

2005

# **Towards a Europeanisation of Industrial Relations**

**The Fourth British-German Trades Union Forum Conference Report**



**Anglo-German Foundation**  
*Deutsch-Britische Stiftung*

**Hans Böckler  
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# **Towards a Europeanisation of Industrial Relations**

Conference Report

**2005**

*Fourth British-German Trades Union Forum*

5 and 6 July 2005

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Conference Report

**November 2005**

**Anglo-German Foundation  
for the Study of Industrial Society**

**Hans-Böckler-Stiftung**

**Friedrich-Ebert-Stiftung,  
London Office**

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## Executive summary

European Union legislation is starting to make a significant impact on industrial relations, and in particular on the crucial three-way relationship between management, employees and trade unions. The establishment of European Works Councils and the creation of information and consultation rights have provided new channels for employees to make their voices heard and to influence decisions about the future direction of their company.

Do these developments herald the slow birth of a Europe-wide system of industrial relations that will function alongside the increasing number of multinationals that treat Europe as a single operational entity? And on what basis will the very different national institutions and practices of industrial relations come together? Will there be a genuine Europeanisation of industrial relations based on the social model, with its guarantees of a central role for trade unions and its entrenched social dialogue? Or will we see continued national diversity within a loose framework of EU legislation, which could well perpetuate the existing pattern, already apparent in France and the UK, of weak unions under pressure and declining collective bargaining coverage?

In July 2005 some 40 British and German trade unionists – from leaders and senior policy-makers to workplace organisers – met in Berlin to discuss these questions, which are central to the future health of trade unions in both countries. The occasion was the fourth British–German Trade Union Forum, a collaboration between the Anglo–German Foundation, the Friedrich Ebert Stiftung and the Hans Böckler Stiftung. The Forum aims to develop closer ties between trade unions and trade unionists in the UK and Germany, and specifically to provide the opportunity to learn from policy and practice in the two countries. Its annual discussions are unique, for it is thought to be the only transnational body to bring together European trade union activists working at different organisational levels.

Two days of lively and intensive debate focused on how trade unions should respond to these opportunities, especially created by the new information and consultation laws. Although trade unions in Germany and Britain operate in strikingly different political and industrial contexts, the organisational challenges are similar. Rights to information and consultation will certainly strengthen the voice of employees. If trade unions are to benefit by rebuilding their membership and influence, they must first overcome the antagonism still prevalent in some unions, especially in the UK, to participating in a company's long-term development, and then accept that worker representation will now take place through two channels, union and non-union. The increased bargaining powers given by the new information and consultation rights will also provide unions with an instrument to establish themselves in unorganised workplaces – especially important in the private sector, much of which is a union-free zone in both countries – and to demonstrate to non-unionised workers how effective unions can be.

The Forum's broad conclusion was that the new rights offer an important step forward. Employees can now – for the first time ever – participate in decisions before they are made. Trade unions need to commit resources to a major education programme to inform employees of their rights and to equip them to play a meaningful part in consultation.

## TOWARDS A EUROPEANISATION OF INDUSTRIAL RELATIONS

The potential benefit to unions is great. The potential benefit to companies is equally significant. Modern companies depend on knowledge and skill, much of which resides with their workforce. Information and consultation offers companies an opportunity to foster long-term co-operation rather than focus solely on short-term shareholder value.



# Introduction

## Some guiding questions

**David Coats, The Work Foundation**, launched the conference with a wide-ranging and stimulating overview of information and consultation/co-determination in Germany, the United Kingdom and the European Union.

### Germany

Germany is often said to have the most successful and most developed system of information and consultation/co-determination in the EU. When commentators talk about the 'European social model', what they actually have in mind is the German social model and its guiding principle of industrial consensus. The institutions established in Germany after World War Two have proved robust and are generally considered to have contributed to Germany's economic success.

The key to the system is the interdependency of its various elements:

- the system of collective bargaining
- co-determination in the workplace through works councils; *and*
- co-determination at the level of governance through the two-tier board system.

As with many German institutions, high unemployment and sluggish economic growth are putting the system under pressure. However, those who advocate neo-liberal prescriptions for structural reform have failed to establish any causal link between information and consultation institutions and high unemployment. By contrast, there is a very strong argument that these institutions smooth the path of structural change, give workers a voice in decision-making, and reduce the problems associated with difficult processes of adjustment.

Nevertheless, it is important to be clear about the scale of the challenge. The institutions are under threat. There are two significant questions.

- First, can the system change and evolve to reflect the changing structure of the German economy?
- Second, can trade unions use the institutions to protect themselves against a neo-liberal assault and to maximise the opportunities presented by well developed information and consultation institutions to rebuild their membership?

In reality, all these problems can be reduced to the organisational challenge. Union membership is falling, and union density is now about 21 per cent, even though collective agreements cover almost all workers. If this decline continues, unions could find it hard to maintain support for co-determination.

On the other hand, union domination of works councils is a real advantage that ought to give unions a strong base in the workplace. Works councillors could become recruiting agents for the union, making clear to workers that, without a union presence, the works council would be much less effective.

