture is never disclosed.

### **Consultation on immediate job issues**

In unionised mncs, in respect of consultation on immediate job issues, employees contend, in general, that management already knows what it wants to achieve before any discussions take place; in non-unionised mncs employees give mixed views on this issue: a) one employee contends there's consultation at a very early stage; b) while another employee contends they receive only information and no consultation at all takes place; and c) yet another employee contends there's only *'discussion in relation to personal issues and nothing else'*.

### **Use of Experts**

In relation to engaging the services of *'experts'* to help formulate responses to management, in unionised mncs employees contend that experts would only be required to assist with responses to a major change issue, but otherwise would

be a *'waste of time'*; whereas, in non-unionised mncs employees responses to this issue are mixed: a) it would help to lend impartiality to the process (but the expertise should be sourced in-house and an environment of trust and confidence should exist between management and employees about it); b) it's a good idea. Experts can serve to strengthen employees' negotiation power. Management, however, would fear it because information is power, rather than viewing it as a mechanism to assist employees better understand the issues involved; c) no problems are envisaged if a request for expert assistance were made, but management is already very good at providing information; d) it would create a *'them versus us'* mentality; and e) it could prove to be very helpful but shouldn't be abused.

In circumstances where *'expert'* assistance were required unionised employees would have a preference for the trade's union expert over a private expert; whereas, non-unionised employees, including non-unionised employees in partly unionised mncs, would have a preference for a private expert.

### **General feelings about I&C**

In unionised mncs employees responses express feelings of involvement, as well as a deep sense of awareness that if a personal problem were to arise management would be highly supportive; indeed one unionised employee contends *'there's no need for I&C in this firm'* and *'this isn't the worst place to work'*. Overall, employees are satisfied with the representation they receive from

trades union, but remark that, thus far, their unions have not addressed the issue of I&C with them. Moreover, unionised employees appear to have little faith in the EWC mechanism and observe that they never receive any feedback from either their elected representative or that forum. One employee contends that the EWC mechanism *'is not effective'*. In fact, one non-unionised employee, in a partly unionised mnc, is not aware there's an EWC representative en site.

In non-unionised mncs employees express mixed feelings about I&C, for example: a) one employee contends, *"there's a 'disconnect' between NYC and the subsidiary here in Ireland. There are cases where employees will not even open an email if it's from NYC"*; b) HR is reactionary and needs to become more proactive relating to I&C; c) there should be no *'trigger mechanism'* involved. Employees who wish to avail of maternity leave, for example, do not have to go through a rigmarole; d) management can use the *'confidentiality banner'* in order to withhold information and in this way employees can be at a loss; e) I&C is a terrific mechanism; and f) management is opposed to I&C and it's currently being introduced under the *'banner of engagement'*.

It should also be noted that a non-unionised employee (non-unionised mnc) contends, *"Senior management here is deeply committed to employees' welfare"*. A huge degree of trust in senior management's integrity was expressed in this instance. In this employee's opinion senior management en site are of the highest integrity.

## **Senior US HR Professional**

A semi-structured interview was held with a senior US HR professional, who has responsibility for HR operations across EMEA, including partly unionised, multi-site operations in Ireland. The following is my interpretation of the various responses received.

### **Aversion to increased '*consultation*' with employees**

The senior HR professional is aware of the new Act, and has practical experience of I&C, following the transposition of the ICD into UK law, in April 2005.

Moreover, she is adamant there's no aversion to increased consultation with employees/trades union over key business issues in the mnc, including the US parent. In sum, she takes the view that informed employees are better employees; and better employees do support business success.

### **Management prerogative**

In her view, I&C do not impinge on the individual manager's right to manage. However, she is adamant that the manner in which Irish trades union conduct business impinges on a mnc's right to manage. Irish trades union do not understand the role they should play in business. For example, mncs have obligations to shareholders and the discharge of those obligations sometime gives rise to serious concerns. Irish trades union do not share this sense of responsibility with management. The recent social partnership talks are proof of

this. The pay deal struck between trades union and IBEC has the potential to make Ireland uncompetitive in international markets. Trades union should realise that US mncs always have the option of moving to either Eastern Europe and/or India, where both the business climate and industrial relations situation are more agreeable. Admittedly, US mncs do enjoy a stable legal environment in Ireland including solid intellectual property rights' protection.

The Irish trades<sup>Q</sup> union movement should compare itself with the Swedish model. In Sweden, I&C is based on the 'true partnership' approach. In Sweden, trades union understand the concept of 'true partnership'. Both management and trades union take decisions and execute them jointly. The Irish trades' union movement has no appreciation of this approach. Accordingly, in her view problems may result with the implementation of the new Act, unless trades union are prepared to meet their responsibilities and be accountable in the workplace.

### **Locus of control**

She contends it's not always possible to direct operations in a foreign subsidiary from the US. She notes, for example, that in the US the laws are different; and the culture is different, too. She accepts that the US parent gives strategic direction to foreign subsidiaries, but, equally, the US parent is deeply committed to providing information to employees on a continuous basis. Accordingly, provided effective I&C arrangements are in place, and both sides are working

together in a spirit of partnership, difficult decisions taken in the US parent should be capable of implementation fairly quickly in the foreign subsidiary.

Moreover, she stresses that on mainland Europe trades union do support the business; however, in Ireland there's a lack of ownership demonstrated. She also stresses that I&C mechanisms are being put in place here without regard for the cultural implications and other responsibilities involved. In Ireland both employees and trades union demand the best of both worlds in all situations, while employers' requirements tend to be left out of the equation.

### **Impact of I&C on management culture**

She contends that existing levels of employee engagement are insufficient in her industry sector, that is, pharmaceuticals, compared with the levels of employee engagement enjoyed in other sectors. She admits there's a lot of work to be done in this area. The US parent realises that engaged employees lead to success. Accordingly, the mnc proposes to push an engagement orientated change agenda very soon and would like to embrace effective I&C arrangements in furtherance of this.

### **Competitiveness, flexibility and confidentiality**

The view is taken that, thus far, I&C have not affected Ireland's ability to sustain the Celtic Tiger. However, if Ireland allows trades union to damage national competitiveness the alternative for US mncs will be relocation to Eastern Europe

and/or India. Trades union must realise that a national wage increase of 10%, over 27 months, is too high; and must also accept both their responsibilities and accountabilities in the workplace. (In fact, a CEO of a partly unionised mnc, who was interviewed following the announcement of the 10% national pay increase, is equally critical of IBEC for agreeing to this. In his view, trades union influence at the partnership talks far outweighs their proportion of representation in the workplace. He also makes the point that IBEC has acceded to this.)

In relation to confidentiality, US mncs have to believe that I&C fora will respect the requirement to retain sensitive information safely. Trades union leaders must also recognise their responsibilities in this regard, which includes retaining the confidence of employers in circumstances where sensitive information is shared. US mncs usually proceed on the basis of trust and confidence and must believe that confidentiality will be respected.

### **Traditional voluntarism**

The EU Commission would probably prefer to 'a morph' Europe into one economy; but each country in Europe is fiercely independent, especially in labour relations. Ireland and the UK are not influencing the EU agenda; rather the EU Commission is driving Ireland and the UK towards EU norms. But one of the reasons why the Irish economy continues to enjoy success is due to the flexible nature of its labour force. Irish employers tend to engage employees



more, compared with the position elsewhere in Europe where collectivism prevails. Ireland should be careful not to follow in that direction.

In her view, there's a definite requirement for change in the Irish trades' union movement. The questions should be posed: "*do Irish youth need trades unions? Do they need representation?*" The answer is, "*Probably not; they can do this for themselves*". Irish youth have only known the Celtic Tiger and believe that it will last indefinitely; whereas, the older senior trades' union officials still remember the poor times and this tends to make them think differently. Irish youth would appear to have the resilience to make the Celtic Tiger last; whereas, the senior trades union officials don't. Accordingly, a case can be made that there's no longer a requirement for old, outdated adversarial methods. A new approach at the top is needed.

### **Way forward for trades union**

Irish trades union must learn to adopt an internationally competitive mind-set. They can't order everything on the menu anymore. Once again, trades union must realise that a national pay rise of 10%, over 27 months, is too much. Costs are getting too high. If this trend continues, part of the mnc community may relocate out of Ireland.

Irish trades union must be prepared to embrace change. They must be prepared to take ownership of their responsibilities in the workplace. They should strive to

model themselves on the Swedish system, where trades union work, and work well. In Sweden, trades union are part of the decision-making process, but they also assist with the execution of decisions, including the hard decisions. US mncs would like Irish trades union to remodel themselves in this manner. Provided Irish trades union do this, but they would have to *'walk the talk first'*, US mncs may become more amenable towards them.

## **The Social Partners, State Agencies & Other Opinion**

Semi-structured interviews were conducted with the social partners, that is, ICTU, (including IMPACT and SIPTU (hereinafter the “union bodies”)) and IBEC; a number of state agencies, that is, DETE, NCPP, IDA (Dublin), IDA (NYC) and LRC; as well as a number of third parties, that is, PWC, two legal professionals, and a research consultant. The following is an interpretation of those interviews.

**N.B.** The interviews with the union bodies and NCPP preceded the enactment of the Act; whereas, the interviews with IBEC, DETE, IDA (Dublin & NYC) and the LRC followed the enactment.

### **The right to Information & Consultation**

A legal professional takes the view that the right to I&C is a collective right and not an individual right, such as, the rights specified in an employee’s terms and conditions of service. Also, it is not a fundamental right, such as, a right to associate or dissociate, as the case may be. The fact that the legislation provides for an ‘opt-in’ trigger mechanism is evidence of this. In sum, it is a right provided under legislation in circumstances where at least 10% of the appropriate workforce (subject to certain maximum and minimum requirements) agrees to trigger it. Any statement to the effect that it is as fundamental, if not more so, than the right not to be unfairly dismissed or to be discriminated against is charged with emotion, and is tantamount to ‘*an audience grabbing headline statement*’.

Another legal professional takes the view that the emphasis in the legislation is on *'collective'* rather than *'individual'* rights. He suggests, if you ask an individual employee is the right to be informed and consulted more important than, for example, the right not to be unfairly dismissed, the answer would be, *"Absolutely not"*. In short, the legislation gives a collective of employees the right to enforce collective discussion, but only provided certain criteria are met. He also takes the view that trades union tend to use legal terminology inaccurately and in an exaggerated manner. Accordingly, any contention by a trade union official to the effect that there is a *'proprietary right'* involved is untrue. There is no constitutional right involved, either. However, he suggests that there's a fundamental clash of traditions and philosophies underpinning the IR models in both Ireland and the UK, and those in France and Germany. He contends, for example, the French would argue that the right to I&C is fundamental. In practice, in France, I&C can be used to slow down the decision-making practices of mncs. But in Ireland and the UK this form of tactic would be viewed as an annoyance. It is this type of flexibility that makes both Ireland and the UK attractive to mncs. It is part of our Irish competitive advantage and the French and Germans would like to eliminate it. He suggests this is perhaps why the Irish government has little or no interest in the implementation of the ICD and has shown a lack of consultation towards it. In his view, government's main objective is to continue to attract FDI into Ireland.

## **Information and Consultation & Collective Bargaining Negotiations**

All three union bodies form the view that it is possible to separate I&C from cbn. ICTU questions the desirability of doing this. For example, in ICTU's view, when trades union deal with employers they tend to have an information deficit.

Management has the information but usually doesn't want to share it.

Accordingly, I&C offer employees' representatives, including trades union, the opportunity to gain information and access data that could prove useful during cbn. In this way, both I&C and cbn can be complimentary, but the union bodies agree that the natural tendency would be to separate them.

ICTU is of the opinion that I&C have the potential, if not properly managed, to dilute cbn. But IMPACT and SIPTU are adamant that this won't happen. IMPACT contends there's a lot of confusion about what I&C are going to do. For example, in IMPACT's view, I&C will not deal with contracts of employment or pay and conditions of service and, consequently, it will not interfere with cbn. SIPTU recognises that some employers may use I&C as a form of cbn substitution, but contends that proactive steps have already been taken to ensure this does not happen. For example, in 2005, SIPTU launched a nationwide training and education programme which involved taking tutors across the 26 counties, over 86 training days, meeting its 10, 000, activists in order to address the purpose and intent of the ICD, as well as to demonstrate its application in the workplace. SIPTU contends this will ensure that its 200, 000 members view the ICD as a

separate and distinct channel from the Industrial Relations Acts, 1946 to 1990, as amended.

IBEC takes the view that both I&C and cbn sit side by side. IBEC is adamant that there will be no dilution of cbn; that territory will be preserved. Trades union can be rest assured that IBEC will not interfere with their right to engage in cbn; the two concepts can be run in parallel.

DETE takes the view that I&C and cbn are separate and distinct from one another. Cbn concerns specific issues that are in dispute e.g. individual rights, pay & conditions, etc. I&C is an on-going process; it's an on-going communications mechanism. I&C are about the exchange of views and the establishment of dialogue at the enterprise level. I&C are not about cbn or co-determination. If an employer would like to include negotiations about pay and conditions in I&C arrangements, the employees will have the final say. If employees agree to negotiations on pay and conditions via a democratic process, so be it. On the other hand, DETE takes the view that it would be hard to conceive of a situation where employees would be swayed against their will by an employer to do this. In any event, the new Act provides a reliable and verifiable system that safeguards employees' rights and interests where an employer attempts to include negotiations on pay and conditions, against employees' will, under the umbrella of I&C.

NCPP takes the view that I&C and cbn can be separated, but in practice they overlap. I&C may dilute existing cbn structures but, overall, it has the potential to enhance its quality and effectiveness; and it may even give rise to a form of interactive-based cbn; mechanisms that are fairer and more representative. However, NCPP is adamant that where both I&C and cbn work, they will complement each other. For example, where certain issues are decided through I&C they may have to be actually signed off in a collective agreement. In other words, a truly effective I&C forum will be collective in nature and, consequently, this can only strengthen and enhance cbn. However, irrespective of any developments in this regard, NCPP contends that strong employee union officials will still be required at national level. Indeed, in this vein, another respondent suggests that Irish trades union need to focus their endeavours at a much higher level than is currently the case; he advocates something akin to the focus of unions in mainland Europe.

A legal professional takes the view that I&C represent a challenge to trades union. Duly elected employees' representatives can conduct cbn on their own behalf. They may need expert assistance, from time to time, but that can be provided via either external consultants or trades union. Trades union will probably find their position being eroded over future years but, to an extent, it will depend on the industry sector and the individual unions involved. "*Banging the table doesn't work anymore*", she says.

Another legal professional suggests that I&C have the potential to replace cbn but it will not happen within the next 10 years. In his view, companies will continue to negotiate with unions; but the negotiations structure may change. He suggests, for example, that something might be discussed in I&C, but it might be formalised via cbn. On the other hand, I&C have the immediate potential to impact dramatically on the current IR scene in a number of respects. He suggests, for example, assume that a US mnc does not recognise trades union and currently has no I&C forum constituted. That mnc is still obliged to respond to a valid request from employees to engage in I&C. If the unions were to covertly get behind the employees in that firm they should be able to run a *'puppet show'*. In such circumstances, the mnc may be faced with a choice of the better of two evils, that is, to negotiate with the union, rather than the employee group. If this were to happen I&C have the potential to revolutionise how that mnc negotiates with its employees.

The LRC takes the view when discussing cbn there are two types of companies to consider, that is, unionised companies where cbn is already recognised and where the same shop stewards will probably sit on both the negotiations committee and the I&C forum; and non-unionised companies where cbn doesn't exist. In non-unionised companies it would probably be untenable to deal with pay and conditions of employment via I&C. In any event, the LRC takes the view that I&C and cbn are separate and distinct mechanisms in practical terms. But



while the LRC agrees that I&C mechanisms will not replace cbn, it recognises that I&C have the potential to dilute the cbn channel.

O'Kelly is adamant that I&C and cbn are absolutely separate mechanisms.

Separate issues come up in each case. There are distinct areas dealt with in cbn e.g. wage levels, implementation of the national agreements, working time, extra benefits, working conditions, etc. In his view, I&C will be confined to the areas stipulated in the Act. However, he agrees that there is a grey area, "*the Danes call it the Danish Egg*", and as trust builds between the parties it may happen that I&C will begin to deal with areas peripheral to cbn e.g. working conditions.

But employees' representatives must understand their role in I&C, that is, they'll have no involvement in cbn. It will be important to delineate who'll do what.

There will have to be a clear distinction drawn between the roles and responsibilities of employees' representatives in I&C and the trades' union process. Equally, O'Kelly posits that if any attempt is made to replace cbn with I&C mechanisms, trades unions will definitely get actively involved.

In relation to the potential for I&C to replace cbn, the Chamber suggests that Ireland has a tendency to move towards one model (e.g. co-determination) while continuing to chip away at another model (e.g. voluntarism). In the final analysis trades union will have to ask, "*What's our value proposition? Is I&C a threat or not?*"

A legal professional takes the view that in circumstances where an I&C forum is constituted it will have a mandate, subject to agreement between the parties, which may include a right to negotiate pay and conditions of service. In order to regulate such agreements it is important that the LRC issues a template on best practice. In this regard she asks, "*Should an agreement contain provision for a mandate to consult on 'soft' issues like benefits, sick pay schemes, etc?*" She suggests, "*If yes, trades union can attempt to exploit the situation via the 2001-04 Acts*". Another legal professional suggests there's potential here for a lot of case law over the next few years. He suggests that interpretations meted out by the ECJ will, of course, influence the conduct of battles at the national level.

### **Standard Rules**

ICTU is adamant that trades union have been written out of the script under standard rules; that the Chamber has been given everything it wants; and that the ICTU has been given only the '*odds and socks*'. IMPACT adopts the view that the legislation, as originally drafted, was an attempt by government to get the EU Commission '*off its back*', and at the time it was made clear that the legislation would be open to substantial amendment on both sides. If the legislation had been enacted within the specified timeframe its format when originally published would have been different. For example, it would have guaranteed union representation. In any event, according to IMPACT, companies usually want a trade union presence during consultations in order to educate the workforce about the realities of a situation.

SIPTU is not aware of any case, anywhere, where the standard rules have been invoked as a means of putting I&C structures in place. The concept of standard rules is novel in both Ireland and the UK where previously there hasn't been a tradition of I&C. Accordingly, going forward the standard rules will act as a template but, for the moment, they lack certainty and, according to SIPTU, are '*in suspended animation*'. They represent a gross distortion of I&C.

Nevertheless, SIPTU indicates that it has formulated a plan for dealing with I&C. For example, all activists were contacted prior to March 23, 2005, about I&C and its implications, but, as SIPTU correctly points out, the legislation wasn't in place on or before the appointed date. However, in like case to the swiftness with which SIPTU acted after the enactment of the Safety, Health and Welfare Act, 2005, when its structures were in place within three days, SIPTU contends that it will be equally swift with regard to I&C. SIPTU also takes the view that its members have a '*proprietary*' right to I&C, and SIPTU will enforce it.

The DETE is adamant that trades union haven't been written out of the script under standard rules. The DETE makes the point that trades union, for example, have a specific role to play pursuant to Schedule II, para 2. (b) (Election of Employees' Representatives). This copper fastens the fact that trades union have a role to play. The DETE points out, however, that members of an I&C Forum must be employees of an undertaking; external union officials cannot be elected to it.

A legal professional takes the view that trades union are too sensitive about I&C, especially in relation to standard rules. It appears as though they are looking for any opportunity to be the victim; rather they should view I&C as brimming with opportunities to exploit. By analogy, trades union have turned the 2001-04 Acts into a positive. She asks, *“Why can’t they do the same with I&C?”* She suggests, *“Trades union must start to help employers with their business models. They can do this by concentrating on producing good officials, with good formal training and in-depth knowledge of business management practices”*. Moreover, the point is made that trades union are increasingly becoming non-receptive audiences in the business environment. Union officials tend not to understand the basic business model and they must learn to re-shape themselves in this regard. Trades union must stop *‘beating the bush’* about I&C and must realise that an employees’ representative is different to a union official. In relation to union officials, the point is made that the younger generation of union officials tend to have a good understanding of business models. Accordingly, the younger officials should be paired off, that is, the right official to suit the right business. In this way trades union can endeavour to proactively use the legislation to best advantage, as well as to re-brand their image.

