The Information and Consultation Directive 2002

The Effect of the Directive on existing Industrial Relations Law

Brian Morgan Solicitor advises that employers should not wait too long to consider the impact of legislation to be enacted under the Directive

Both Ireland and the UK (including Northern Ireland) are bound by the Directive 2002/14/EC of the European Parliament and the Council of 11th March 2002 establishing a general framework for informing and consulting employees in the European Community. They will be obliged to implement the Directive by the beginning of March 2005.

Speaking at a seminar in Dublin 2004, Anthony Kerr, lecturer in the Faculty of Law at UCD in Dublin opined that "the implementation of the Directive could be most significant piece of employment legislation ever to be introduced in this jurisdiction." It will give many employees the right to be informed and consulted systematically through their representatives, in matters affecting their jobs and their future employment prospects. This will have a major impact, even in organised workplaces, because the introduction of these information and consultation rights could enable the trade unions to address work/life and organisation issues that traditionally have been beyond their reach.

Currently under Irish and UK Law, an employer is required to inform and consult its employees only in connection with certain events, e.g. collective redundancies and certain business sales. Outside of those particular circumstances, the only obligation to consult with employees arises under collective agreements, which covers a relatively small proportion of our workforce.

The Consultation Directive will require employers to enter into a written agreement with employees which will set down a formal procedure for informing and consulting employees or employer representatives on an ongoing basis on a broad range of issues affecting the business. The group which will participate in the group information and consultation procedure may be called a "Works Council" or "Employees Forum" or such title as may be agreed between the employer and the employees. In effect, the Consultation Directive will introduce into the national forum the type of employee consultation that is required by multi-nationals under the Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council (the "European Works Council Directive). Neither Ireland nor the UK have passed the legislation to transpose the Consultation Directive into domestic law. However, this legislation should issue shortly as both jurisdictions will be required to bring the legislation into effect by 23rd March 2005. For a guide as to what the implementations will involve, one can read the Irish Consultation Paper which can be obtained on the website of the ROI Department of Trade, and Employment (www.entemp.ie) or the Draft Regulations of the UK Department of Trade and Industry (www.dti.gov.uk).

Further reading is also available on the website on the Northern Ireland Department for Trade and Learning (www.delni.gov.uk) All companies which have in excess of fifty employees should be concerned about the implementation of procedures required under this legislation. While the Regulations will be phased and will only, from April 2005 apply to undertakings with in excess of 150 employees, from April 2007 it will apply to undertaking with in excess of 100 employees, from April 2008, the Regulation will apply to undertakings with in excess of 50 employees. This is a very low threshold.

In certain instances, there will only be obligations on the employer to inform. In other instances there will be obligations on the employer to inform and **consult**. While "consult" does not necessary mean "negotiation or reaching agreement", it will involve the transmission by the employer to the employees representatives of data in order to enable them to acquaint themselves with the subject matter and to enter into dialogue with the employer on certain issues such as:

- The organisation within the enterprise including the transfer of production or posts to different locations or to different divisions
- Recruitment of new employees
- Redundancies (compulsory and voluntary)
- Staff turnover
- Structure of employment
- Geographic location or employees
- Re-organisation of posts within an organisation, redeployment of staff or transfer of posts.

Of particular concern would be the definition of employees' "representatives" who must be informed and consulted. The Irish Congress of Trade Unions are insistent that the legislation should enshrine the principle that information and consultation should be through the trade union representative where unions are recognised and otherwise through independent representatives elected by the employees. Congress is clearly concerned to secure, not only that the legislation provides robust rights to information and consultation, but also that it provides a platform for the further spread of trade union recognition. Employers would be vehemently opposed to a provision, which required a trade union official to be included as 'an employee's representative' in non-union operations. Apparently at the first Irish conference of the Amicus Trade Union, which took place at the end of August 2004 in Belfast, the Union announced its intention to roll out a major organising campaign, which will depend significantly on the organising initiative and activities of its membership, such as the formation of internal organising committees. Such bodies would be well placed to coordinate an election campaign for positions

whose terms of office will have to be of sufficient length to enable the required information to be given and adequate studies thereof to be conducted and a consultation completed.

When a valid employee request to negotiate an Information and Consultation, agreement is made where the employer starts the process on his own initiative, the requirement to negotiate an agreement will be triggered. The Regulations will also provide for the retention of pre-existing agreements which have workforce support. Where the parties fail to negotiate an agreement, the Regulations will allow the standard information and consultation provisions to be applied. Where the standard information and consultation agreement does not suit the employers operation, it is in those circumstances that difficulties will arise for the employer – where it will be confined to procedures which do not suit its operation.

The smart employer should now seek to implement an information and consultation agreement which will be accepted by the workforce in the hope that the procedures in that agreement will in due be adopted as the formal agreement under the terms of the legislation when enacted.

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