### **The UK**

The situation in the UK is very different. Workplace institutions for information and consultation (I&C) were not introduced until April 2005, when the Information & Consultation of Employees Regulations came into force; these implement the EU Directive giving employees the right to be informed and consulted about the business they work for. The Regulations, which introduce a universal, rights-based voice regime for the first time, are a genuine

innovation. However, some trade unions are uncertain about the impact of I&C, believing that the universal rights model could threaten unions' position and that hostile employers could use I&C to undermine collective bargaining.

If this view prevails, unions in the UK could well miss out on an important opportunity. Union density is now 28 per cent overall, and collective agreements cover about 30 per cent of workers. But in the private sector density is 17 per cent and falling – much of the UK private sector is a union-free zone. Unions have the opportunity to use I&C as an instrument to establish a presence in hitherto unorganised workplaces. If unions can win seats on consultative committees, they can give non-union workers a taste of what unions can do.

As in Germany, British unions need to see the whole picture. The government is proposing to reform company law and change directors' duties so that they are explicitly responsible to a wider constituency than shareholders. Similarly, listed companies will be required to publish much more information about overall business performance and organisation – which unions should be able to use through the I&C provisions. Finally, the government is attempting to improve the operation of the UK's capital markets by encouraging institutional investors to become active share-owners – with pressure being applied by the trustees of pension funds, who will play a more important role in the future.

### **The European Union**

Are we seeing a genuine convergence of industrial relations systems across the 25 member states? A pessimist would say that trends in the larger member states suggest that convergence is taking place towards a model with weak unions under pressure and declining collective bargaining coverage – for evidence, look at the challenges facing unions in France, Germany, Italy and the UK. Of course this is contrary to the supposed EU social model in which unions have a guaranteed status, social dialogue is entrenched, and agreements between the social partners can be an effective substitute for legislative proposals from the Commission.

Whatever view one takes about the convergence argument, it is important to be clear about the rationale for EU-level social policy in the past. One can say with confidence that most policy-makers believe that the role of social policy has been to manage the consequences of the integration of markets rather than create an EU 'social space'. This is why we have directives on collective redundancies, business transfers, European Works

Councils and domestic-level I&C. Of course, the EU has inspired great advances in equal pay for both sexes – but these advances largely derive from judicial interpretation of the original treaties. It is much easier to sustain the case that the purpose of social policy has been to manage the consequences of 'creative destruction'.

The question is: can EU legislation on I&C work if trade unions are losing members and bargaining clout? In the absence of strong trade unions it is much more difficult to make I&C effective.

Further challenges flow from the rejection of the draft constitutional treaty in France and the Netherlands. This has led to a renewed focus on the EU social agenda, with the Commission about to initiate a review of the European social model. What this means is not yet clear, although it would be too easy to characterise the process as a struggle between Anglo-Saxon capitalism red in tooth and claw and continental European social markets. In the UK there has been a distinct change of tone, and both Tony Blair, in his speech to the European Parliament in June 2005, and Gordon Brown have referred to the importance of the social dimension.

Of course one might be slightly sceptical about what this commitment means in practice. However, it is worth recalling that the UK labour market has become less flexible in conventional terms since 1997. We have a rising National Minimum Wage, more stringent dismissal rules with higher compensation, equal rights for full-time and part-time workers, and new rights for working parents. Yet at the same time the UK has low unemployment benefits, tight benefit conditionality, and rigorous job search requirements – a more coercive model therefore than anything currently proposed in Germany.

Equally, collective bargaining in the UK is relatively weak outside the public sector, and the government is neutral rather than enthusiastic about trade unions' role in bargaining.

This suggests that we need much greater clarity about those areas subject to the competence of the EU and those subject to decision at domestic level. We need to be clear too about the challenge of globalisation and whether this poses a threat to the EU social model. The questions for the future are:

- How far can we achieve a common floor for rights across Europe and, at the same time, respect national differences?
- Will this lead to a genuine Europeanisation of industrial relations?
- Or will we see continued national diversity within a loosely determined framework of EU legislation?

# Session 1

## Different Starting Points: history, structure and current challenges

Delegates met in two national groups for an introductory briefing on the situation in the 'opposite' country.

### **Britain: Inform! Consult! Organise! – briefings by Hannah Reed and Sean Bamford, Trades Union Congress**

#### **Hannah Read**

##### *Background*

There are three main arguments in favour of information and consultation laws:

- ending 'breakfast redundancies' – when the first workers time hear that their plant is closing and they are redundant is on a morning radio programme
- strengthening the voice of workers and creating organising opportunities
- creating high-performance workplaces based on high trust relationships between workers and employers. Research shows that workplaces that consult and involve staff are a third more likely to have above-average financial performance and a quarter more likely to have above-average productivity; and that there is a strong correlation between union involvement and higher performance.

