

# the **HR DIRECTOR**

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BT

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O2

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Pictured: Dave Gartenberg - HR director, Microsoft UK

**DON'T MISS NEXT MONTH'S DOUBLE SUMMER ISSUE WHERE WE LOOK AT: FORUM: DIVERSITY STRATEGY; INTERIM MANAGERS; OUTSOURCING; ABSENTEEISM; DATA MANAGEMENT - THE LINK WITH BUSINESS PERFORMANCE... AND MUCH, MUCH MORE**



## THE INFORMATION & CONSULTATION REGULATIONS: THE DOG THAT DIDN'T BARK?

IN APRIL 2005, THE UK'S REGULATORY SCENE ALTERED WITH THE INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS 2004 ('ICE') IMPLEMENTING AN EU DIRECTIVE REQUIRING INFORMATION AND CONSULTATION WITH EMPLOYEES, ON A WIDE RANGE OF BUSINESS AND EMPLOYMENT RELATED MATTERS'. HAS THE LAW HAD ANY REAL IMPACT IN THE UK? FIONA WEBSTER OF ORC WORLDWIDE LOOKS TO EUROPE TO SEE WHAT WORKS COUNCILS CAN MEAN FOR COMPANIES AND ASSESSES WHETHER UK BUSINESSES ARE UP TO THE CHALLENGE.

EU and national implementing laws, together with continued legal oversight of national and European courts, now form a comprehensive web of rights and obligations that businesses ignore at their peril. But one year down the track, the ICE Regulations of themselves would appear to have had little effect; so far there has been no discernable surge in new information and consultation arrangements, or of businesses falling foul of the new law. But can business rely on this law never having any bite?

The ICE Regulations do not refer to works councils as such, but the standing information and consultation process described by them

approximates to the collective representation familiar to employers in many other EU Member States. The Regulations currently affect undertakings with at least 150 employees; undertakings with between 100-150 employees will be covered from April 2007 and include those with at least 50 employees from April 2008. Although employers are not required to be proactive in establishing consultative arrangements, they must do so if triggered by a minimum number of employees. Companies are permitted to establish so-called voluntary arrangements (subject to minimum criteria) or to negotiate consultative procedures using the Regulations. The fact that the ICE Regulations do not oblige

companies to establish proactively consultative arrangements, and that only relatively modest fines apply in the event of regulatory breaches, with no requirement on management to recommence consultation or delay implementation of the management decision, may influence some UK employers to pay scant attention to the law.

**“reliance by companies on employee disinterest in the law”**

My own view is that it is still too early to write off this new law as inconsequential. So long as the UK Regulations do not actually mandate companies to establish new information and consultation arrangements, it is certainly possible that some companies—especially where their employees are not focused on collective issues and processes—will never do so. But continued reliance by companies on employee disinterest in the law may not work in the long-term, especially if controversial business issues were to arise: for example, changes to company apension schemes, company restructuring, or takeovers. These are just the type of issues which could have an adverse employee reaction and prompt interest in legal protection. In these circumstances, more UK companies may well face pressure to establish information and consultation arrangements as trade unions realise the Regulations' potential and as employee awareness increases.

If UK employers hope to get away with a 'light touch' by establishing toothless voluntary information and consultation arrangements, an early decision from the UK's Central Arbitration Committee (CAC) indicates that it intends to scrutinise the detail of such arrangements, where they are challenged by disaffected employees. In the case concerned, CAC decided that Moray Council's voluntary information and consultation agreement was insufficiently precise as to how information and consultation would be effected with employee representatives. Undoubtedly some employers will be reluctant to rock the boat by trying to formalise or enhance current consultative arrangements with employees, but they should recognise that if these arrangements were challenged, they may well prove invalid.

**“the experience of continental Europe may well be instructive”**

If more companies do respond directly to the ICE Regulations, or are encouraged to establish information and consultation arrangements at their own initiative, the experience of continental Europe may well be instructive in the UK. In countries where works councils are the norm, experienced HR practitioners usually confirm two things: firstly, the law evolves over time, often resulting in tougher regulatory demands on employers than at the outset, and secondly, good works council relationships that assist the business in times of major change or in its day-to-day operations do not happen by chance - they require considerable investment of management time and skill.

Although neither the EU directive nor the ICE Regulations require negotiation or bargaining, consultation must take place with a view to reaching agreement on issues concerning >

**XEROX:**

**COMMITTED TO TWO-WAY COMMUNICATION**

As part of its information and consultation initiative, Xerox has implemented an innovative communication tool to ensure staff at all levels in the company feel they have a voice. Actively supported by the Trade Union, TalkBack – a carefully structured, regular staff-manager consultation session – was conceived following a company survey in 2004. Employees revealed a desire for frequent information sharing with managers, to help them feel fully 'connected' to the company, as well as offering an opportunity to express their opinions. A year on from the scheme's inception and Xerox reports impressive statistics:

- 83% of employees who participated in TalkBack agree/strongly agree that it is an effective way of keeping them informed about the business
- 69% felt that their knowledge about the company direction had increased as a result of attending a TalkBack session
- 60% thought that TalkBack gives the opportunity for their views to be listened to by management.