Another legal professional takes the view that Irish trades union strike him as, in many cases, being run as if they were businesses. They have customers, target markets, financial targets, etc; but their primary concern is to increase membership, rather than to advance workers rights. In his view, they are at the

social partnership negotiation table at the *'gift'* of government; and, in effect, they are a lobby group for state development. Moreover, in his view, trades union are dreaming if they think that the standard rules should bring them automatically to the I&C table. Nevertheless, the standard rules provide ample opportunities for unions, and if they deal with the legislation in a clever, sophisticated manner opportunities will present. But he stresses that trades' union must act covertly in order to achieve results.

In relation to the standard rules, NCPP contends that you can only *'be written out if you are in'*. Trades union should see the opportunities presented in this regard. If trades union are viewed in the workplace as visible and effective they will gain seats on I&C fora proportional to their memberships. In *'single table'* frameworks, provided their representation is effective, opportunities are sure to present.

The LRC takes the view that if the standard rules are resorted to it's an indicator that a company hasn't been able to organise or embrace I&C arrangements in-house. If a company has to resort to the fall back position, the LRC asks, *"What is the point of proceeding with I&C?"* According to the LRC, if this happens, it's an indicator that the parties have failed to sit down and negotiate I&C arrangements. Moreover, in a unionised company while unions will have some input under standard rules, of course, in a non-unionised company unions will probably have no input to I&C, at all.

O'Kelly contends it's doubtful if the legislation could have been drafted any other way. If it had made explicit provision for the unions it would have excluded the non-union companies from its application. He is adamant that there was no other way to draft the new Act.

### **Minimalist approach**

NCPP notes trades union argue that government has adopted a '*minimalist approach*' in the transposition of the ICD, but contends that this is not correct. Government is only minimalist on the trigger mechanism issue; otherwise, the ICD has been "*transposed as it stands*". In sum, NCPP's view is that government has opted for a non-proactive, non-invasive, and neutral role. Government is quite entitled to so do.

One of the legal professionals is adamant that government has, in fact, adopted a minimalist approach. In his view, government has courted FDI, *inter alia*, via its approach to I&C. By contrast, he claims that government in the UK embarked on a major consultation initiative prior to the transposition of the ICD into UK law; but the Irish government didn't do that. He contends, however, it is widely accepted that the Irish government consulted with a number of major mncs prior to publication of the initial draft legislation. By contrast, however, DETE is adamant that it engaged in an extensive consultation process: a Consultation paper was published in 2003 which resulted in over 20 detailed submissions, and DETE engaged in ongoing bilateral consultation with the

social partners throughout the legislative process. The views points presented proved invaluable in respect of policy decisions made in the legislation.

Moreover, DETE is vehement that there's no minimalist approach. According to the DETE when one looks at the new Act as a whole three separate phases to I&C can be discerned. First, in relation to a pre-existing agreement (PEA) there's a minimalist approach adopted (there's very little prescription involved); second, where the parties agree to a post-regulation or a negotiated agreement the approach still remains quite loose; and, third, the standard rules are quite prescriptive in effect; but the standard rules also underpin the new Act with specific rights. In other words, if an employer doesn't play ball the employees can proceed to enforce their rights and rely on the fallback position.

Additionally, DETE points out that Section 13 of the new Act provides very strong protection for employees' representatives. DETE notes that Section 13 hasn't received a lot of media attention, but contends that Section 13, together with Schedule III, comprises one of the strongest protections afforded to employees in Irish employment legislation. The DETE is adamant that the ICD has been transposed in its entirety into domestic law.

On the other hand, PWC is adamant that government has adopted a '*minimalist approach*' in the new Act. PWC contends, for example, government has not defined unequivocally what I&C entails. Government has opted for the least painful route in the transposition of the ICD into domestic law.

O'Kelly also agrees that a '*minimalist*' approach has been adopted. In his view, the draftsmen didn't think the matter through extensively enough; instead they were trying to find a balance between the views of ICTU and IBEC.

IDA (NYC) contends that government has certainly kept an eye on the effect that I&C may have on potential FDI in Ireland. Clearly, government is concerned to keep Ireland competitive; to safeguard our can-do culture; as well as to maintain how we "*stack up*" on the global scene.

### **Management prerogative**

According to the NCPP management will always have to take certain types of Decisions; but I&C should improve the overall quality of management decision making. For example, it should ensure that management articulates why decisions are made and it will improve management practices in this way.

Management will be forced to consider how to get employees on board and to get buy in, especially relating to change issues. Accordingly, I&C should not be viewed as a challenge to management prerogative.

The DETE contends that it is neither the intention of the ICD nor the new Act to challenge management's prerogative. The DETE points out, for example, nowhere in the new Act is it provided that a manager's decision can be overturned by the courts (Schedule 1, para 4 (2) (e) is apposite in this regard). If the new Act had legislated in that effect it would have encroached into the realm



of cbn. I&C aim to facilitate the building of rapport between employer and employees; it's not about co-determination.

IDA (Dublin) is adamant that managers must manage and be allowed to manage. I&C do impinge on this to an extent, but it can be turned into a positive provided I&C are approached correctly, that is, in a spirit of co-operation on both sides. Nevertheless, the view is taken that in US parents I&C may be viewed as an impingement on managers' right to manage, particularly if it is not explained clearly to them. But IDA (Dublin) also contends that local managers would probably view I&C as less of an impingement on them. By contrast, IDA (NYC) forms the view that it all depends on how individual mncs decide to engage with employees in the management of the business. IDA (NYC) suggests that it's not possible to generalise in this regard, and points out that Irish employees often contend about US mncs, "*It's the best place in Europe to work.*"

The LRC takes the view that there's no perceived challenge to management prerogative inherent in '*informing*', but there probably is in '*consulting*'.

According to the LRC, consultation implies talking to employees, gathering their views, and taking those views on board before making a decision. Some managers view this as a challenge; however, it should be considered part of the overall decision-making process. In the final analysis, it must be remembered that managers take decisions, but during the process they should listen to their employees first, and then take a decision. At the end of the day, according to the

LRC, there's no socialist model being imposed under the new Act. A business is not a commune. Management must take decisions.

O'Kelly is adamant that there's no impingement on management prerogative involved. Good management practices include I&C. Any good manager will inform, consult and involve his or her workforce.

The Chamber contends that I&C doesn't take away the US parent's right to manage, and points out that local managers have far less autonomy than might be imagined. At the local level I&C may be perceived to impose restrictions on how managers manage, but the Chamber agrees that I&C is good management practice anyway.

PWC contends that a good manager will always engage in I&C with his or her staff. If a manager prefers to I&C directly there's nothing in the legislation to prevent this. The Act is very general in nature. It's really only in a '*plant closure type of scenario*' that I&C will come into focus. Government will have to introduce regulations on I&C. When this happens PWC believes that it's preferable to leave a significant amount of discretion to the individual companies.

## **Direct and/or indirect representation**

NCPP takes the view that there's no obligation imposed under the ICD to engage in indirect representation. Employees are free, subject to the constraints imposed (e.g. trigger mechanism, etc), to exercise their rights via either direct or indirect means. NCPP contends that US mncs will do their best to ensure a minimum demand for indirect means. For example, Dell (heavily committed to direct involvement) already has a EWC/SNB mechanism which is an indirect channel; and, HP uses direct means, but has established a much publicised indirect mechanism in response to the ICD. The picture is complex, but best practice does result from a mix of both direct and indirect channels.

The LRC takes the view that the main concern is to adhere to the spirit of the ICD, which requires that effective I&C mechanisms are in place. This can be achieved either through direct or indirect means. But the LRC points out that the trigger mechanism has diluted the true spirit of the ICD. Nevertheless, it's time for the various actors to accept that the I&C debate is over. It's time for them to accept what has been put in place and to make the best use of it. The legislation will not be re-visited.

O'Kelly contends that the ICD is a framework directive; it allows the local country decide how to transpose the principles enshrined in it. Nevertheless, in his view, it would appear that the legislative draftsmen were working within the mindset of the 'EWC framework' when drafting the new Act. However, he

contends, that in actual fact, the ICD is much looser than the EWC framework. It seeks to engender a spirit of co-operation between employer-employees at the enterprise level.

A legal professional agrees that increasingly over the past 30 years US mncs have been allowed to engage directly with staff. In this way, for example, the Intels and IBMs have managed to avoid trades union altogether. But she points out that companies do have a right to associate or dissociate, as the case may be. On account of this, US mncs will continue under no obligation to engage with unions; instead, under the new Act, they will be obliged to engage with employees, but only on foot of a valid request. In terms of consultation, she suggests that the extent of the required level of engagement remains somewhat unclear. Both the ICD and the new legislation refer to *“in a spirit of co-operation”*, but what that actually means is a matter of interpretation. What is clear, however, is government’s desire not to be invasive in business arrangements. Government will not engage in the micromanagement of businesses and, by extension, government’s approach to the transposition of the ICD is a signal to trades union to that effect.

Another legal professional takes the view that the ICD does not seek to prevent companies from talking to employees individually. In his view, the ICD seeks to enhance employees rights, but it does not purport to make it more difficult for employers to talk to them. Employers must be able to talk to employees on an

individual basis, if they so wish. He suggests, however, that US mncs are terrified of and opposed to unionisation. It is an irrational fear on their behalf, in his view. Anything with a collective connotation to it is of concern to them. Legislation with collective implications almost invariably is treated in a minimalist way. US mncs, in general, seek to discharge their obligations with minimum compliance. This type of approach on the part of US mncs is just within permissible boundaries. In his view, there are mncs that fall on the wrong side of the boundary line, sometimes due to a misinterpretation of legislation, where, for example, they may have been wrongly advised. In any event, by and large, US mncs seek to comply with the letter rather than the spirit of the law; and they are allowed to get away with it. But US mncs should remember that under the new Act there is an obligation to I&C with employees following the submission of a valid request.

### **Locus of control in US mncs**

ICTU forms the view that US mncs are obsessive about the sharing of information with employees. A once-off opportunity has been lost in the draft legislation. If parliament had come out strongly and dictated I&C requirements for management, US mncs would conform to the domestic law.

IMPACT points out that it doesn't deal with US mncs. Other mncs that IMPACT deals with, however, have a great deal of local autonomy, for example, most mncs allow remuneration policy to be determined by local conditions. On the

other hand, the closure of a plant is a *'life and death situation'* and would involve consultation, but a going concern retains a lot of local autonomy.

SIPTU forms the view that US mncs have conducted a concerted campaign to water down I&C, and government has *'rolled over'* to such an extent that the *'minimalist'* position adopted means that the legislation doesn't comply with the ICD. In other EU countries governments have attempted to strike a balance between employers' rights and workers' rights to representation. If the legislation, as enacted, doesn't meet this requirement it will be open to legal challenge. In Ireland workers' rights within a representative framework are paramount. Any attempt to water down the legitimacy of the trades' union movement will be resisted. Trades union are a legitimate organisation and are entitled to operate within a collective framework.

The Chamber takes the view that the *'US locus of control'* in mncs could actually speed up I&C processes. Consider for example a sudden decision taken in the US to close down an Irish subsidiary. Decisions such as this actually put pressure on the Irish manager to work I&C machinery faster, and the manager in question might be viewed as not allowing I&C arrangements to work. The employees might be viewed in such an instance as being unable to I&C in an informed way or that the manager hasn't, in fact, engaged with them at all. The Chamber also takes the view that there's very little that can be done by it in an

individual instance. All the Chamber can do is to disseminate information internally and in this way strive to promote best practice, in a general sense.

O'Kelly, on the other hand, takes the view that the '*locus of control*' will slow down I&C machinery. In his view, US mncs operate a peculiar type of matrix reporting structure; but they are very good at making local legislation work to their benefit. O'Kelly first noticed this approach by US mncs when the Vredling Directive was being discussed. At the time US mncs were somewhat antagonistic in their initial responses, but once the Directive was actually transposed into local law they had effected the necessary transition and had begun to use it to their best advantage. For example, he points out, GM has used its EWC mechanism to put at least two collective agreements in place that are applicable in plants throughout Europe e.g. Opel in Germany and Vauxhall in the UK. In sum, O'Kelly contends that US mncs are very legalistic in approach. They tend to produce very detailed guidelines in response to a piece of legislation such as I&C.

PWC contends that, in Ireland, the typical local manager is in full control of the operation and runs the plant. However, the local manager will not always be aware where precisely the Irish plant fits into the overall scheme of things at corporate level. For example, a decision to close down an Irish plant will definitely be taken at corporate level and the local manager will receive his or her instructions from the US about it. But the local manager, in any event, would

probably prefer to enter into meaningful I&C arrangements (in a spirit of cooperation) with the local staff whenever an opportunity presents.

The LRC takes the view that the concept of I&C encourages a more efficient and fair management style. Decisions made without any consultation can give rise to dissension and mistrust. The LRC contends that most employees do want to know what's going on in their firm; and management can do this in a framework of "*let's talk it through*", rather than "*what do you think?*" The LRC suggests that this type of framework might be more tenable to management, including to US mncs.

IDA (Dublin) takes the view that US mncs will continue to do business, but observe the legislation. IDA (Dublin) admits that the maximum penalties allowable under the legislation are "*a little scary*" and cannot be taken lightly. In the post-Enron era, strong corporate governance and strict compliance is an integral part of the US business agenda. Enron has caused a change in mindset, and as a result, US mncs are likely to be more compliant with local laws. By contrast, IDA (NYC) contends that it all depends on the type of issue involved in I& C. For example, if a closure decision is taken that's probably the end of the matter, and there'll be no consultation about it. On the other hand, if the matter relates to improvements in efficiency there's bound to be a lot of consultation between corporate US and the local manager. Indeed, the future of the domestic operation may depend on its outcome. Interestingly, on the day the semi-



structured interview with IDA (NYC) took place, a US mnc, with a large presence in Ireland, closed down 1,000 jobs world wide (mainly in the US and Puerto Rico). The decision in question was taken by the US parent, in the US. Accordingly, IDA (NYC) posed a number of questions, that is, if that decision had the effect of closing down 1,100 Irish jobs, and circumstances where no consultation had taken place: a) what are the Irish courts prepared to do in such circumstances? B) Who would be charged? And c) where would the charges be brought?

O'Kelly contends that the locus of control will not shift. At the end of the day I&C is not a decision-making mechanism; it's about I&C only. US mncs will continue to take the decisions.

### **Giving voice to workers in non-unionised, US mncs**

SIPTU forms the view that there is a menu of choices available to trades union in this regard. Trades union can seek to maintain the traditional balance of power relationship subscribed within the meaning of the 1946-90 Acts, and in this way seek recognition. If this does not succeed, trades union can avail of the 2001-04 Acts. The 2001-04 Acts have left trades union in a unique position, according to SIPTU. The LC has been consistent in recommending the rights of workers to be recognised as trade unionists. If employers refuse to recognise this right in an I&C scenario it would be interesting to learn how the LC would react. Employers cannot prevent trades union from organising. Employers can attempt to thwart

recognition, but trades union have strategic choices available for use at strategic times. Employers' perceived unilateral right to control relationships is increasingly coming under the spotlight, and will become increasingly unsustainable in the medium-term. To adopt an alternative position is tantamount to taking a shallow view of the ICD. In any event, following the ECJ's judgment in the *Junk Case (C-188/03)* employers can no longer rely on direct representation. There is no equality in employers dealing directly on an individual basis with workers. Trades union will exploit this opportunity in order to protect workers' rights.

IMPACT, too, places reliance on the 2001-04 Acts. IMPACT takes the view that the Acts have produced an extensive body of procedures that enable trades union to by pass employers in non-recognition cases.

### **The use of 'Experts'**

ICTU notes that the draft legislation is silent on the use of experts. Experts can be useful for employees, employers and trades union alike to retain. The LRC is currently drawing up a code of best practice on how to conduct I&C in the context of the individual enterprise. ICTU asks, "*Perhaps, this issue will be addressed therein?*" For example, an employer might deliver a presentation on the global position of the firm. How do employees handle this type of information? How do employees attempt to interpret financial data presented in a balance sheet? Equally, an employer might require assistance in order to

respond to an employees' question. For example, the employer might provide an answer suitable for reply to a banker, but of no use at all to employees. In fact, the employer's answer might cause more difficulties between the parties. On the other hand, an employer might require advice and assistance about the type of information to share with employees. Either party should be able to call on experts for help. The legislation doesn't provide for this. It is employer centred. The American Chamber of Commerce in Ireland has been given everything it wants.

IMPACT takes the view there's a role for hiring in expert advice, but cannot recall a situation where it has arisen independent of trades union. However, both trades union and employers do much business with various experts and it is difficult to envisage an expert or expert body giving advice or forming a view that would be out of sink with the view of either trades union or employers.

SIPTU takes the view that any advice required by its members should be provided either by SIPTU or its bench of experts and external advisers. This is a major resource that is available for use by its membership. Moreover, it is envisaged that in partially unionised sites, or even non-unionised sites, the benefits of using SIPTU's resources in order to match professional management teams will become evident. It is anticipated that trades union will benefit from this. Non-union workers will appeal to the resources of trades union for assistance in representation.

The LRC suggests that the use of '*experts*' provides potential for trades union to increase membership, as well as to colonise non-union sites, but contends that those objectives will not be easy to achieve, especially in US mncs. But the LRC is adamant that employees will need proper training and advice in order to I&C properly; and asks, "*Who will provide this? What structures will be put in place to facilitate this?*" Accordingly, the LRC contends that in the absence of training (or adequate training) there is a window of opportunity for trades union to exploit.

O'Kelly suggests that the use of '*experts*' provides an opportunity for trades union to provide services to workers e.g. in relation to corporate governance, economic literacy, etc.

### **Single table frameworks**

In relation to '*single table*' frameworks, IBEC takes the view that it's important to distinguish between a union official and a union representative for this purpose. There's no room for the former type in I&C arrangements. IBEC has no difficulty accepting a '*single table*' framework comprising both union representatives and non-union representatives. In partially unionised sites, this type of arrangement will have to be absorbed within I&C frameworks, anyway.

A legal professional notes the position relating to EWCs elsewhere in Europe, particularly on the mainland, and would like to see a similar type movement evolve in this country, under the umbrella of I&C; one that would enhance good

employer-employee working practices. Another legal professional agrees with this view and he contends that trades union can play a role in I&C, but from behind the curtains, similar to the role played by the German unions in the EWC framework. He also suggests that the standard rules afford trades union in Ireland this opportunity.

O'Kelly forms the view that the success or failure of '*single table*' frameworks will all depend on the attitude adopted towards trades union. Both union and non-union people will have to work together. If there's any attempt to marginalise the unions there will be conflict. '*Single table*' frameworks will call for a consensual approach. If management attempt to divide and conquer they will undermine the thinking behind I&C.

NCPP takes the view that I&C pave the way for the introduction of '*single table*' frameworks, and makes the point that the mechanism can and does work. For example, in the UK, Abbey National is coping with partial unionisation from this perspective. It also works at the EWC level. The view is taken that trades union will have to '*bite the bullet*' on this. Protocols and rules will have to be put in place to facilitate this type of machinery. Trades union must recognise that membership in the private sector is falling and there is potential in I&C to reverse this trend.

The LRC would also encourage '*single table*' frameworks, but takes the view that trades union will probably have difficulty with the concept. Unions would prefer not to participate with non-union employees; nevertheless, in the LRC's view, across the board representation is a good practice.

### **Undertakings versus Establishments**

DETE points out that the new Act doesn't preclude an '*undertaking*' with 50 or more employees from introducing I&C at the '*establishment*' level, for example, where it has multi-site operations. DETE takes the view that if it had opted for the '*establishment*' level initially, many firms at that level might be too small to embrace I&C, especially given the fact that it's a new concept in Irish IR. In other words, I&C are being eased in. I&C can always be extended to the '*establishment*' level later on, if deemed appropriate. In the meantime, full use should be made of the transitional arrangements provided in the ICD. DETE is confident this is the correct action to take in the Irish IR scenario.