British trade unions are finding it hard to get their voice heard. Current union density is 29 per cent – and under 20 per cent in the private sector; collective bargaining covers 35 per cent of employees, and 48 per cent of workplaces have a union presence. This makes it difficult to exploit recent legislation – giving rights to statutory recognition and allowing union officials to accompany workers in grievance and disciplinary hearings – in areas where union membership is low.

Before the introduction of works councils in 2000, the UK lacked any effective universal workplace institutions that could provide the framework for developing high trust relationships. Five years on, in 2005, such institutions exist in only 53 per cent of workplaces: in 17 per cent representation is exclusively via a trade union (single channel); in 36 per cent there is dual-channel representation, extending beyond the trade union.

##### *Implementing information and consultation*

Unusually, the British government consulted on the shape of the new Information and Consultation (I&C) Regulations, so the framework agreement, has the support of the TUC and the CBI. The aim is to achieve negotiated I&C agreements, with the standard

provisions of the EU Directive being used as a fall-back: a 'light-touch' approach is preferred. Existing collective bargaining agreements are protected.

Implementation will take place in three stages: companies with 150-plus employees by April 2005; with 100-plus employees by April 2007; with 50-plus employees by April 2008. The TUC is pushing the government to extend I&C to small enterprises.

Key features of the UK's I&C regulations are:

- The 'trigger mechanism' is a request by 10 per cent of employees. This initiates the election of representatives and negotiations on I&C arrangements.
- Trade unions do not have priority treatment. While collective bargaining agreements are valid for organised workers only, I&C arrangements cover the entire undertaking. This may lead to a mixture of union and non-union representatives; trade unions need to watch out for employers blocking union representation.
- Employers can consult their workforce directly, not via elected I&C representatives.
- Union rights to I&C on collective redundancies and transfers of undertakings are preserved.

The Central Arbitration Committee is responsible for enforcing the Regulations. Employers who refuse to implement them can be fined – the maximum fine is £75,000, which trade unions consider too low. Whether these sanctions will be effective is an open question.

### *Opportunities and threats*

Even though it may lead to non-union representation, I&C legislation brings opportunities to build union organisation, develop a wider union voice and open up debate about workplace relationships. There is a risk that the boundaries between collective bargaining and consultation will become blurred – but this need not necessarily happen.

Unions need to win places on I&C structures. I&C has enormous potential, if unions, along with employers and government, are willing to invest money and support in making the structures work.

### **Sean Bamford**

#### *The challenges*

The impact of the new information and consultation legislation will remain uncertain for some time. Will it undermine union strength or help build it up? The answer will be different in different workplaces.

I&C highlights the organisational challenge to unions. While it will strengthen the voice of employees, will it extend trade union influence? The workforce is getting larger, but unions are not growing with it. Membership is declining; in enterprises with a union presence, union influence is also declining. Unions have to be able to respond to different situations. The challenges will be quite different in a highly unionised site, in a workplace with a union presence but no recognition, and in a 'greenfield' site with no union presence at all. Unions are especially nervous about I&C in the first of these, where they have much to lose.

The organising issues are diverse:

- Unions have to be convinced that investing resources in I&C will produce added value in increased influence and membership.
- British trade unions need to accept two channels of worker representation – union and non-union – and to learn from their sister unions in Europe who have experience of working with these two channels.
- The antagonistic attitudes of some union representatives have to be overcome.
- Both union and non-union I&C representatives need support.
- Unions must understand why it is that, although the majority of British workers want some form of collective representation in the workplace, not all of them associate this desire with membership of a trade union.

### **Germany: The Model of Co-determination under Pressure – briefings by Ralf-Peter Hayen and Rainald Thannisch, Deutscher Gewerkschaftsbund**

#### **Ralf-Peter Hayen**

There are two key elements in Germany's industrial relations system. First, the state may not interfere in collective bargaining. Second, workers' interests are safeguarded by a dual system embracing national trade unions and works councils. These have different tasks:

- Trade unions lead collective bargaining and reach collective agreements, and are accountable to their members. If necessary, they can call for a strike.
- Works councils are responsible for monitoring the enterprise's progress and for ensuring that collective bargaining agreements are implemented. They can make proposals and influence decision-making, and are accountable to all employees. Their opinion must be heard before workers are dismissed. Works councils are required by law to work co-operatively with management.

Works councils play a central part in co-determination, or worker participation. The most important rights of co-determination relate to working conditions other than pay (e.g. hours of work, performance monitoring), which works councils must agree.

Legislation passed in 2001 updated the role and operation of works councils, which had remained unchanged for 30 years. These included:

- simpler and more flexible structures
- better working conditions for works council representatives
- co-determination rights for works councils in relation to job security and training issues
- improved representation of women on works councils
- promotion of equal opportunities for women in the workplace.

Currently co-determination is under pressure. In November 2004 a report from the two employers' organisations – the BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände) and the BDI (Bunderversband der Deutschen Industrie) – proposed fundamental modifications to co-determination and greater flexibility in the way works councils operate. The argument is that these changes are necessary because of globalisation is increasing the competitive pressure on companies; because new EU legislation is making works councils superfluous; and because the 2001 reforms are cumbersome and inflexible. The employers have demanded

- reductions in the membership of works councils and in the number of employees given time off for works council duties
- limited time for negotiation, with employers gaining the right to implement changes after the time limit has expired
- a higher voting quorum for creating a works council
- abolition of the extended powers granted to works councils in 2001.