TalkBack has been integrated into an already dynamic internal communication system which includes:

- An intranet
- 'Information cascade' meetings
- Newsletters
- Company-wide TV broadcasts
- Employee suggestion schemes
- Employee engagement surveys.

An 'open-to-all' culture is at the heart of TalkBack, according to Myra Clarke, who is the manager for HR Programmes and Resourcing: *“The company tries to ensure that TalkBack tackles topics that every employee, irrespective of their business function, can contribute to. The topics covered so far have been 'Reward & Recognition' and 'Belief in our company direction' – two wide-reaching topics that led to the reward and recognition scheme being completed re-worked as a result of our employees' opinions. The feedback on 'Belief in company direction' has given us some excellent opinions and ideas on how we handle change and manage communication. To ensure transparency and to manage the volume of responses, talent management consultancy, Getfeedback, helps to facilitate the process.”*

The success of the initiative also depends, of course, on managers having the skills to deliver consultations effectively and information accurately. As such, Xerox ensures senior staff attend regular 'Communicate to Motivate' sessions and are supported by a dedicated TalkBack team.



For further information:  
[www.xerox.co.uk](http://www.xerox.co.uk)

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> substantial changes in work organisation or in contractual relations, unless management and employee representatives agree otherwise. (Other matters are also designated separately for information and consultation.) A couple of issues are worth



commenting on here: firstly, consultation *“with a view to reaching agreement”* may well prove challenging for British managers, since they are perhaps less used than their continental counterparts to explaining in good time proposals affecting the organisation and employees, the underlying rationale for the proposed changes, and to handling feedback and further questioning from employee representatives; secondly, some employee and management representatives may well find it difficult to differentiate between matters for information and consultation, from those that are subject to consultation with a view to reaching agreement, resulting in the majority of issues being elevated to negotiation status.

Managers experienced in the ways of works councils elsewhere in Europe attest that meaningful consultation - let alone co-decision - can take considerable time to effect, especially where multiple meetings must be held and extensive (and sometimes sensitive) information and data must be shared with the works councils. In the now infamous closure of Renault’s plant near Brussels in 1997, the Belgian courts required the company to stall its management

plans in order to carry out adequate consultation with both the local works council and the company’s European Works Council.

**“outside experts can be very influential in day-to-day works council discussions”**

And what are British unions making of the new regulations? The former TUC general secretary, John Monks, counselled British unions in 2002 that the EU directive offered significant opportunities to British unions, but their response to date has been muted. Amicus is a notable exception, however, in its current campaign to use the Regulations in order to establish consultative arrangements in the publishing sector. On the ground, UK companies have met with varied union responses: in some cases local union officials are willing to formalise consultative arrangements in companies, while others are deferring all employer proposals regarding the ICE Regulations to union headquarters for approval, and others are clearly concerned that union influence will be diluted where non-unionised representatives participate in new consultative arrangements. On the one hand, unlike many of their European counterparts, British unions that are more used to bargaining may well find it difficult to adjust to engaging in strategic discussions about the company but, on the other hand, employers may find it difficult to raise the level of discussion from a focus on the state of the canteen and tea facilities to strategic business issues.

# CONSISTENTLY GOOD QUALITY...

Poor quality in business is usually easy to spot and easy to put right. Yet time and again businesses can be compromised by poor quality people decisions made by managers. It's a problem unique to HR that would not be tolerated in any other part of the business.



One particular dimension of union involvement in workplace consultation arrangements is worth bearing in mind, however. As in continental Europe, unions may well try to influence consultative arrangements indirectly as experts advising employee representatives. The ICE Regulations and the EU directive only hint at the actual role permitted for such experts, but the experience of other countries shows that outside experts can be very influential in day-to-day works council discussions. In France, for example, managers often report that dialogue ends up taking place with the outside experts to the works council, rather than with employee representatives themselves, and even in Germany where the role of the trade unions is separate from works councils, the former are still often influential.

While lessons from elsewhere in Europe are interesting in assessing the possible value of works councils to companies, as well as the ways in which the law and practice governing them can develop over time, few HR practitioners would advocate simply transplanting a German or Dutch approach to managing works councils directly into the UK, or indeed any other country. Despite the impact of EU law on employee relations, national industrial relations differences remain powerful. But one general maxim holds good for all countries, and that is that successful works councils require significant management commitment and skill if they are to work productively for both management and employee representatives. While it is tempting to focus on the challenge of handling employee and union ambitions in the UK, the really tough work for HR executives may well lie in coaching business

leaders to handle the demands of regular, meaningful and timely consultation with employee representatives.

<sup>1</sup> <http://www.opsi.gov.uk/si/si2004/20043426.htm>

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