The LRC agrees with the DETE in opting for the '*undertaking*' level and forms the view that it's doubtful if firms with less than 50 employees need formal I&C arrangements. If small firms were to come under the umbrella of the new Act it could prove unduly burdensome for them. It would impose a regulatory regime on them and substantial costs would have to be incurred, too.

However, NCPP suggests that it is up to the various actors to promote I&C. NCPP asks, “*What is the difference between a firm with 49 and 50 employees?*” If I&C work with 50 employees it can work with less than 50. That’s what the ‘*Workplace of the future strategy*’ is all about.

O’Kelly contends that this area is one of the reasons why trades union argue that government has adopted a minimalist approach. He also stresses that IBEC wanted an ‘*undertakings*’ result. He notes that in small organisations (less than 50) everybody knows what the other person is doing. I&C don’t have to be formalised at that level. There even isn’t a requirement to do it at the 20 to 30 employees’ level, he suggests. In the smaller companies a lot of informal, direct participation takes place, anyway. It’s only in the bigger companies, that are more hierarchical, where conflict tends to arise.

### **Enterprise partnership issues**

NCPP takes the view that we tend to get bogged down in the false divide between strategic and operational issues. For example, suppose a US mnc decides to invest €400m in Ireland; there are both strategic and operational decisions involved. There is the strategic decision to invest (made by the company) and there’s the operational impact the decision will have on employees’ lives etc. According to NCPP, these are separate issues; but it is in relation to both the impact and implementation considerations where employees require I&C. NCPP notes, however, that academics tend to get mundane here and assert that

employees should be involved in the decision-making process throughout.

According to NCPP that's not necessarily true.

Equally, NCPP contends, for example, a finance director who signs off a financial issue may consult widely first. Who makes the decision? Is this centralised decision making? Improving the quality of decision making may slow matters down. But there is an initial slow down phase with everything, after which things tend to speed up quickly e.g. IT improvements. But a number of benefits are usually realised long-term.

The LRC is adamant that I&C properly implemented in its full sense is good for business. Once effective I&C arrangements are in place employees will know what's going on in the firm. The LRC recognises that there is a crossover between strategy and the issue of confidentiality. But the LRC is adamant that I&C engenders trust and minimises the potential there exists for conflict. Accordingly, from a best practice perspective I&C should include strategic issues. Nevertheless, the LRC agrees that a distinction will probably have to be drawn between US mncs and other companies in relation to I&C and strategy. US mncs prefer to focus on individual productivity; whereas most other companies have a different perspective.

IBEC is most supportive of the enterprise partnership agenda, but contends that it will require a leap of faith to catapult employee participation and involvement



into the strategic decision-making arena. In IBEC's view, the primary obstacle here can be identified in the answer to the question, "*Who normally takes strategic decisions in firms?*" The answer is, "*a small group of people*". There is no space here for employee participation and involvement.

In relation to employees enjoying a share of company profits IBEC takes the view that I&C is not about this. IBEC admits, however, that profit sharing can work in certain situations; it depends on the industry sector involved. For example, IBEC suggests that drawing a comparison between Eircom and Fruit of the Loom is instructive. IBEC asks, "*How many workers and trades union would like to have a share in the profits of Fruit of the Loom?*" IBEC also asks, "*Is it ok to take money away from employees when times are bad?*"

On the other hand, the LRC is adamant that financial participation is good practice. The LRC, for example, highlights Microsoft that provides a sense of ownership to employees via its ESOT. There's room also to enshrine profit sharing in pay; according to the LRC, "*At the end of the day, all that employees want is a fair wage for a fair week's work*".

According to IDA (Dublin) strategic partnership arrangements, as well as financial participation with unions and employees "*is not a flyer with US mncs*". Although IDA (Dublin) points out that some of the more progressive US mncs already have employee stock options in place, but those benefits are provided at

the individual mnc's discretion. In sum, US mncs like to be the decision makers. But they are more receptive towards working with employees, rather than unions, on such issues. US mncs try to treat their staff well.

PWC takes the view that in the longer term workers are better off when they focus on improving their skills and increasing productivity. Employers are better off when they focus on increasing profits and generating good returns. In other words, little or no weight should be placed on allowing workers and trades union a say in strategic decision-making and a share of company profits.

O'Kelly points out that currently the EU Commission is pushing hard for employees' financial participation. The concept of employees' having shares in a company or a trust or some form of profit sharing is recommended. The view is taken that it lends itself to excellent processes of social democracy. But, in his view, the trades union do not necessarily agree with this concept.

By contrast, in relation to trades' union involvement in enterprise partnerships, a NCPP Survey (2003) reported that 4.3% of all companies surveyed had a formalised partnership arrangement between management and unions. This rose to 29% when companies with less than 50 employees were excluded. As regards informal partnership arrangements, 19% of all companies surveyed had one, while this rose to 42% when companies with less than 50 employees were excluded. Accordingly, NCPP contends that progress has been made to date.

This provides a foundation for a more co-operative way of working. The idea of enterprise partnership is only 10 years old. Other models are out there. Ireland took over an adversarial model in 1922. It will take time to replace it. But where enterprise partnership will actually lead to is unclear. It is a matter for the various agencies and actors to promote it. It's what the '*Workplace of the future*' strategy is about.

The LRC takes the view that where relations are going well there will be a sense of trust, and the parties will feel comfortable dealing with each other in a partnership framework. However, the LRC notes that, regrettably, this is the exception to the rule. In most employer-employee relationships there are tensions. Accordingly, for partnership to work there's a need to have champions on both sides. There's a requirement to have shop steward leadership, as well as a CEO/HR dept that's committed to '*employee voice*'. It's key to have the various personalities well disposed towards each other. However, in some cases shop stewards are used to the traditional voluntarist model that's based on adversarialism; and this tends to hamper matters.

The DETE takes the view that the concept of I&C at enterprise level is new to Irish IR. It will take time for it to embed itself in the fabric of our IR system. This is precisely why the new Act has provided for transitional arrangements. It is the responsibility of both DETE and NCPP to disseminate information about the contents of the new Act to all parties concerned, as well as to make the business

case for I&C. DETE and NCPP have a strategy mapped out for this purpose and it will be unfolded presently. The strategy will seek to inform employers and employees about the new Act. The social partners will have a role to play here, too. Currently, the LRC is beginning work on developing a Code of Practice on I&C. The Code is being drawn up in conjunction with both ICTU and IBEC. The Code will provide a good supplement to the legislation and will be a practical guide to how I&C should work on the ground. DETE is also preparing an information booklet on I&C that will be published after the commencement of the legislation. (Currently, the Commencement Order is with the Office of the Parliamentary Council and it should be finalised within a few weeks.)

DETE also points out that many employers are engaged in I&C practices already; it's good management practice for them to do this. Indeed, it's the DETE's view that some employers are actually embracing I&C beyond the requirements specified in the new Act. However, the DETE admits that other employers aren't even aware about I&C, including the many benefits that can flow from it. It is the job of the DETE and NCPP to eliminate the incidence of this. In relation to trades union, DETE contends that they may be experiencing a level of suspicion about the new Act; however, time will demonstrate the range of benefits that can accrue to them via I&C.

According to IDA (Dublin), "*we are living in curious times*". For example, following the Irish Ferries Case there's a change in mind-set in some companies about the

implications of outsourcing and how this may impact on individual employees. It is IDA's (Dublin) view that trades unions can use this as an opportunity to reinforce what the concept of consultation actually means; to help re-position themselves in the private sector; as well as to transform the way they do business.

The LRC takes the view that I&C is a good development in employment practices. Employers should take it on board and deal with it. Employers tend to be good at informing employees, but not too good at consulting. As far as the unions are concerned, the LRC asks, "*Is it a challenge or an opportunity for them?*" The view is taken that some union officials view I&C in conflict with a union's role. They fear it might lead to union isolation. This is bound to cause stresses and strains. The LRC also points out that the DETE, on behalf of government, is the custodian of the legislation, but it has chosen to adopt a minimalist approach to I&C. For example, trades union looked for I&C to be a '*right*', as of course, without any trigger mechanism involved; but this has not happened; and, as a result the trigger mechanism has diluted the full effect of I&C. Both government and DETE are sitting on the fence and have adopted a compromise position in new Act. The fact that an implementation code has to be framed is also evidence of this.

O’Kelly contends that I&C offer an opportunity to develop enterprise partnership. But it will be important to differentiate between I&C and cbn. I&C is aimed at promoting co-operation, consensus and working together.

### **Social partnership and related issues**

NCPP takes the view IBEC is concerned that an imposed I&C framework would constrain flexibility and competitiveness. Ireland has a perception of being a ‘*can-do*’, high flexibility market. There is a concern to allay the fears of mncs (including US mncs) that Ireland has not got a restrictive model like France. There is also a concern that I&C will impinge on managers’ right to manage. On the other hand, trades union are concerned that they haven’t been given a ‘*union priority rule*’. They required this to be written into the legislation, but government has responded in a fairly non-prescriptive manner. However, now that the debate on I&C is over, the social partners should ask what needs to be done; a proactive stance is required. In this regard, NCPP takes the view that, *inter alia*, codes of practice should be issued by the LRC that should reflect what’s happening in the workplace and be updated at least once in every two years.

IBEC points out that there is a shared strategic agenda at the national level for a number of well-known reasons. But in relation to this IBEC states, ‘*it takes two to tango*’. In other words, it will not be realised at the local level until both sides agree to it.

The LRC agrees that partnership hasn't worked at the local level; it has only worked at the macro level. The LRC points out, however, that there are a few partnership committees working across the public sector, but agrees that's not the private sector. The LRC contends that for partnership to work at the enterprise level, a company as a whole must embrace the concept, otherwise it won't work; and suggests that the concept has been tarnished in the private sector over the past 10 years, at least from the perspective of employees. Moreover, in the LRC's view, employers, in general, are not well disposed towards it. The LRC suggests that it would take legislation to introduce partnership at enterprise level in the private sector; but, contends "*in reality, that won't happen*".

O'Kelly agrees that '*social partnership*' has failed to extend partnership below national level interactions. He suggests that NCPP should take a more proactive role in this. He also suggests that the IDA is afraid to discourage US mncs from investing in Ireland. No attempt has been made to push partnership at the micro level. Unless legislation intervenes it's doubtful there will ever be a development in this regard.

IDA (Dublin) forms the view that domestic managers face a major task in allaying the fears of US mncs about the implications of the new Act, but contends that this is largely due to a lack of understanding in the US that I&C might diminish corporate control in the local country e.g. in relation to mergers

and acquisitions. US managers like to exercise strong central corporate governance. The US has a different business culture.

By contrast, IDA (NYC) takes the view that insofar as the existing mnc community is concerned it all depends on how they wish to run their businesses. In relation to new mnc entrants much emphasis needs to be placed on Ireland's attractiveness for business. According to IDA (NYC) competitiveness is relative. DE TE's perceptions of competitiveness and those of US mncs are different. US mncs have to manage a business. This doesn't mean that they are afraid of I&C; it means that I&C is something else they'll have to manage.

Moreover, IDA (Dublin) points out that it has already worked closely with the NCPP, the American Chamber, IBEC, etc., (but, when asked, not with unions!) in order to muster consensus in preliminary submissions to the DE TE on I&C. The objective was to try to negate some of the negative issues at the draft stage of the legislation. Now that the legislation has been enacted the various industry networks will keep members advised. IDA (Dublin) intends to feed into that network, as well as to keep our own staff advised about I&C.

By contrast, IDA (NYC) indicates that all it can do is to make US mncs aware about I&C; anything else is "*beyond its brief*". However, IDA (NYC) points out that it informs US mncs, prior to their location in Ireland, about the requirement to adhere to national law. US mncs are always advised to take legal advice in



this regard. IDA (NYC) is adamant that US mncs are fully aware of this obligation.

The Chamber contends that it might not be a major task to allay the concerns of the US parents about I&C; a number of them are quite familiar with I&C as a result of the EWC Directive. The new Act is not hugely new territory to a lot of them. Where a difficulty might arise would be in the case of a new mnc arrival with no previous experience of I&C. In such a case all that can be done is for the new arrival to tap into the Chamber's '*dissemination of best practice*' to fellow mncs. The Chamber tends to play down difficulties that may arise with the implementation of I&C, and indicates that, overall, viewed in isolation, I&C is not a huge deal, but agrees that it could be viewed by some mncs to diminish Ireland's perception as a flexible place in which to do business. Moreover, when taken together with a range of other employment legislation issues, I&C can be viewed as evidence of more chipping away at Ireland's attractiveness to FDI. The Chamber stresses that it has already made this point.

PWC agrees with the Chamber and indicates that I&C, of itself, is not a major issue. Nevertheless, US parents will probably view the new Act, due to the creeping nature of its obligations, as another incremental step taken by Ireland towards mainstream European protectionism. PWC stresses that US mncs do not like this. PWC also posits that it is difficult for the state agencies to allay the concerns of US mncs in this regard. In PWC's view the current partnership talks,

for example, will most definitely result in increased employment regulation, which is even more evidence of the creeping nature of obligations being imposed on employers. Therefore, the questions should be posed: *“How will the I&C legislation unfold? Will it mean anything in practice?”* PWC suggests that we don’t know the answer to any of these questions, at this stage. Consequently, this makes it difficult for state agencies to educate or allay the concerns of US mncs.

Moreover, according to PWC, I&C represent a number of challenges for the social partners, that is, for employers it represents an additional burden. On the other hand, employers should reflect on the positive aspects of I&C. It makes good business sense to I&C employees. For the unions it represents additional opportunities. It affords them the potential to increase membership.

It should be noted that PWC when asked, *“Do the state agencies promote Ireland to US mncs as a union neutral country in which to do business?”* PWC answered, “Yes”. By contrast, IDA (NYC) is vehement that this isn’t the case. According to IDA (NYC), US mncs intending to locate in Ireland do ask about trades’ union policy in Ireland. IDA (NYC) informs them, however, that there’s no strict policy about this. In other words, if a US mncs decides to associate or dissociate with trades union, so be it. Moreover, IDA (NYC) always gives examples to US mncs, of Irish-based mncs with multi-plant and single plant operations, which are unionised, partly unionised and non-unionised. US mncs are advised that employees are entitled to associate or dissociate, too. IDA (NYC) always stresses

the requirement to take legal advice about this issue. But IDA (NYC) never promotes Ireland as a union neutral country.

The Chamber suggests that the immediate challenge is how I&C will translate into best practice.

### **Traditional Voluntarism**

The union bodies express mixed views concerning the extent to which Ireland still conforms to the voluntarist model of IR. ICTU is aware of Tom Hayes's report on "new collectivism" (Hayes 2003) but contends it's only reflective of developments in Ireland up to a point. ICTU is adamant that the Irish model of voluntarism is different to the UK's. In the UK the trades union have sought union recognition, just like in Canada, but the Irish trades union have never sought this. Instead, Irish trades union use '*pseudo legal mechanisms*' to process workers' '*interest-based claims*'. Irish trades union have developed a sophisticated model via the Industrial Relations Acts, 2001-04, for this purpose, which enable unions to negotiate on behalf of workers where it is not the practice of an employer to engage in cbn. However, ICTU admits there's a need for unions to become more sophisticated and more professional in their approach in this regard.

IMPACT agrees that the trades' union movement in Ireland is on a journey away from the voluntarist model, *inter alia*, as a result of the plethora of legislation

that has emanated from Europe in recent years. Today, it's not a question of where employees' interests lie; rather it is one of enforcing those rights. IMPACT contends that the 2001-04 Acts go beyond the voluntarist tradition, and makes the point that even the current social partnership talks are premised, on both sides, on a movement away from an entirely voluntarist system of IR. IMPACT takes the view, however, that the Irish system is different to the UK's system described by Tom Hayes (Hayes 2003). In the UK the unions are largely engaged in the enforcement of workers' rights, but a solicitor can do that; whereas, in Ireland, IMPACT has identified a different '*space*' for unions to penetrate. For example, IMPACT is beginning to give support to members in various areas of dispute with employers e.g. performance management issues, in addition to the enforcement of contractual rights. In fact, IMPACT has identified a hierarchy of rights that are beginning to emerge on three levels i.e. first, statutory rights; second, '*representation*' in areas that aren't rights-based, but form part of company policy (the '*space*'); and third, *cbn*. IMPACT forms the view that the '*space*' identified above is evolving into '*bread & butter*' for trades unions. Trades union would be in a terrible predicament if their sole role was confined to policing the law.

SIPTU, however, contends that the voluntarist traditions of Irish IR remain embodied in the 2001-04 Acts. For as long as those Acts are in place they will allow for the articulation of collective grievances. Voluntarism is still here. Trades union are not precluded from following issues under the 1946-90 Acts.

Workers continue to have a right to representation in the absence of a collective agreement. On the other hand, according to SIPTU, it can be argued that voluntarism is becoming more regulated by central agreements, but that has evolved more by way of gentleman's agreement, rather than the preclusion of workers to enforce their rights under the 1946-90 Acts. The thrust of the ICD will ensure that this remains the case. SIPTU also contends that the LC has recognised workers' rights to '*representation*' but, thus far, has not specified precisely what those rights actually entail. By way of example, the respondent referred to a dispute a few years ago between Ryanair and baggage handlers at Dublin Airport, where the baggage handlers took a case against Ryanair for victimisation, but lost it. SIPTU makes the point that it would be interesting to learn how the courts would view those facts today, for example, on the grounds of lack of representation under the Safety, Health and Welfare Act, 2005, as well as under the 2001-04 Acts.

IBEC forms the view that there's definitely a '*shift*' away from voluntarism in Irish IR, but it's not too significant as of yet. In IBEC's view, at enterprise level voluntarism still dictates how things get done. Nevertheless, IBEC admits there's value in the concept of IR advocated in Tom Hayes's "new collectivism" (Hayes 2003).

## **Decline in trades' union density in private sector**

ICTU is adamant there's no link between the 'so called' decline in union density in the private sector and a move away from voluntarism. ICTU forms the view that there are a number of reasons for the decline in density (including in US mncs): first, the size of employment, that is, the number of firms with less than five employees has grown substantially over recent years. ICTU poses the question: *'How do you organise in an environment such as that?'*; and, second, the growth in the economy, as well as the consequent growth in employee numbers. For example, ICTU makes the point that the number in employment has grown by c. 500, 000 over the past 7 to 8 years, and contends that no trade union movement in any country could keep pace with this rate of increase. Nevertheless, trades' union membership has increased, year on year, over the same period and currently stands at c. 600, 000 members. Overall, trades' union density is 41% and in the private sector it is 30%. However, density and voluntarism are not linked. Separate factors influence each. But the trade union movement must ask itself the question: *'Can we give a service to employees who are not collective?'* The respondent admits, however, *'Thus far, this question has not been answered'*.

IMPACT did not address the decline in union density issue. This arose due to the intensity of debate surrounding the *'voluntarism'* issue, rather than anything else. SIPTU, however, refers to the statistics on trades' union membership and notes the phenomenal increase in employees' numbers over the period 1995 to

2006. SIPTU recognises that trades' union density has decreased, but members' numbers have increased over the same period. In relation to the increase in non-union workers' numbers, according to SIPTU, a parallel can be drawn between the position with I&C in Ireland and that in France. In France, non-union employees can vote in the election of union members to boards. Employees there recognise the power of collective representation by proxy. They recognise that I&C can provide an opportunity to increase their level of influence. The French experience presents trades union in Ireland, as well as non-union workers, with the opportunity to move in the same direction as France.