### **Rainald Thannisch**

Having outlined the roles played by the Board of Management, the Supervisory Board and the General Meeting of Shareholders in different sizes and types of company, Herr Thannisch examined current proposals for changes to co-determination.

The two employers' organisations (see above) argue that co-determination must be changed because it is inefficient, isolates Germany in the EU and hinders foreign investment, so placing Germany at a competitive disadvantage. The BDA/BDI's proposals are designed to abolish parity of representation (and thereby co-determination) in the supervisory boards. Most of their arguments are tendentious:

- Co-determination is becoming the European standard. Widespread participation rights exist in 12 of the 25 EU member states, and limited rights in a further six; only seven states have no, or very limited, participation rights.
- Germany remains the most attractive country in western Europe for foreign investment – about 29 per cent of enterprises with parity co-determination (i.e. equal representation on the supervisory board) are owned by foreign investors.
- Co-determination supports successful management by achieving greater acceptance of management decisions and fostering co-operative modernisation. It has a positive impact on productivity and innovation and ensures investment in human capital.

Co-determination is popular – in a survey by the opinion pollsters TNS-EMNID in autumn 2004, 82 per cent disapproved of the proposed reduction of co-determination on supervisory boards – has brought major economic and social benefits, and represents a fundamental plank of the successful German social model.

## Points from discussion

(These sections summarise the main points made in lively and wide-ranging discussions of policies and strategies. As is to be expected, many contributors made overlapping points; such repetitions have been ignored here.)

- Initially the British government tried to block any form of I&C regulation on the grounds that entrepreneurs were hostile. Later it altered its position, partly because the employers' organisation, the CBI, became more receptive.
- In the UK, small business organisations have been effective in lobbying against regulation on the grounds that I&C would threaten their profitability. The challenge is for unions to convince government and business that I&C will benefit both small and large enterprises.
- Generally companies move from Germany (often to eastern Europe) because of cheaper labour costs – and some companies have already returned. Not one company has moved solely because of co-determination. Equally there is no evidence of companies moving to Germany because of co-determination. But, once in Germany, many managers learn to appreciate the benefits of co-determination. These include proper representation of workers, so that they do not have to communicate directly with every individual worker, and a co-operative ethos in which management decisions are accepted.
- The supervisory board can find itself in a difficult position. Elected members are required to communicate with the workers who elected them but are subject to confidentiality requirements in respect of company plans and developments.
- In both Germany and the UK, trade unions are increasingly marginalised – for example, union density in the UK retail trade is down to 7 to 8 per cent. The current reform proposals in Germany are about shareholder value – German capital is trying to re-establish its power following the post-war settlement. How will German trade unions defend co-determination on economic grounds against a right-wing government? How can co-determination be used to develop unions in new industries without a union presence?



## **Session 2**

# **Information and Consultation and more: towards a Europeanisation of industrial relations?**

### **Peter Scherrer, General Secretary, European Metalworkers' Federation**

The development of social dialogue through Sectoral Social Dialogue Committees has been a major priority for the European Metalworkers' Federation since 1999. However, negotiations within the steel and automobile sectors have not so far been especially fruitful, and positive results have only been obtained in shipbuilding, where agreements have been reached on such topics as education and vocational training. This represents encouraging but very limited progress in the light of unions' ambitions for social dialogue.

Employers' organisations are slowly beginning to show interest in, and understand the benefits of, entering into a social dialogue – partly because establishing a voluntary system should prevent the Commission enforcing one. But they are held back by their members, many of whom remain hostile to any activity in this area.

So far the EMF has been instrumental in establishing 309 European Works Councils (EWCs) in multinational groups; 270 of these are still in existence. However, about half of these are not active. The number of agreements signed each year has been steadily declining since 1999: from 32 in that year down to nine in 2004. EWCs have yet to be established in a further 227 multinational groups. In over half of these (121) a request to establish an EWC has yet to be made. Negotiations in many of the others have stalled for a variety of reasons, often linked to management's lack of interest and systematic delaying techniques.

The enlargement of the European Union has had a major impact on EWCs. Well over half (149) of EWCs are in concerns affected by enlargement, and half (79) of these have already been enlarged.

There are many reasons why it is difficult to convince companies and trade unions of the added value EWCs bring. Aside from cultural and linguistic problems, co-operation, especially with colleagues in the new member states, is hard to achieve when jobs are likely to be lost to eastern Europe. Some smaller companies lack the personnel needed to establish EWCs. Some trade unions are reluctant to pass negotiating rights to EWCs.

The way ahead is to concentrate on a sectoral approach and to highlight specific issues of importance across the entire sector.

