Harnessing Workers’ Participation in the introduction of new technology in multinationals: Towards a European Approach

Re-Thinking Labour Law in the Digitalization Era

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Remember that I&C rights are analogous across the EU

At local, national, and European levels, Workers’ representatives have the right to be informed, consulted, and under certain circumstances to negotiate about the impact of the introduction of new technology.
Information and consultation and digitalisation

Especially where that new technology

- can be expected to be **disruptive** and
- where that technology will be or could be used to **monitor** employee’s performance and behaviour
- Where there are **health and safety** implications (don‘t forget: psychosocial risk)

**Information and Consultation basics:**

- in good time,
- with the appropriate level of management,
- and all the information that is needed to engage meaningfully.
What new technologies are we actually talking about?

**Equipment:**
- Hand-held mobile devices, smart machines, cameras, Bring Your Own Devices rules, wearables

**Monitoring:**
- Screenshots, the temptations of big data, GPS localisation, drones

**HR Management tools:**
- Online platforms, for recruiting, project management, supervision, evaluation, working time, holiday, travel, expenses reimbursement, etc.

**Compliance:**
- (external) regulatory authorities may seize equipment
- Workers must comply with transparency rules
Multi-level actors, institutions and processes

Transnational collective agreements at company level (?)

European level:
Cross-border information, consultation via EWC, SE-WC

National and/or European level:
Information and monitoring via board-level employee representation

National levels:
Information, consultation, negotiation via local workplace representation and national company level-representation and/or trade unions

Local/national collective agreements
Legal sources of influence

- in EWC & SE legislation
- In EWC and SE-WC agreements
- In national I&C law
Digitalisation is a transnational issue

Digital technologies are very likely to be introduced across the company...

...and hence are within the competence of the transnational body for information and consultation (EWC or SE-WC)

- **EWC Directive (Recital 16, 2009/38/EC)**
  - The transnational competence of the EWC is “determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. [The EWC is thus competent to address...] matters which concern the entire undertaking or group or at least two Member States [...] and which [...] are of importance for the European workforce in terms of the scope of their potential effects [...]
EWC & SE Directive: SUBSIDIARY REQUIREMENTS specifically mention technological change

- **EWC Directive (Annex)**
  - [...] The information and consultation of the European Works Council shall relate in particular to [...] substantial changes concerning organisation, introduction of new working methods or production processes [...]

- **SE Directive** Annex: Standard rules, Part 2, b
  - (...) The meeting shall relate in particular to the [...] introduction of new working methods or production processes [...].
What's in the EWC and SE WC agreements?

Competence included (%)

- Changes to work processes: 74%
- Introduction of new technology: 18%
- R&D Investment & activity: 7%
- Data protection: 2%
General I&C

- where actors present and request it
- very general provisions, nothing known or mentioned on risks of surveillance

- UK
- Ireland
- Romania
- Cyprus
- Croatia
- Poland
Information and Consultation on new technology -- some specific rules

- **Spain**
  - I&C general, Employee reps can issue own report on surveillance, H&S aspects covered.

- **Portugal:**
  - I&C general, nothing specific except that behaviour may not be monitored except for H&S

- **Norway:**
  - statutory I&C not used much, but elaborate rights in national collective agreement

- **Finland:**
  - regular and comprehensive information and consultation (more I than C)
  - Very important role of Data Protection Ombudsman
Information and Consultation on new technology -- some specificity

- **France:**
  - More I than C, mostly on impact on jobs or health and safety aspects

- **Latvia:**
  - I&C on impact of new tech on jobs, working conditions and salary

- **Italy**
  - on monitoring; information only:
  - Since 2015 employers have all freedom to use tech and data to measure performance and behaviour. Before 2015, employees had strong rights!
Information and Consultation on new technology: enhanced rights if it can be used to monitor behaviour and/or performance

- **Germany, Greece, Belgium, Austria**
  - I&C plus negotiation if technology *could* be used to monitor behaviour and/or performance

- **Hungary:**
  - I&C plus collective agreement possible (but none known)

- **Switzerland:**
  - I&C, and possibility in sectoral collective agreements arrangements about data protection, use of data, etc.
To bear in mind

- I&C rights are widely understood to be applicable to the introduction of new technology
  - but not practiced everywhere.

- Differentiation of rights
  - depending on whether new tech is designed to or simply COULD BE used to monitor performance and behaviour
The connection to health and safety protection

If digitalisation is the source of risk for health and safety...

- Physical risks: Robots, automation
- Psychosocial risks: workload, loss of autonomy, stress, time stress, constant connectivity, less direct face to face communication, etc.