NCPP takes the view that trades union have to make a case for people to join the movement. They have to launch national, regional and local level campaigns to ensure that people know about I&C. They must strive to become advocates and experts on it. For example, trades union should operate a *'free fone'* system where they can be reached about I&C issues. Employees might want to ask: does this PEA comply with the legislation? Can we get more? Trades union should be certifiers of agreements; adopt a *'name and shame'* policy where employers do not adhere to the letter and/or spirit of the legislation; hold seminars on I&C; campaign for training and development of the national workforce on I&C; ensure that as many fora as possible are set up, are effective and in compliance with the legislation; and should promote I&C at every available opportunity. NCPP stresses the point that we live in the *'knowledge era'* where governments proclaim that employees are our key asset and,

consequently, trades union should argue that involvement and participation is critical to this.

### **The way forward for trades union**

In relation to the way forward for unions, ICTU forms the view that trades' union officials must be equipped with the skills base to meet the challenges of all types of environments. In ICTU's view there is a continuum of trade union involvement in the private sector. At one end there's the low trust of unions witnessed in firms such as Ryanair; at the other end there is the high trust of unions witnessed in firms such as Abbott's; and in the centre there's a mix. Going forward trades union must be able to assist workers to effectively deal with the various management types to be encountered along that continuum.

IMPACT appears to agree with ICTU on this point and contends that at one end of current labour standards, there are companies with advanced HR policies that seek to promote a form of union substitution, such as, Intel, where HR acts as employees' advocate; at the other end there's the *'shifty'* side of the market, where there's more of a need for trades union to use *'hobnailed boots'* in order to give an employer *'a kick in the shin'*; it all depends on the employer. There is also a mix in between where employers are more co-operative. In other words, there is a *'half-way house'* between opposing management and acquiescing in their practices, which IMPACT terms *'influencing'*, and this represents another *'space'* for trades union to penetrate.



The union bodies are adamant that I&C will not compromise the traditional role of trades union to defend members' rights. ICTU forms the view that the most developed forms of I&C demonstrate this doesn't happen and cites The Worker Participation (State Enterprises) Acts, 1977 to 1988, as evidence of this. IMPACT agrees that '*single table*' frameworks will be established in partially unionised workplaces in order to facilitate I&C arrangements, but contends that how this matter will be managed hasn't been scripted yet. SIPTU cites the ECJ's interpretation of '*consultation*' in *Junk v Kuhnel (C-188/03)* in order to bolster its position in this regard. SIPTU contends this judgment is most significant insofar as it clearly specifies the right of workers to hear management's views and the obligation of management to consider workers' opinion in consultation matters. Accordingly, the point is made that the *Junk Case* will ensure no compromise of the traditional trades' union role in defending members' rights.

Accordingly, SIPTU forms the view that '*consultation*' encompasses a right, *inter alia*, to agree or to disagree. For example, trades union can walk away from the current social partnership talks at any time and so can the other side. SIPTU makes the point that P2000 was re-negotiated by trades union in the face of rising inflation. There are no hard and fast rules.

But SIPTU is also of the view that a wholly new jurisprudence is being developed concerning the right to representation of employees in both unionised and non-unionised workplaces. Trades union are in the best position to provide that

representation. Cbn will remain a core element of what trades union actually do, but it would be wrong to substitute '*representation*' for cbn. Admittedly, '*representation*' is a new weapon in a union's armoury, but it is not an exclusive one. Its use as either an individual or collective route to the vindication of workers' rights is a matter for trades union.

SIPTU also points out that currently there are 25 pieces of legislation in the employment law framework. Under existing law an employer can sack an employee for any reason or no reason provided reasonable notice is given, and the only real recourse that an employee has in such circumstances is to proceed via the Unfair Dismissals Acts. On the other hand, SIPTU stresses that the Safety, Health and Welfare Act, 2005, provides, *inter alia*, for the imposition of significant penalties on employers who are found to be at variance with its provisions. This is an important precedent for trades union going forward. Trades union will use this and similar type mechanisms in order to safeguard workers' rights.

NCPP argues that the way forward is towards more partnership and a co-operative approach on both sides. The focus in this regard should not be exclusively on pay and conditions; rather it should be focused on such issues as organisational performance, work life balance, life-long learning, etc. NCPP accepts that trades union do this type of work anyway; but it would appear to be a secondary issue on their agenda. It is not treated with the same verve that

pay and demarcation receive. Trades unions should move more in that direction while at the same time retaining the right to oppose decisions that go against members' interests.

On the other hand, NCPP is adamant that it is the responsibility of Irish-based, US mncs to sell I&C concepts to their US parents (it should be noted that at least one of the CEOs interviewed forms a similar viewpoint). In circumstances where decisions are taken outside of the jurisdiction, Irish subsidiaries will have to be consulted in a timely manner regarding implementation issues. It would appear that this is either not happening at all or not happening frequently enough. NCPP takes the view that *'US parents don't appear to be losing any sleep over I&C'*.

A legal professional agrees with the NCPP's view about this and contends that we are still stuck with *'the phone call syndrome'*, that is, *'we'll be closing you down in three months time or thereabouts'*. There's a need for US parents to understand the role of I&C in decision-making. There is a need for them to understand the criticality of conducting prior I&C with employees (and their representatives) concerning matters of material importance to them.

Another legal professional uses the anatomical analogy of the liver transplant to address this issue. He suggests that I&C is an alien concept to both Irish and US, IR/ER systems. He contends, *'it's like a liver transplant: will the system*

*accept or reject it?* He contends, however, that the concept of consultation has definitely been rejected by employers here, at least, insofar as TUPE is concerned. In sum, employers pay lip service to it. There's no genuine consultation in most cases. Less than five percent of applicable employers have embraced it; but those that have done so truly recognise its benefits.

O'Kelly takes the view that I&C will have no impact on trades union. Trades union have generally dominated EWCs in those countries that have introduced the framework. In non-union companies a representative style structure will emerge (possibly in the form of staff associations), but trades union will probably not penetrate them. Trades union are finding it hard to break into new territories.

A legal professional contends that the ICD is *'a bit like Y2K. It's not a huge bomb'*. According to another legal professional *'it's not an earth shaking piece of legislation'*. However, the former legal professional contends that the main idea is to get consistency in agreements going forward. Given that government isn't going to micromanage businesses undoubtedly there will be different types of agreements negotiated, but the social partners should agree on a minimum acceptable set of standard clauses for all such agreements.

The LRC accepts that currently trades union are using the miscellaneous machinery of the 2001-04 Acts in order to press their interests. (The LRC also

agrees that this is diluting the traditional voluntarist nature of our IR system.) But the LRC points out that the 2001-04 Acts are designed to suit small companies with less than 100 employees, and are not designed to address US mncs' issues, at all. Nevertheless, the new legislation offers potential to unions to colonise non-union US mncs, provided the 10% trigger is activated and they secure position(s) on I&C fora. But the point is made that the trigger mechanism can also be a hindrance, because it will be difficult for unions to organise 10% of a workforce *'to put their heads above the parapet'* and seek I&C. Consequently, it will be difficult for unions to get a foot in the door of US mncs, as a result.

IDA (Dublin) accepts that I&C have the potential to enable trades union mount a comeback in the US mnc sector, but suggests that this is unlikely to happen.

IDA (Dublin) points out, for example, when a US mncs is about to enter Ireland a house keeping agreement is prepared which usually specifies no third party involvement, except, for example, where a EWC framework applies. If a house keeping agreement specifies that indirect employee representation must be allowed there could be a problem. Experience to date indicates that US mncs much prefer when this type of clause is not included.

By contrast, IDA (NYC) is not convinced that the new Act provides a mechanism for declining trades union to mount a comeback in the private sector; but agrees that it may help in certain sectors. The point is made that when US mncs are setting up in Ireland they make it very clear to employees joining their employ

what is their policy on trades union. In this way, it's difficult to imagine how the new Act represents a backdoor to trades union into US mncs.

PWC suggests that trades union view I&C as an opportunity to mount a comeback in the non-unionised US mnc sector; and agrees that it certainly provides that opportunity for them. But PWC points out that US mncs try hard to keep their employees satisfied and, consequently, it is unlikely that trades union will enjoy much success here.

IBEC contends that the new Act places an onus on employers to be proactive about I&C. Once a valid request is submitted an employer has no choice in the matter. But IBEC takes the view that a reputable employer should have good HR practices in place anyway, which should include policies and practices for I&C. IBEC also recognises that the new Act provides a mandate, albeit a minimal one, for trades union in I&C matters. But IBEC contends that employers will be able to exploit the new Act's apparatus in order to ensure that trades union do not make a comeback in the private sector.

O'Kelly indicates that in 1992 ICTU adopted a resolution on flexibility in the workplace. Every trade union in Europe is trying to cope with declining memberships. In Ireland union density is dropping but union membership is actually increasing. This has not been the experience in other EU countries. There are reasons for this decline in union density: the focus has changed from

collectivism to individualism; today's workforces are highly educated and are both confident and competent enough to represent themselves; and we are no longer in the old industrial era. Trades union in Europe must etch out a new *modus operandi*. The trades' union experience in the Scandinavian countries is in point where unions have legal responsibility for social security and the administration of employment benefits. In Scandinavia trades union density is about 90%. The experience there is the exception to the rule.

### **“New Collectivism” and “Transformed Pluralism”**

NCPP takes the view that Ireland has been moving away from voluntarism since we joined the EEC on January 1, 1973. In particular, the 1990s witnessed a huge increase in employment regulation emanating from Europe via various Directives e.g. Transfer of Undertakings. Interestingly, during the same period the Irish economy experienced a massive increase in prosperity, as well as a general movement from voluntarism towards increased regulation. Accordingly, voluntarism is being transformed, *inter alia*, via a wave of non-prescriptive EU regulations that are not enforcement orientated; rather they seek compliance. For example, if a company has good health and safety policies and practices it may avoid inspection by the Health & Safety Authority. This encourages good practice. Moreover, NCPP makes the point that US mncs are good at ameliorating their HR systems to reflect national culture, but they tend to have a preference for internal HR systems with non-union involvement. Nevertheless, it is important to be aware that many of the non-unionised US mncs remain

supportive of the social partnership process. A majority of employees in those non-unionised US companies do require a lot of issues to be dealt with in a collective manner e.g. the case of Nortel is in point, where a non-union representative sits on its EWC.

A legal professional agrees that there is a movement away from traditional voluntarism in Irish IR, but argues that the new legislation on I&C is not the primary catalyst in this regard. In her view, for example, the 2001-04 Acts have heralded a major shift in the traditional voluntarist framework. An important effect of the 2001-04 Acts is to enable the LC to determine contractual rights, even in circumstances where no legal rights exist under Irish law. Take for example a US mnc with 200 employees that will not recognise trades union. The employees look for a sick pay scheme and the mnc says "No". Trades union can act on behalf of the employees and secure a LC determination which ultimately forces the mnc to introduce a sick pay scheme. This has happened on a number of occasions since the introduction of the 2001-04 Acts. The sick pay schemes in question are now contractual rights of the employees concerned. This type of development is definitely a movement away from voluntarism.

Another legal professional takes the view that voluntarism in Ireland is dead; it's fiction. In his view, this process commenced in 1967 and ended in the early 1990s. In fact, he contends that the 2001-04 Acts have erected the tombstone over voluntarism. Voluntarism is a creature of the 19<sup>th</sup> century that Ireland



inherited from the UK. Trades union emerged as a response by workers who had no legal rights and were being trampled on. The primary weapon used in response to this was the strike; a gun loaded with collective action. This is not the case today. In the UK, for example, government there has killed off voluntarism; but the UK government admits this. The Irish government and the DETE, from time to time, use the term '*voluntarism*' virtually at will, in order to suit their purposes.

The DETE takes the view that the new Act is not the first time that I&C have been introduced into domestic law. There are already a number of Acts in place that provide for I&C in certain circumstances. However, some pieces of legislation approach I&C in a different way e.g. Transfer of Undertakings Regulations, while other legislation approaches I&C in a similar vein (that is, as an on-going issue) e.g. the legislation relating to EWCs. The new Act establishes a statutory right to I&C, but when one looks closely at the legislation it is clear that it allows huge scope for the parties to put in place a mechanism that suits their specific culture. In this way, the new Act allows for a voluntarist approach to be adopted by the parties concerned. It's really only in circumstances where the fallback position or standard rules apply that the new Act prescribes how the parties must proceed in order to implement I&C arrangements. When this happens the new Act is less voluntarist in nature.

IDA (Dublin) takes the view that I&C will have an impact on the traditional voluntarist nature of Irish IR; and agrees there is some evidence of a move away from traditional voluntarism in Irish IR, but it's not enough to get alarmed about yet. However, IDA (Dublin) stresses the requirement to have flexibility in the system in order to properly manage businesses. If I&C hamper flexibility in any way US mncs will be concerned. It's a given that US mncs must adhere to local laws, but Ireland must be careful, there is a limit to how a country can interfere with their speed of response. Mncs must be nimble and swift; it really comes down to the difference between protectionism and the free market. Mncs are engaged in international competition; this makes them averse to increased regulation; but they still wish to act responsibly towards their staff. Nevertheless, they would much prefer a voluntarist system, rather than a prescriptive approach.

By contrast, IDA (NYC) takes the view that trades union have, in fact, changed their spots over the past few years; and admits that some US mncs have a very entrenched attitude towards trades union, which is based on experiences they've had in the US, especially in certain industries e.g. steel, automotives, etc. But in Ireland the trades' union attitude is different; it has certainly changed over the past 5 to 10 years. There are examples where US mncs work with trades union in Ireland, mainly in the traditional sectors, even though the same mncs have had difficult experiences with unions in the USA. But IDA (NYC) agrees that if Irish trades union were to embrace the business model of US mncs it would

benefit them. In fact, IDA (NYC) contends there are already signs of this happening in Ireland; although it's probably union members, rather than union officials who are promoting it. The members realise that decisions have to be taken to improve competitiveness, as well as to protect jobs and, consequently, flexibility is required. According to IDA (NYC) this approach is getting common in Irish unionised workplaces, and we may see more of it in the future.

On the other hand, IDA (NYC) agrees that US mncs are generally averse to increased '*consultation*' with employees (or employees' representatives) over key business issues. According to IDA (NYC) this view is fairly representative of the corporate outlook in the US. But it's generally left up to the individual subsidiaries how to fit into a domestic culture. The point is also made that US mncs with operations in Europe will have to contend with I&C in the workplace. Some of them may not like it, but others may have no problem with it.

The LRC takes the view that potentially the new Act represents a departure from the traditional voluntarist nature of Irish IR. Under the Act an organisation can be forced to engage in I&C following the presentation of a valid request. But the LRC also makes the point that the voluntarist tradition of Irish IR has already been substantially eroded, for example, via the 30 to 40 pieces of employment legislation that are currently on the statute books. The IR area has really become rights-based, rather than voluntarist in nature.

The Chamber takes the view that I&C represent another step in a series away from voluntarism. This is a worry to US mncs. Ireland is seen by US mncs as a location with voluntarist traditions, where mncs are free to engage in direct involvement with employees, if they so wish. There is a range of views among US mncs about Ireland's movement away from voluntarism; for example, some of them contend that Ireland is importing the Franco/German model into its IR system. This is viewed by some as industrial age thinking versus meeting the requirements of the knowledge economy. In the knowledge economy the primary emphasis is on direct involvement and not indirect representation with staff; whereas the union model is embedded in the industrial past.

According to the Chamber it remains to be seen how US mncs will react to the requirement for increased consultation under the new Act. The impact could be minimal. I&C could be viewed as a good practice. US mncs are already doing it. Some aspects of the new Act are problematic, however, e.g. "*with a view to reaching an agreement*" (Schedule I, para 4 (2) (e)). In the Chamber's view, this statement is perilously close to advocating negotiation. Take for example a restructuring mandated by a US parent; "*there'll be no negotiation about any of this*", the Chamber contends. However, the Chamber would prefer not to overstate the potential for problems with the legislation; overall, the view is taken that I&C is not a huge issue. US parents won't be alarmed about it; undoubtedly some of them are a little concerned, but others are quite sanguine.

O'Kelly forms the view that I&C mark a dilution of traditional voluntarism in Irish IR. But he contends that in a good way I&C brings a legalistic approach into the area of management prerogative. Proper I&C could only have resulted through a legislative route, he suggests. Employers have always held the balance of power in this regard. Moreover, he also points out that neither the Irish government nor the EU has wrestled legislatively yet with the issue of worker directors on private companies' boards.

O'Kelly also takes the view that even a move towards a form of "new collectivism" in Irish IR would not allay the concerns of US mncs about indirect representation. In his view, in the US there has always been an extremely conflictual approach adopted towards unions. The US has always invested heavily in the unitarist system, for example, there's a lot of emphasis placed on building up the HR dept in US companies. This is part of the US's union avoidance strategy.

The Chamber also agrees that there is a move towards a form of "new collectivism", but forms the view that Irish trades union would have an uphill battle in order to convince US mncs they have changed their spots. The Chamber asks, "*How would unions do this?*" It would definitely result in an initial level of suspicion among US mncs. A number of US mncs continue to have some engagement with unions, but the unions still continue to reinforce mncs perceptions and prejudices about their lack of flexibility.

PWC also agrees that the new Act marks a departure from traditional voluntarism. In PWC's view, for example, it has the potential to force an employer to recognise a trade union, say, in circumstances where a valid request is submitted to engage in I&C, and the employees elect from amongst their members a union representative to act on their behalf, the employer will be obliged to I&C with the union representative in question.

On the other hand, PWC contends that trades union no longer have a significant role to play in any part of the new Irish economy. Any continued involvement in the economy that unions have is rooted in the public sector (which is a significant part of the Irish economy), as well as traditional industries where historically they have a presence. What the future holds for those traditional industries is somewhat uncertain. Many of them will probably relocate to low cost countries. This will further marginalise trades union presence in the private sector. Also, due to the increasing burden of employment legislation, employers are being forced to adopt new ways of dealing with employees, for example, through direct involvement initiatives. Accordingly, the outlook for traditional voluntarism in Ireland is uncertain. The IR landscape will probably continue to change much more over the next 20 years.

In relation to the burden of increased consultation the new Act imposes, PWC forms the view that its impact on US mncs will be critical. US mncs are very keen to communicate (including to consult) directly with employees. In the

*'knowledge economy'* there is a pressing requirement to motivate and engage employees. US mncs take the view that it is easier to achieve this via direct involvement. Very few US mncs tend to prefer indirect involvement in this regard. In the *'knowledge economy'* one cannot force a *'knowledge employee'* to be productive, for example, to develop a good piece of software; but one can encourage an employee to do this via direct involvement. US mncs are concerned that there will be any dilution of the direct approach, primarily for this reason.

IDA (Dublin) forms the view that US mncs, on balance, would prefer if there were no I&C at all. US mncs require flexibility to manage their business affairs. This helps to ensure market responsiveness. We must be careful to protect this feature of Ireland's attractiveness to FDI. We should do nothing to cause any further erosion of competitiveness from a cost perspective. US mncs would probably prefer if the traditional voluntarist system were to continue in Ireland. There is also the concern to them that I&C may jeopardise confidentiality.

The LRC posits that non-union US mncs probably do not want to associate with trades union. This is regrettable because the LRC is adamant that a professional union can add value and is good for business.

## **Benefits of I&C**

As far as ICTU is concerned the primary benefit of I&C is its potential to build high trust. ICTU points to research findings (Black & Lynch 2000) that indicates a strong correlation between good I&C and unionisation of a firm. In workplaces with good I&C delivered via unionised structures, performance is higher. In ICTU's view, regrettably, the draft legislation has set this process back years.

IMPACT stresses the obligation that I&C place on employers to make available information on the business and trading environment. Currently, there's no obligation on employers to do so. SIPTU agrees with this view. It is crucial that workers have hard information available to them when taking a decision.

However, representatives must be adequately skilled to put the information provided to best use. If not, I&C can be manipulated by employers as a form of cbn substitution. SIPTU also stresses the potential of I&C to usher in a new *modus operandi* for establishing relations between workers and employers.