## **Paul Noon, General Secretary, Prospect, and member of the TUC General Council**

The European industrial relations model offers a high level of employment protection and a high level of employee involvement in the undertaking through systematic structures for information, consultation and co-determination. Messrs Blair and Brown seem to prefer the sharply contrasting Anglo-Saxon model. This offers little employment protection – the emphasis is on the right to hire and fire in response to economic circumstances – and does not systematically involve employees through information and consultation; co-determination is off the agenda. These two models reflect historically different views about society and what makes a successful enterprise.

Until 1997, the EU was the only progressive element in British industrial relations. Since then it has continued to have a major impact, including

- relative improvements in job security and better legislation for tackling sex discrimination in the workplace
- introduction of employees' information and consultation rights
- provisions against collective dismissals
- establishment of EWCs.

However, enforcement of many of these rights is weak – they are not supported by adequate penalties and by compensation for workers.

It is too soon to assess the impact of the Information and Consultation Directive. Trade unions are concerned about its impact, and draw parallels with France where the weak unions are finding themselves by-passed by works councils.

EWCs are not new in Britain; European employers have been establishing them for many years. The British experience is very mixed. Often EWCs do not engage adequately with domestic representative structures; the process of informing and consulting employees systematically is not part of the culture of British management. The legal right to consultation does not lead to effective consultation. In practice, consultation is often not timely, and frequently involves employees being informed about a decision rather than consulted about a proposed course of action. Many employers are hostile – hardly any change their minds after a consultation – and describe I&C rights as a burden on their business; others recognise its importance, often through enlightened self-interest. Broadly speaking, British management wants a flexible workforce and to be left alone by the state to manage.

It is difficult to forecast which model of industrial relations – the European or the Anglo-Saxon – will prevail in the enlarged Europe, and what impact the accession countries will have. The trade union movement believes that European industrial relations must be based on a concern for the dignity and economic well-being of employees and on the realisation that engaging with employees leads to greater, not less, effectiveness. Effective knowledge-based companies need to carry their employees with them; they cannot compete on price, so they must compete on quality. The task for trade unions is

to increase membership levels, strengthen membership involvement, and reach out to the significant union-free workforce across Europe, especially in the private sector.

## Points from discussion

- The influence of European Works Councils should not be underestimated. EWCs helped to keep two Vauxhall car production plants and much Ford production in Britain.
- Unions should put pressure on the Commission to improve the EWC Directive. Important factors are training, working conditions, and reducing the size threshold to 500.
- The example of General Motors (GM) – where the EWC organised

simultaneous co-operative action by workers in GM plants across Europe in the face of a restructuring programme – shows the potential strength of EWCs. GM's management and the EMF signed a framework agreement designed to avoid site closures and forced redundancies and to set out the principles on which future manufacturing sites will be selected. The EMF is trying to replicate the GM example at Electrolux, which is undergoing a Europe-wide restructuring; but the smaller size of the Electrolux plants makes this difficult.

- Unions must also take responsibility for making EWCs work – employers are not always to blame. It is a mistake to abandon the fight for better social protection – social justice and flexible, efficient employment can co-exist. I&C agreements can offer enterprises greater opportunities to respond to economic challenges.
- Conflict with employers is often the trigger for workers at different plants in different countries to co-operate through the EWC. Once co-operation has developed in this way it will continue.
- EWCs can also play an effective role in some parts of the public sector such as energy.
- Unions will have to make their members understand that the Europeanisation of industrial relations is inevitable. Many multinational companies make decisions on a Europe-wide or worldwide basis – not on a national basis. EWCs therefore need to develop common cross-Europe positions, recognising that individual countries, while moving in the same direction, will not necessarily be travelling at the same speed.
- Many employers are keen for their employees to participate in I&C structures, but are not enthusiastic about trade unions. Unions must guard against this and ensure that they actively use EU instruments for worker participation.
- A common European social policy gives greater potential for unions to organise workers who move across Europe and to ensure that workers from the accession states enjoy full rights and benefits. Unions are trying to develop passport union

membership that will apply across Europe and give workers the same rights everywhere; but legal and financial problems are making this difficult to implement.

- Unions need to connect with the people of Europe. This is hard when so few are members – 20 per cent in the private sector, and only 10 per cent if the former utilities (railways, electricity, etc) are excluded – and when voting trends are moving to the right.
- The I&C Directive presents organisational challenges and opportunities:
  - to develop a rights-based approach linking with current developments in corporate governance. This will enable unions to work with international companies on fair trade, working standards in the supply chain and so on.
  - to campaign in under-organised sectors, such as agriculture, cleaning services, security, hotels, where foreign workers are numerous and where protection against abuse is almost non-existent. The challenge is to organise all workers, both local and migrant.
- Unions have to stand up for exploited workers. They must also show that they are there for people in well-paid jobs in concerns with good industrial relations, where unions can help them progress in their career.

## **Session 3**

# **Corporate Governance and the Future of Information and Consultation Rights**

### **Norbert Kluge, European Trade Union Institute**

In both Germany and Britain, corporate governance is generally seen as one aspect of the relationship between investors and management. Social responsibility is in the interests of shareholders, and corporate governance is based on strengthening investor confidence.