Then these are issues that can be raised together with health and safety representatives.
I&C in health and safety: General

- Any measures substantially affecting health and safety, and on the organisation of workers’ H&S training.
  - they must be consulted in good time;
  - they must be able to make proposals;
  - they must be able to participate, in line with national laws and practices.
- the right to ask employers to draw up and implement plans for mitigating or removing hazards at work.
- submit comments when authorities carry out inspections.
- adequate time off, without loss of pay, and the resources they need
- Approach: Cycle of continuous improvement
**H&S Process Rights; information, consultation,**

- ICP rights apply to minimum safety and health requirements for the use of work equipment and personal protective equipment

- H&S reps have access to all the information they need
  - including risk assessments, preventive measures and reports from inspection and health and safety agencies.

- Employer must inform workers’ reps about any incident, what caused it, and how they are dealing with the situation

- Access to generalised lists about exposures and risks
  They must know the steps taken to reduce or eliminate these risks, so that they can check that safety procedures are being applied, particularly when changes occur at the workplace.
SOME EXAMPLES....
Company car -- with strings attached

- Company cars automatically generates e-logbook
  - for travel and tax purposes
  - Monitors fuel consumption, engine performance
  - Constant GPS localisation
  - External provider manages data, acc to law and contract w/ company

1st introduced in CZ, where it was regulated that:
- Kilometers are recorded „but not monitored“
- If a route is registered as a private drive,
  - Vehicle not traceable on a map
  - Only number of KM travelled, but no information about the movement in any statistics
- „Private“ km and 1% of car value are non-financial benefit subject to taxes and social and health insurance contributions
Mobile home care workers

- **Company app**
  - to allocate and manage scheduling home care
  - GPS: Direction and tracking

- **Risk:**
  - excessive monitoring, less autonomy and discretion of worker.
  - Strict scheduling, mapping of times and routes to be taken
  - Loss of face to face collegial contact: source of support in a difficult job

- **To be regulated:**
  - How much discretion in allocating visiting times and choosing routes
  - Breaks: the right to disconnect, to be where one wants
  - Data protection, privacy

- **Analogous situation** for sales forces, maintenance workers etc
  - Some first experiences in “Uberisation”: On-demand home care
HRM in the Cloud: What’s to be regulated?

Use of data must be regulated site by site/country by country with works councils/trade unions

- Who has access to what data? (including employee)
- How detailed is the regular and ad-hoc reporting and who has the right to generate reports?
  - Establish basic rules, e.g., no individual, identifiable reporting, deletion of data after certain period
- **Recruitment** platforms, evaluation platforms need specific protection
- **Compliance**: Workers‘ reps must have the right to see:
  - how data protection is regulated in the contract with the provider
  - how national law is implemented
  - Approval of official data protection authority
HRM in the Cloud: What’s to be regulated?

- **No personnel data exported outside reach of law,**
  - e.g., to USA

- **Information rights:** Management must be obliged to report country by country about
  - implementation of data protection law
  - role of WP and protection of employee data

- **Risk:** in-built dynamism of system/automatic updates via cloud
  - Must know when update makes new analyses possible & thus ensure WP whenever impacted!
In all country groups, digitalisation has entered the agenda of I & C.

This is not the case as regards the establishment of working groups within trade unions and companies.

Very limited knowledge about collective agreements addressing digitalisation.

% of responses by country cluster:

- **Digitalisation as a topic of information and consultation**: 65,25% (ALL), 62,16% (NORDIC), 71,83% (WESTERN CONT.), 42,5% (EAST), 61,48% (SOUTH)
- **Working group on digitalisation**: 35,64% (ALL), 31,58% (NORDIC), 43,11% (WESTERN CONT.), 42,5% (EAST), 32,16% (SOUTH)
- **Knowledge of collective agreements at company sector level**: 14,42% (ALL), 13,33% (NORDIC), 11,79% (WESTERN CONT.), 7,59% (EAST), 22,27% (SOUTH)
Some key questions:

- How to get this onto the agenda for information, consultation and negotiation?
- Look for analogue analogies: camera in the hallway is obvious, but GPS localisation is not?
- Recognise that digitalisation has turned principles of data protection upside down.
  - used to be that data collected cannot be used for anything for which it was not collected. Today, all data is collected and we need to decide what it cannot be used for.
- Find ways to reduce complexity
  - One-off new tech is hard enough, but what if it is constantly being updated via the Cloud?
  - Define basic, generally applicable and adaptive rules
  - Reverse burden of proof/instill obligation to inform rather than right to ask.
  - Ensure qualification and access to expert support
Outlook:

Many of the issues thrown up by digitalisation are not fundamentally new:
- we don’t need to reinvent the wheel, but perhaps add a few wheels.

Key challenge in MNCs:
The impact of digitalisation is transnational, if not global.

So how to strategically and pragmatically link up the exercise of information, consultation and negotiation rights by unions, employee representatives and health and safety representatives when it comes to mitigating the impact of digitalisation on all areas of their work in representing and defending the interests of the workforce?
Thank you for your attention!

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