IBEC takes the view that prior to the enactment of the new Act communications and consultation with employees was not an imperative in business management. IBEC admits that the landscape has now changed. I&C is now part and parcel of good business practice. Employers will have to meet their responsibilities in that regard; but, in IBEC's view, it's early days yet, and much will probably depend on the nature of the employer, as well as the sector and growth phase of the industry involved.



DETE takes the view that a firm without effective I&C arrangements in place, given the competitive pressures of globalisation, probably will not last long in the marketplace. On the other hand, where strong I&C arrangements exist higher productivity; happier staff; and lower costs (e.g. less absenteeism in the workplace), should result.

NCPP takes the view that I&C is a foundation stone for strong, effective HPWS and, as such, it will have a positive impact on performance, employee commitment, employee welfare, change management, etc., provided it's introduced properly. The NCPP stresses, however, that the legislation itself will not bring about these benefits. Thus far, it has definitely focused attention on those issues. In this way it will act as a catalyst. It has ignited debate. There is a change agenda afoot, but it is the various actors who will wield that change agenda. In the final analysis, it is a proven fact that if employees are committed the company will do better.

A legal professional takes the view that I&C affords an opportunity for employees to make a real contribution to business, as well as for senior management to listen to them; and to make hierarchical companies less hierarchical. If businesses allow this to happen it should result in a better management style and less hierarchy.

Another legal professional takes the view that while I&C have no benefits to offer to the Irish economy; I&C has the potential to demonstrate to employees their true value to a firm. He takes the view that probably most employers will be cynical about I&C. But employers that are not cynical will experience the benefits of talking to employees, appreciating the value inherent in their ideas, as well as in understanding their concerns. As far as the unions are concerned, he suggests, it all depends on how they play the legislation. It should give them a forum through which they can influence developments; achieve recognition; and in extreme cases even act as *'business puppeteers'*.

IDA (Dublin) takes the view if a company is well managed that effective I&C arrangements will probably be in place anyway. I&C should achieve employees' buy-in; better trust; management's empathy with staff; improved productivity; and improved competitiveness. According to IDA (NYC) employees will receive more information about the business, including its plans for the future. This will improve their perceptions about job security etc.

The LRC agrees that where good I&C practices exist employees' buy-in, commitment and job satisfaction will result. The LRC recommends that managers should I&C with staff whenever possible; there shouldn't be too much difficulty involved sharing information in a lot of cases. The LRC also points out that where there's poor communications between management and employees, there's generally low morale, too.

O'Kelly suggests that I&C should result in industrial peace which will be good for the national economy; greater consultation and recognition of workers; as well as a more mature attitude on the part of managers. It should also increase the level of trust.

The Chamber contends that it's good practice to I&C with employees. If the new Act encourages companies to do this it will have a positive effect. But the Chamber asks, "*Why do we have to regulate for this?*" *We should let the companies decide what to do*'. The Chamber suggests that most companies are doing something akin to I&C, in any event. Companies should be allowed to succeed or fail in the marketplace, as they choose. The Chamber also cautions that I&C are adding to the already burdensome weight of regulation. I&C have introduced another formal framework where previously one didn't exist.

PWC simply posits that I&C will encourage both managers and companies to engage with employees.

### **Obstacles to I&C**

ICTU takes the view that the main obstacle is the legislation. ICTU also highlights both employers' concern that I&C is a challenge to management prerogative, and trades' union concern that it will water down traditional cbn. But ICTU also stresses the need for trades union to be quick to accept change.

IMPACT agrees with ICTU that I&C represents a challenge to management prerogative, but also recognises the difficulty of raising interest in I&C among workers. In IMPACT's view the health and safety legislation is in point, under which there is a requirement to appoint safety representatives in workplaces, but IMPACT notes that, in reality, in many workplaces there are no safety representatives, because few employees are willing to assume the burden of responsibility involved. Accordingly, the view is taken that it will be difficult to organise the worker side of I&C; there will probably be greater demand for it during times of crises, but routine matters will probably meet with "*a lot of inertia*".

SIPTU is adamant that the main obstacle will be a perceived challenge to management prerogative. According to SIPTU, there's a tendency in the Anglo/Hibernian/US psyche to be that way inclined. Moreover, in SIPTU's view management is becoming less participative and more opportunistic towards workers. Management tends to use participation as a means to gain short-term wins. SIPTU foresees difficulties if management continues to do this within an I&C framework. In SIPTU's view, competitiveness is not about short-term surprises for workers; rather it's about collective strategic responses and understanding between the parties involved. Competitiveness has a long-term shelf life. If this challenge is embraced we will witness a cultural change in employer-employee relations. However, the informant doubts that this will happen.

IBEC takes the view that, *inter alia*, inertia, lack of interest and denial on the part of non-progressive employers and companies, represent the main obstacles to I&C. But IBEC intends to stress to its membership the requirement to be progressive in this regard. Senior managers must realise that I&C represents another domain of IR that needs to be managed. It represents a new agenda for management. I&C will test management's capacity to adapt and change to new circumstances and, henceforth, must be considered during the decision-making process.

DETE takes the view that I&C are new to the Irish IR system and, accordingly, this presents an initial challenge to the various parties concerned. I&C is sure to give rise to change, but with the help and support of DETE, NCPP and the social partners, all challenges presented should be overcome. The balanced position adopted in the new Act will also help this.

NCPP takes the view that I&C is about the creation of '*a new mind-set*'. This involves cultural change and cultural change is difficult to achieve.

Both legal professionals form the view that there's a definite need for mncs (including US mncs) to understand the role of I&C when taking business decisions. There will probably be a struggle about what consultation should involve. Time will tell this.

IDA (Dublin) contends that US mncs are averse to unnecessary regulation. There are also additional resources involved, such as, time; and costs could be an issue, too.

According to IDA (NYC) insofar as managers are concerned it represents another box to tick. Decisions will have to be taken concerning: a) at what level to I&C? b) What resources will be required to make it work? And c) How much information should be imparted? Insofar as employees are concerned a different set of issues can arise, for example: a) Do I need this information? And b) What do I do with it? Moreover, in cases where the outlook for the business looks poor it may incite an employee to jump ship.

According to the LRC the main obstacle will probably be the attitude of both employers and employees toward I&C. The LRC is adamant that it takes a positive attitude on both sides for effective two-way communications processes to work.

O'Kelly suggests that if managers adopt a minimalist approach and attempt to circumvent the intention of the legislation obstacles may present. In his view, there is also a danger that trades union may use I&C as a negotiations forum, instead of an I&C forum.

The Chamber suggests that the main obstacle will be employees' desire to engage in I&C; and points out that it's often hard to get employees to do this. There may be uncertainties on the ground relating to implementation aspects, too.

PWC asks, "*In reality, how many companies and managers will truly engage in I&C?*" PWC suggests it's likely that a minimalist approach will be adopted by employers across the board.

### **Other matters**

NCPP stresses that the new Act provides an opportunity to promote a culture of employee involvement, engagement, high performance and quality of working life for employees. NCPP highlights the fact that if employees are committed a business will do better. Accordingly, the concept must be proactively engaged on all sides.

DETE contends that, thus far, in general, commentaries on the Act have tended to fall at opposite ends of the spectrum, but there has been little if any commentary in between. As the various actors begin to implement the new Act they will see the balanced approach adopted by DETE. As agreements are put in place it will become clear that the new Act provides protection and support for both sides. There is sufficient shading in it to cater for undertakings of different sizes, as well as cultural complexities.

The LRC notes that most companies prefer to disclose as little information as possible, especially in the private sector (including P&L details). The LRC points out that the new Act recognises a right to confidentiality and employers will be able to avail of that provision, as circumstances present. The LRC admits, however, that companies sometimes will disclose when they're doing badly; but not when business is good. This quandary is always an issue.

IBEC is concerned about some of the post-enactment commentaries on I&C e.g. Dobbins (2006L – *'Can consultation law create new workplace bargaining agenda?'*). IBEC takes the view that commentators are approaching I&C from a tactical, prescriptive viewpoint. IBEC is concerned that there's an agenda afoot. IBEC agrees that employers are obliged to I&C with employees in accordance with the Act; there's no choice in the matter. In this way I&C will be a test for management and workers. For example, I&C should help to raise and maintain quality and production levels. If it achieves this it will have a positive effect, rather than a negative one. Employers will have to get their houses in order and demonstrate visible compliance, but I&C has nothing to do with that.

IDA (Dublin) reinforces the point that US mncs are compliant but they dislike unnecessary regulation. They tend to maintain tight spans of control over subsidiaries.



Finally, the Chamber posits that the US system is fair and non-exploitative. The Chamber accepts trades' union concern about developments in cases such as "*Irish Ferries*" and "*Gama*". But the Chamber stresses that US mncs didn't do any of this; and points out it's both Irish and European companies that are involved in those two cases. There are no questionable practices afoot in US mncs, according to the Chamber. Accordingly, US mncs should be allowed to run their businesses without union interference, if they so wish. If the unions decide to change their spots and strive to meet the demands of the new Irish economy, that is, the knowledge economy, that's their business. "*In the meantime, the Asian economy is thriving*".

## **Chapter 5 - Discussion of Findings**

In Chapter 3, on '*Methodology*', I explained that where one collects data and then explores them to see which themes or issues to follow up and concentrate on, is referred to as a '*grounded theory*' approach to research, because of the theory or exploration which emerges as a result of the research. I also explained that Mintzberg's (1973) research study on managers' jobs to see in reality how managers behave is as purely inductive as possible, the first step being what Mintzberg calls '*detective work*' (when the researcher looks for order and patterns) and the second '*creative leap*' (which entails generalising beyond the data). This does not imply that the research is unsystematic or unfocused; rather that the categories identified are not abstract and have a close relationship with the issues under investigation, and, where possible, are supported with anecdotal evidence.

The '*Mintzberg approach*' is precisely the methodological style adopted in this research study. At the outset there are no hypothesis; the semi-structured interviews are the '*detective work*' (the product of which is outlined in the preceding chapter); and the next step is to take the '*creative leap*', which is outlined immediately below. This entails the selective extraction of data from the overall findings and generalising beyond that data in order to identify if any theory or exploration emerges. Extracts from previous tables are used for this purpose. Consequently, an empirical residue of data results, which can be retained for further exploratory research purposes (i.e. my doctoral thesis).

## US MNCs

### **CEOs and senior HR professionals on site**

Table No9 indicates a number of distinct differences between unionised and non-unionised mncs. First, in unionised mncs, CEOs and senior HR professionals on site perceive the locus of strategic decision-making to be in the US or a mix between the US and Ireland; whereas, in non-unionised mncs, it is perceived to be in Ireland or a mix between the US and Ireland.

### **Table No9: Extract from Table No1**

### **Responses - CEOs and senior HR professionals on site**

Table indicates the number of weighted responses received in each category. There are 7 mncs involved: 3 x unionised mncs; and 4 x non-unionised mncs.				
Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Locus of decision-making:				
a. Ireland			1	
b. USA	2			
c. Mix of both	1		3	
2. Impact of early I&C on culture	3			4
3. Mix of direct/indirect I&C mechanisms employed	2	1		4
4. Communications with manual grades on:				
a. Strategy	3		3	1
b. Finance	3		3	1

Second, in unionised mncs, it is perceived that the requirement to conduct early I&C on core business issues will impact on culture; whereas, in non-unionised mncs, it is perceived that it will not so impact. Third, unionised mncs are more likely than not to employ both direct and indirect I&C mechanisms; whereas, non-unionised mncs exclusively employ direct means. Finally, in all unionised mncs surveyed CEOs and senior HR professionals perceive that they communicate with manual grades on strategy and finance; whereas, in one specific non-unionised mnc there is no communication at all with manual grades on those issues.

### **Senior HR professionals on site (only)**

Table No10 also indicates a number of differences between unionised and non-unionised mncs. In non-unionised mncs no emphasis is being placed on training and development in either economic literacy or how to work together (that is, in a spirit of co-operation). Equally, in non-unionised mncs, there are no plans in place to support employees' representatives with the extra workload involved in I&C; whereas, in unionised mncs a more proactive approach is being taken in that regard.

According to the responses received from senior HR professionals, overall, there is a greater willingness to support employees, as well as a deeper appreciation of the need for training and development in I&C (if the initiative is to work), in unionised mncs.

## **Table No10 – Extract from Table No2**

### **Table No2: Responses from senior HR Professionals on site only**

Table indicates the number of weighted responses received in each category.  
There are 6 HR professionals involved: 3 x unionised; 3 x non-unionised mncs.

<b>Details</b>	<b>Unionised</b>		<b>Non-Unionised</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
1. Training & development:				
a. Economic literacy	1	2		3
b. Managers on how to I&C	2	1		3
2. Support provided for employees with extra workload	2	1		3

### **Middle managers**

Table No11, tends to confirm the veracity of the responses in Table Nos 9 & 10.

Middle managers in unionised mncs agree that communications are received on strategic issues, but less on financial issues. There is definitely a perceived commitment from the top for I&C; the commitment is less pronounced from the bottom up. Training and development takes place on how to I&C (including how to co-operate with each other), but no training on economic literacy has taken place as of yet. Equally, there is a willingness to exchange sensitive information and, by extension, engender feelings of trust and confidence.

On the other hand, in non-unionised mncs, the responses are mixed in almost all categories; however, little or no training and development takes place on I&C.

**Table No11 – Extract from Table No3**

**Table No3: Responses from middle managers**

Table indicates the number of weighted responses received in each category. There are 8 middle managers involved: Three from 3 x unionised mncs; and Five from 3 x non-unionised mncs. Responses in both unionised and non-unionised mncs are disaggregated into half units due to this.

Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Communications received on:				
a. Strategy	3		1.5	1.5
b. Finance	1	2	1.5	1.5
2. Commitment from top for I&C	3		1.5	1.5
3. Commitment from bottom for I&C	2	1	1.5	1.5
6. Training received on:				
a. How to work with managers	2	1	1	2
b. How to I&C	2	1		3
c. Economic literacy		3	0.5	2.5
7. Exchange of sensitive information	2	1	1.5	1.5

**Employees**

Table No12 is interesting: it tends to confirm the veracity of the responses in Table Nos 9, 10 & 11, but also it indicates that, overall, there's a greater willingness to embrace I&C, as well as enterprise partnership, in unionised compared to non-unionised mncs.

**Table No12 - Extract from Table No4**

**Table No4: Responses from front line employees (1)**

Table indicates the number of weighted responses received in each category. There are 10 employees involved: Four from 2 x unionised mnc; and Six from 3 x non-unionised mncs. Responses in both unionised and non-unionised mncs are disaggregated into sub-units.

Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Awareness of I&C rights		2	3	
2. Use joint problem solving approaches to work	2		1.7	1.3
3. Receive I&C relating to immediate work area	2		2.7	0.3
4. Receive I&C on:				
a. Strategic issues	1	1		3
b. Financial issues	1	1		3
5. Forms of I&C used				
a. Direct	0.5		2.7	
b. Indirect				
c. Mix of both	1.5		0.3	
6. Training received on I&C:				
a. Working with managers		2	1	2
b. Economic literacy		2	1	2

First, in unionised mncs, none of the employees surveyed knew about their pending rights to I&C; whereas, in non-unionised mncs all of the employees surveyed were so aware and, in general, viewed I&C as a mechanism through which they could learn more about the business. Second, employees in

unionised mncs appear to have a better understanding of what is going on in the firm as a result of better oiled communications processes. Third, in unionised mncs, there's a greater tendency for management to engage in a mix of direct and indirect I&C mechanisms (which, of course, is considered to be best practice), as well as a collaborative approach towards problem solving and work issues. Fourth, in unionised mncs, employees' responses indicate there's a tendency for management to I&C on strategic and financial issues with them; whereas, in non-unionised mncs there are no communications at all on those issues. Finally, Table No12 confirms that little or no training and development on I&C and related matters has taken place in either unionised or non-unionised mncs.

### **Other issues**

In non-unionised mncs, CEOs perceive themselves to be good at I&C; middle managers contend that the commitment to I&C from the top is less of a priority; but employees agree that while management, including top management, engage in communications, its focus is more on information exchange, rather than consultation; in the employees' view there's little opportunity given to make an input; and too little informal dialogue takes place.

In unionised mncs, CEOs also perceive themselves to be good at I&C, but tend to be cautious not to disturb the good relations that they enjoy with trades union; middle managers agree that there's a deep commitment from the top to



I&C and stress the importance for employees to know about corporate strategy, as well as to understand their individual contributions; while employees recognise that management do engage in I&C, as well as informal dialogue.

In non-unionised mncs, when introducing change programmes, CEOs perceive they have a tendency to engage in informal dialogue with staff; but employees are fairly adamant that they receive only direct information, and then only when a major change issues is about to occur, with little or no information on change issues of lesser importance. In unionised mncs, when introducing change programmes (including incremental change), CEOs perceive they are good at I&C; employees agree with this assertion and acknowledge that they are given an opportunity to make an input, but only when requested to so do.

In non-unionised mncs, CEOs, in general, perceive that I&C doesn't represent a challenge to management prerogative, but they are alarmed about the potential for the use of '*experts*' by employees. In unionised mncs the challenge to management prerogative is more pronounced, but CEOs are less sensitive about the use of '*experts*' by employees.

In both unionised and non-unionised mncs CEOs are well disposed towards the partnership approach; but they have a tendency, even in unionised mncs, to prefer direct involvement with employees; and note that trades union are '*not knocking down the door about I&C*'.

In unionised mncs middle managers are very positive about the future for I&C arrangements; whereas, in non-unionised mncs they are sceptical in this regard.

In unionised mncs employees express positive feelings about the level of involvement they experience; whereas, in non-unionised mncs there are mixed feelings about this; nevertheless, employees in non-unionised mncs express extremely high levels of trust in senior management.

None of the employees surveyed in unionised mncs have received any form of communication about I&C from their trades union. This tends to confirm what can be gleaned from management's responses, that is, trades union are adopting a passive approach towards the new Act.

In non-unionised mncs, CEOs contend that I&C may lead to competitive advantage, but insist that confidentiality will be a tricky area; whereas, in unionised mncs, CEOs contend that I&C will have no impact on competitiveness; by and large, confidentiality is not an issue with them; but they do feel that flexibility could be impeded.

**N.B.** This section together with the following sections will be summarised in Chapter 6 – Conclusions.

## **The Social Partners, State Agencies & Other Opinion**

### **US mncs are usually compliant with local laws**

ICTU is adamant that the Irish government has missed an excellent opportunity to introduce real partnership at enterprise level, and makes the point that US mncs have a reliable history of conforming to local laws. In other words, according to ICTU, if government had been more adventurous with the legislation US mncs would have succumbed! (Please refer to p.165). O’Kelly’s experiences with US mncs before and after the transposition of the Vredling Directive tends to support this view. (Please refer to p.167). IDA (Dublin & NYC) and NCPP also agree that US mncs are highly compliant in this regard. (Please refer to pp.168, 199 respectively).

### **Labour Relations Commission’s task**

It’s important that the LRC, when framing the Code of Practice, does not get bogged down in semantics. What is the difference between *“let’s talk it through”* and *“what do you think?”* (Please refer back to p.168). The proposed Code will either underpin the requirement to engage in I&C in *“a spirit of co-operation ... with a view to reaching an agreement...”* or it will not? There is no half-way house. There is a requirement for the LRC, due to the non-prescriptive nature of the new Act, to boldly state in clear, concise and intelligible English what I&C actually entail. There’s no room for semantics. There is a pressing requirement to introduce certainty into this area.

On the other hand, the question should be posed: Is the LRC the right agency to craft the Code of Practice? For example, DETE and NCPP have a strategy mapped out to disseminate information about I&C. Anyone with even a cursory knowledge of strategy will agree that the implementation phase is of critical importance. It's a fairly easy task to conceptualise lofty ideas and reduce them to glossy reports, but the work is meaningless without firm guidance on implementation. Therefore, why has NCPP and DETE crafted a strategy and delegated the most critical element to a third-party agency?