However, trade unions take a wider view, and argue that three groups – shareholders, management and workers – should be regarded as investors in a company. All these groups are also citizens and consumers, which makes them stakeholders as well. This view leads to the conclusion that a company's economic performance cannot be isolated from its social role – which it fulfils through corporate governance. A well functioning enterprise serves the public interest.

Most EU states recognise that different groups should be able to influence company decision-making. In 18 states the law provides for some form of worker representation on company boards, and in 11 there is a strong tradition of worker participation. Only Belgium, Britain, Cyprus, Estonia, Italy, Latvia and Lithuania do not require worker participation on company boards. In many countries worker representation extends to small and medium-sized enterprises; in Sweden, for example, to companies with 25-plus employees and in Denmark to those with 35-plus employees.

Recent debate on corporate governance has focused on how to improve transparency and accountability in the face of the multinational companies' growing power and cross-border operations. However, it is national corporate governance codes that need to be strengthened – a single European corporate governance structure would not be effective. The European Corporate Governance Forum established in January 2005 has not been asked to develop a European model; its role is to monitor and report on national developments.

The most interesting and important innovation is the introduction of the 'comply or explain' rule. Corporate governance codes remain voluntary, but if companies do not comply with them they must explain why. This represents an important step forward in self-regulation.

Other areas where corporate governance can be strengthened include:

- clear separation of the roles of chief executive and chairman
- compulsory publication of the remuneration of managers
- independence of non-executive directors.

Co-determination/worker participation does not damage company performance – in fact, quite the opposite, it creates commitment among the workforce to structural change. The fundamental argument for co-determination is individuals' right to be consulted and informed about issues to do with their workplace. In other words, employees are also citizens in their workplace. Important thought it is, the right of employee shareholders to be represented in the boardroom (as, for example, in France) is not a substitute for participation rights at this level.

### **Karlheinz Blessing, Human Resources Director, AG Dillinger Hütte**

Herr Blessing explained his background as a working director sitting on the executive board of a steel company. The company's supervisory board has an equal number of representatives of shareholders and workers; the balance of power is held by a neutral member. This means that working directors must gain and retain the confidence of workers – which can place them in a difficult position.

Overseas investment in the German steel industry has increased substantially in recent years. Investors are not deterred by the rigid form of co-determination in the industry, and shareholders appreciate the fact that co-determination works on a practical level. Worker participation leads to worker responsibility – if responsibility for decisions is shared, then they are carried out effectively; labour conflict happens only if all else fails. The French investors in Herr Blessing's company notice the contrast with France, where the tendency is to strike, then negotiate. French trade unions are also starting to realise that co-determination can bring greater influence.

There is a danger that companies will increasingly take a short-term view: the tyranny of the quarterly report. Traditional German family companies add greater value over the long term than listed companies – the family tends to think in terms of the next generation. However, the support of other stakeholders needs to be gained.

Although the details may vary in different countries, and some reforms are needed, the broad European approach has many valuable features: in particular the balance of interests between different stakeholders, the fundamental right to pensions and social security, and co-operation between management and employees. Modern companies depend on know-how – much of which resides with their employees. Companies will derive much greater benefit from this know-how if they foster an ethos of co-operation rather than through top-down management focused solely on shareholder value.

### **Jonathan Hayward, International Co-ordinator, Amicus**

The British perspective on corporate governance is very different from the German. The corporate governance strategy adopted by UK employers is essentially short-term, and I&C rights are seen as threatening managers' right to manage and shareholder value. The

UK approach is largely adversarial, and I&C rights, other than those that stem from the EU, are non-existent – the I&C Directive has helped to impose minimum corporate governance standards in the UK. In addition, UK trade unions do not see their role as participating in the company's long-term development. The British government strongly opposed the I&C Directive, and remains unhappy with it despite having negotiated a number of concessions.

The Regulations implementing the Directive in Britain contain a number of loopholes that undermine the spirit of the Directive and will weaken its practical implementation:

- There is no list of specific topics on which employers must provide information.
- I&C procedures are negotiated separately in individual concerns – there are no minimum requirements about when, where and how often consultation should take place.
- Employers are able to determine how far they want to implement I&C and can then railroad employees into accepting these limited criteria .

UK employers are going along with the limited involvement required for EWCs – minimal information, annual meetings, no consultation – rather than creating an on-going dialogue that will influence the company's development.

Unions have a major role to play in ensuring that employers do not undermine the Directive's intentions. For example, Amicus mobilised the employees of DS Smith plc (spread across 140 companies) to ensure that the company negotiated an agreement with the Union that guaranteed proper I&C provisions for its employees. While it was successful, this campaign absorbed a lot of resources.

Nevertheless, despite the loopholes, the I&C Directive represents a positive step forward – employees can now, for the first time ever, participate in decisions before they take place. A major education programme is required to meet the challenge of informing employees of their rights and equipping them to play a meaningful part in consultation.