Moreover, the LRC's core business is mediation, dispute resolution and related matters. Accordingly, the LRC should guard its impartiality in order to discharge its duties and functions fairly. In this instance, therefore, the Code should be created elsewhere (e.g. in DETE or NCPP), while the LRC should be charged with its interpretation in the fair and impartial mediation of dispute resolutions. Good practice dictates that the LRC should not be engaged in both the crafting of the Code and the interpretation and implementation of its provisions. It would appear that the DETE (and in this case NCPP, as well!) has developed a habit of delegating this type of work to third-parties that are also tasked with the interpretation and implementation of the various codes in question. Another example in point is the drawing up of a Code of Practice on Parental Leave that the DETE has delegated recently to the Equality Authority. The question should be posed: Do the Courts draw up the legislation they interpret and implement on a daily basis? The answer is, "*Absolutely not*". The same logic should apply in

the case of the LRC and/or the Equality Authority! Perhaps, NCPP should be tasked to craft the Code of Practice on I&C. This would give NCPP an opportunity to get involved in the practical aspects of partnership and performance.

### **Opportunities for trades union**

SIPTU makes the point that there's no equality in employers dealing with workers on an individual basis, and that trades union will exploit this opportunity in order to protect of workers' rights. Moreover, the findings outlined above clearly indicate that little or no training has taken place on I&C, thus far. Therefore, how are employees expected to effectively I&C with employers without proper training on e.g. economic literacy, how to consult etc? SIPTU is correct in its contention that there is no equality in this. Accordingly, the 'equality aspects' involved in I&C should present an opportunity for the trades' union movement to consolidate its existing membership strength in the private sector, as well as recruit workers and colonise workplaces into its fold. But it's important for trades union to act quickly lest they miss the opportunity presented in this regard. On the basis of this research study none of the unionised employees surveyed have received any contact or information from their union about I&C. This suggests that trades union are not proactive to the extent indicated.

On the other hand, a proactive employer should also endeavour to grasp this opportunity. There is a requirement for employers to invest substantial funds in

training and development on I&C and related matters. Of course, employers that do this will be engaging with their employees; they will be demonstrating holistic concern for their employees' rights; and they will be laying the foundations for a partnership approach in the workplace. The training and development arena provides astute employers with the opportunity in unionised or partly unionised mncs to marginalise unions; and in non-unionised mncs to retrench their union avoidance strategies.

The findings also highlight the adversarial tendencies which shop stewards tend to adopt in the workplace. Equally, if employers invest in the training and development of those same individuals, for example, under the banner of employees' representatives, it presents an additional opportunity for to develop a spirit of enterprise partnership, irrespective of the ideological hues of either ICTU or SIPTU. Once again, in this way, astute employers can endeavour to alienate shop stewards from their full-time officials. Indeed, employers who do this would tend to affirm IDA's (NYC) contention that trades union representatives in the workplace have, in fact, changed their spots; they realise that unless they adopt a flexible approach a mncs may relocate elsewhere and jobs may be lost. (Please refer to p.202). Accordingly, if trades union do not act, and act quickly, there are ample opportunities for proactive employers to use the new Act strategically and marginalise or oust trades union from the private sector altogether.

## **A theory of “transformed pluralism”**

A central theme that emerges from the interviews is the extent to which Irish IR practices have moved away from traditional voluntarism.

A common question was posed to 15 respondents, that is, “*Do you perceive a movement away from traditional voluntarism in Irish IR?*” The responses received are outlined in Table No13, and indicates that all respondents, with the exception of SIPTU, agree that traditional voluntarism no longer applies. It is interesting to note that SIPTU is the trade union that primarily deals with Irish-based, US mncs. (IMPACT deals with other mncs e.g. Japanese.) SIPTU remains resolute that traditional voluntarism is alive and well.

Please note that none of the Irish-based, US mnc respondents were asked for an opinion on this issue. At the outset the view was taken that that question, together with a related question regarding a movement towards “transformed pluralism” (see more below), should only be posed to the Chamber, senior US HR professionals in participating mncs, and the IDA (Dublin & NYC), all of whom would have a global perspective on both issues. I contend that this was the correct decision to take. Only one CEO in the seven mncs surveyed forms the view that the locus of decision-making is in Ireland. All of the remaining CEOs contend that the locus of control is either in the US or a mix between Ireland and the US. In any event, they agree that all major decisions are taken by the US parent. Please refer to Table No14.

**Table No13 Perceived movement away from voluntarism**

The following respondents were asked if they perceive a movement away from 'voluntarism' in Irish IR.		
<b>Details</b>	<b>Yes</b>	<b>No</b>
ICTU	Yes	
Impact	Yes	
SIPTU		No
IBEC	Yes	
NCPP	Yes	
DETE	Yes	
LRC	Yes	
IDA (Dublin)	Yes	
IDA (NYC)	Yes	
Legal professional No1	Yes	
Legal professional No2	Yes	
American Chamber	Yes	
O'Kelly	Yes	
PWC	Yes	
Senior US HR professional	Yes	

A perusal of Table No13 begs the question, *'If traditional voluntarism no longer exists what impact does this have on Irish IR and the trades' union movement?'*

The responses received during the semi-structured interviews indicate a number of different views about this.



ICTU recognises the fact that trades union are experiencing difficulties organising in the new Irish economy; and, in ICTU's view, notwithstanding the fact that density and voluntarism are not linked, the trades union movement must ask itself the question: *'Can we give a service to employees who are not collective?'* ICTU admits, however, *'Thus far, this question has not been answered.'* (Please refer to p.190.)

IMPACT contends that it has identified at least two different '*spaces*' for unions to penetrate. First, providing representation and giving support to members in various areas of dispute with employers e.g. performance management issues, in addition to the enforcement of contractual rights. In fact, IMPACT contends that it has identified a hierarchy of rights that are beginning to emerge on three levels i.e. first, statutory rights; second, '*representation*' in areas that aren't rights-based, but form part of company policy (the '*space*'); and third, *cbn*. IMPACT contends that the '*space*' identified above is evolving into '*bread & butter*' for trades unions. Trades union would be in a terrible predicament if their sole role was confined to policing the law. (Please refer to p.188.)

Second, IMPACT also contends that at one end of current labour standards, there are companies with advanced HR policies that seek to promote a form of union substitution, such as, Intel, where HR acts as employees' advocate; at the other end there's the '*shifty*' side of the market, where there's more of a need for trades union to use '*hobnailed boots*' in order to give an employer '*a kick in the*

*shin*’; it all depends on the employer. There is also a mix in between where employers are more co-operative. In other words, there is a ‘*half-way house*’ between opposing management and acquiescing in their practices, which IMPACT terms ‘*influencing*’, and this represents another ‘*space*’ for trades union to penetrate. (Please refer to p.192.)

SIPTU, however, is retrenched in its view that the voluntarist traditions of Irish IR remain embodied in the 2001-04 Acts. For as long as those Acts are in place they will allow for the articulation of collective grievances. Voluntarism is still here. Trades union are not precluded from following issues under the 1946-90 Acts. Workers continue to have a right to representation in the absence of a collective agreement. On the other hand, SIPTU agrees that voluntarism is becoming more regulated by central agreements, but that has evolved more by way of gentleman’s agreement, rather than the preclusion of workers to enforce their rights under the 1946-90 Acts. The view is taken that the thrust of the ICD will ensure that this remains the case. (Please refer to p.189.)

A legal professional contends that trades union need to become more flexible, as well as embrace the business model of employers. In her view, there is also a requirement for trades union to undergo leadership re-brand. For example, some of the younger union officials are excellent and are prepared to work with management. Accordingly, they should be a pairing off of the ‘right’ union official

to suit the 'right' firm, and in this way a new way forward for the trades' union movement may be found. (Please refer to p.156.)

Another legal professional forms the view that the trades' union movement should model itself on the approach of their brethren on the continent and concentrate on representation at the macro level. Insofar as I&C, EWCs and related matters are concerned, trades union should operate in a '*behind the curtains*' mode. (Please refer to p.173.)

However, PWC contends that trades union no longer have a significant role to play in any part of the new Irish economy. Any continued involvement in the economy that unions have is rooted in the public sector (which, in PWC's view, is a significant part of the Irish economy), as well as traditional industries where historically they have a presence. (Please refer to p.206.)

O'Kelly takes the view that whatever steps are taken by trades union they will have a difficult task allaying the concerns of US mncs about indirect representation. In his view, in the US there has always been an extremely conflictual approach adopted towards unions. The US has always invested heavily in the unitarist system, for example, there's a lot of emphasis placed on building up the HR dept in US companies. This is part of their union avoidance strategy. (Please refer to p.235.)

The Chamber agrees that the trades' union movement would have an uphill battle in order to convince US mncs that they have changed their spots. If trades union attempted to do this it would most definitely meet with a great deal of suspicion among US mncs. A number of US mncs continue to have some engagement with unions, but the unions still continue to reinforce mncs perceptions and prejudices about their lack of flexibility. (Please refer to p.235.)

IDA (NYC) takes the view that trades union have actually changed their spots over the past five to ten years. But IDA (NYC) agrees that this has only happened at the local level where union representatives, as distinct from officials, realise the requirement to become more flexible in the workplace for the betterment of the business, as well as to save jobs. (Please refer to p.203.)

A senior US HR director indicates that the US parent would entertain a '*movement*' on the part of trades union towards a spirit of true partnership. But trades union would have to '*walk the talk first*', and '*demonstrate that they have changed their mind-set*'. The recent national wage agreement demonstrates that 10%, over 27 months, is too much. Costs are getting too high. Trades union must adopt an internationally competitive mind-set; and move away quickly from their parochial approach; otherwise mncs may re-locate elsewhere e.g. to Eastern Europe or India. (Please refer to p.146.)

Moreover, in the senior US HR director's view in order for the '*movement*' to have the required effect trades union must be willing to take ownership of their responsibilities. This happens in Sweden where the trades' union movement actually works. In Sweden, the trades union operate on the basis of true partnership, which entails assisting management to execute decisions, including the hard decisions. US mncs would really like to see the Irish trades' union movement work like the Swedish model (in fact, O'Kelly hints at this, too, please refer to p.199). However, if trades union continue to be inflexible US mncs would probably not entertain any new initiative their part. In any event, trades union must realise that they cannot have all of the rights without the responsibilities (including the flexibility) that goes with them. According to the US director, '*You can't order everything on the menu any more.*'

Perhaps, the trades' union movement might be mindful of SIPTU's contention (SIPTU deals with US mncs) concerning the main obstacles to I&C, and by extension enterprise partnership, that competitiveness is not about short-term surprises; rather it's about collective strategic responses and understanding between the parties involved. Competitiveness has a long-term shelf life. If this challenge is embraced we will witness a cultural change in employer-employee relations. But it is also interesting to note that SIPTU doubts this will happen. (Please refer back to p.212.) It should also be mentioned that I spoke with a respondent in one of the participating state agencies after the 10% national pay increase was announced when the view was expressed to me that Ireland cannot

afford an increase of that magnitude at this time. In the respondent's view Ireland's international competitiveness is being eroded. It was also indicated to me that there's talk among public servants in the state agency in question that the 10% national pay award should be rejected. Perhaps this is rhetoric!

The view expressed by the above-mentioned respondent also tends to militate against PWC's view that any continued involvement in the economy unions have is rooted in the public sector. In my view, the Irish economy is too small to subdivide in this way. The reality of the matter is: there's a public: private sector divide being established. Soon we may have an almost wholly unionised public sector and an almost wholly non-unionised private sector. Consequently, if trades union continue to enjoy their current level of influence at the social partnership table, which is disproportionate to their level of representation in the workplace, there's real potential for the creation of a '*them versus us*' mentality between private and public sector workers. That's not a good direction for the economy to take. Accordingly, there's a pressing need to recast the directions of both social and enterprise partnership without delay.

By contrast, NCPP contends that I&C offers trades union an opportunity to commence a re-positioning strategy for the movement. Trades union have to make a case for people to join the movement (NCPP means in the private sector). They have to launch national, regional and local level campaigns to ensure that people know about I&C. They must strive to become advocates and experts on it.

For example, trades union should operate a 'free fone' system where they can be reached about I&C issues. Employees might want to ask: does this PEA comply with the legislation? Can we get more? Trades union should be certifiers of agreements; adopt a 'name and shame' policy where employers do not adhere to the letter and/or spirit of the legislation; hold seminars on I&C; campaign for training and development of the national workforce on I&C; ensure that as many fora as possible are set up, are effective and in compliance with the legislation; and should promote I&C at every available opportunity. NCPP stresses the point that we live in the 'knowledge era' where governments proclaim that employees are our key asset and, consequently, trades union should argue that involvement and participation is critical to this. (Please refer to p.191.)

Therefore, having regard for all of the above points, I contend there's a pressing requirement for a new initiative in Irish IR and I propose to address this issue next. I have decided to title this initiative "transformed pluralism".

**Table No14 Extract from Table No9**

**Responses - CEOs and senior HR professionals on site**

Table indicates the number of weighted responses received in each category. There are 7 mncs involved: 3 x unionised mncs; and 4 x non-unionised mncs.				
Details	Unionised		Non-Unionised	
	Yes	No	Yes	No
1. Locus of decision-making:				
a. Ireland			1	
b. USA	2			
c. Mix of both	1		3	

## **What is transformed pluralism?**

Transformed pluralism is an IR initiative, I have identified, that would involve the social partners (both trades union and IBEC) cutting the umbilical cord with the industrial past and embracing the pressing demands of the new Irish economy; an economy which encompasses both the public and private sectors (we must move forward together). It advocates the demise of adversarialism both at the macro and micro IR levels; and the fostering of a spirit of 'true enterprise partnership' in the workplace, in order to provide a firm basis upon which the new Irish economy should rest. The responsibilities of the various actors are as follows:

### **Trades union**

Trades union must move away from adversarialism and the right to oppose management in the advancement and protection of workers rights. Trades union must embrace the business model of employers; concentrate on the formulation and implementation of flexible work systems with management; focus more attention on the representation of workers' interests e.g. organisational performance, work life-balance issues, and life-long learning; endeavour to influence management in the recognition of employees' rights to participation and involvement in the business; seek out responsibility for decision-making at the business table; and take an active part alongside management in the execution of decisions, including the difficult decisions.



## **IBEC**

IBEC, too, must move away from adversarialism at both the macro and micro IR levels. IBEC must postulate amongst its members a requirement to engender a 'true' spirit of employee participation and involvement, as well as an extension of democracy in the workplace, in the drive for improved national productivity and competitiveness. IBEC must also encourage its membership to extend the hand of welcome at the business table to their trades union colleagues in order to promote a spirit of 'true' partnership at the enterprise level.

### **Both trades union and IBEC within an I&C framework**

Both trades union and IBEC should operate '*free fone*' systems where they can be reached about I&C issues. Employees and/or employers might want to ask: Does this PEA comply with the legislation? Can we adopt a more balanced view? Both trades union and IBEC should be certifiers of agreements; adopt a '*name and shame*' policy where employers and/or employees (or their representatives) do not adhere to the letter and/or spirit of the legislation; hold seminars, including joint seminars, on I&C; campaign for training and development of the national workforce on I&C; ensure that as many fora as possible are set up, are effective and in compliance with the legislation; and should promote I&C at every available opportunity. Both trades union and IBEC must realise that we live in the '*knowledge era*' where governments proclaim that employees are our key

asset and, consequently, it must be accepted that involvement and participation are critical to this.

### **US mncs (and/or employers in general)**

US mncs must accept that Ireland and the EU primarily adopt a 'contextualist' approach in the management of human resources. US Mncs must realise that the European trades' union movement, including the Irish movement, is efficient and effective. Indeed, trades union have a special place in the hearts of Irish society. For example, trades union fought as a formation during the 1916 Rising, when Ireland struck for her freedom. Accordingly, US mncs when locating here should not automatically bring their prejudices about trades union to Ireland. US mncs must realise that trades union are an expression of the European Christian ethic and social democracy. The right to organise is enshrined in the European Charter of Human Rights, as well as the Charter of the Council of Europe. US mncs must be prepared to extend the '*olive branch*' and allow the concept of 'transformed pluralism' advocated herein the opportunity to flourish.

### **State agencies**

The state agencies have responsibilities here, too. For example, IDA (Dublin) must include trades union in its workshops, including those on FDI; while NCPP must get actively involved in the promotion of enterprise partnership.

## Cramer's V and chi-squared distribution - $\chi^2$

Four participating organisations were asked their views on the concept of 'transformed pluralism' advocated above. The questions posed were as follows: a) Do you perceive a movement away from traditional voluntarism in Irish IR? And b) Would Irish-based, US mncs be prepared to embrace "Transformed Pluralism"? The responses received from each of the respondents are outlined in Table No14 and indicate an authoritative "Yes" in relation to the former, and a qualified "Yes" in relation to the latter. The importance of the responses outlined in Table No15 is that the various respondents take the view that US mncs may be prepared, subject to certain reservations, to give an IR initiative, such as, 'transformed pluralism' a try.

### **Table No15 – Responses relating to “Transformed Pluralism”**

Four participating organisations were posed the following questions: No1 - <i>Do you perceive a movement away from traditional voluntarism in Irish IR?</i> No2 – <i>Would Irish-based, US mncs be prepared to embrace “Transformed Pluralism”?</i> [Please note that the concept was explained to each of the respondents in the manner more particularly outlined above.]		
<b>Details</b>	<b>Question No1</b>	<b>Question No2</b>
The Chamber	Yes	Yes (N1)
The IDA (Dublin)	Yes	Yes (N2)
The IDA (NYC)	Yes	Yes (N2)
Senior HR professional (USA)	Yes	Yes (N3)

**N1** Irish trades union would have a difficult time convincing Irish-based, US mncs about this.

**N2** Irish trades union have changed a lot over the past 5 to 10 years but would need to do more.

**N3** Irish trade unions would have to “*walk the talk first*”. It would be pointless for trades union to merely indicate “*we’ve changed*”. This process would take time.

In Chapter 4 – Methodology, I indicated that the  $\chi^2$  test is an important extension of hypothesis testing and is used when it is wished to compare an actual, that is to say observed distribution with a hypothesised or expected distribution. It is often referred to as a “goodness of fit” test.

The formula for the calculation of  $\chi^2$  is as follows:

$$\chi^2 = \sum \frac{(O-E)^2}{E}$$

Where:

O = the observed frequency of any value and,

E = the expected frequency of any value.

The  $\chi^2$  value obtained from the formula is compared with the value from a  $\chi^2$  Distribution Table (Silver 1992, p.355) for a given significance level and the number of degrees of freedom, i.e. the usual hypothesis testing procedures.

Accordingly, I decided to apply the  $\chi^2$  test to the data in Table No15. The results are as follows: the first stage in the solution is to calculate the *expected frequencies* for each category of answer, which will then be compared with the *actual frequencies* shown below. I expected to receive four affirmative answers to each question, and I actually received four affirmative answers to each. Almost everyone that I interviewed accepts the need for change. See Table Nos 16 & 17.

**Table No16 - Expected Frequencies**

Type of answer	Expected Frequencies		
	Question No1	Question No2	Total
Yes	4	4	8
No	0	0	0
Total	4	4	8

**Table No17 - Observed Frequencies**

Type of answer	Observed Frequencies		
	Question No1	Question No2	Total
Yes	4	4	8
No	0	0	0
Total	4	4	8

The  $\chi^2$  calculation can now be made.

**Table No18 -  $\chi^2$  calculation**

Observed frequencies (O)	Expected frequencies (E)	(O-E)	(O-E) <sup>2</sup>	$\frac{(O-E)^2}{E}$
4	4	0	0	0
4	4	0	0	0
8	8	0	0	$\chi^2 = 0$

It is now necessary to find the appropriate  $\chi^2$  value from the Chi-squared-Distribution Table (Senior 1992, p.355). This is done by establishing v. that is, the number of degrees of freedom. This is found by multiplying the number of row in the original table less one, by the number of columns less one, i.e.

$$v = (\text{Rows} - 1)(\text{Columns} - 1)$$

$$v = (2-1)(2-1)$$

$$= 1 \text{ degrees of freedom}$$

1 degree of freedom @ 95% significance level = 0.4549. Therefore, I accept the hypothesis.

I also accept that the responses from only four respondents are considered above. But it must be remembered that one of the respondents is the Chamber that represents the views of 620 Irish-based, US mncs. In hindsight, it's regrettable that I didn't pose Question No2 to a wider group, but the importance of the exercise is the identification of a trend that's worthy of closer examination.

## **Likely cultural impact of I&C**

As has already been highlighted in the literature review, Roche & Geary form the view that “... *it is difficult to foresee a radical recasting of Irish employment relations. In other words, we would not expect the legislation to be transformative in the real sense. It is our view that robust forms of employee information and consultation such as are envisaged in the Directive are more likely to emerge in strongly unionised companies, but it should be emphasised that the preconditions for this outcome existed prior to the Directive. In the absence of such preconditions, it is difficult to see how the Directive alone might instigate the adoption and diffusion of strong forms of employee voice in significant numbers of Irish workplaces*” (Storey 2005, p. 196).

In the UK, where the ICD is actually operational since April 2005, Hall (2005) reports a ‘*slow start*’ to the implementation process due to, *inter alia*, a cautious approach on the part of even the more proactive employers, characterised by ‘*risk assessment*’ rather than ‘*compliance*’; whereas, trades’ union attitudes towards the new legislation are primarily defensive, reflecting concerns that the Regulations could potentially threaten union-based arrangements.

When I add to the above-mentioned the views of NCPP and O’Kelly regarding US mncs general approach towards regulation, including EU regulations that are applicable with direct effect throughout the member states, a distinct possibility emerges that, unless some intervening act or event occurs, the general approach

to I&C may be one of *'going through the motions'* or *'minimum compliance'* on US mncs' behalf. Given the wide ranging challenges that confront the new Irish economy, via a mix of globalisation and international competitive pressures, as well as the generally accepted principle that employee participation and involvement are critical in a *'knowledge economy or era'*, this would be a pity.

Accordingly, I strongly suggest that, unless there's a movement towards an IR initiative, such as, *'transformed pluralism'* (as defined above), I&C will probably have minimum cultural impact on US mncs, at least in the short- to medium-term. In other words, the ICD is unlikely to be transformative in the real sense as suggested by Roche & Geary (2004); even the more proactive employers will probably engage in a mix of *'risk assessment'* followed by *'compliance'* via a series of adjustments to their current I&C arrangements; while trades union are likely to become defensive, lest I&C threaten union-based arrangements. On the other hand, in my view, a movement towards *'transformed pluralism'* would provide the required *'intervening act or event'* that would prevent this from happening.



## Other matters

### Training & development

SIPTU's point is pertinent that there's no equality in an employer consulting with employees on an individual basis. If an employee is to consult in an informed and meaningful way in this regard, s/he will require much training and development, *inter alia*, in economic literacy, how to I&C etc. The findings of this exploratory study indicate that there's inadequate emphasis being placed on training and development for I&C purposes. This provides an opportunity for trades union to exploit and offer the benefits of their extensive services and expertise to employees who need that level of assistance. On the other hand, if trades union do not act quickly on this or even in circumstances where they do so act, there is also a pressing requirement for trades union to develop the relational skills of their activists in the workplace.

Management are also presented with an opportunity in this regard. For example, management may use the new Act strategically in order to further marginalise trades' union presence in the private sector, by investing heavily in training and development for I&C, including union representatives. A proactive employer has the opportunity to craft an employee voice strategy aimed exclusively at either union avoidance or union marginalisation (that is, ousting trades union from wholly or partly unionised workplaces), as the case may be. In other words, unless a spirit of 'true' partnership is embraced, the training and development arena, provides potential for either side to go on the offensive.

### **Legislatively prompted voluntarism**

The term '*legislatively prompted voluntarism*' was first devised by Hall (2005). He forms the view that I&C have the potential to cause employers to conclude PEAs (or, in my view, even post-regulation agreements) with employees, rather than engage with them under the fall back position or standard rules. This study confirms that Hall's assertion is correct. I have surveyed at least one US mnc with less than 150 and more than 100 employees en site, where a PEA is currently being prepared in advance of the March 23, 2007 deadline for undertakings of that size.

It is also interesting to note that in one US mnc I surveyed, where total employee strength is 15, management in that mnc is conscious about the ICD, and may introduce an I&C agreement with employees, notwithstanding the fact that the overall strength of the firm is below '*establishment level*' (that is, 20 employees). This evidence tends to confirm the contention of the IPA in the UK, that I&C should be extended to all SMEs not covered by the ICD (Please refer to p.54.); and it tends to disprove O'Kelly contention that there is no such requirement. (Please refer to p. 175)

## **Chapter 6 – Conclusions**

This is an exploratory study and, consequently, its conclusions should be viewed in that context. Nevertheless, I have extensively interviewed a range of key players, including experts in the field of IR, on the likely cultural impact of the ICD on Irish-based, US mncs, and the following are my considered opinions:

First, I found that management in non-unionised mncs tend to engage in information exchange rather than consultation, even though management perceive they are adept at consultation; whereas, in unionised mncs management are more inclined to engage employees at the consultation end of the spectrum, rather than in mere information exchange. This tends to confirm a key finding of the Dundon et al. (2003) study, which was completed on behalf of the CISC (please refer to pp. 48-49).

I also found that trades union in the unionised mncs would appear to be somewhat indifferent in overall approach towards I&C; happy and content to have a presence; to safeguard their membership; as well as receive a stream of membership subscriptions. There is no evidence to suggest that trades union are informing their membership about I&C. In all of the unionised mncs surveyed SIPTU has a substantial presence, but I found no evidence to suggest that SIPTU actually conducted the country wide communications and training exercise referred to on p. 149. That said, I take the view, the mere fact that trades union have a presence in the unionised mncs surveyed ensures that management in

those mncs take their obligations to I&C with employees more seriously. In sum, trades union presence delivers the required degree of edge in order to ensure that more meaningful consultation with employees takes place. This tends to confirm the view expressed by Roche & Geary (2004) that is outlined in Storey (2005). (Please refer to p. 22).

Second, in both unionised and non-unionised mncs, I found that employees have a high degree of trust in senior management. This degree of trust tends to be more pronounced in non-unionised mncs. In my view, management's commitment in non-unionised mncs to direct involvement ensures employees believe that their best interests are being served. This is ironic because in my opinion little or no '*consultation*' takes place with them.

Third, I take the view it is unlikely that I&C will be transformative in the real sense amongst US mncs, unless there occurs an intervening act or event, such as, a movement towards "transformed pluralism", which, as I argued above, has the potential to engender a spirit of 'true' partnership at enterprise level (or at least in unionised or partly unionised mncs). In other words, unless something of this nature occurs, it is likely that even the more proactive US mncs will engage in a form of '*risk assessment*' followed by '*compliance*' via a series of adjustments to their current I&C arrangements; and trades union are likely to become defensive lest I&C threaten union-based arrangements. This tends to broadly confirm Hall's (2005) findings in the UK. (Please refer to pp. 35-36)

Fourth, in my opinion, there is a pressing requirement for trades union to embrace a “transformed pluralism” style model, along the lines advocated above (please refer to pp. 240-242). Provided this happens, there is a possibility that the current hemorrhage of union memberships in the US mnc bloc may stop, and provided trades union can convince US mncs of their *bona fides* (sincerity), and become accountable and take responsibility for their actions in the workplace, density levels may increase. This will not be an easy task to achieve. It will require transformational leadership within the trades’ union movement, of the type advocated by Tichy & Devanna (1990) (Please refer to pp. 73-76), in order to accomplish this. On the basis of this research study, however, I can confirm there’s at least one partly unionised US mncs that may be willing to extend the ‘*olive branch*’ to trades union (especially SIPTU) for this purpose. But any move in that direction would have to involve a close investigation of how Scandinavian trades union embrace partnership arrangements.

Fifth, there is a pressing requirement to train and develop employees how to I&C. My findings show that little or no emphasis has been placed on this area, thus far. If trades union and/or employers are to exploit the opportunities inherent in the new Act, substantial investment in training and development will be required.

Sixth, there is evidence of ‘*legislatively prompted voluntarism*’ taking place amongst US mncs. In one instance, I surveyed a non-unionised mnc with about

120 employees (en site) where active preparations are currently underway in order to put a PEA in place, well in advance of the March 23, 2007 deadline for undertaking of that size. This tends to confirm Hall's (2005) finding (Please refer to p.27.)

There is also evidence to suggest that US mncs with employee strength below the '*establishment level*' are prepared to engage in I&C. For example, I surveyed a US mnc with 15 employees (in totem) where management has a keen interest in the new Act. This tends to confirm the IPA's (UK) view that I&C should be extended to all firms irrespective of size (see pp. 54).

Finally, in my opinion the LRC should not be tasked with the responsibility of formulating a Code of Practice on I&C. This is a task that should be undertaken by either DETE or NCPP (preferably by NCPP). There is little point in DETE and NCPP, on the one hand, formulating an I&C strategy, and, on the other hand, delegating the most critical aspect of any strategic plans, the implementation phase, to a third-party. In any event, I take the view that it's time for NCPP to stop writing reports about I&C and get actively involved in the detail of its implementation.

## **Author's Note**

This research study is the forerunner of my doctoral thesis which I propose to complete under the tutorship of Prof. Brendan Mac Partlin, National College of Ireland.

Specifically, I have identified a new hypothesis, that is, '*transformed pluralism*', via a '*grounded theory*' approach to research. I now propose to prove the new hypothesis via a deductive approach to research. In sum, I propose to empirically test my theory of '*transformed pluralism*' in the context of a comparative study between Irish and Scandinavian unionised or partly unionised workplaces.

My doctoral research thesis will also afford me the opportunity to interview senior US HR professionals, as well as CEOs of Irish-based, US mncs, more extensively about the new hypothesis. It is regrettable, that only four entities were posed the question about '*transformed pluralism*' during the course of this Master's study. Perhaps, in hindsight, I should have widened the net in this regard. But this is something that I have learned and I will benefit from it going forward. Nevertheless, for present purpose, I took the view that the appropriate parties to pose the critical questions to are those listed in Table No 15 (Please refer to p.243). I had hoped to conduct semi-structured interviews with senior US HR professionals in all participating mncs; this didn't happen. But I did pose the questions to the Chamber that represents 620 Irish-based, US mncs.

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## Appendix No 1

### Main points of the Employees ( Provision of Information and Consultation) Act, 2006

[No. 9 of 2006]

The legislation will apply to undertakings with 50 or more employees. It will be phased in by March 23, 2008:

- a. From a date to be prescribed, undertakings with 150 or more employees will be covered before March 23, 2007.
- b. Undertakings with 100 or more employees will be covered from March 23, 2007.
- c. Undertakings with 50 or more employees will be covered from March 23, 2008.

Employers will have the option of negotiating a “pre-existing agreement” at workplaces in accordance with the following timetable:

- a. On or before a date to be prescribed before March 23, 2007 in undertakings with 150 or more employees.
- b. On or before March 23, 2007 in undertakings with 100 or more employees.
- c. On or before March 23, 2008 in undertakings with 50 or more employees.

Employees will have the right to request an employer to set up an information and consultation procedure. At least 10% of employees must request this, subject to a minimum of 15 and a maximum of 100 employees.

Standard rules apply where:

- a. the parties so agree;
- b. the employer fails to open negotiations within three months of having received a valid written request; and
- c. the parties fail to reach agreement within the time limits specified.

The type of information and consultation that employers will be obliged to give is:

- a. information on the recent and the probable development of the undertaking's activities and economic situation;
- b. information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment; and
- c. information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

## Appendix No2

### Provisions of the Employees (Provision of Information and Consultation) Act, 2006

[No. 9 of 2005]

**Section 1 – Interpretation:** The section outlines the definition of terms e.g. “information” and “consultation”.

**Section 2 – Regulations:** The Minister for Enterprise, Trade and Employment is empowered to make regulations under the Bill.

**Section 3 – Right of employees to information and consultation:** This section confers a right to information and consultation on employees in undertakings with 50 or more employees, without prejudice to the provisions of other legislation e.g. European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003.

**Section 4 – Application – workforce thresholds:** This section outlines the transitional arrangements for “relevant workforce thresholds” i.e.

- a. From a date to be prescribed, undertakings with 150 or more employees will be covered before March 23, 2007.
- b. Undertakings with 100 or more employees will be covered from March 23, 2007.

- c. Undertakings with 50 or more employees will be covered from March 23, 2008.

**Section 5 – Calculating workforce thresholds:** This section specifies the method of calculating workforce thresholds for the purpose of deciding the application of the Bill to a particular undertaking. An obligation is placed on the employer to provide the appropriate information for this purpose within set time limits (normally not later than 4 weeks from the date of receipt of a request). The section also provides for the dissolution of an information and consultation forum in circumstances where the number of employees falls below the relevant workforce threshold and remains below the threshold for 12 months.

**Section 6 – Employees' representative:** This section obliges an employer to arrange for the election or appointment of one or more than one employees' representative. Without prejudice to Section 11, where it is the practice of the employer to conduct collective bargaining negotiations with a trade union or excepted body, employees who are members of a trade union or accepted body that represents 10% or more of the employees of the undertaking shall be entitled to elect or appoint from amongst their members one or more than one employees' representative for the purposes of the Act.

## **Section 7 – Process for establishing information and consultation**

**arrangements:** This section outlines the process for establishing information and consultation arrangements i.e.

- a. The process will have to be triggered by a written request from 10% of the workforce, subject to a minimum of 15 employees and a maximum of 100.
- b. The employer may enter into negotiations with the employees or their representatives or both to establish the necessary arrangements.
- c. The employees may make the request to the employer or the Labour Court or a nominee of the Labour Court.
- d. There is a six (6) months period within which negotiations must be concluded; although this period may be extended by agreement of the parties.
- e. There are two possible outcomes to the negotiations, that is:
  - (1). a negotiated agreement under Section 8 (see below); or
  - (2). the application of Standard Rules under Section 10 and Schedule One (see below).

In circumstances where the employee thresholds are not met at the time of the request, there is a moratorium of two years on repeat employee requests.

**Section 8 – Negotiated agreements:** The section outlines minimum requirements for such agreements, and allows the parties by mutual agreement to renew or extend it at any time prior to the expiration of the agreement.

**Section 9 – Pre-existing agreements:** This section outlines the dates before which pre-existing agreements must be in place i.e.

- a. On or before a date to be prescribed before March 23, 2007 in undertakings with 150 or more employees.
- b. On or before March 23, 2007 in undertakings with 100 or more employees.
- c. On or before March 23, 2008 in undertakings with 50 or more employees.

The procedures to be adopted for obtaining workforce approval are also specified.

**Section 10 – Standard rules on information and consultation:** This section specifies that standard rules (Schedule One) apply where i.e.

- a. The parties so agree;
- b. The employer fails to open negotiations within three months of having received a valid written request; and
- c. The parties fail to reach agreement within the timeframe specified in Section 7.

The employer has six months to comply with the requirements specified in standard rules. Provision is also made for a review of standard rules by the parties.

In the event that the terms of a negotiated agreement are not approved the standard rules will not apply for a period of two years. The parties may, however,

re-enter negotiations and approve a negotiated agreement within the two year period.

**Section 11 – Direct involvement:** This section enables employees to exercise their rights to information and consultation either directly or indirectly via their elected representatives. Where a system of direct representation is in place for all or part of the undertaking, at least 10% of employees for whom the direct involvement system operates are required to make a written request to the employer, the Labour Court or a nominee of the Labour Court seeking collective representation. Following approval the employer is obliged to arrange for the election or appointment of employee representatives.

**Section 12 – Co-operation:** this section calls for “a spirit of co-operation” between the parties in their dealings under the legislation.

**Section 13 – Protection of employee representatives:** This section requires reasonable facilities, including paid time off, for employee representatives to discharge their duties under the legislation.

**Section 14 – Confidential information:** This section specifies that employee representatives (and any experts assisting them) are not entitled to reveal to third parties any information given in confidence. Employers are entitled to withhold information the release of which would have a serious prejudicial

impact on the undertaking or whose disclosure would break statutory or regulatory rules.

**Section 15 – Dispute resolution:** This section sets out dispute resolution procedures for different types of disputes i.e.

- a. Disputes regarding the negotiation and/or interpretation or operation of agreements of systems of direct involvement; and
- b. Disputes regarding confidential information.

Both types of disputes may be referred by either of the parties to the Labour Court for recommendation or determination, as the case may be.

**Section 16 – Powers of the Court to administer oaths and compel**

**witnesses:** This section empowers the Labour court to administer oaths and compel witnesses in relation to matters referred to it under the legislation.

**Section 17 – Enforcement:** This section provides for enforcement of Labour Court determinations by the Circuit Court.

**Section 18 – Inspectors:** This section provides that the Minister may, in writing, appoint as many persons as the Minister thinks appropriate to be inspectors for the purposes of the Act. The section also specifies what an inspector may do under or pursuant to the Act.



**Section 19 – Offences:** This section specifies offences of non-compliance under the legislation i.e.

- a. A refusal to provide information in relation to calculating workforce thresholds or to unreasonably or wilfully obstruct or delay the provision of such information; or
- b. A failure to arrange for the election or appointment of one or more employees' representatives; or
- c. A failure to put in place a system of collective representation where one has been requested or approved.

Duties of confidentiality must be observed by the parties where such information is provided in confidence.

**Section 20 – Penalties:** This section specifies the penalties for infringements under Section 18 or 19. The Minister for Enterprise, Trade and Employment is empowered to initiate and prosecute proceedings for infringements under the legislation.

- a. On summary conviction, a fine not exceeding €3,000 or imprisonment for a term not exceeding six months or both;
- b. On conviction or indictment, a fine not exceeding €30,000 or imprisonment for a term not exceeding three years or both.

If the offence is continued after conviction, that person will be guilty of a further offence for every day on which the act or omission continues i.e.

- a. On summary conviction, the person shall be liable to a fine not exceeding €500 for each such further offence; and
- b. On conviction or indictment, to a fine not exceeding €5,000.

**Section 21 – Notification obligations of transferor to transferee in the event of transfer of an undertaking:** This section specifies the obligations imposed on the transferor, in a transfer of undertakings situation, in order to comply with the Act.

**Section 22 – Short title and commencement:** This section states that the Bill may be cited as the “Employees (Provision of Information and Consultation) Act, 2006”. It will come into operation by order of the Minister for Enterprise, Trade and Employment.

## **Appendix No3**

### **Schedule One: The Standard Rules on Information and Consultation**

The Rules are contained in Schedule One to the draft legislation. The Rules provide for the setting up of an information and consultation forum and will apply where:

- a. the parties so agree;
- b. the employer fails to open negotiations within three months of having received a valid written request; and
- c. the parties fail to reach agreement within the time limits specified in Section 7.

#### **Size and structure of forum**

The forum must be composed of employees' representatives who shall be employees of the undertaking. Employees' representatives shall be elected in accordance with Schedule Two. It shall comprise at least three members, but not more than 30 members. It may agree its own internal structures.

#### **Rules of procedure**

The forum will adopt its own rules of procedure which must include the following:

- a. Mutually agreed arrangements for meeting. The employer must act reasonably.
- b. Joint approval of minutes.
- c. Before a meeting with the employer the Forum shall be entitled to meet on its own.
- d. Members of the Forum are entitled to inform the employees of the content and outcome of the meetings.
- e. The Forum has the right to meet with the employer twice a year, or more in exceptional circumstances.

### **Competence**

Information and consultation includes:

- a. Information on the recent and probable developments of the undertaking's activities and economic situation.
- b. Information and consultation on the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular where there is a threat to employment.
- c. Information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations.

### **Practical arrangements for consultation**

Information shall be given by the employer at the time, in the fashion and with the consent appropriate to enable, in particular, the Forum to conduct an adequate study and, where necessary, prepare for consultation.