### **Norbert Deutschmann, Chair, Works Council, and Deputy Chair, Supervisory Board, Schering AG**

Herr Deutschmann explained that he has been a member of Schering's supervisory board for six years and has been active at different levels of the works council for 30 years. Nowadays Schering is a single-division pharmaceutical company; the decision during the early 1990s to specialise in pharmaceuticals resulted in a difficult transition period, in which the industrial chemicals and electroplating division and the agrochemicals business were sold. Unlike other medium-size German pharmaceutical companies, Schering has a large number of shareholders, which gives the capital markets considerable influence.

New corporate governance legislation and practice over the past five years have led to major changes in the way the supervisory board operates. These changes are also the result of the greater influence of shareholders, such as pension funds. The outcome is that the supervisory board is far more effective and transparent; its responsibilities are more

clearly delineated, the influence of employee representatives has increased, and it now focuses on longer-term strategic issues for the group as a whole, rather than on smaller-scale issues relating to individual member companies. Changes include quarterly reports from the executive board in place of the previous annual report, enabling closer monitoring; evaluation of the performance of members of the supervisory board, and the introduction of an upper age limit; greater participation by the supervisory board, with, for example, members undertaking roadshows to attract potential investors. Co-operation between trade unions and works councils also leads to increases the effectiveness of the supervisory board. An additional outcome is a better balance between the interests of large institutional investors and small shareholders, since employee representatives have the same priorities –sustainable long-term growth, saving jobs, product safety, training and education, rather than just short-term gain. Indeed many employees are small shareholders, having bought shares in the company for their old age.

The job of a member of a works council or a supervisory board has changed considerably, and it can no longer be done by a volunteer in their spare time. People need to have, or to acquire, expertise – in corporate governance, accounting standards and so on – and communications skills, to build links with workers as well as with investors, and to gain support for decisions. Training is essential, as well as time to do the work.

### **Points from discussion**

- It is refreshing to hear a human resources director [Herr Blessing] speak so unequivocally in favour of corporate governance and I&C. In the UK there is progress towards shareholder involvement, but only in a weak form. Directors now have to take account of the interests of other stakeholders as well as maximising shareholder value. The Myners review of institutional investment in the UK found that pension funds are too focused on the short-term and fail to think long term. In the UK greater sensitivity is needed towards other stakeholders, in Germany to the requirements of investors.
- British trade unions are major investors. They should buy a few hundred shares in companies that are reluctant to implement I&C and good corporate governance and make a fuss at the annual meeting. If they are asked to do so, directors are now required to report on the company's social policies, e.g. towards employees, the local community and the local environment. Forthcoming legislation will require one third of pension fund trustees to be worker representatives. This has the potential to shift pension funds' attitudes – but only in the long term since trustees do not have much influence.
- US unions are already buying shares and raising corporate governance issues at AGMs. IKEA was successfully pressurised to persuade Quebecor Inc. (which has a major printing contract with IKEA) to introduce corporate governance and to negotiate agreements with unions.



- How can employee participation be strengthened? Focusing on issues of democracy is too abstract. Issues such as the environment, company growth, sustainability and pensioners' rights are all more effective campaigning platforms.
- Convergence between the British adversarial approach to corporate governance and the German co-operative approach is not significant. If British trade unions want to move towards the German model, they need to work out how to change management attitudes. Pension funds are one avenue – employee representatives have huge potential power.
- Employer and employee attitudes to I&C in Britain are very negative. Employers see I&C as at best an irritant: I&C will not have an impact on their investment or closure plans. Unions view I&C as a tool to extend their bargaining power, not as a democratic principle. Many trade union members in Britain are hostile towards the government's and unions' moves towards partnership, and see partnership as a way of neutralising unions.
- Research has shown that the input of supervisory boards improves company performance in the long term. The question is whether capital has social responsibility. In Germany the answer is 'yes', in the UK 'no'. Which system can stop big corporations doing what they want to do without redress? There is too much emphasis on trusting the employer. British trade unions need to convince their members that I&C is important and that unions are best placed to defend it.
- If trade unions are to play an informed, major role in corporate governance in Britain, a big shift in resources will be needed. At the moment unions are member-not employer-facing.
- The gulf between the German and British models is not as wide as it is often portrayed. In some respects, more progress has been made in Britain in developing corporate social responsibility than Germany. Some 35 major companies are working with the TUC to develop long-term approaches and to challenge the City's short-termism. Many of these companies are changing their corporate culture and developing social dialogue, and are thereby introducing a new mindset among company leaders.
- Many German industrialists are bad-mouthing the German system. But despite its current difficulties Germany remains the world's largest exporter and has a huge trade surplus, and German companies lead the world in profitability and competitiveness. We need to develop a European model of capitalism – characterised by participation, information and consultation – that can take on the American and Asian models.

## Session 4

# Concluding Questions

### David Coates, The Work Foundation

We need to ask ourselves two important questions:

- Why are the institutions of co-determination and information and consultation important?
- How do they help us to achieve the trade union goals of higher membership and more effective collective bargaining?

It could be said that capital, left to itself, will always behave irresponsibly. There will be unaccountable concentrations of power, an imbalance of power between employer and employees and, in the worst cases, exploitation. The institutions of co-determination are important because they help to deal with these power imbalances and 'domesticate' the behaviour of capital: managed markets rather than free markets.

Alternatively, we may value these rights because they are a practical expression of what human beings need to flourish fully in the world of work. In particular, we place a high value on the right to free speech and the right to express views and be heard. Co-determination rights might therefore be said to be fundamental human rights.

We also know that certain conditions must be met before human beings can flourish at work. Work is better than unemployment and a 'good job' is better than a 'bad job'. The factors that contribute to high quality employment are:

- autonomy and control
- avoiding monotony and repetitive work
- a proper balance between a worker's effort and the rewards they receive
- procedural justice in the workplace.

While effective voice institutions help to ensure that these conditions can be met, they do not guarantee that they will be met.

The critical point is that these institutions can support effective trade unionism and collective bargaining. They can help to make union membership more worthwhile. However, voice institutions cannot be a substitute for strong unions, trusted by their members and respected by the employer. The mere presence of a co-determination law or information and consultation rights is a weak defence if union membership is declining and workplace organisation is weak.

However, this should not be taken as an argument for an upsurge of militant action in the workplace. The TUC's own work shows very clearly that workers understand the simple

equation that high-quality employment is sustained by effective organisational performance and high productivity. This is why more than 90 per cent of union members in the UK believe that unions should protect workers against unfair treatment and at the same time work with employers to improve organisational performance. We know too that the 'bread and butter' issues of trade unionism – fair pay, equality and procedural justice – continue to resonate with the vast majority of workers. Effective worker participation laws can help to create an environment where unions are better able to exercise influence. But the real value of these institutions depends on the level of union membership. Organising must be a priority.

Those unions with the widest agendas – focused on 'getting on' at work as well as 'getting even' – are most likely to be highly valued by their members.

These findings were confirmed by the OECD in the 1999 *Employment Outlook*, where the level of workplace innovation was associated with widespread individual employee involvement and strong collective voice institutions.

This then leaves us with the big question: can these institutions survive the chill winds of globalisation or, in today's shorthand, the 'challenge of China'?

The simple answer is 'yes'. One might reasonably argue that worker participation has contributed to Germany's strong manufacturing base and has enabled organisations to adapt more rapidly. For example, despite all the criticism of sclerotic labour markets, sluggish growth and high unemployment, Germany remains the world's largest exporter. German exports to China have almost doubled over the last four years, whereas the UK's exports have only increased by 17 per cent.

This does not mean that painful choices can be avoided or that the current structure of the economy can be frozen in time. Policy makers have more options available than to 'save all the existing jobs' on the one hand or 'let the workers drown' on the other. Social dialogue, European Works Councils, corporate governance, and enterprise-level worker participation are all important elements in the policy mix.

We should value the institutions we have, reform them where necessary, and make these arrangements work to our advantage. There is no value in disengaging or pursuing a strategy based only on 'fighting back' against either governments or employers.

### **Points from discussion**

- The political context in both Britain and Germany is crucial. Given over 20 years of right-wing governments in Britain (both Conservative and Labour), it is hardly surprising that unions' logical arguments are not heard. Employers will only respond if unions build their strength and become more militant. In Germany, too, trade unionists will have to take action to gain a hearing in the increasingly harsh political environment, created by the SPD government and likely to be accentuated in the event of a CDU victory in the September election.

- Trade unions worldwide are facing common problems of declining membership numbers and a gap between unions' traditional values and the public's perception of what unions stand for. Unions should be taking up wider issues of individual dignity, work-life balance, human rights in the workplace and contributing on this basis to political argument in society. This will help them to 'rebrand' and widen their appeal in contemporary society.
- Unions need to decide whether they are going to adopt a 'cuddly' position towards right-wing governments or a 'tigerish' one. British unions chose the cuddly option in the 1980s – and lost the arguments.
- The right-wing assault on trade unions in Britain has stopped, and it is mistaken to brand New Labour as hostile to unions – considerable advances in workers' rights have been achieved since 1997. We are at a turning-point in union development. We must deal with companies that retain outdated managerial attitudes, and we must also reach out to enrol new members from new private-sector industries.
- The challenge from China is a major one. Especially at the European level, trade unions have a responsibility to pressurise multi-national companies to bring socially acceptable standards to Chinese workers.
- Linkages can be made between the business case for long-termism and the rights case, which is fundamental to trade union activity. Political and social oppression makes sense if companies are only concerned about the short term, since wage rates will always be low in oppressed nations such as China. Jobs are moving to China not just from the North but also from countries South Africa, India and Brazil – this is a shift from decency to oppression.
- There is no substitute for effective trade union organisation. This will create a virtuous cycle in which the decline in membership in both Britain and Germany is reversed, and unions as far as possible work with employers, because co-operation increases company performance. In Britain the increased bargaining power given by the new information and consultation rights have the potential to bring in new members; in Germany unions should use the power of works councils in the same way. In both countries unions must extend their appeal to workers in well paid, knowledge-based service industries.