Consultation shall take place:

- a. While ensuring that the method, content and timeframe thereof are appropriate.
- b. At the relevant level of management and representation, depending on the subject under discussion.
- c. On the basis of information supplied by the employer and of the opinion which the employees' representatives are entitled to formulate.
- d. In such a way as to enable the Forum to meet the employer and obtain a response, and the reasons for that response, to any opinion that they might form.
- e. With a view to reaching an agreement on decisions referred to at c. above that are within the scope of the employer's powers.

**Expenses**

The employer is obliged to cover any expenses incurred in the operation of the Forum and also provide Forum members with any reasonable financial resources required to enable them to carry out their duties.

## **Appendix No4**

### **Schedule Two: Election of employees' representatives**

An employee who is employed by the undertaking on the day the date or dates for an election of members of the Forum is fixed is entitled to vote, and an employee who have been in the service of the undertaking for a continuous period of not less than one year on the nomination day is eligible to stand as a candidate for election as a member of the Forum, provided s/he is nominated by at least two employees or a trade union or excepted body with whom it is the practice of the employer to conduct collective bargaining negotiations.

The employer is obliged to cover the costs of the nomination and election procedure.

**Schedule Three: Redress for Contravention of Section 13 (1)**

This schedule sets out a procedure to be followed by employees' representatives who believe they have been penalised, whereby they will be able to refer their complaint to a Rights Commissioner who, if satisfied that the complaint is justified, may order the employer to take corrective action, and can award the employee up to two years remuneration by way of compensation.

**Interview Schedules**

**No 1. Trades Union**

- a. Do you think it is possible to separate I&C and cbn?
- b. Do you think that I&C dilute the cbn channel?
- c. Will I&C compromise the traditional role of trades unions to defend members' rights?
- d. Given the decline in trade union density in the private sector, the extent to which Ireland still conforms to the voluntarist model of IR can be questioned. What are your views about this?
- e In your view, what is the way forward for unions;
  - (1). Continue to emphasise the "right and ability" to oppose management?  
Or
  - (2). Seek to integrate workers and/or trade unions with management in the decision making process, via, for example, 'a new collectivism' or 'transformed pluralism' framework?
- f. Do you perceive a movement away from voluntarism towards 'new collectivism' or 'transformed pluralism'?
- g. What are your views on the retention of 3<sup>rd</sup> party externals as 'experts' by employees' representatives in unionised or partly unionised undertakings?
- h. Do you perceive that the 'locus of control' in US mncs will slow down I&C machinery? If yes, is there anything you can do to prevent this?



- i. How does your union propose to give voice to those employees in non-union firms who seek union representation, but whose employers (US mnocs) are not willing to countenance union organisation and recognition?
- j. Do you view unions as having been written out of the script under standard rules?
- k. What efforts have your union made to raise your profile in regard to I&C?
- l. What do you perceive to be the main benefits of I&C?
- m. What do you perceive to be the main obstacles to I&C?
- n. ICTU only

To what extent has ICTU's policy of promoting partnership arrangements between trades union, workers and management, and thus to stimulate national level "social partnership" at firm level, succeeded?

## **No 2 Questions - IBEC**

- a. Do you view I&C mechanisms as a potential back door for declining unions to mount a comeback in the private sector?
- b. What do you perceive to be the main benefits of I&C?
- c. What do you perceive to be the main obstacles to I&C?
- d. What is your view on 'single table' consultative arrangements?
- e. Is IBEC averse to employee participation and involvement initiatives, particularly direct participation, such as, strategic decision making?

- f. To what extent should greater weight be placed on allowing workers and trades union a say in strategic decision making and a share of company profits?
- g. Do you perceive an inconsistency between the extension of democracy in the workplace and the drive for improved productivity & competitiveness?
- h. Has or will I&C lead to competitive advantage?
- i. What is your view that '*social partnership*' has failed to extend '*partnership*' below national level interactions? If you agree, why is this?
- j. Is there a need to move from distributive bargaining towards a '*partnership approach*' based on '*mutual gains*'? If yes, how can I&C advance this? How can IBEC assist in this regard?
- k. Do you perceive a movement away from voluntarism towards '*new collectivism*' or '*transformed pluralism*'?
- l. Do you anticipate that I&C mechanisms will replace cbn?
- m. AoB

### **No 3 Questions – NCPP**

- a. From the literature it is evident that the new Act on I&C heralds a new legal framework for industrial relations that potentially marks a departure from the traditional voluntarist approach adopted in this country. What is your view about this?

- b. In your view would a '*new collectivism*' or '*transformed pluralism*' framework allay the concerns of parent US mncs towards indirect involvement and representation in the workplace?
- c. What challenges does the new Act represent for the social partners?
- d. Do you anticipate that I&C mechanisms will replace cbn?
- e. Do you think it is possible to separate I&C and cbn?
- f. Do you think that I&C dilute the cbn channel?
- g. In your view, what is the way forward for unions;
  - (1). Continue to Emphasise the "right and ability" to oppose management?
  - Or
  - (2). Seek to integrate workers and/or trade unions with management in the decision making process, via, for example, a '*new collectivism*' or '*transformed pluralism*' framework?
- h. Do you view unions as having been written out of the script under standard rules?
- i. Do you view I&C mechanisms as a potential back door for declining unions to mount a comeback in the private sector?
- j. What is your view on '*single table*' consultative arrangements?
- k. To what extent should greater weight be placed on allowing workers and trades union a say in strategic decision-making and a share of company profits?
- l. What is your view that '*social partnership*' has failed to extend '*partnership*' below national level interactions? If you agree, why is this?

- m. Do you perceive that the 'locus of control' in US mncs will slow down I&C machinery? If yes, is there anything NCPP can do to prevent this?
- n. Do you perceive I&C to be a challenge to managerial prerogative? At local company level? At corporate US level?
- o. Do you anticipate that I&C will shift the locus of strategic decision making away from central management?
- p. Do you anticipate the requirement for employee representatives/unions to work cooperatively with management provides an opportunity for the development of a partnership-based approach to management-employee relations?
- q. What are your views on the use of 'experts' for I&C purposes?
- r. Paragraph 16 in the preliminaries of the Directive states:

*"This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to be informed and consulted through their representatives".*

Article 1 of the Directive states:

*"When defining or implementing practical arrangements for information and consultation, the employer and the employees' representatives shall work in a spirit of co-operation and with due regard to their reciprocal rights and obligations".*

(1). Do you consider the above provisions to be conflicting?

(2). What is your view on US mncs expressed wish to engage in direct involvement only with staff?

- s. Do you take the view that parliament has adopted a “*minimalist approach*” in the new Act?
- t. What do you perceive to be the main benefits of I&C?
- u. What do you perceive to be the main obstacles to I&C?
- v. What is your view that the DETE should have opted for ‘*establishments*’ instead of ‘*undertakings*’?
- w. What is your view that the ICD should be extended to all private, semi-state and public bodies irrespective of employee numbers?
- x. AoB

#### **No 4 Questions – DETE**

- a. From the literature it is evident that the new Act on I&C heralds a new legal framework for industrial relations that potentially marks a departure from the traditional voluntarist approach adopted in this country. What is your view about this?
- b. Do you take the view that parliament has adopted a “*minimalist approach*” in the new Act?
- c. Do you view unions as having been written out of the script under standard rules?
- d. In your view, to what extent does the ICD impinge on managers’ rights to manage?
- e. Do you anticipate that I&C mechanisms will replace cbn?
- f. What challenges does the new Act represent for the social partners?

- g. What do you perceive to be the main benefits of I&C?
- h. What do you perceive to be the main obstacles to I&C?
- i. Why did the DETE opt for '*undertakings*' instead of '*establishments*'?
- j. Was any consideration given to extending the ICD to all private, semi-state and public bodies irrespective of number of employees?
- k. AoB

**No 5 Questions – Senior Manager US mnc**

- a. Is the firm 100% unionised/non-unionised or mixed? [What is the actual balance?]
- b. Is there a European Works Council in place in the firm? **Yes/No**
- c. Is there a Prior Existing Agreement (PEA) in place in the firm? **Yes/No**
- d. If yes, have you noticed any benefits flowing from Information & Consultation (I&C)?
- e. If no, do you anticipate the receipt of a request from employees to negotiate I&C arrangements? **Yes/No**
- f. Have you undertaken a risk assessment of your existing I&C arrangements viz compliance with the new Act? **Yes/No**
- g. Have you instituted any forward planning to position the firm to manage the implications of the new statutory framework?
- h. Where is the locus of strategic decision-making in the firm?
- i. To what extent do I&C mechanisms impact on locally or centrally driven change programmes?

- j. How do you perceive the requirement to conduct '*early*' I&C with employees on core business issues will impact on the prevailing management culture?
- k. Do you perceive this to be a challenge to managerial prerogative? At local company level? At corporate US level?
- l. Do you anticipate that I&C will shift the locus of strategic decision-making away from central management? If yes, what effect (if any) would this have on your existing managerial style?
- m. What are your views on the use of '*experts*' by employee representatives?
- n. Do you anticipate the requirement for employees' representatives/unions to work cooperatively with management provides an opportunity for the development of a partnership-based approach to management-employee relations?
- o. What is your '*employee voice*' strategy?
- p. Do you have a mix of direct/indirect I&C mechanisms in the '*employee voice*' strategy? What is your preference?
- q. Do you communicate with manual grades about strategy?
- r. Do you communicate with manual grades about financial performance?
- s. Would you consider setting up a '*Standing Consultative Body*' to deal with all aspects of statutory consultation including redundancies and transfers?
- t. What do you perceive to be the main benefits of I&C?
- u. What do you perceive to be the main obstacles to I&C?

- v. Has or will I&C lead to competitive advantage?
- w. To what extent will I&C affect competitiveness? Flexibility?  
Confidentiality? Relationships with existing IR structures? The distinction between consultation and negotiation?
- x. Do you anticipate that I&C mechanisms will replace cbn?
- y. AoB

**No 6 Questions – Senior HR professional US mnc**

- a. To what extent have you aligned HR policies and practices in order to promote:
  - (1). Collaborative problem solving and innovation?
  - (2). Fostering a participative approach?
  - (3). Informed decision making?
  - (4). Change management?
  - (5). Organisational adaptability and flexibility?
  - (6). Employee commitment and involvement?
  - (7). Culture management?
  - (8). Training and development of employees e.g. economic literacy?
  - (9). Training and development of managers on I&C? [As well as training managers and employees together about how to work and consult with each other?]



- b. What are you doing to support employee representatives in undertaking the additional workload associated with I&C? [e.g. interference with normal daily workloads?]
- c. Do you detect any employee apathy towards I&C? Or are existing arrangements to engaging with staff working effectively with no major demand for change?
- d. AoB

**No 7 Questions – Middle Manager US mnc**

- a. To what extent is there communication with you on:
  - (1). Strategic issues?
  - (2). Financial issues?
- b. To what extent does communication on those issues cascade down the levels of the organisation to clerical and manual grades?
- c. Do you perceive a commitment from the top for I&C?
- d. Do you perceive a commitment from your subordinates to embrace I&C?
- e. Have you received any training and development on I&C?
  - (1). How to work with subordinates and understand each other's views?
  - (2). How to I&C?
  - (3). Economic literacy, etc?
- f. Where do you perceive the emphasis is place from the top:
  - (1). 'Soft' measures e.g. QCs, TQM, etc?

- (2). 'Hard' operational or financial targets, reflecting the pressures of the wider business context?
- g. Do you perceive I&C as a '*bolt-on*' to your existing work load counting for very little in the overall scheme of things?
- h. Do you anticipate that I&C will lead to a competitive advantage for the firm?
- i. What do you perceive to be the future for effective I&C mechanisms in this firm?
- j. Which of the follow best describe the approach adopted to handling change:
- (1). Managerial prerogative – change decisions made solely by management?
  - (2). Direct involvement – decided by management with the direct involvement of employees?
  - (3) Mix of both?
- k. What do you perceive to be the main benefits of I&C?
- l. What do you perceive to be the main obstacles to I&C?
- m. In relation to trust, are there any exchanges of commercially sensitive information from management to employees? Or is sensitive type information heavily guarded by corporate/global management?
- n. Is I&C a dirty word in this firm?
- o. In terms of consultation where does the final decision rest?

- p. In your view, to what extent does the ICD impinge on managers' rights to manage?
- q. How would you describe your management style – directive or consultative/participatory?
- r. AoB

### **No 8 Questions – Employee US mnc**

- a. Are you aware of the statutory rights to Information & Consultation under the new Act? **Yes/No**
- b. If yes, do you envisage any difficulty in exercising those rights? **Yes/No**
- c. Do you envisage employer hostility to a request for Information & Consultation? **Yes/No**
- d. Are there any worker directors in the firm? **Yes/No**
- e. Are there areas where employees exert primary control over decision making in the firm? Key decisions without management's approval?
- f. Are there joint problem solving approaches in operation? [Employees and management in consultation with each other?]
- g. Is there Information & Consultation in connection with decisions that affect your immediate work role?
- h. In terms of consultation where does the final decision rest?
- i. Is Information & Consultation a dirty word in this firm?
- j. How would you rate the way management involves employees in this firm?  
**[Very good, good, poor, very poor]**

- k. How would you assess the current Information & Consultation practices in this firm? [**Very good, good, poor, very poor**]
- l. Is the emphasis placed on direct or indirect forms of Information & Consultation? Both?
- m. To what extent does management use informal dialogue for change programmes?
- n. Tell me about the type of Information & Consultation that you receive?
- (1). In respect of transformational change?
  - (2). In respect of incremental change issues?
  - (3). Issues related to your immediate job area?
- o. How would you rate the quality of Information & Consultation that you receive in terms of:
- (1). Transparency? [**Very good, good, poor, very poor**]
  - (2). Timeliness? [**Very good, good, poor, very poor**]
- p. Where is the emphasis placed in terms of management-employee communications:
- (1). Direct verbal communications?
  - (2). Direct written communications?
  - (3). Representative staff bodies?
  - (4). Other?
- p. Where is the focus of management-employee communications?
- (1). Product market focus? **Yes/No**
  - (2). Market realities? **Yes/No**

- (3). Market volatility? **Yes/No**
- (4). Intensity of competition? **Yes/No**
- (5). Requirements for quality? **Yes/No**
- (6). Requirements for low-cost? **Yes/No**
- (7). Other matters? If yes, please specify? **Yes/No**
- q. In your view, does the employer's desire to communicate derive from:
  - (1). Commercial imperatives?
  - (2). Desire to increase employee involvement?
- r. Where do you perceive the locus of strategic decision-making to be?
- s. What are your views on the use of 'experts' for Information & Consultation purposes?
- t. What is your level of education?
- u. Have you ever received Information & Consultation on strategic issues?
- v. Have you ever received Information & Consultation on financial performance issues?
- x. Do you perceive commitment from the top for Information & Consultation?
- y. Have you received any training on Information & Consultation? E.g. with managers on how to work together? On economic literacy, etc?
- z. AoB

## **No 9. American Chamber of Commerce in Ireland**

- a. From the literature it is evident that the business culture of parent US mncs would generally either be averse to indirect representation and/or opposed to increased '*consultation*' with employees' representatives over key business issues. In your view, how will the new Act impact on this?
- b. In your view, to what extent do &C impinge on managers' rights to manage?
- c. Do you perceive that domestic managers face a major task in allaying corporate senior executives regarding the implications of the new Act, in particular relating to its impact on managerial decision-making, flexibility and competitiveness?
- d. If yes to Q. c. what does the American Chamber of Commerce in Ireland propose to do about this?
- e. Do you perceive that the '*locus of control*' in US mncs will slow down I&C machinery?
- f. If yes to Q. e. is there anything that the American Chamber of Commerce in Ireland can do to help this?
- g. What challenges does the new Act represent for the social partners?
- h. From the literature it is evident that the new Act on I&C heralds a new legal framework for industrial relations that potentially marks a departure from the traditional voluntarist approach adopted in this country. What is your view about this?

- i. Do you perceive a movement away from voluntarism towards '*new collectivism*' or '*transformed pluralism*'?
- j. In your view would a '*new collectivism*' or '*transformed pluralism*' framework allay the concerns of parent mncs towards indirect involvement and representation in the workplace?
- k. Do you anticipate that I&C mechanisms will replace cbn?
- l. What do you perceive to be the main benefits of I&C?
- m. What do you perceive to be the main obstacles to I&C?
- n. AoB

#### **No 10 Questions – Other Parties**

**The following are representative of questions posed to a range of third parties e.g. Solicitors, IDA, LRC, PWC etc**

- a. "*The right to be informed and consulted at work is as fundamental, if not more so, than the right not to be unfairly dismissed or to be discriminated against*", (Sisson, K. 2002). Do you have a view about this statement?
- b. "*The implication of referring to the 'right' to I&C is that employees may not necessarily exercise that right and that employers need not be obliged to inform and consult where this is the case*", (Dundon et al. 2003). Do you have a view about this statement?

c. Paragraph 16 in the preliminaries of the Directive states:

*“This Directive is without prejudice to those systems which provide for the direct involvement of employees, as long as they are always free to exercise the right to be informed and consulted through their representatives”.*

Article 1 of the Directive states:

*“When defining or implementing practical arrangements for information and consultation, the employer and the employees’ representatives shall work in a spirit of co-operation and with due regard to their reciprocal rights and obligations”.*

(1). Do you consider the above provisions to be conflicting?

(2). What is your view on US mncs expressed wish to engage only in direct involvement with staff?

(3). Do you think this expressed wish is open to challenge?

(4). Are US mncs obliged to engage in indirect representation?

(5). Where a conflict arises between the employer and employees, is the expression *“in a spirit of co-operation”* tantamount to a **no strike clause** in a collective agreement?

(6). What in your view is the enforceability of this provision in circumstances where a strike actually results?

d. Do you take the view that the right to I&C is a *‘proprietary’* right? Is it a constitutional right (Art 40.3)?



- e. The new Act on I&C heralds a new legal framework for industrial relations that potentially marks a departure from the traditional voluntarist approach adopted in this country. Do you agree with this statement?
- f. Do you perceive a movement away from voluntarism towards '*new collectivism*' or '*transformed pluralism*'?
- g. Do you anticipate that I&C will replace cbn?
- h. Do you take the view that trades union have been written out of the script in standard rules?
- i. Do you take the view that parliament has adopted a "*minimalist approach*" in the new Act?
- j. What challenges does the new Act represent for the social partners?
- k. What do you perceive to be the main benefits of I&C?
- l. What do you perceive to be the main obstacles to I&C?
- m. AoB

**No 11. VP Human Resources - US mncs**

- a. Are you aware of the new Irish legislation on Information & Consultation (I&C)? **Yes/No**
- b. Is your firm averse to increased '*consultation*' with employees/trades union over key business issues?
- c. In your view, to what extent do I&C impinge on managers' rights to manage?

- d. In your view, will I&C interfere in any way with the '*locus of control*' in your firm?
- e. How do you perceive the requirement to conduct early I&C with employees on core business issues will impact on the prevailing management culture in your firm?
- f. To what extent if any will I&C affect the following?
  - a. Competitiveness?
  - b. Flexibility
  - c. Confidentiality
- g. To what extent, if any, do you perceive a movement away from traditional voluntarism in Irish industrial relations?
- h. If Irish trades union became less adversarial and were prepared to embrace fully your firm's business model would you be inclined to associate with unions in the conduct of your business?
- i. If your firm were to expand its operations in Ireland to an additional site would you recognise trades union at the new plant? Would your answer be different if trades union were to embrace the concept outlined in Question No8?
- j. AoB

## **Appendix No7**

### **List of participating organisations**

American Chamber of Commerce in Ireland

IBEC

ICTU

SIPTU

IMPACT

NCPP

DETE

IDA (Dublin)

IDA (NYC)

PWC

LRC

Horner Ireland Limited

Group Tech Limited

Pfizer Ireland Limited

Wyeth Medica Ireland Limited

AIB/BNY Security Services Limited

BD

Schering Plough

Mason Hayes & Curran Solicitors

Doyle's Solicitors, Wexford

Mr Kevin O'Kelly, Research Consultant